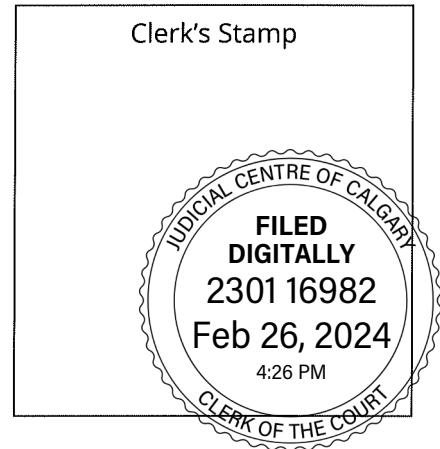


COURT FILE NO. 2301-16982

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANDESTO ENTERPRISES CORP., D3 INFRASTRUCTURE SERVICES INC. and SAFE ROADS ALBERTA LTD.

APPLICANTS CHRIS BOKENFOHR and VOR ALLEM CONSULTING LTD.

DOCUMENT **AFFIDAVIT OF CHRIS BOKENFOHR**

ADDRESS FOR SERVICE	McLENNAN ROSS LLP	Lawyer: Michael D. Aasen / Taylor Campbell
AND CONTACT	1900 Eau Claire Tower	Telephone: 403.303.2903
INFORMATION OF	600 – 3rd Avenue SW	Fax: 403.543.9150
PARTY FILING THIS	Calgary, AB T2P 0G5	Email: taylor.campbell@mross.com
DOCUMENT		File No.: 20231555

**AFFIDAVIT OF CHRIS BOKENFOHR SWORN/AFFIRMED
ON THIS 26th DAY OF FEBRUARY, 2024**

I, Chris Bokenfohr, of Sturgeon County, in the Province of Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am the President and sole shareholder of Vor Allem Consulting Ltd., previously 411850 Alberta Ltd. ("**Vor Allem**"). As such, I am authorized to swear this affidavit as the corporate representative of Vor Allem.
2. Vor Allem and I are prior shareholders of Safe Roads Alberta Ltd. ("**Safe Roads**"), D3 Infrastructure Services Inc. ("**D3**"), and Candesto Enterprises Corp. ("**Candesto Corp**"; collectively with Safe Roads and D3, the "**Corporations**"). I am a prior director of the Corporations.

3. As a result of the foregoing, I have personal knowledge of the matters hereinafter deposed to except where stated to be based upon information and belief, and where so stated I do verily believe the same to be true.

The Corporations History

4. In February 1992, I became the sole shareholder and director of Vor Allem. Thereafter, I established Candesto Enterprises Inc. ("**Candesto Inc.**"). I operated Candesto Inc. as a roadway signage, guardrail, and high-tension cable barrier installation company as its sole director and shareholder.
5. In January 2016, I was contacted by William Francis Powell ("**Bill Powell**"). My discussions with Bill Powell led to the formation of the material terms and conditions of my initial working relationship with Bill Powell and the group of companies he is involved with (the "**Negotiations**").
6. As a result of the Negotiations, Candesto Corp was established in November 2016. The assets and work in progress from Candesto Inc. was sold to Candesto Corp. 1964740 Alberta Inc. ("**196 Inc.**") and I were equal (50%) shareholders of Candesto.
7. As a further result of the Negotiations, Safe Roads (formerly 1957282 Alberta Ltd.) was established on or about March 16, 2016. Between March 16, 2016, and December 21, 2018, I held 100% of Safe Roads' common voting shares in trust for 196 Inc., Vor Allem, and Scott Welsh pursuant to an agency agreement. On December 21, 2018, Safe Roads' shares were distributed to 196 Inc. (60%), Vor Allem (20%), and Scott Welsh (20%).
8. As far as is known to me, in or around October 2019, Barricades and Signs Ltd. purchased Scott Welsh's shares in Safe Roads and thereby became a minority shareholder of Safe Roads.
9. D3 was established in March 2017. Between March 2017 and May 2022, Vor Allem owned 20% of D3.
10. The following are loans due and owing to Vor Allem:
 - (a) As of September 10, 2021, Safe Roads was indebted to Vor Allem for \$565,128.94; and
 - (b) As of September 16, 2022, Candesto Corp was indebted to Vor Allem for \$388,990.59.

(collectively, the "**Loans**")

The Share Purchase Agreement

11. In late May 2022, Vor Allem and I sold all shares held in each of the Corporations to Batavi Venture Group Inc ("**Batavi**"). Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a copy of the share purchase agreement (the "**Share Purchase Agreement**").
12. As far as is known to me, Jan van Bruggen ("**Mr. van Bruggen**") is the directing mind of Batavi, which acts as Mr. van Bruggen's holding company. As far as I am aware, Batavi has no active business operations, has no customers and clients and does nothing more than hold shares in other companies.
13. At the time the Share Purchase Agreement was executed, I understood the financial terms contemplated in the Share Purchase Agreement and transaction as a whole were as follows:
 - (a) Batavi agreed to pay \$125,000 at closing and \$625,000 paid over a 5 year period commencing January 31, 2023;
 - (b) Safe Roads would issue a promissory note in the amount of \$250,000 to Vor Allem (the "**Promissory Note**"). Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a copy of the promissory note;
 - (c) Batavi and the Corporations agreed to pay \$14,354.87 per month for a period of 60 months for consulting services (the "**Consulting Agreement**"). Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a copy of the consulting services agreement; and
 - (d) The Corporations would repay the Loans to Vor Allem.
14. I estimate the total value that I and Vor Allem was to receive as a result of the Share Purchase Agreement transaction to be approximately \$2,815,412.06.
15. In January 2022, I completed an inventory count on all of Safe Roads inventory. The total value of Safe Roads inventory at that time was \$2,171,693.58. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a copy of Safe Roads' inventory count as at January 31, 2022.
16. I have reviewed Jan Van Bruggen's Affidavit sworn on December 18, 2023 (the "**JVB Affidavit**"). The JVB Affidavit, at paragraph 109, confirms Batavi has only paid \$125,000 of the total purchase price contemplated by the Share Purchase Agreement. This accords with my review of my and Vor Allem's records.
17. I have reviewed my records and verily believe that neither Batavi or the Corporations have made any payments to either myself or Vor Allem pursuant to the terms of the Consulting Agreement.

18. Further, I have reviewed Vor Allem's records and verily believe that Safe Roads has not made any payments to Vor Allem pursuant to the terms of the Promissory Note.
19. Candesto Corp and Safe Roads continue to be indebted to Vor Allem for the full value of the Loans.

The Non-Competition Agreement

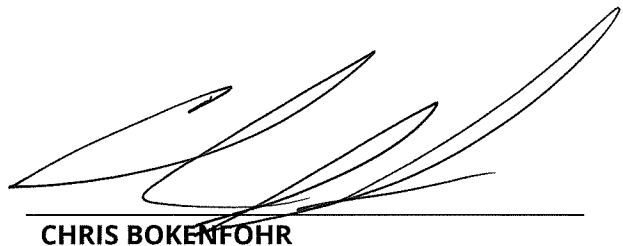
20. A term of the Share Purchase Agreement required me to execute a Non-Competition, Non-Solicitation Undertaking in favour of Batavi and the Corporations (the "**Non-Competition Agreement**"). This was a separate standalone agreement from the Share Purchase Agreement. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a standalone copy of the executed Non-Competition Agreement.
21. I am informed by my counsel, and verily believe, that during the Corporations' initial CCAA application on December 20, 2023, counsel for the Corporations advised the Court that the Corporations viewed the best approach given the circumstances was to cease operations and active business in order to wind up their affairs in an orderly fashion. Attached hereto and marked as **Exhibit "F"** to this my Affidavit are the title page, table of contents, and pages 1, 11-12, 17-19, and 39-46 from the December 20, 2023 application transcript.
22. I swear this affidavit in support of my and Vor Allem's application to find the Non-Competition Agreement void as a result of Batavi's breach of the Share Purchase Agreement.

SWORN/AFFIRMED BEFORE ME
at the City of Edmonton,
in the Province of Alberta
on the 26th day of February, 2024.


A Commissioner for Oaths in and
for the Province of Alberta

Jared R. Lane
Student-At-Law


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)
)
)
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)
)


CHRIS BOKENFOHR

This is Exhibit " A " referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 20 24.



A commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

SHARE PURCHASE AND SALE AGREEMENT

April __, 2022
January 31, 2022

Between:

BATAVI VENTURE GROUP INC., an Alberta corporation
(hereinafter called the "**Purchaser**")

and

411850 ALBERTA LTD., an Alberta corporation ("411850") and
CHRIS BOKENFOHR ("Bokenfohr"), an individual resident in
Alberta (collectively hereinafter called the "**Vendor**")

WHEREAS the 411850 owns 20 Class "B" Common Shares in the capital of Safe Roads Alberta Ltd., 411850 owns 20 Class "A" Common Shares in the capital of Candesto North Inc., and Bokenfohr owns 500 Class "A" Common Shares in the capital of Candesto Enterprises Corp. (the "**Shares**"), which is the owner and operator of a certain business (the "**Business**") providing services to the public in the Province of Alberta;

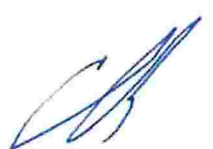
AND WHEREAS the Purchaser wishes to purchase the Shares, all on the terms and conditions hereinafter set forth, for the Purchase Price, as hereinafter defined;

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto mutually covenant and agree as follows:

ARTICLE I **INTERPRETATION**

1.1 **Defined Terms.** Where used herein or in any amendment hereto, the following terms shall have the following meanings respectively:

- (a) All dollar amounts referred to in this Agreement are in Canadian funds;
- (b) "Agreement", "hereto", "hereof", "herein" and "hereunder" mean this Agreement and any and all amendments hereto;
- (c) "Business Day" means Monday to Friday every week, excluding any statutory holidays in the Province of Alberta;
- (d) "Closing" means the closing, on the Closing Date, of the transactions contemplated under this Agreement;
- (e) "Closing Date" means January 31, 2022;
- (f) "Corporations" means Candesto North Inc., Candesto Enterprises Corp., and Safe Roads Alberta Ltd.



- (g) "Effective Date" means January 31, 2022 or such other date as is mutually agreed upon by the parties;
 - (h) "Income Tax Act" means the *Income Tax Act* (Canada) and regulations thereto as amended from time to time;
 - (i) "Lien" shall have the meaning attributed thereto herein;
 - (j) "Non-Competition Agreement" means the non-competition agreement between the Vendor and the Purchaser in the form annexed hereto;
 - (k) "Purchase Price" shall have the meaning attributed thereto in paragraph 2.2 hereof;
 - (l) "Purchaser's Solicitors" means D. Allison Professional Law Corporation, located at 2205, 500 – 4 Avenue SW, Calgary, Alberta T2P 2V6;
 - (m) "Schedules" means the Schedules referred to in paragraph 1.4 hereof;
 - (n) "Vendor's Solicitors" means Lori Bokenfohr.
- 1.2 Headings. The headings used in this Agreement are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.3 Number and Gender. All words importing the singular number shall include the plural and vice versa, and all words importing gender shall include the masculine, feminine and neuter gender.
- 1.4 Schedules. The following Schedules are appended to and form part of this Agreement:

Non-Competition Agreement
Consulting Retainer Agreement

All Schedules hereto are incorporated herein fully as though contained in the body hereof. Whenever any provision of any Schedule conflicts with any provision hereof, the provisions hereof shall prevail and govern.

ARTICLE II

PURCHASE AND SALE OF SHARES

- 2.1 Agreement to Sell and Purchase. Upon and subject to the terms and conditions hereof, the Vendor hereby sells to the Purchaser, and the Purchaser hereby purchases from the Vendor, the Shares on the Effective Date.
- 2.2 Purchase Price. Subject to the terms and conditions contained herein (including adjustment pursuant to clause 2.6), the purchase price payable by the Purchaser to the Vendor for the Shares (the "**Purchase Price**") shall be the sum of \$750,000.00. The Purchase Prices shall be allocated as follows: (a) Shares held in Candesto North Inc.



\$150,000.00; (b) Shares held in Candesto Enterprises Corp. \$500,000.00; and (c) Shares held in Safe Roads Alberta Ltd. \$100,000.00.

which Purchase Price shall be paid as follows:

- (a) \$125,000.00 at the Closing Date; and
- (b) \$125,000.00 per annum on each of the first, second, third, fourth and fifth annual anniversary dates of Closing.

- 2.3 Non-Competition Election. The Parties agree that no portion of the Purchase Price shall be allocated to the undertakings set out in the Non-Competition Undertaking annexed hereto. The Parties hereto acknowledge and agree that the said undertakings form an integral part of this Agreement and that said undertakings are required in order for the maintenance and preservation of fair market value. The Parties agree that subsections 56.4(5) and 56.4(7)(g) of the *Income Tax Act* (Canada) and the equivalent provisions of any provincial legislation shall apply to the undertakings set out in the Non-Competition Undertaking. The Parties agree to file a joint election in the prescribed form on or prior to the date on which they are required pursuant to the *Income Tax Act* (Canada) to file their next federal tax return agreeing to apply subsections 56.4(5) and 56.4(7)(g) the *Income Tax Act* (Canada) to the undertakings set out in the Non-Competition Undertaking.
- 2.4 Consulting Agreement. At Closing, Vendor shall enter into a written agreement to provide consulting services to the Corporations during the 60 month period following Closing. The Vendor shall be available to provide consulting services to and in favour of and as and when required by the Corporations for up to 40 hours in a week. The Vendor shall be paid monthly in arrears in amount equal to \$13,671.31, plus GST, per month regardless of the actual hours worked in such month to reflect the retainer and personal availability expectation nature of such engagement.
- 2.5 Security. Each of the Purchaser and the Corporations covenants and agrees to pay all amounts set out in this Agreement and in the aforesaid consulting agreement when due. If any of the Purchaser or the Corporations defaults in the payment of any such amounts, the Vendor may give notice to the Purchaser and the Corporations of such default with sufficient details of such default to permit the Purchaser and/or the Corporations to act to remedy such default. If the Purchaser and/or the Corporations fail to fully rectify such default within 90 days of such notice, all amounts set out in this Agreement and in the aforesaid consulting agreement shall be immediately due and payable and the Vendor may proceed to exercise those rights set out in that certain share pledge agreement, annexed hereto, to recover all losses suffered as a result of such default in payment.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

- 3.1 Representations and Warranties of Vendors. The Vendors, jointly and severally represent and warrant as follows to the Purchaser and acknowledge and confirm that the Purchaser is relying on such representations and warranties in connection with the purchase by the Purchaser of the Shares:

- (a) Due Incorporation. 411850:
- (i) is duly incorporated, validly existing and in good standing under the laws of the Province of Alberta; and
 - (ii) has all necessary corporate power and authority to own, lease and operate its properties and to conduct its business as and in the places where such properties are now owned, leased or operated or such business is now conducted.
- (b) Corporate Authority and Due Execution. 411850 has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement, and all necessary actions, corporate or otherwise, have been taken by and on behalf of 411850 to approve this Agreement and the transactions contemplated hereunder. This Agreement has been duly executed and delivered by 411850 and constitutes a valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally or general principles of equity.
- (c) Validity of Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated herein will not result in the violation or breach of or be in conflict with or constitute a default under any of the terms or provisions of any agreement or instrument to which the Vendor is a party or by which it is bound or to the best of the Vendor's knowledge, information and belief, or that of any agent or employee of the Vendor, under any judgement, decree, order, statute, regulation, rule or license.
- (d) Title to Shares. The Vendors are the beneficial owner and holder of record of the Shares and at Closing shall transfer to the Purchaser a good and valid title to the Shares, free and clear of all Liens. The Shares are issued as fully paid and non-assessable.
- (e) Resident. The Vendor is not a non-resident of Canada within the meaning of the Income Tax Act.
- (f) Necessary Authorizations. All necessary or desirable steps and proceedings, to approve or authorize validly and effectively the transfer of the Shares to the Purchaser and the execution of this agreement and all other documents contemplated or desirable to give effect to the intent hereof have been taken by the Vendor.
- (g) No Effect. The execution of this Agreement, the consummation of the transactions contemplated herein, the performance by the Vendor of the Vendor's obligations hereunder and the compliance by the Vendor with this Agreement does not:
- (i) result in, or give any person the right to seek, or to cause (a) the

termination, cancellation, modification, amendment, variation or renegotiation of any contract, agreement, indenture, instrument or commitment to which the Corporations or any of the Corporations' properties may be a party or subject or by which it is bound or affected, or (b) the acceleration or forfeiture of any term of payment, or (c) the loss in whole or in part of any benefit which would otherwise accrue to the Corporations;

- (ii) result in, or require the creation of any lien, hypothec, pledge, charge, prior claim, security interest, adverse claim or other encumbrance or right of others of any nature, whatsoever or howsoever arising (individually, a "Lien" and collectively, "Liens"), upon any of the Shares or any property of the Corporations; or
- (iii) violate, contravene or breach any Laws.

3.2 Representations and Warranties of Purchaser. The Purchaser represents and warrants as follows to the Vendor and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the purchase by the Purchaser of the Shares:

(a) Due Incorporation. The Purchaser:

- (i) is duly incorporated, validly existing and in good standing under the laws of the Province of Alberta; and
- (ii) has all necessary corporate power and authority to own, lease and operate its properties and to conduct its business as and in the places where such properties are now owned, leased or operated or such business is now conducted.

(b) Corporate Authority and Due Execution. The Purchaser has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement, and all necessary actions, corporate or otherwise, have been taken by and on behalf of the Purchaser to approve this Agreement and the transactions contemplated hereunder. This Agreement has been duly executed and delivered by the Purchaser and constitutes a valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally or general principles of equity.

(c) Validity of Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated herein will not result in the violation or breach of or be in conflict with or constitute a default under any of the terms or provisions of any agreement or instrument to which the Purchaser is a party or by which it is bound or to the best of the Purchaser's knowledge, information and belief, or that of any agent or employee of the Purchaser, under



any judgement, decree, order, statute, regulation, rule or license.

- (d) Enforceability. This Agreement constitutes a legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms.
- (e) Residency. The Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act, and is not a non-eligible person, as that term is defined under the *Investment Canada Act*.

ARTICLE IV **SURVIVAL AND INDEMNIFICATION**

- 4.1 Survival. The representations and warranties contained in this Agreement, in the Schedules annexed hereto or in any certificate or other document delivered or given pursuant to this Agreement shall survive the completion of the transactions contemplated by this Agreement, and notwithstanding such completion or any investigation made by or on behalf of the Purchaser or any knowledge by the Purchaser of any incorrectness in, or breach of, such representations or warranties, shall continue in full force and effect for the benefit of the Purchaser.
- 4.2 Indemnification by Vendor. The Vendor shall indemnify and hold the Purchaser harmless from and against any claims, demands, actions, causes of action, judgments, damages, losses (which shall include any diminution in value), liabilities, costs or expenses (including, without limitation, interest, penalties and reasonable attorneys' and experts' fees and disbursements) (collectively, the "Losses") which may be made against the Purchaser, the Corporations or which any of them may suffer or incur as a result of, arising out of or relating to:
 - (a) any violation, contravention or breach of any covenant, agreement or obligation of the Vendor under or pursuant to this Agreement;
 - (b) any incorrectness in, or breach or, any representation or warranty made by the Vendor in paragraph 3.1, the Schedules annexed hereto or in any certificate or other document delivered or given pursuant to this Agreement; or
 - (c) any liabilities or obligations of the Business of any nature whatsoever arising after the Effective Date in respect of any act or omission of the Vendor accruing prior to the Effective Date.
- 4.3 Purchaser's Right to Set-Off. The Purchaser is hereby authorized at any time and from time to time to set off and apply any amounts for which the Vendor must indemnify the Purchaser against any amounts that may be owing by Purchaser to the Vendor.

ARTICLE V **CONDITIONS TO THE CLOSING**

- 5.1 Purchaser's Conditions to Closing. The obligation of the Purchaser to complete the purchase of the Shares as contemplated by this Agreement is subject to the fulfillment



and/or performance at or prior to the Effective Date or as otherwise specified of the following conditions:

- (a) Representations and Warranties. The representations and warranties of the Vendor set forth in paragraph 3.1 shall be true and correct in all material respects as at the Effective Date and the Purchaser shall not have received any search results with respect to the Vendor and the Shares and the Corporations (which may include searches conducted at corporate registry, personal property registry, sheriff's office, patent office, employment standards, bankruptcy, the court house and any other searches reasonably necessary in the circumstances) which indicate that the representations and warranties of the Vendor set out in paragraph 3.1 are untrue or incorrect in any material way.
- (b) Performance of Obligations. The Vendor shall have in all material respects complied with all the covenants herein and shall have performed, or caused to be performed, all of its obligations hereunder at or before the Effective Date.
- (c) Lease. If necessary, the Corporations shall have received consent to a change of control in respect of any lease, as might be applicable, on terms that are acceptable to the Purchaser.
- (d) Certificates of Vendor. The Purchaser shall be furnished with such certificates, or other instruments of the Vendor as the Purchaser may reasonably request in order to establish that the terms, covenants and conditions contained in this Agreement have been performed or complied with by the Vendor at or prior to the Effective Date.
- (e) Non-Competition Agreement. The Purchaser shall have received from the Vendor an executed Non-Competition Agreement in substantially the form annexed hereto.
- (f) No Material Change. From the date hereof up to and including the Effective Date, there shall have been no material adverse change in the business, operations, properties, prospects or condition of the Business, including, without limitation, any mandated closure or reduction of operations due to public health measures.
- (g) Litigation. There shall be no actions, claims, investigations, arbitrations or other proceedings pending or threatened as against the Vendor or the Business.
- (h) No Actions. No action or proceeding shall be pending or threatened by any person, government, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the sale and purchase of the Shares or any portion thereof contemplated hereby.

The conditions set forth in this paragraph 5.1 are for the exclusive benefit of the Purchaser and may be waived in writing in whole or in part by the Purchaser at any time. If any of the conditions referred to in this paragraph 5.1 are not satisfied or duly waived on or before the

Effective Date or by the time otherwise specified, the Purchaser may elect by notice in writing to the Vendor to terminate this Agreement whereupon all of the obligations of the parties hereto shall cease to be of any further force and effect.

5.2 Vendor's Conditions to Closing. The obligation of the Vendor to complete the sale of the Shares as contemplated by this Agreement is subject to the fulfillment and/or performance at or prior to the Effective Date or as otherwise specified of the following conditions:

- (a) Representations and Warranties. The representations and warranties of the Purchaser set forth in paragraph 3.2 shall be true and correct in all material respects as at the Effective Date.
- (b) Performance of Obligations. The Purchaser shall have in all material respects complied with all the covenants herein and shall have performed, or caused to be performed, all of its obligations hereunder at or before the Effective Date.

The conditions set forth in this paragraph 5.2 are for the exclusive benefit of the Vendor and may be waived in writing in whole or in part by the Vendor at any time. If any of the conditions referred to in this paragraph 5.2 are not satisfied or duly waived on or before the Effective Date, the Vendor may elect by notice in writing to the Purchaser to terminate this Agreement whereupon all of the obligations of the parties hereto shall cease to be of any further force and effect.

ARTICLE VI **CLOSING**

6.1 Closing. Subject to the terms and conditions hereof, the sale and purchase of the Shares shall be completed at the Effective Date at the offices of the Purchaser's Solicitors.

6.2 Vendor's Deliveries at Closing. The Vendor shall tender at the Closing the following items and/or documents in such number as is requested by the Purchaser:

- (a) share certificates representing the Shares duly endorsed for transfer;
- (b) a certificate of the Vendor certifying that all of the Vendor's representations and warranties set forth in paragraph 3.1 hereof are true and correct as of the Effective Date;
- (c) a fully executed non-competition agreement;
- (d) a fully executed consulting agreement;
- (e) a fully executed share pledge agreement;
- (f) an executed resignation as a director, officer and employee of the Corporations;
- (g) a release to and in favour of the Corporations from and on behalf of the Vendor;

and

- (h) all records of the Vendor and/or the Corporations relating to the Shares and the Business in the possession and/or control of the Vendor.

6.3 Purchaser's Deliveries at Closing. The Purchaser shall tender at the Closing the following items and/or documents in such number as is requested by the Vendor:

- (a) a fully executed consulting agreement;
- (b) a fully executed share pledge agreement;
- (c) a fully executed promissory note in the amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars from Safe Roads Alberta Ltd. in favour of the Vendor, in connection with the agreed sale of inventory of Safe Roads Alberta Ltd. following Closing;
- (d) a solicitor's cheque, certified cheque or bank draft in the amount of the of the Purchase Price payable at Closing, as may be adjusted; and
- (e) a certificate of the Purchaser certifying that all of the Purchaser's representations and warranties set forth in paragraph 3.2 hereof are true and correct as of the Effective Date.

ARTICLE VII

MISCELLANEOUS

7.1 Further Assurances. The parties hereto shall execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

7.2 Parties in Interest. This Agreement and all of its terms and provisions shall be binding upon and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors, heirs, executors and personal representatives and permitted assigns, as the case may be.

7.3 Cross-Default and Remedies. In the event that the Vendor is in breach of the Non-Competition Agreement, this shall be considered and deemed an event of default pursuant to this Agreement. All rights and remedies of the Purchaser under this Agreement, the Non-Competition Agreement and otherwise under applicable law are cumulative, and in addition to and not in substitution for, any other rights or remedies. Any single or partial exercise by the Purchaser of any right or remedy shall not be a waiver of, nor alter or prejudice, any other right or remedy of the Purchaser.

7.4 Time of Essence. Time shall be of the essence of this Agreement.

7.5 Notices. All notices consents or approvals required or permitted to be given hereunder shall be in writing and shall be delivered to the address of the intended recipient set forth

below or at such other address or addresses as may from time to time be notified by any of the parties hereto in the manner herein provided, that is to say:

(a) Vendor:

(b) Purchaser:

2205, 500 – 4 Avenue SW
Calgary, Alberta, T2P 2V6

Any notice shall be deemed to have been received on the date delivered if such date is a Business Day. If received on a day that is not a Business Day, the notice should only be effective starting on the next succeeding Business Day.

- 7.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise, and no agreement collateral hereto other than as expressly set forth or referred to herein. This Agreement supersedes and replaces any prior agreements, arrangements and understandings between the parties hereto with respect to the subject matter of the transactions contemplated hereof.
- 7.7 Severability. If any paragraph or any portion thereof set forth herein is declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder of that paragraph or of this Agreement, which shall continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion and it is hereby declared that the intention of the parties hereto is that this Agreement would have been executed without reference to any portion which may for any reason be hereafter declared or held valid.
- 7.8 Assignment. Neither party may assign in whole or in part any of its interest, rights or obligations hereunder without the prior written agreement of the other.
- 7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the parties attorn to the exclusive jurisdiction of the Courts of Alberta.
- 7.10 Amendment. This Agreement may be amended only by written amendment signed by both parties.
- 7.11 Waiver. The waiver by any party hereto of any matter provided for herein shall not be deemed to be a waiver of any such other matter.
- 7.12 Expenses. Each party shall bear its own costs in connection with this Agreement.



7.13 Counterparts. This Agreement may be executed by the parties in counterparts, and all counterparts will constitute one Agreement. Delivery of an executed counterpart of a signature page to this Agreement by fax or e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

BATAVI VENTURE GROUP INC.

Per: _____



Witness



CHRIS BOKENFOHR

411850 ALBERTA LTD.

Per: _____


Chris Bokenfohr



- 11 -

7.13 Counterparts. This Agreement may be executed by the parties in counterparts, and all counterparts will constitute one Agreement. Delivery of an executed counterpart of a signature page to this Agreement by fax or e-mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

BATAVI VENTURE GROUP INC.

DocuSigned by:
Per: Jan van Bruggen
Jan van Bruggen

Witness

CHRIS BOKENFOHR


411850 ALBERTA LTD.

Per: _____

This is Exhibit " B " referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 2024.



A commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

PROMISSORY NOTE

January 31, 2024

Principal Sum \$250,000.00

~~Due: May, 2024~~

FOR VALUE RECEIVED the undersigned, promises to pay to or to the order of **411850 ALBERTA LTD.** the principal amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (the "**Principal Sum**") (\$250,000.00), in consideration of 20% of the value of product inventory of Safe Roads Alberta Ltd. at the Closing of the Share Purchase and Sale Agreement between Batavi Venture Group Inc., 411850 Alberta, and Chris Bokenfohr (the "**Inventory**") in lawful money of Canada on demand, with no liability for interest.

The Principal Sum shall be paid in installments from the sale proceeds of the Inventory until the Principal Sum is paid in full, or Two (2) years from the date hereof, whichever is later. The undersigned may at any time without notice, bonus or penalty prepay all or any part of the amount then outstanding under this Promissory Note.

The undersigned waive presentation, days of grace and any other notice of any kind in relation to this Promissory Note, other than notices expressly provided for in this Promissory Note, and agree that the lack of presentation, days of grace and such other notices shall not affect the undersigned's liability for payment under this Promissory Note.

The parties acknowledge and agree that the limitation period for enforcing payment of this Promissory Note shall, notwithstanding anything to the contrary in the *Limitations Act*, or similar legislation, as it may hereafter be amended or replaced, commence only on the date demand for payment under this Promissory Note is made and shall not commence on the date of this Promissory Note or on any other date other than the date of such demand.

Executed and delivered this ~~day of May, 2022.~~

January 31, 2022

SAFE ROADS ALBERTA LTD.

Per: _____



{00036967}

This is Exhibit "C" referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 2024.



A commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

CONSULTING SERVICES AGREEMENT
January 31, 2022 (the "Effective Date")

Between

BATAVI VENTURE GROUP INC., CANDESTO NORTH INC., an Alberta corporation, **CANDESTO ENTERPRISES CORP.,** an Alberta corporation and **SAFE ROADS ALBERTA LTD.,** an Alberta corporation (the "**Corporations**")

and

411850 ALBERTA LTD., an Alberta corporation and **CHRIS BOKENFOHR,** an individual resident in Alberta (the "**Consultant**")

Recital

- A.** The Consultant has entered into a Share Purchase and Sale Agreement dated January 31, 2022, with Batavi Venture Group Inc..
- B.** The Consultant possesses specific skills and capabilities, that the Corporations require in the performance and growth of certain aspects of its business.
- C.** The parties are entering into this Agreement to provide for the Consultant's delivery of the Consulting Services.

The parties agree as follows.

1. Interpretation. In this Agreement:

"**Consulting Services**" means the provision and supply by the Consultant of services to bring about and accomplish those assignments to support the Corporations from time to time.

"**Monthly Compensation**" means \$13,671.31, plus GST.

"**person**" includes any individual, firm, partnership, company, corporation, body corporate, bank, trust, government or governmental authority, unincorporated body or other association of persons or legal entity.

"**Term**" means the 60 months following the Effective Date.

Derivatives of defined terms have corresponding meanings. Headings have been used solely for convenience and shall not be used to interpret this Agreement. This Agreement shall be read with all changes in gender and number required by the context.

2. Engagement. The Corporations engage the Consultant to perform the Consulting Services as provided in this Agreement, and the Consultant accepts the engagement.

3. Performance of Consulting Services. the Consultant shall perform the Consulting Services with due diligence, in a competent, ethical, courteous, honest, co-operative and professional manner promoting the Corporations' goodwill and reputation, and during such hours of work as the Consultant may determine from time to time, acting reasonably. The Consultant agrees to provide Consulting Services up to 40 hours a week during the Term.

4. Independence of The Consultant. The relationship of the Consultant to the Corporations is in all respects independent. the Consultant shall:

- (a) be solely responsible for its employees, suppliers and contractors;
- (b) be entitled to provide services for other persons, so long as the provision of such services:
 - (i) does not constitute a breach or default of this agreement;
 - (ii) does not adversely affect the Consultant's performance of the Consulting Services in accordance with this Agreement or constitute a conflict with the Corporations' interests; and
 - (iii) is conducted in accordance with all such measures and practices, including but not limited to billing practices, as the Corporations may require from time to time in order to protect the Corporations from liability related to or arising from such services; and
- (c) subject to paragraph 3, have control, superintendence and direction over the Consulting Services.

Nothing in this Agreement shall have the effect of constituting an employment, partnership, joint venture or similar association or relationship between the Corporations and the Consultant. The Consultant has no authority to make agreements or other commitments on The Corporations' behalf or otherwise bind the Corporations to third parties, and the Consultant shall not hold itself out as having any such authority.

5. Compensation and Payments. Monthly Compensation shall be paid by the Corporations to the Consultant on the last day of each month of the Term.

6. Statutory Payments and Indemnity. The Corporations shall be solely responsible for and shall remit and pay all income tax, applicable sales taxes, Canada pension plan payments, employment insurance premiums and other payments required by law in respect of the Consulting Services, including without limitation interest thereon and penalties in respect thereof. The Consultant agrees to and shall at all times hereafter indemnify the Corporations from and against all:

- (a) such income tax, applicable sales taxes, Canada pension payments, employment insurance premiums and other payments, including without limitation interest thereon and penalties in respect thereof; and
- (b) claims, losses, damages, expenses and liabilities directly or indirectly resulting from,

arising out of or connected with any (i) breach of this agreement by The Consultant; and (ii) Consulting Services performed under this agreement, including but not limited to any claim by a The Corporations client for negligence to the extent not covered by The Consultant's liability insurance in The Corporations' favour.

7. Insurance. The Consultant acknowledges that it is responsible to provide for its own workers' compensation coverage and for such life, disability and other personal insurance as it may deem appropriate.

8. Term. The Term shall commence on the Effective Date and shall continue for 60 months.

9. Confidentiality and Property. The Consultant shall during the Term and at all times thereafter keep confidential, and not use or exploit otherwise than as reasonably necessary to perform the Consulting Services, all information pertaining to the Corporations, excluding only such information as is in the public domain through no fault of the Consultant. In particular but without limitation, the Consultant shall not disclose, use or exploit any lists of The Corporations clients, projects or other information about any client or project, otherwise than to perform the Consulting Services.

10. Notices. Notices and other communications under this Agreement shall be in writing and delivered or faxed to the addressee at their primary place of business and shall be deemed received on the business day after delivery or transmission.

11. Limitation of Liability and Indemnity. Under no circumstances will the Consultant be liable to the Corporations or any other person or entity for special, incidental, consequential, punitive, exemplary or indirect damages, loss of goodwill or business profits, work stoppage, data loss or any other commercial damage or loss. The Corporations agree to wholly indemnify and save harmless the Consultant and any other person associated or connected thereto from any claim, action, cause of action, cost, suit, or demand whatsoever resulting from any act or omission by the Corporations.

12. Alberta Law. This agreement is governed by and construed in accordance with the laws of Alberta and the parties acknowledge and agree to submit to the jurisdiction of Alberta courts for any matter arising hereunder.

13. Superseding Document. This Agreement supersedes and replaces all previous written, electronic and oral communications between the parties in relation to the Consulting Services and this Agreement is the entire agreement between the parties in relation to the Consulting Services.


14. Severance. Any void, illegal or unenforceable part of this Agreement shall be without effect to the extent thereof, but without invalidating or otherwise affecting any other part of this Agreement.

15. Waiver and Amendment. No waiver shall be effective unless expressed in writing, and all waivers shall apply only to the specific situations in connection with which they are given. This Agreement may be amended or renewed only by written instrument executed by all parties.


16. Enurement. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

Signed, sealed and delivered.


BATAVI VENTURE GROUP INC.

Per:  9398CA343FC9422...


SAFE ROADS ALBERTA LTD.


Per:  9398CA343FC9422...


CANDESTO NORTH INC.

Per:  9398CA343FC9422...

CANDESTO ENTERPRISES CORP.

Per:  9398CA343FC9422...

Witness 


CHRIS BOKENFOHR

411850 ALBERTA LTD.

Per: 

This is Exhibit " D " referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 2024.



A Commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

Safe Roads Alberta Ltd. - Asset Value

as of January 31st, 2022

Fixed Assets	\$	142,256.63		
Crossfield Inventory	\$	1,057,774.23		
Morinville Inventory	\$	35,745.75		
Other Misc. Inventory	\$	121,531.88		
		=====		
Total...	\$	1,357,308.49	x 60% avg. steel price incr. =	\$ 2,171,693.58
Cash on Hand	\$			49,740.14
Receivables	\$			579,490.86
Total Liabilities	-\$			236,000.00
				=====
			Total Equity...	\$ 2,564,924.58

This is Exhibit " E " referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 20 24.



A commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

NON-COMPETITION, NON-SOLICITATION UNDERTAKING

TO: BATAVI VENTURE GROUP INC., CANDESTO NORTH INC., CANDESTO ENTERPRISES CORP., AND SAFE ROADS ALBERTA LTD ("Candesto Group")

I, THE UNDERSIGNED, in consideration of \$1.00 now paid, covenant and agree as follows:

1. In this Undertaking, "person" includes any individual, firm, partnership, company, corporation, body corporate, bank, trust, government or governmental authority, unincorporated body or other association of persons or legal entity; and "Restricted Business" means the business of providing services in competition to Candesto North Inc., Candesto Enterprises Corp., or Safe Roads Alberta Ltd.

2. During the period that commences on the date of this Undertaking and ends on the date that is 60 months thereafter, the undersigned shall not directly or indirectly, and whether as proprietor, principal, agent, profit sharer, licensor, licensee, concessionaire, franchisee, consultant, contractor, director, officer, shareholder, limited or general partner, joint venturer, employee, investor, guarantor, financier, advisor, or in any other manner whatsoever, and whether alone or together with one or more other persons or through any one or more bodies corporate: (a) conduct, carry on, be engaged in or associated with; or (b) assist any person to conduct, carry on, be engaged in or associated with, any Restricted Business, or any aspect thereof, conducted or carried on, in whole or in part, from one or more locations, within the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba.

3. During the period that commences on the date of this Undertaking and ends on the date that is 60 months thereafter, the undersigned further covenants and agrees to not directly or indirectly through or with any other person, approach, solicit, entice or attempt to approach solicit or entice any customer of Candesto Group's business to leave Candesto Group's business or to refer any customers of the business to any other person. Furthermore, the undersigned shall not directly or indirectly through or with any other person, provide services to any customer of Candesto Group, or remove, transfer, refer, relocate, assign, transmit any customer, customer list or customer record from Candesto Group's business to any other business whatsoever. The undersigned acknowledges and agrees that Candesto Group or its agent shall at any time within 60 months of this Undertaking have the right to audit the records of any business with which the undersigned is associated in any way. Notwithstanding the generality of the foregoing, if Candesto Group and the undersigned determine that the provision of services to a customer of Candesto Group by the undersigned away from Candesto Group's business is permitted, as may be determined on a case by case basis, Candesto Group and the undersigned shall prearrange, in writing, reasonable financial arrangements to reflect any such exceptional allowance.

4. During the period that commences on the date of this Undertaking and ends on the date that is 60 months thereafter, the undersigned further covenants and agrees to not directly or indirectly through or with any other party or entity, approach, solicit, entice or attempt to approach solicit or entice any staff member, agent or contractor of Candesto Group's business to leave Candesto Group's business without the express written consent of Candesto Group. Notwithstanding the generality of the foregoing, if Candesto Group and the undersigned determine that the engagement of any employee, associate or contractor of Candesto Group by the undersigned is permitted, as may be determined on a case by case basis, Candesto Group and the undersigned shall prearrange, in writing, reasonable financial arrangements to reflect any

such exceptional allowance.

5. Any part of this Undertaking which is illegal, void or unenforceable shall be severed from this Undertaking, without affecting the legality, validity or enforceability of the rest of this Undertaking. Any legal fees incurred by Candesto Group in the enforcement of this Undertaking shall be to the account of the undersigned.

6. The undersigned acknowledges that damages may be an inadequate remedy for the breach of this Undertaking, and accordingly the undersigned agrees that this Undertaking may be enforced by specific performance, injunction or other equitable remedy.

7. The provisions of this Undertaking shall enure to the benefit of Candesto Group and its successors and assigns.



CHRIS BOKENFOHR

This is Exhibit " F " referred to in
the Affidavit of

Chris Bokenfohr

Sworn/Affirmed before me this 26th
day of February, 2024.



A Commissioner for Oaths in and for Alberta

Jared R. Lane
Student-At-Law

Action No.: 2301-16982
E-File Name: CVK24CANDESTO
Appeal No.: _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANDESTO ENTERPRISES CORP., D3 INFRASTRUCTURE SERVICES INC.
and SAFE ROADS ALBERTA LTD.

P R O C E E D I N G S

Calgary, Alberta
December 20, 2023

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@just.gov.ab.ca

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TABLE OF CONTENTS

Description	Page
December 20, 2023	1
Afternoon Session	
Submissions by Mr. Oliver (Service)	3
Ruling (Service)	4
Submissions by Mr. Oliver	4
Submissions by Mr. Gabor	23
Submissions by Mr. Oliver	29
Submissions by Mr. Wilkinson	33
Submissions by Mr. Aasen	34
Submissions by Mr. Misri	37
Submissions by Mr. Oliver (Reply)	38
Decision	39
Certificate of Record	45
Certificate of Transcript	46

Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

December 20, 2023

Afternoon Session

The Honourable Justice Johnston

Court of King's Bench of Alberta

J.L. Oliver (remote appearance)

For Candesto Enterprises Corp., D3
Infrastructure Services Inc., and Safe Roads
Alberta Ltd.

N. Thompson (remote appearance)

For Candesto Enterprises Corp., D3
Infrastructure Services Inc., and Safe Roads
Alberta Ltd.

M. Aasen (remote appearance)

For C. Bokenfohr and Vor Allem Consulting
Ltd.

T. Campbell (remote appearance)

For C. Bokenfohr and Vor Allem Consulting
Ltd.

A. Wilkinson (remote appearance)

For Trisura Insurance Company

N.S. Misri (remote appearance)

For Nova Pole International

S. Gabor (remote appearance)

For the Monitor

S. Hawkins

Court Clerk

THE COURT:
you hear me?

Good afternoon, this is Justice Johnston, can

THE COURT CLERK:

Sorry, I am just trying to fix -- stop.

(PORTION OF PROCEEDINGS NOT RECORDED)

MR. OLIVER:

. . . here on behalf of Chris Bokenfohr and Vor
Allem Consulting Ltd are Taylor Campbell and Michael Aasen.

THE COURT:
I don't have --

Can I just get you to slow down for one minute.

MR. OLIVER:

I'm sorry.

THE COURT:

-- the benefit of seeing everyone on the screen so
I am -- I only see the speaker view, madam clerk. I don't know if you can change that for
me. Sorry, on behalf of Bokenfohr and then I didn't hear what you said afterwards.

1 and he indicates that the material contracts are to fall into three categories. There are the
2 projects that have been partially completed, or have not yet started, ones that are completed
3 and we are just waiting for receivables or holdback release, and the finally those that are
4 completed and there is deficiency work ongoing.

5
6 So there are a total in Canesto at the moment of four contracts that are -- that are considered
7 ongoing. Of those, two are at a very early stage and -- or have not started. Two of them are
8 well under -- underway. The -- with respect to D3, there are three projects currently
9 ingoing, one has not started, one is midway, and the other is largely complete.

10
11 So the plan during the course of the restructuring will be for -- or sorry, the -- the liquidation
12 I should say will be some -- some continued analysis with respect to the company, and the
13 monitor, and stakeholders to determine what is to occur with those. Certainly it is the -- the
14 interim financing facility of the plans of the company are -- are premised upon performing
15 work that is necessary to minimize exposure and to maximize value. So that might mean
16 different things for different projects. But this is going to be an again collaborate process,
17 with -- with Trisura also obviously involved in looking at this.

18
19 With respect to the secured obligations with CIBC taking care of the senior lender of
20 Candesto is 1-2-8 which is an -- an entity that is controlled by -- by the Powells. It is owed
21 \$2 million pursuant to a general security agreement and promissory note dated January
22 25th of this year. There is also a loan from -- a secured loan from Barricades and Signs
23 pursuant to a loan agreement dated February 22nd, 2023. And that is also secured by a
24 general security agreement. It is registered as against each of Candesto, D3 and Safe Roads.
25 And the -- the amount of that loan is currently in the range of \$2.4 million.

26
27 I have already discussed ATB and CIBC. There are also some serial numbered goods
28 registrations from Kubota Canada and CWB National Leasing. Those parties are on notice
29 of this -- of this application, however brief that notice has been.

30
31 I have touched upon the bonds already. They are disclosed in the materials. With respect
32 to all of the bonds, Trisura is the surety. There are a variety of -- of obligees. And certainly
33 one of the interests here again is to -- is to ensure that the exposure to Trisura in the
34 circumstances is minimized.

35
36 The applicants are currently operating out of two -- two leased premises, one in Edmonton,
37 one in Crossfield, Alberta. The combined rent between those is approximately \$15,750 a
38 month and certainly what's to occur with respect to that space is -- is going to be something
39 that will be -- that -- that will be addressed and considered.

40
41 As you indicated, the applicants are current on source deductions, GST, employee wages

1 and vacation pay. We are not aware of any deemed trust claims.

2
3 You will have seen from the materials there are a relatively considerable amount of
4 unsecured creditors. Candesto owes approximately \$3,420,643 to 85 unsecured creditors.
5 D3 owes approximately \$456,432 to seven unsecured creditors. These figures do not
6 include any inter-company loans which are described in the materials. You will have seen
7 those. They are significant as well.

8
9 The most significant unsecured creditor is Nova Pole and I believe they are owed
10 approximately \$2.3 million.

11
12 The materials also indicate some analysis that has been performed by the proposed monitor
13 with respect to losses that have occurred on a number of projects. In -- in essence there is
14 a -- we are facing a liquidity crisis that is either upon us or if one was to I suppose put their
15 head in the sand would be upon us in January if nothing was done. There is a shortfall on
16 bonded and unbonded projects of approximately \$2.8 million after receivables and
17 holdbacks are applied. Unfortunately one project in particular has been the most
18 challenging and that's the --

19
20 THE COURT: Ring road.

21
22 MR. OLIVER: -- ring road project. It's a-- it's a \$1.6 million loss
23 on that.

24
25 So in light of the foregoing the -- the applicants are, as I will go into, unable to -- to
26 effectively meet those obligations as -- as they come due. And it is the view of the
27 applicants that the best -- the best approach in these -- in these circumstances is to
28 effectively cease operations and active business, but to wind up their affairs in -- in an
29 orderly fashion. There is -- the applicants' approach to this I think can be illustrated as
30 responsible in -- in light of the fact that they have not bid on any further work so that other
31 parties are not going to get themselves into any -- any further form of -- of issues.

32
33 So, Madam Justice, those are the facts. I am happy to answer any questions and if not, I'll
34 proceed with my --

35
36 THE COURT: No, I --

37
38 MR. OLIVER: -- legal argument.

39
40 THE COURT: -- I didn't have any questions on the facts and
41 you've laid them out very well and were reflected in the materials as well, so --

1 has been -- actually just last evening I came across a paper on the subject that was -- that I
2 was trying to get to the bottom of it. What I can -- what I can say is because we are here
3 now in a -- on this issue in a consensual fashion, I -- I hope that that satisfies any -- any
4 concerns, at least for now.

5
6 The -- there are -- there is some authority I believe that still looks at this -- at the general
7 section 11 jurisdiction that a *CCAA* court has, and tends to come to the -- come to the
8 conclusion that -- that if it's in the best interests of the -- of the -- the proceeding and the
9 restructuring, that it can be -- it can be issued. So those are some quick comments on that.
10 But again hopefully with the progress that we've -- that we've made, I would --

11
12 THE COURT: It seems that -- and I'll hear from Trisura but it
13 does seem that you have reached consensus on that subject to my approval which -- which
14 may simplify the issue to some -- to a large degree actually, yeah.

15
16 MR. OLIVER: Thank you. So I am going to move on to the share
17 pledge stay. As I mentioned, I don't think we are quite there on this -- on this issue. You
18 will have seen that Batavi purchased the shares of the applicants in -- in January of 2022.
19 The share purchase agreement provides for -- for payments to be made over the course of
20 -- of time. The initial payment on closing has been made. It is -- the -- the payments that
21 are due -- there is a payment that was due in January --

22
23 THE COURT: In January.

24
25 MR. OLIVER: -- of this year.

26
27 THE COURT: Yeah.

28
29 MR. OLIVER: There has been a dispute that has arisen -- that
30 has arisen about disclosure and the state of the business upon -- upon sale. Under the share
31 purchase agreement a default could result in an enforcement of the share pledge. The
32 concern of the companies is that without this stay there is a risk that the share pledge could
33 be enforced at which time the jeopardy of the stability -- or the stability of the proceedings
34 might be in jeopardy with a new shareholder and -- or a new hold shareholder, possibly a
35 new director showing up as well.

36
37 In addition, we have obviously an interim lender here who has an interest in supporting a
38 stable restructuring. That is the basis of the request.

39
40 I do wish to be clear that we are not seeking to stay any rights that may exist as between
41 any of those parties with respect to anything outside of the share pledge. Obviously if there

1 as to be an action commenced against Candesto would be so purely preserve a limitation
2 period. But if there is -- there is relief sought as against Batavi with respect to this, we are
3 not -- that is not what we are after. It is solely to ensure the proceeding is stable.

4
5 With respect to the monitor, obviously the proposed monitor is a licensed trustee, is duly
6 qualified. They have consent --

7
8 THE COURT: I don't need to hear -- I have read --

9
10 MR. OLIVER: Thank you.

11
12 THE COURT: -- submissions on that. I have no questions on
13 that at all, that part.

14
15 MR. OLIVER: Thank you.

16
17 THE COURT: Yeah.

18
19 MR. OLIVER: Thank you. So I think we could move on then to
20 the charges. I am going to just get the cash flow up here.

21
22 THE COURT: And I am just -- I am going to kind of preface my
23 comments because they are overriding all of them. This is -- this is initial hearing. This is
24 --

25
26 MR. OLIVER: M-hm.

27
28 THE COURT: -- on virtually no notice to the stakeholders.

29
30 MR. OLIVER: M-hm.

31
32 THE COURT: These are significant amounts I think that you are
33 asking for in -- for a short period of time and I believe if I read the affidavit right of Mr.
34 van Bruggen, there doesn't start to be a problem until January 5th and -- and it just -- it
35 seems like for the amount of money we are dealing with here, these are very large amounts
36 and -- and recognizing, you know, this is an initial hearing. You know, there is good policy
37 reasons for why it's ten day and, you know, all of the things that you've actually I think
38 alluded to.

39
40 MR. OLIVER: M-hm.

41

1 THE COURT:

I am concerned about the amount and -- and the
2 prejudice to other stakeholders by granting charges of this magnitude at this initial stages.
3 And I am in no way suggesting they may or may not be appropriate but is this the -- is this
4 the time to be granting those amounts. So that's kind of -- and I suspect you are not
5 surprised to hear me raise that. So -- and I have read the proposed monitor's report and,
6 you know, their statements that they are reasonable et cetera. But -- but quite frankly I do
7 have concerns about the size of them and -- and the necessity of them in the -- in the period
8 that we are dealing with and whether or not they should be -- if I decide they are appropriate
9 at all, if they should be a significantly lower amount with this actually dealt with at the true
10 comeback.

11
12 That's kind of -- you now, without interrupting your flow each time, that's the overarching
13 concern I have that I really want you to address. And in -- in terms of the cash flow, you
14 know, I think we have a 13 week cash flow, but what -- what is the crunch in terms of
15 between now and January 12th? What -- what is going to be reasonably necessary and, you
16 know, I don't have to read the legislation to you but I think the legislation is very clear that
17 -- that the initial period is to be dealt with very differently.

18
19 MR. OLIVER:

M-hm. Understood. Okay. So before I go into the
20 cash flow, the first thing I will -- I will comment on is the interested parties here and who
21 would -- who, in our submission, could make a claim of prejudice. At this point, the -- the
22 lenders, the secured lenders to these companies are non -- are non-arm's length entities --

23
24 THE COURT:

Right.

25
26 MR. OLIVER:

-- who -- so they are --

27
28 THE COURT:

And they are supporting it.

29
30 MR. OLIVER:

They are supporting it, correct.

31
32 THE COURT:

Yeah.

33
34 MR. OLIVER:

So is it -- I think it would be a wonderful
35 outcome if there were funds for unsecured creditors but I think that is -- that would be --
36 that's probably not expected. With that said, if I could take you to the cash flows.

37
38 THE COURT:

Yeah, I have it.

39
40 MR. OLIVER:

So if we begin with week 1.

41

1 comfort to the company in light of the potentially very drastic consequences of a -- of a
2 share pledge enforcement that we -- that we need. So we would just respectfully ask that
3 we -- that the order be granted in that respect and we can obviously revisit this in a de novo
4 fashion in several weeks.

5
6 THE COURT: Okay.

7
8 MR. OLIVER: Thank you very much.

9
10 THE COURT: All right. I would like to take probably about a
11 ten minute adjournment if I could, maybe 15, but I'll come back, madam clerk, in ten or
12 15 and I can give you my decision. All right. Just give me one second.

13
14 MR. OLIVER: Thank you.

15
16 (ADJOURNMENT)

17
18 **Decision**

19
20 THE COURT: I am prepared to give my oral decision. I have
21 reviewed all of the materials that were filed in this application and I have considered all of
22 the arguments.

23
24 I decline to grant the adjournment requested by counsel for Nova Pole, who is an unsecured
25 creditor, given the urgency of this matter.

26
27 I am satisfied that the applicants are eligible for relief under the *CCAA*. In particular, the
28 applicants are incorporated under the *ABCA*. The liabilities of the debtor companies and
29 affiliated companies meet the \$5 million collectively. See *Victorian Order of Nurses for*
30 *Canada* 2015 ONSC 7371, para 10. The applicants are also insolvent, specifically they
31 have a deficit of \$3.7 million on recent projects and insufficient liquidity to repay their
32 indebtedness as more particularly described in the affidavit of Mr. van Bruggen.

33
34 Finally, although there is no proposed plan of arrangement, I agree that in the
35 circumstances of this case liquidating *CCAA* is appropriate as the *CCAA* would allow the
36 applicants to eliminate further losses for creditors and focus on the solvent operations of
37 the business and to pursue an orderly wind-down of the business. This does meet the policy
38 objectives in my view of the *CCAA* on an initial application.

39
40 In this case the applicants have also satisfied me that on an initial basis the stay should be
41 extended to the non applicants in accordance with section 11 and 11.02(1) of the *CCAA* as;

1
2 It is well established that it is appropriate for a court to extend a stay
3 of proceedings to third parties that are integrally and closely related
4 with the debtor company's business where doing so would further the
5 purposes of the *CCAA*.
6

7 See *Laurentian University of Sudbury* 2021 ONSC 659. I note that this Court did raise
8 some concern relating to whether such stays are generally appropriate in the context of the
9 type of indemnity agreements present in this case, however, I note that the indemnitor stay
10 has been agreed to by Trisura and the parties have agreed to limit the scope of the stay only
11 to legal proceedings.
12

13 As it relates to the share pledge stay, I am also prepared to grant the stay for the initial
14 period as the share pledge enforcement could jeopardize the stability of the *CCAA*
15 proceedings. However, this in no way limits the rights of those parties to argue the
16 appropriateness of such a stay on any comeback hearing.
17

18 Appointment of Monitor

19

20 The Court agrees that the proposed monitor is appropriate and should be appointed.
21

22 Charges and Payments

23

24 Section 11.001 of the *CCAA* makes it clear that relief during the initial period shall be
25 limited to;
26

27 relief that is reasonably necessary for the continued operations of the
28 debtor company in the ordinary course of business during that period.
29

30 In essence, this means the decisions taken at the outset of *CCAA* proceedings must be
31 limited to measures that are necessary to avoid the immediate liquidation of an insolvent
32 company.
33

34 This Court is faced with a somewhat difficult situation in that this application was argued
35 on the last afternoon of the court sitting for the year. There is no sitting dates available until
36 January 8th, 2024, which extends beyond the ten day period that would expire on
37 December 30th, 2023. The applicants therefore ask for an amended and restated initial
38 order, an ARIO, to extend the stay period to and including January 12th, 2024. Given this
39 very unique situation, this Court, in this context of these facts, will consider both the initial
40 and the ARIO applications.
41

1 Counsel rightfully acknowledges that notwithstanding their request for the ARIO, this is in
2 no way a substitute for a fulsome comeback hearing which is to occur in January.

3
4 Given the clearly stated intention of Parliament to have a comeback hearing on short notice
5 to allow stakeholders to have appropriate notice to ensure their interests are protected, this
6 Court will deal both the initial application and the ARIO with section 11.001 in mind.

7
8 **Payments to Critical Suppliers for Pre-filing Amounts**
9

10 The applicants ask for the ability to pay certain critical vendor invoices related to pre-filing
11 amounts. The monitor has identified approximately \$163,000 of invoices related to labor
12 and materials to complete certain projects that remain outstanding but they deem critical
13 and necessary in order to ensure the viability and stability of the applicant's business and
14 to allow them to complete their operations during the *CCAA* proceedings.

15
16 The Court has concerns with the application for payment of pre-filing amounts, particularly
17 at this stage of the proceedings. However, I accept the representations of the proposed
18 monitor that these amounts are critical and may not need to be paid prior to January 12th
19 but it is possible they will be. I therefore grant this part of the order.

20
21 **Administration Charge**
22

23 The applicant seeks an administration charge of \$500,000 as part of the initial order. The
24 proposed monitor is of the view that the administrative charge is appropriate in light of the
25 applicant's operation and the proposed duties for monitor and counsel. I do not find that
26 \$500,000 is reasonably necessary for the continued operations of the debtor company in
27 the ordinary course of business during the initial period. I have concerns with the amount
28 of the charge in the context of this being an initial application and a necessary delay for the
29 scheduling of the comeback hearing.

30
31 I felt that this issue is best left to the January hearing. However, I accept that an
32 administrative charge of \$350,000 for the period until January 12th, 2024 is reasonably
33 necessary. I authorize the payment of reasonable professional fees and disbursements of
34 the monitor and its legal counsel, and of legal counsel to the applicants.

35
36 **Interim Financing and Interim Lender Charges**
37

38 The applicants seek a court-ordered priority lender charge in the initial amount of \$450,000
39 to allow them to "ensure that they have sufficient liquidity and cushion until the next
40 anticipated hearing in January 2024" as it appears from the cash forecast there will be a
41 need for interim financing to fund the *CCAA* proceedings by the week ending January 5th,

1 2024. The interim lender charge would rank supportive to the administrative charge but
2 ahead of any 'D' and 'O' charge.

3
4 The applicants also seek the approval of the interim loan facility of up to \$1.4 million that
5 is with Durasol Limited on the terms set out in the December 19th term sheet appended to
6 the affidavit of Murray (phonetic) Kim. I note the proposed monitor is of the view that the
7 interim lender charge is warranted and the terms of values in the term sheet for the interim
8 loan facility are commercially reasonable. The monitor notes that quote; the proposed
9 initial order provides for the creation of an initial court-ordered priority charge to secure
10 advances under the interim loan facility to match the initial maximum allowable borrowing
11 under the interim loan facility plus interest and recoverable costs.

12
13 They also note that without the interim loan facility the applicants would not be able to
14 continue with their restructuring activities and may be faced with immediate liquidation of
15 their assets. This would result in significantly lower recoveries and greater exposure to the
16 indemnitors.

17
18 I accept that the applicants will require funding to continue their operations during the
19 proceedings and that spending will be overseen by the monitor. I accept the interim loan
20 facility is appropriate and I am prepared to approve the execution of the term sheet by the
21 applicants.

22
23 However, I do have concerns with the amount of the interim lender charge. Again, this is
24 initial hearing and any lender charges that could prejudice stakeholders' rights without
25 fulsome argument and notice to all stakeholders should be granted on these exceptional
26 circumstances.

27
28 I do, however, note that Trisura and the secured creditors do not raise any concerns with
29 the amount of the interim lender charge, therefore I am prepared to grant the initial lender
30 charge in the amount of \$450,000.

31
32 'D' and 'O' Charges and Stay

33
34 I find that the 'D' and 'O' charge is reasonably necessary for the continued operations of
35 the debtor company in the ordinary course of business prior to January 12th, 2024. I also
36 grant the stay against former and current, or future directors and officers of the applicants.

37
38 I also grant the other relief that was sought in paragraphs 1(a), (c), (d) and (e) of the order.
39 I also grant the ARIO which will extend the stay period up to and including January 12th,
40 2024.

41

1 Is there anything else, counsel?
2
3 MR. OLIVER: I don't believe so, Madam Justice.
4
5 THE COURT: All right. So I gather --
6
7 MR. OLIVER: If there is nothing --
8
9 THE COURT: Sorry, go ahead.
10
11 MR. OLIVER: I was just going to say if there is nothing else
12 from any other party, because of the -- the pace at which we were -- we were moving,
13 we've been sort of -- we will circulate a revised form of order to my friends for those
14 interested parties to make sure we land at where we think we have landed.
15
16 THE COURT: Okay.
17
18 MR. OLIVER: And we'll try to get that to you as soon as -- as
19 soon as possible.
20
21 THE COURT: All right. Madam clerk, are you able to message
22 Mr. Oliver privately? I assume you are.
23
24 THE COURT CLERK: I think so, yes.
25
26 THE COURT: Okay. Mr. Oliver, on an exceptional basis I am
27 going to give you my personal email because I am not sure -- today is the last sitting date.
28 I am not sure if the commercial coordinator is around tomorrow or later today, I really
29 don't know. So if -- once you have circulated the form of order and it's ready to send, I
30 would ask that you please not copy my personal address to all of the parties, and in this
31 exceptional case you can send it directly to me for my review and signature. Madam clerk,
32 do you know what -- okay. All right.
33
34 MR. OLIVER: Thank you, Madam Justice.
35
36 THE COURT: Thank you very much. All right. And for those
37 of you that will have any time off I wish you all the best for -- for the holiday time.
38
39 MR. OLIVER: Thank you, you as well.
40
41 THE COURT: All right. Thank you very much.

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MR. AASEN:

Thank you, Justice.

MR. WILKINSON:

Thank you, My Lady.

MR. GABOR:

Thank you.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Sharon Hawkins, certify this recording is the record made of the evidence in the Court of King's Bench, in Calgary, Alberta, in courtroom 1504, on December 20th, 2023, and that I was the official clerk in charge of the sound-recording machine on the matter of Candesto Enterprises Corp. v Safe Roads -- v D3 Infrastructure.

Certificate of Transcript

I, Marg Lavay, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Marg Lavay, Transcriber
Order No.: TDS-1050733
Date: February 8, 2024