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COURT FILE NUMBER 2201-01016

COURT COURT OF KING'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

COM  
Dec 14 2022

IN THE MATTER OF THE RECEIVERSHIP  
OF ROBUS RESOURCES INC.

APPLICANT ALVAREZ & MARSAL CANADA INC., in its  
capacity as Court-appointed Receiver of  
ROBUS RESOURCES INC.

DOCUMENT **BENCH BRIEF OF ALVAREZ & MARSAL  
CANADA INC., in its capacity as Court-  
appointed Receiver of ROBUS  
RESOURCES INC.**

ADDRESS FOR  
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## I. INTRODUCTION

1. This brief is provided in support of an application (the "**Application**") filed by Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the receiver (and, in such capacity, the "**Receiver**") of all of the current and future assets, undertakings and properties (the "**Property**") of Robus Resources Inc. ("**Robus**" or the "**Debtor**").
2. The Application seeks the approval of, among other things, the following:
  - (a) a sale and investor solicitation process (the "**SISP**"), in substantially the form attached as Appendix "A" to the First Report of the Receiver, dated December 8, 2022 (the "**First Report**"), pursuant to which, if approved, the Receiver will canvass the market and solicit offers of an Alternate Transaction (as defined in the SISP);
  - (b) a proposed transaction (the "**Stalking Horse Transaction**") contemplated in the stalking horse term sheet dated December 8, 2022 (the "**Term Sheet**"), between the Receiver, Robus Equity Acquisition Corporation (the "**Stalking Horse Bidder**"), Blue Fin Group LLP ("**Blue Fin**") and Robus Services LLC ("**RSLLC**") a copy of which is attached as Appendix "C" to the First Report;
  - (c) a reverse vesting order ("**RVO**"), which will only become effective upon the filing of a Receiver's certificate confirming that the Stalking Horse Bidder is the Successful Bidder, pursuant to which the Stalking Horse Transaction will be completed and implemented in the event that the Stalking Horse Bidder is the Successful Bidder;
  - (d) approving the conduct and activities of the Receiver to date including the First Report;
  - (e) approving the professional fees and disbursements of the Receiver and its legal counsel, Cassels Brock & Blackwell LLP ("**Cassels**"); and
  - (f) authorizing and approving an increase in the Receiver's Borrowings secured by the Receiver's Borrowing Charge, as defined and set out at paragraph 21 of the Receivership Order (defined herein).
3. The Receiver respectfully submits that the foregoing relief is necessary and appropriate in the circumstances for the reasons set out below.
4. Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the Term Sheet or First Report, as applicable.

## II. FACTS

5. The facts relevant to the Application are set out in detail in the First Report. A summary of the key facts as they relate to the relief requested in the Application is set out below.

### A. BACKGROUND

6. Robus is a private junior oil and gas company with property and operations east of Edmonton, in the Jocam and Joe Lake fields. On April 12, 2022 (the “**Receivership Date**”), and on application by RSLLC, the Alberta Court of King’s Bench (the “**Court**”), granted a consent receivership order (the “**Receivership Order**”) in Court File No. 2201-01016 (the “**Receivership Proceedings**”), pursuant to which, among other things, A&M was appointed as Receiver of the Property.
7. The Receiver understands that the Property includes, among other things an ownership interest held by Robus in the following oil and gas assets<sup>1</sup>:
- (a) a 99% non-operated working interest in 131 oil and gas wells, 13 facilities, and associated pipelines and other assets (the “**WI Assets**”);
  - (b) various non-operated working interests in other oil and gas wells, facilities, pipelines and associated assets; and
  - (c) a 100% operated working interest in two oil and gas wells (the “**Two Robus Licensed Wells**”).
8. Enerplus Corporation (“**Enerplus**”) holds a 1% working interest in the WI Assets, as well as the licenses and operatorship in the WI Assets.
9. Prior to the Receivership Proceedings, several applications were made by Enerplus and Robus to the Alberta Energy Regulator (the “**AER**”) to have Enerplus’ interests in the WI Assets (including all permits, licenses, approvals and authorizations (collectively, the “**WI Asset Licenses**”) transferred to Robus. The applications for the transfer of the WI Asset Licenses were either rejected by the AER (as a result of Robus not fulfilling the AER’s security deposit requirements, which were significant) or withdrawn by Enerplus.
10. Given the intertwined nature of Robus’ and Enerplus’ interests in the WI Assets (which assets form the bulk of the Property), the Receiver has encouraged RSLLC and Enerplus to engage in discussions for the joint marketing of the WI Assets. On July 18, 2022, Enerplus, RSLLC and the Receiver entered into a non-binding memorandum of understanding regarding the joint marketing

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<sup>1</sup> As noted in the First Report of the Receiver dated December 8, 2022 (the “**First Report**”), the Receiver understands that minor discrepancies exist between the records of (a) Robus, (b) Enerplus, and (c) the AER with respect to the particular wells, pipelines and facilities in which Robus holds an interest. The Receiver is working with all parties to finalize an accurate and complete listing of oil and gas assets.

of the WI Assets. Notwithstanding the foregoing, a joint marketing strategy for the WI Assets was not reached between Enerplus and RSLLC.

11. Given the foregoing, it was ultimately determined that the most efficient way to market the Property for sale was to run a sale process with a credit bid by RSLLC and Blue Fin (through their nominee) acting as a stalking horse bid.
12. Additionally, and as discussed in detail in this Bench Brief, the Receiver respectfully submits that it is in the best interest of the Debtor's estate to conclude this matter relatively quickly, due to both the professional costs and some of the operational matters that have arisen.

#### **B. STALKING HORSE TERM SHEET**

13. RSLLC is the most significant secured creditor of the Debtor and is currently owed approximately US\$14,200,000 (the "**RSLLC Indebtedness**"). Additionally, Blue Fin has advanced funds to the Receiver (as Receiver's Borrowings) to finance the receivership proceedings, which as of December 7, 2022, total US\$728,042.08 including interest, which continues to accrue (the "**Blue Fin Indebtedness**"). The Blue Fin Indebtedness is secured by the Receiver's Borrowing Charge and accordingly, is in priority to the RSLLC Indebtedness.
14. RSLLC and Blue Fin (through their nominee, the Stalking Horse Bidder), have submitted a non-binding offer (*i.e.*, the Term Sheet). The Term Sheet is subject to the approval of this Honourable Court and contemplates the transfer of the Purchased Shares (as defined below) to the Stalking Horse Purchaser. In the event that the Term Sheet and the RVO are approved, and assuming the Term Sheet is determined to be the Successful Bid, the Stalking Horse Transaction would be effected through the RVO and contemplates the following:
  - (a) the articles of incorporation of Robus will be reorganized to provide for: (i) authorization of the issuance of a new class of common shares (the "**New Shares**"), (ii) to remove all rights and restrictions of existing common voting shares of Robus (the "**Existing Shares**"), if any; and (iii) cause the Existing Shares to be redeemable for nominal value;
  - (b) upon Closing, the Stalking Horse Bidder will subscribe for all of the New Shares (the "**Purchased Shares**"), for an amount equal to the Purchase Price, and the Existing Shares will be redeemed in accordance with the Articles of Incorporation; and
  - (c) upon Closing, the Receiver will file a certificate with the Court (the "**RVO Certificate**"), which shall have the effect of:
    - (i) transferring the Transferred Assets to the Creditor Trust (as defined below);

- (ii) directing that all existing claims against the Debtor (other than the Retained Liabilities) be solely claims against the Transferred Assets to be administered by the Creditor Trust;
  - (iii) discharging the Receiver with respect to the Debtor and terminating the Receivership Proceedings with respect to the Debtor; and
  - (iv) notwithstanding any of the foregoing, declaring that the Retained Assets shall remain with the Debtor and the Debtor shall remain liable for all of the Retained Liabilities.
- 15. The material terms of the Term Sheet, for which approval is now sought, include, among others, the following:
  - (a) the total aggregate price for the Purchased Shares will be comprised of:
    - (i) the total amount of the Receiver's Borrowings to be paid by way of set off against (as a non-cash credit reduction of) the Receiver's Borrowings as at Closing;
    - (ii) US\$8,000,000 of the Secured Debt to be paid by way of set off against (as a non-cash credit reduction of) the Secured Debt; and
    - (iii) a cash payment of US\$400,000 (the "**Cash Component**"), which amount shall consist of the Priority Payables and the Holdback Amount;

(the "**Purchase Price**");
  - (b) the Purchase Price (and in particular the Holdback Amount) is subject to adjustment after the Closing Date;
  - (c) the sum of 2% of the Purchase Price is payable to the Stalking Horse Bidder, if the Stalking Horse Bidder is not the Successful Bidder (the "**Break Fee**");
  - (d) the Purchased Shares will be acquired on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description;
  - (e) a trust will be created (the "**Creditor Trust**"), the trustee of which will be the Receiver, to which the Transferred Assets and Transferred Liabilities will transfer upon closing of the Stalking Horse Transaction; and
  - (f) a deposit of 5% of the Cash Component (the "**Deposit**") will be paid prior to the application for the RVO.

16. The Stalking Horse Bid will set the floor for potential offers to be received in the SISP, and would be closed as the Successful Bid if a Superior Offer is not received.

### C. THE SISP

17. The Receiver is also seeking this Honourable Court's approval of the SISP. It is anticipated that the marketing process under the SISP from launch to the final bid deadline will last approximately 4-weeks.
18. Pursuant to the terms of the SISP, Qualified Bidders (as defined in the SISP) will have until 4:00 PM (Mountain Time) on January 31, 2023 (the "**Final Bid Deadline**") to deliver a Qualified Bid to the Receiver. In order to constitute a "**Qualified Bid**", a Bid must comply with the criteria set out in the SISP, including the following:
- (a) evidence of a firm, irrevocable financial commitment for all required funding or financing;
  - (b) a deposit in an amount equal to 10% of the total consideration in the Qualified Bid;
  - (c) no further due diligence requirements;
  - (d) a cash purchase price in excess of the Stalking Horse Bid by at least \$250,000;
  - (e) a break fee payable to the Stalking Horse Bidder in the amount of 2% of the Purchaser Price under the Term Sheet.
19. In the event that the Receiver determines, in consultation with the Sale Advisor (as defined in the SISP), that one or more Qualified Bids constitute Superior Offers, the Auction (as defined in the SISP) would be held in accordance with the terms of SISP in order to provide the parties making Superior Offers and the Stalking Horse Bidder the opportunity to make further bids.

### D. RECEIVER'S ACTIVITIES & PROFESSIONAL FEES

20. Since its appointment, and pursuant to the terms of the Receivership Order, the Receiver has, among other things performed those activities as more fully described in the First Report, including those activities summarized in paragraphs 14 to 17 of the First Report.
21. The Receiver is seeking approval of the following professional fees and disbursements:
- (a) the accounts of the Receiver for the period of April 12, 2022 to October 31, 2022, totaling \$228,144, exclusive of GST;<sup>2</sup> and

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<sup>2</sup> First Report, *supra* note 1 at para 109.

- (b) the accounts of the Receiver's legal counsel (Cassels) for the period of February 4, 2022 to October 31, 2022, totaling \$220,205, exclusive of GST.<sup>3</sup>

22. The accounts of the Receiver and Cassels will be made available to the Court in a fee affidavit.

#### **E. RECEIVER'S BORROWINGS**

23. The Receiver's Borrowing Charge granted in the Receivership Order empowered the Receiver to borrow by way of a revolving credit up to the amount of \$1,000,000.<sup>4</sup>

24. Over the course of the Receivership Proceedings, Blue Fin has advanced funds to the Receiver in the amount of the Blue Fin Indebtedness, which amounts are evidenced by Receiver's Certificates and are secured by the Receiver's Borrowings Charge.<sup>5</sup>

25. To date, the Receiver has disbursed funds in the approximate amount of \$889,000,<sup>6</sup> but has not yet paid disbursements totaling approximately \$225,000 in relation to amounts owed to royalty holders (which will not be assumed by the Creditor Trust under the Stalking Horse Transaction) and contractors.<sup>7</sup>

26. In addition, Enerplus is claiming it is owed approximately \$1.895 million<sup>8</sup> in post-receivership payables, of which \$1,485,000 relates to costs incurred to remediate an oil spill with respect to the jointly operated assets with the Debtor.<sup>9</sup> The Receiver has not yet determined whether these amounts are properly a post-receivership obligation of the estate and has reserved all of its rights in relation to such amounts.

27. The Receiver also continues to incur professional fees and costs and various operating expenses related to operating the Two Robus Licensed Wells on a monthly basis.<sup>10</sup>

28. As a result of the foregoing, the Receiver is requesting to increase the Receiver's Borrowing Charge from \$1,000,000 to \$3,000,000.

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<sup>3</sup> *Ibid* at para 110.

<sup>4</sup> Receivership Order at para 21.

<sup>5</sup> First Report, *supra* note 1 at para 102.

<sup>6</sup> *Ibid* at para 97.

<sup>7</sup> *Ibid* at para 103.

<sup>8</sup> Application of Enerplus Corporation at para 8.

<sup>9</sup> First Report, *supra* note 1 at para 29.

<sup>10</sup> *Ibid* at para 105.



### **III. ISSUES**

29. The Receiver respectfully submits that the main issue to be decided by this Honourable Court is whether it is appropriate in the circumstances, to approve the Sale Process including the Stalking Horse Transaction. In particular:
- (a) should the Sale Process and the Stalking Horse Transaction be approved?
  - (b) should the Reverse Vesting Order be granted?
  - (c) Is the Creditor Trust appropriate in the circumstances?
30. In addition, this Bench Brief will also address:
- (a) whether the Professional Fees should be approved; and
  - (b) whether the Receiver's Borrowings should be increased.

### **IV. LAW & ANALYSIS**

#### **A. THE RELIEF SOUGHT FURTHERS THE PURPOSE OF THE RECEIVERSHIP**

31. The relief sought by the Receiver in this Application is consistent with the provisions of the Receivership Order and will further the purpose of the Receivership Proceedings by, among other things:
- (a) establishing a floor price and transaction structure in an effort to generate superior offers to the Term Sheet from interested parties, thereby maximizing the value of the Property for the benefit of Robus' stakeholders;
  - (b) enhancing the fairness of the SISP through the Term Sheet, including by allowing the Receiver to seek to identify any Superior Offer to the Term Sheet through the SISP; and
  - (c) ensuring the efficiency of the Receivership Proceedings by allowing the Receiver to proceed to close the transactions contemplated by the Term Sheet expeditiously should no Superior Offer be submitted through the SISP.
32. For these reasons, and the further reasons set out below, the Receiver submits that this Court's granting of the relief sought by the Receiver will:
- (a) further the purpose of the Receivership Proceedings;
  - (b) is in the best interests of the Debtor and its stakeholders, and
  - (c) assists the Receiver's efforts to maximize value through these Receivership Proceedings.

## B. APPROVAL OF THE STALKING HORSE SALE PROCESS

33. This Court's jurisdiction to approve the SISP is found in section 243(1)(c) of the *Bankruptcy and Insolvency Act* ("**BIA**"), which provides that, on application by a secured creditor, a court may appoint a receiver to take any other action that the court considers advisable if it considers it to be just or convenient to do so.<sup>11</sup>
34. In addition, subparagraphs 3(d), (k) and 3(m) of the Receivership Order, expressly authorize the Receiver to:
  - (a) engage consultants, appraisers, agents and experts to assist the Receiver in exercising its power and duties;<sup>12</sup>
  - (b) market the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiate such terms and conditions of sale as the Receiver, in its discretion, may deem appropriate;<sup>13</sup> and
  - (c) apply for any vesting order or other relief necessary to convey the Property or any part or parts thereof to a potential purchaser or purchasers, free and clear of liens and encumbrances affecting the Property.<sup>14</sup>
35. A stalking horse sale process is a recognized structure of sale process frequently utilized in insolvency proceedings to attempt to obtain the best price for the business or assets being sold.<sup>15</sup>
36. The use of a stalking horse term sheet in sale processes establishes a floor price and deal structure in an effort to generate superior bids to the term sheet from interested parties, thereby maximizing the value of a business for the benefit of stakeholders while enhancing the fairness of the sale process.<sup>16</sup>
37. In *Nortel Networks Corp. (Re)* ("**Nortel**"), the Ontario Superior Court of Justice (Commercial List) approved a stalking horse sale process and set out four factors (the "**Nortel Factors**") that a court should consider when determining whether to authorize a sale process:
  - (a) whether a sale transaction warranted at that time;
  - (b) whether the sale would benefit the whole "economic community";

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<sup>11</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243(1)(c) [**BIA**] [Tab 1].

<sup>12</sup> Receivership Order at para 3(d).

<sup>13</sup> *Ibid* at para 3(k).

<sup>14</sup> *Ibid* at para 3(m).

<sup>15</sup> *Danier Leather Inc., Re*, 2016 ONSC 1044 [**Danier Leather**] at para 20 [Tab 8], citing *CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd.*, 2012 ONSC 1750 at para 7 [**CCM Master**] [Tab 7].

<sup>16</sup> *Danier Leather*, *supra* note 15 at para 20 [Tab 8].

- (c) whether any of the Debtor's creditors have a bona fide reason to object to a sale of the business; and
  - (d) whether there is a better viable alternative.<sup>17</sup>
38. Although the *Nortel* decision was rendered in the context of a SISF under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"),<sup>18</sup> the Supreme Court of Canada has recognized that the CCAA is an analogous restructuring statute to the proposal provisions of the BIA<sup>19</sup> and further, to the extent possible, the two statutes should be interpreted harmoniously in order to prevent statute-shopping.<sup>20</sup>
39. In *Mustang GP Ltd. (Re)*, the Ontario Superior Court of Justice applied the Nortel Factors on a motion to approve a sale process backstopped by a stalking horse bid in a proposal proceeding under the BIA.<sup>21</sup>
40. In the context of a CCAA sale proposal, this Court has held that "[a] sale process is only required to be reasonable, not perfect."<sup>22</sup>

#### **I. THE SISF AND TERM SHEET ARE WARRANTED AT THIS TIME**

41. As detailed further in the First Report, the Receiver is of the view that a sale transaction with respect to the Debtor's Property and/or Business is warranted at this time and that the SISF and Term Sheet provide material value to the Debtor and constitute together the best currently available value to the Debtor's estates in the context of these Receivership Proceedings.
42. If the SISF is not implemented at this time, the Receiver will incur additional professional fees through an extended period of time, thereby materially decreasing recoveries for the Debtor's stakeholders.<sup>23</sup>
43. The Receiver is of the view that the SISF is a well-defined, fair and transparent marketing process designed to identify the highest and best offers for the Property and to maximize recoveries in the short term, by seeking offers superior to the Term Sheet. Accordingly, the Receiver is of the view that the implementation of the SISF, including the Term Sheet, is warranted at this time.

<sup>17</sup> *Nortel Networks Corp., Re*, 2009 CanLII 39492 (Ont SCJ [Commercial List]) at para 49 [Tab 23].

<sup>18</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") [Tab 3].

<sup>19</sup> See e.g. *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60 at para 24 [Tab 33]; see also *Indalex Ltd., Re*, 2013 SCC 6 at paras 50-51 [Tab 15].

<sup>20</sup> *9354-9186 Québec Inc. v Callidus Capital Corp.*, 2020 SCC 10, at para 74 [Tab 40].

<sup>21</sup> *Mustang GP Ltd., Re*, 2015 ONSC 6562 at paras 37-38 [Tab 21].

<sup>22</sup> *Sanjel Corporation, Re*, 2016 ABQB 257 at para 80 [Tab 30].

<sup>23</sup> First Report, *supra* note 1 at para 105.

## II. BENEFIT TO THE ECONOMIC COMMUNITY OF THE DEBTOR

44. The Stalking Horse Transaction:
- (a) contemplates a share purchase transaction that will result in the Retained Assets and the business of the Debtor remaining with the Debtor and the Debtor entity being discharged from the Receivership Proceedings; and
  - (b) provides certainty to the Debtor and its stakeholders of a resolution and finality to these Receivership Proceedings, regardless of whether the Stalking Horse Bidder is the ultimate owner of the Property.
45. Ultimately, the SISP provides value maximization for stakeholders by, among other things, setting a floor price that will potentially be bested by any bids received under the SISP.<sup>24</sup>

## III. THE SISP AND TERM SHEET PROVIDE FOR A FAIR, TRANSPARENT AND REASONABLE PROCESS

46. The SISP is fair, transparent and reasonable. In particular:
- (a) the SISP will be facilitated by the Receiver to maintain the integrity of the SISP as an officer of this Court;
  - (b) the sale of the Acquired Property will be on an "as is, where is" basis;
  - (c) the SISP takes into account the intertwined nature of the Debtor's assets with third parties and the ongoing complications;
  - (d) the timeline provided in the SISP will permit a sufficient level of market exposure for the Property in an expedient and efficient manner;
  - (e) the Receiver is not aware of any stakeholder that appears to be prejudiced by the SISP;
  - (f) the SISP provides certainty of a Successful Bid;
  - (g) the Term Sheet is fair and reasonable, as well as sets a fair "base level" price for the SISP, when taking into consideration the nature of the Property and the Debtor's current financial position;
  - (h) the Receiver will retain a sale advisor with experience in marketing distressed assets in similar circumstances;

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<sup>24</sup> First Report, *supra* note 1 at para 79.

- (i) only if a Superior Offer is not identified in the SISP, or if the Stalking Horse Bidder submits the highest bid under the Auction, will the Receiver be allowed to proceed with closing of the transactions contemplated by the Term Sheet; and
- (j) the Stalking Horse Bidder, as well as RSLLC and Blue Fin are supportive of the SISP and the Term Sheet.

#### **IV. THE BREAK FEE**

- 47. The Break Fee provisions in favour of the Stalking Horse Bidder are frequently approved in insolvency proceedings.<sup>25</sup> Such "break fees" do not merely reflect the cost to the purchaser of putting together the Term Sheet, but may include the price of stability, and thus some premium over simply providing for out of pocket expenses is appropriate.<sup>26</sup>
- 48. The Receiver considers the Break Fee to be reasonable in the circumstances as it is not onerous and represents only two (2) percent of the Purchase Price.
- 49. The Break Fee provision in the Term Sheet falls well within the range of reasonableness when compared to other similar provisions which have been previously approved, and as such should be approved in the circumstances.
- 50. The Receiver respectfully submits that the Break Fee will not jeopardize other potential purchasers' ability to bid in the SISP. Any deleterious effects that the Break Fee could potentially cause are balanced by (i) the salutary effects entailed by having the Term Sheet as a sale stimulator and (ii) the stability brought to the SISP.
- 51. The Receiver is of the view that offering bid protection to the Stalking Horse Bidder, should a Superior Offer be selected in accordance with the SISP, is reasonable in the circumstances.

#### **V. THERE ARE NO BETTER VIABLE ALTERNATIVES TO THE SISP AND TERM SHEET**

- 52. As discussed in the First Report, the majority of Robus' Property is intertwined with assets held by Enerplus. Enerplus has been in the process of marketing for sale all of its Canadian assets, including but not limited to their remaining ownership in the Joarcam field. These efforts have so far been unsuccessful.
- 53. Since the onset of the Receivership Proceedings, the Receiver and RSLLC have attempted to advance discussions with Enerplus with a common view to maximize realizations in their shared interests and transfer the AER licenses to a purchaser.

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<sup>25</sup> *CCM Master*, *supra* note 15 at para 13 [Tab 7].

<sup>26</sup> *Danier Leather*, *supra* note 15 at para 41 [Tab 8]; see also *CCM Master*, *supra* note 15 at para 13 [Tab 7].

54. Due to the Receiver's uncertainty regarding if and when an agreement can be in place to jointly market Robus' and Enerplus' Joarcam assets, with the support of the primary secured creditor, RSLLC, the Receiver has determined that the most efficient way to realize on the Property and maximize value for Robus' estate is to implement the proposed SISP, with the intention that the Successful Bidder can negotiate their own transaction with Enerplus outside of the receivership for their remaining interest, operatorship and the transfer of the AER licenses.
55. Based on the foregoing, the Receiver respectfully submits that the SISP be approved by this Honourable Court, given that it:
- (a) is warranted at this time;
  - (b) is beneficial for the Debtor's economic community;
  - (c) provides for a fair, transparent and reasonable SISP;
  - (d) is commercially efficacious in the circumstances; and
  - (e) is the best alternative in the circumstances.

### **C. APPROVAL OF THE STALKING HORSE TRANSACTION AND RVO**

#### **I. THE STALKING HORSE TRANSACTION SATISFIES THE SOUNDAIR PRINCIPLES**

56. In *Royal Bank v Soundair*,<sup>27</sup> the Ontario Court of Appeal set out the four factors a court should consider in approving a proposed sale of assets by a receiver:
- (a) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers are obtained; and
  - (d) whether there has been unfairness in the working out of the process;
- (the "**Soundair Principles**").
57. Consideration of the Soundair Principles was endorsed by the Alberta Court of Appeal in *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, and recently by the Honourable Justice B.E. Romaine of this Court in *Sydco Energy Inc., Re*.<sup>28</sup>

<sup>27</sup> *Royal Bank v Soundair Corp.* (1991), 4 OR (3d) 1 (Ont CA) at 6 [Tab 29].

<sup>28</sup> *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, 2010 ABCA 16 at para 12 [Tab 28]; *Sydco Energy Inc., Re*, 2018 ABQB 75 [Tab 32].

58. As discussed in more detail above:
- (a) the SISP is well-defined and transparent, consistent with similar Court approved sale processes for properties of this nature, and will be facilitated by the Receiver to maintain the integrity of the SISP as an officer of this Court; and
  - (b) if no Superior Offer is obtained in the SISP, the approval of the Stalking Horse Transaction will result in an efficient and cost-effective process to realize on the Debtor's Property.
59. Further, the Stalking Horse Transaction:
- (a) would only be approved if no Superior Offer be received by the Receiver in the context of the SISP, which is a sale process that is fair, transparent and reasonable; and
  - (b) provides certainty to the Debtor and its stakeholders of a resolution and finality to these Receivership Proceedings, regardless of whether the Stalking Horse Bidder is the ultimate owner of the Property.
60. Based on the foregoing, the Receiver submits that the Stalking Horse Transaction satisfies the Soundair Principles.

## II. THE COURT HAS THE JURISDICTION TO GRANT A REVERSE VESTING ORDER IN A RECEIVERSHIP

61. The Term Sheet stipulates that a transaction respecting the Debtor be consummated through a reverse vesting order. A reverse vesting order transfers certain assets and liabilities to a separate entity (in this case, the Creditor Trust), while other specified assets and liabilities remain in the corporation. The transferred assets are then made available for distribution to satisfy the transferred liabilities, in the same order and priority they would have been satisfied in the debtor corporation but for the transfer.
62. A reverse vesting order can be contrasted with a traditional vesting order, wherein assets of the debtor are transferred to the purchaser, leaving the liabilities behind.
63. A reverse vesting order can be uniquely beneficial in cases like the present where there are intangible assets, such as the JOA and the AER licenses and other corporate attributes, which are not readily transferrable in an ordinary transaction.<sup>29</sup>

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<sup>29</sup> *Harte Gold Corp., (Re)*, 2022 ONSC 653 [**Harte Gold**] [Tab 14]; *Just Energy Group Inc. et al. v Morgan Stanley Capital Group Inc. et al.*, 2022 ONSC 6354 at para 43 [Tab 18].

64. Reverse vesting transactions have frequently been approved in insolvency proceedings,<sup>30</sup> such as CCAA proceedings pursuant to the court's broad powers provided under section 11 of the CCAA.<sup>31</sup>
65. Reverse vesting orders have also been granted in receivership proceedings. For example, on March 30, 2022, this Court approved a reverse vesting order transaction in the *Balanced Energy* receivership,<sup>32</sup> concurrently with a SISF and the conditional approval of a stalking horse transaction.
66. This Court also granted a reverse vesting order in a receivership proceeding as recently as May 2022 in *Jam Hospitality Inc., et al (Re)*.<sup>33</sup>
67. In 2021, Justice Conway of the Ontario Superior Court of Justice (Commercial List) approved a reverse vesting order and creditor trust structure in *Vert Infrastructure Ltd. (Re)* in a receivership proceeding, on the basis that section 243(1)(c) of the BIA provides the court in a receivership proceeding with broad powers similar to those granted under section 11 of the CCAA.<sup>34</sup>
68. Although the BIA does not expressly confer upon the court the authority to grant vesting or reverse vesting orders in a receivership proceeding, the courts have found that a broad, liberal and purposive interpretation of the BIA, including section 243(1)(c), implicitly provides such authority.<sup>35</sup>
69. Such interpretation permits the court to grant orders that facilitate the purpose of a receivership proceeding, which is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors" and to "ensure that the highest value is received for the assets so as to maximize the return to the creditors."<sup>36</sup>
70. The Alberta Court of Appeal has also endorsed a broad interpretation of section 243(1)(c) of the BIA, and provided that this section gives "supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise."<sup>37</sup>
71. Following the above line of precedent, the Receiver respectfully submits that this Court has the jurisdiction to grant the RVO, taking into account the broad powers conferred on the court under

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<sup>30</sup> See e.g. *Pure Global Cannabis Inc. (Re)*, ONSC Court File No. CV-20-00638503-00CL, Order granted January 7, 2021 [Tab 25]; *Elcano Exploration Inc et al (Re)*, ABQB Court File No. 2101-08818, Order granted March 11, 2022 [*Elcano*] [Tab 12].

<sup>31</sup> CCAA, s 11 [Tab 3]; *Re Nemaska Lithium inc.*, 2020 QCCA 1488, Order granted November 11, 2020 [Tab 26].

<sup>32</sup> *Balanced Energy, (Re)*, ABQB Court File No. 2201-02699, Orders granted March 30, 2022 [*Balanced Energy*] [Tab 6].

<sup>33</sup> *Jam Hospitality Inc., et al (Re)*, ABQB Court File No. 2101-05667, Order granted May 5, 2022 [*Jam Hospitality*] [Tab 17].

<sup>34</sup> *Vert Infrastructure Ltd. (Re)*, ONSC Court File No. CV-20-00642256-00CL, Order granted June 8, 2021 [*Vert Infrastructure*] [Tab 38].

<sup>35</sup> *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 76-77 [*Third Eye Capital*] [Tab 34].

<sup>36</sup> *Ibid* at para 73.

<sup>37</sup> *DGDP-BC Holdings Ltd. v Third Eye Capital Corporation*, 2021 ABCA 226 at para 20 [Tab 10].



section 243(1)(c) of the BIA and the broad purpose of a receivership proceeding, namely, to enhance and facilitate the preservation and realization of assets.

### III. GRANTING OF THE RVO IS JUSTIFIED IN THIS CASE

72. In *Harte Gold Corp. (Re)*, Penny, J. provided commentary and guidance regarding the issuance of reverse vesting orders, noting that approval of a reverse vesting order structure should involve close scrutiny, since "the frequency of applications based on court approval of an RVO structure has increased significantly in the past few years", and that most of those applications were "in a context where there was no opposition and no obvious or identified unfairness arising from the use of the RVO structure".<sup>38</sup>
73. Acknowledging the lack of guidance in Canadian jurisprudence on reverse vesting order structures, Penny, J. noted the following:
  - (a) neither the BIA nor the CCAA deal specifically with the use or application of the RVO structure;
  - (b) an RVO should continue to be regarded as an unusual or extraordinary measure and not an approach appropriate merely because it may be more convenient;
  - (c) the court officer and the court must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and constraints of the underlying statute;
  - (d) approval of the use of an RVO structure should involve close scrutiny; and
  - (e) this is particularly the case where there is no party with a significant stake in the outcome opposing the use of an RVO structure.<sup>39</sup>
74. As a result, the court found that a court-appointed officer overseeing the process should be prepared to answer questions such as:
  - (a) why is the RVO necessary in this case?
  - (b) does the RVO structure produce an economic result at least as favourable as any other viable alternative?
  - (c) is any stakeholder worse off under the RVO structure than they would have been under any other viable structure?

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<sup>38</sup> *Harte Gold*, *supra* note 29 at para 25 [Tab 14].

<sup>39</sup> *Ibid* at para 38.

- (d) does the consideration being paid for the debtor's business reflect the importance and value of the intangible assets being preserved under the RVO structure?<sup>40</sup>

75. The Receiver submits that the circumstances of the case at bar satisfy the foregoing criteria for the reasons set out below.

*The RVO is Necessary*

76. The RVO allows the AER licenses of the Two Robus Licensed Wells to stay with Robus, thereby avoiding a lengthy process whereby RSLLC, or any other designee, would be required to apply to be a license holder and then subsequently apply to transfer the licenses.<sup>41</sup> In this way, this RVO avoids the requirement to obtain written consent to a party's assignment, as stipulated in the JOA.
77. The RVO was a required condition to the Stalking Horse Transaction and the Receiver has no other viable option or structure to pursue. As a result of production declines in the field, utility prices climbing over the winter and commodity price risk, the Receiver is uncertain whether it will be provided with sufficient cash flow to pursue any alternative.<sup>42</sup>

*The RVO structure produces an economic result at least as favourable as any other viable alternative*

78. Based on the Receiver's analysis of potential realization strategies for Robus' assets, the Stalking Horse Transaction effected through an RVO produces an economic result at least as favorable as other transaction structures. Due to the intertwined relationship with Enerplus and the inability to control decision making in the field, there is no viable alternative. The RVO satisfies the post-receivership obligations (through cash consideration or Retained Liabilities), which may remain unsatisfied if the Stalking Horse Transaction and RVO are not approved.<sup>43</sup>

*No stakeholder is worse off under the RVO structure than they would have been under any other viable structure*

79. The Receiver is not aware of any stakeholder that would be worse off as a result of the RVO structure, relative to another viable transaction structure.<sup>44</sup>
80. A similar transaction through a traditional approval and vesting order is not expected by the Receiver to generate the same Purchase Price, and would create additional financial and time barriers with respect to the transfer of the AER licenses. The structure of SISF will act as a test to

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<sup>40</sup> *Ibid.*

<sup>41</sup> First Report, *supra* note 1 at para 96(a).

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid* at para 96(b).

<sup>44</sup> *Ibid* at para 96(c).

determine whether an alternate transactional structure would product a better result than the RVO structure.

*The consideration being paid for the Debtor's Business reflects the importance and value of the intangible assets being preserved under the RVO structure*

81. If the assets were to transfer under a traditional approval and vesting order, the Two Robus Licensed Assets would be required to go through a license transfer application process through the AER, which could take considerable time. In addition, if RSLLC, or its designee, seek to purchase the assets, they would be required to apply to become a license holder. Further, the JOA requires the written consent to a party's assignment of that agreement. While options may be available to force an assignment over a potential Enerplus objection, pursuing an RVO structure avoids the issue. Finally, as time passes, the likelihood of any option or alternative diminishes in light of the lack of cashflow in the estate.<sup>45</sup>
82. The consideration paid under the Stalking Horse Transaction is higher than the average of the comparable transactions, without factoring in the asset retirement obligations, which the Receiver understands to be significant. As the RVO is a required condition to the Stalking Horse Transaction, the Receiver considers the consideration being paid to reflect the importance and value of the time it would take to undertake the additional steps required by the AER under a traditional asset sale.<sup>46</sup>
83. In the Receiver's view, all of the above considerations support the use of an RVO to complete the Stalking Horse Transaction and, as a result, the Receiver respectfully recommends that this Honourable Court approve the Stalking Horse Transaction.

#### **IV. CONCURRENT APPROVAL OF SISP AND STALKING HORSE TRANSACTION**

84. Stalking horse transactions are often approved concurrently with sale processes.<sup>47</sup> For example, on March 30, 2022 the Honourable Justice J.T. Neilson of this Court granted the concurrent approval of a SISP and a conditional approval of a stalking horse transaction in the receivership proceedings of *Balanced Energy*.<sup>48</sup> In that case, the receiver took the position that such concurrent approval was justified, among other things, on the basis that:

- (a) it would avoid delays and expenses, which would be prejudicial to the Debtor's stakeholders;

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<sup>45</sup> *Ibid* at para 96(d).

<sup>46</sup> *Ibid*.

<sup>47</sup> See e.g. *US Oil Sands Inc. and US Oil Sands (Utah) Inc., (Re)*, ABQB Court File No. 1701-12253, Order granted February 16, 2018 [Tab 37]; *Traverse Energy Ltd., et al, (Re)*, ABQB Court File No. 1901-16844, Order granted February 14, 2020 [Tab 36]; *Ladacor AMS Ltd., et al (Re)*, ABQB Court File No. 1803-09581, Order granted October 24, 2018 [Tab 19].

<sup>48</sup> *Balanced Energy*, *supra* note 32 [Tab 6].

- (b) the receiver would be able to ensure that the sale process would have been conducted in accordance with its terms, and that no superior bids would be received, thus protecting the fairness of the sale process;
  - (c) if superior bids would be received, the conditions for the closing of the transaction proposed by the stalking horse bidder would not be met, and the receiver would be required to bring an application before the Court, so there would be no prejudice by the concurrent approval of the sale process and of the stalking horse transaction; and
  - (d) concurrent approval would simplify the proceedings and preserve judicial resources.
85. The Receiver respectfully submits that all of the foregoing considerations are applicable to the case at bar, and that a concurrent approval of the SISP and the Stalking Horse Transaction would be appropriate.

#### **D. APPROVAL OF THE ARTICLES OF REORGANIZATION AND THE CREDITOR TRUST**

##### **I. THE COURT HAS JURISDICTION TO APPROVE THE ARTICLES OF REORGANIZATION**

86. Pursuant to section 192 of the *Business Corporations Act* (Alberta), this Court has the jurisdiction to grant an order approving the Articles of Reorganization.<sup>49</sup>

##### **II. THE COURT HAS JURISDICTION TO APPROVE THE CREDITOR TRUST**

###### *The Court's jurisdiction to create the Creditor Trust*

87. Canadian Courts have approved the creation of a common law trust over sale proceeds from an estate in other insolvency proceedings.<sup>50</sup>
88. Courts have approved of such trust arrangements to ensure a path of recovery for parties with claims against the debtor. For example, in *269893 Alberta Ltd v Otter Bay Developments Ltd.*, the Court created certain trust funds which it deemed be held in lieu of the subject lands and premises as security for the amounts claimed by certain lien claimants.<sup>51</sup> Such order created a trust in order to facilitate the sale of certain real property by an interim receiver.
89. In *Re Woodward's Ltd.*, the court found that preservation of the status quo was one justification for the creation of a trust for supplier claims (which was absent in such case).<sup>52</sup> Here, the creation of

<sup>49</sup> *Business Corporations Act*, RSA 2000, c B-9, s 192 [Tab 2].

<sup>50</sup> See e.g. *Dominion Diamond Mines ULC, et al, (Re)*, ABQB Court File No. 2001-05630, Order granted October 15, 2021 [Tab 11]; see also *Jam Hospitality*, *supra* note 33 [Tab 17].

<sup>51</sup> *269893 Alberta Ltd v Otter Bay Developments Ltd.*, 2010 BCSC 1972 at para 23, *aff'd* 2011 BCCA 90 [*Otter Bay*] [Tab 39].

<sup>52</sup> *Re Woodward's Ltd.*, 1993 CanLII 870 (BC SC) at para 18, leave to appeal dismissed 1993 CanLII 305 (BC CA) [Tab 27].

the Creditor Trust is designed specifically to maintain the status quo while monetizing certain assets of the Debtor to the benefit of its creditors.

90. Courts in CCAA proceedings have approved the creation of a trust notwithstanding that the CCAA does not contain any provision expressly authorizing it, by relying on its broad discretion to create a common law trust.<sup>53</sup>
91. Similarly, creditor trusts have also recently been approved in Alberta receivership proceedings under the BIA as part of transactions consummated through reverse vesting orders, on the basis of the Court's discretion.<sup>54</sup>

*This Court has the jurisdiction to vest the Property in the Creditor Trust and channel all claims against the Property thereto*

92. The proposed RVO includes certain reorganization steps that are necessary to implement the RVO Transaction on a "free and clear" basis, including:
  - (a) Robus' interest in and to the Transferred Assets shall be transferred to and shall vest exclusively in the Creditor Trust;
  - (b) all Claims and Encumbrances in respect of Robus other than Retained Liabilities shall be transferred to and shall vest absolutely and without recourse in the Creditor Trust, and such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time; and
  - (c) all Claims and Encumbrances other than the Retained Liabilities shall be expunged, released and discharged as against Robus and the Retained Assets.
93. This Court has the jurisdiction to vest the Property in the Creditor Trust pursuant to section 243(1)(c) of the BIA, which provides this Court with the jurisdiction to appoint a receiver to "take any other action that the court considers advisable" if just or convenient to do so.<sup>55</sup> This section has been interpreted broadly and found to grant Canadian court's jurisdiction to do what "justice dictates" and "practicality demands".<sup>56</sup>
94. A liberal and purposive interpretation of section 243(1)(c) of the BIA leads to the conclusion that this Court has the jurisdiction not only to create the Creditor Trust but to vest the Property with the

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<sup>53</sup> *Otter Bay*, *supra* note 51 [Tab 39].

<sup>54</sup> *Elcano*, *supra* note 30 [Tab 12]; *Jam Hospitality*, *supra* note 33 [Tab 17]; *Vert Infrastructure*, *supra* note 34 [Tab 38].

<sup>55</sup> BIA, *supra* note 11, s 243(1)(c) [Tab 1].

<sup>56</sup> *Third Eye Capital*, *supra* note 35 at paras 52 & 57 [Tab 34].

Receiver in trust. Such a finding would also adequately respect Parliament's desire for the receivership regime to be flexible and responsive to evolving commercial practice.<sup>57</sup>

95. No creditor of the Robus will suffer prejudice as a result of the transfer of the Transferred Assets and Transferred Liabilities to the Creditor Trust. The proposed RVO provides that the Claims and Encumbrances shall continue to attach to the Transferred Assets with the same attributes, rights, security, nature and priority as they had immediately prior to the completion of the RVO Transaction. As a result, creditor entitlements to the RVO Transaction proceeds and the other assets not retained by the Robus will be preserved in accordance with their existing priorities.

### **III. APPROVAL OF THE ARTICLES OF REORGANIZATION AND THE CREDITOR TRUST IS JUSTIFIED IN THIS CASE**

96. The use of the Creditor Trust administered by the Receiver is necessary and appropriate in the circumstances of this case. The use of the Creditor Trust will fulfil the same purpose as the incorporation of a "newco" subsidiary used in other cases, and will facilitate the completion of the RVO Transaction.
97. The Receiver will administer the Creditor Trust for the benefit of creditors, subject to the continued oversight of the Court in the Receivership Proceedings. Accordingly, the Receiver submits that the use of the Creditor Trust to channel Claims and Encumbrances and achieve a necessary restructuring of Robus is appropriate in the circumstances.

### **E. APPROVAL OF THE RECEIVER'S ACTIVITIES & PROFESSIONAL FEES**

98. This Court has jurisdiction to approve the activities of a court officer as described in its reports to court.<sup>58</sup> This Court routinely grants such approval in the context of receivership proceedings,<sup>59</sup> recognizing that it:
- (a) brings the receiver's activities before the Court;
  - (b) enables the Court to satisfy itself that the receiver's activities have been conducted prudently and diligently;
  - (c) allows the concerns of stakeholders to be considered and addressed;

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<sup>57</sup> *Ibid* at para 86.

<sup>58</sup> BIA, *supra* note 11, s 183(1) [Tab 1]; *Hanfeng Evergreen Inc, (Re)*, 2017 ONSC 7161 at para 15 [**Evergreen Inc.**] [Tab 13].

<sup>59</sup> *Accede Energy Services Ltd., et al. (Re)*, ABQB Court File No. 2001-04485, Order granted October 22, 2020, para 3 [Tab 4]; *Mustang Well Services Ltd., et al. (Re)*, ABQB Court File No. 1801-06866, Order granted September 5, 2018, para 14 [Tab 22]; *Innova Global Ltd., (Re)*, ABQB Court File No. 1901-04589, Order granted April 12, 2021, para 3 [Tab 16].

- (d) provides stakeholders with an opportunity to bring to the fore any concerns they may have regarding the receiver's diligence and prudence; provides protection for the receiver not otherwise provided by statute;
- (e) permits the receiver to move forward with the next steps in the proceedings; and
- (f) protects creditors from the delay and expense that would be caused by:
  - (i) the re-litigation of the steps taken in the proceedings to date; and
  - (ii) potential indemnity claims by the receiver.<sup>60</sup>

99. Having regard to the foregoing considerations, the Receiver submits that it is appropriate for this Court to exercise its discretion to approve the Receiver's activities as described in the First Report.<sup>61</sup>

100. It is well established in Canadian law that a receiver has a *prima facie* right to be paid its fees and disbursements, including the fees and disbursements of its legal counsel.<sup>62</sup>

101. The principles governing the approval of the fees and disbursements of a court appointed receiver and its counsel are well established.<sup>63</sup> In seeking such approval, the Receiver must satisfy this court that the amount claimed is fair and reasonable having regard to:

- (a) the nature, extent and value of the case;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the parties;
- (d) the time spent by the receiver;
- (e) the receiver's knowledge, skill and experience;
- (f) the receiver's diligence and thoroughness;
- (g) the responsibilities assumed the results achieved;
- (h) the cost of comparable services; and
- (i) any agreement as to fees between the parties.<sup>64</sup>

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<sup>60</sup> *Evergreen Inc.*, *supra* note 58 at paras 15-17 [Tab 13].

<sup>61</sup> First Report, *supra* note 1 at paras 14-18.

<sup>62</sup> See e.g. *Avant Enterprises Inc., (Re)*, 2013 BCSC 993 [Tab 5]; see also *Polish Alliance of Canada v Polish Assn. of Toronto Ltd.*, 2015 ONSC 6458 [Tab 24].

<sup>63</sup> *Servus Credit Union Ltd v Trimove Inc.*, 2015 ABQB 745 at para 6 [Tab 31].

<sup>64</sup> *Ibid* at paras 26-28; *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at paras 33, 35 [**Diemer**] [Tab 7].

102. These factors are non-exhaustive.<sup>65</sup>
103. In the present case, the aforementioned considerations support the approval of the Receiver's fees. Since the granting of the Receivership Order, the Receiver, with the assistance of its counsel, has acted in good faith and with due diligence to, among other things, conduct a security review of Robus, correspond with various stakeholders and prepare the SISP, Term Sheet and First Report. The circumstances surrounding this proceeding are extremely complex. The fees and disbursements of the Receiver and its counsel are commensurate with the complexity of these proceedings, the cost of comparable services, and the diligence, expertise and efforts of the Receiver and its counsel.

#### **F. APPROVAL OF AN INCREASE IN THE RECEIVER'S BORROWINGS**

104. Pursuant to the Receivership Order, the Receiver's borrowings under the Receiver's Certificates are not to exceed \$1,000,000, provided that the Receiver may increase its borrowings by any amount this Court may by further order authorize.<sup>66</sup>
105. Canadian courts commonly grant similar increases to receivers' borrowings to facilitate the continued administration of such receivership proceedings.<sup>67</sup>
106. On a go-forward basis, the proposed increase in the Receiver's borrowings is necessary to enable the Receiver to, among other things:
- (a) monitor the Property and operations to ensure compliance with all applicable legal and regulatory requirements;
  - (b) continue consultations with RSLLC, Enerplus, and the AER (as required) with respect to the Property;
  - (c) implement and perform the proposed SISP (if approved by this Honourable Court); and
  - (d) complete and implement the Stalking Horse Transaction (if approved by this Honourable Court) in the event no Superior Offer is identified in the SISP.<sup>68</sup>

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<sup>65</sup> *Diemer supra* note 64 at para 33 [Tab 7].

<sup>66</sup> Receivership Order at para 21.

<sup>67</sup> See e.g. *Mahal Venture Capital Inc., et al (Re)*, Court File No. CV-21-00664778-00CL, Order granted November 22, 2021 [Tab 20]; see also *Tradesman Enterprises Limited Partnership, et al (Re)*, ABQB Court File No. 2101-04670, Order granted July 15, 2021 [Tab 35].

<sup>68</sup> First Report, *supra* note 1 at para 113.



107. The Receiver has had discussions with Blue Fin and RSLLC and understands that Blue Fin and RSLLC neither support nor oppose of the proposed increase to the Receiver's Borrowings Charge.<sup>69</sup>

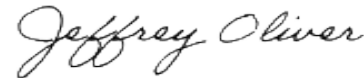
**V. CONCLUSION**

108. Based on all of the foregoing, the Receiver requests that this Honourable Court grant the relief requested, including the approval of the SISP, Term Sheet and RVO.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12th day of December, 2022.

**Cassels Brock & Blackwell LLP**

Per:




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Jeffrey Oliver / Danielle Marechal  
Counsel for the Applicant, ALVAREZ &  
MARSAL CANADA INC., in its capacity as  
Receiver of ROBUS RESOURCES INC.

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<sup>69</sup> *Ibid* at para 106.

## LIST OF AUTHORITIES (hyperlinked)

### STATUTES

1. [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)
2. [Business Corporations Act, RSA 2000, c B-9](#)
3. [Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)

### JURISPRUDENCE

4. [Accede Energy Services Ltd., et al. \(Re\), ABQB Court File No. 2001-04485, Order granted October 22, 2020](#)
5. [Avant Enterprises Inc., \(Re\), 2013 BCSC 993](#)
6. [Balanced Energy, Re, ABQB Court File No. 2201-02699, Orders granted March 30, 2022](#)
7. [Bank of Nova Scotia v Diemer, 2014 ONCA 851](#)
8. [CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd., 2012 ONSC 1750](#)
9. [Danier Leather Inc., Re, 2016 ONSC 1044](#)
10. [DGDP-BC Holdings Ltd. v Third Eye Capital Corporation, 2021 ABCA 226](#)
11. [Dominion Diamond Mines ULC, et al, \(Re\), ABQB Court File No. 2001-05630, Order granted October 15, 2021](#)
12. [Elcano Exploration Inc., et al \(Re\), ABQB Court File No. 2101-08818, Order granted March 11, 2022](#)
13. [Hanfeng Evergreen Inc. \(Re\), 2017 ONSC 7161](#)
14. [Harte Gold Corp. \(Re\), 2022 ONSC 653](#)
15. [Indalex Ltd., Re, 2013 SCC 6](#)
16. [Innova Global Ltd., \(Re\), ABQB Court File No. 1901-04589, Order granted April 12, 2021](#)
17. [Jam Hospitality Inc., et al \(Re\), ABQB Court File No. 2101-05667 - Order granted May 5, 2022](#)
18. [Just Energy Group Inc. et al. v Morgan Stanley Capital Group Inc. et al., 2022 ONSC 6354](#)
19. [Ladacor AMS Ltd., et al \(Re\), ABQB Court File No. 1803-09581, Order granted October 24, 2018](#)
20. [Mahal Venture Capital Inc., et al, \(Re\), Court File No. CV-21-00664778-00CL, Order granted November 22, 2021](#)
21. [Mustang GP Ltd., Re, 2015 ONSC 6562](#)

22. [Mustang Well Services Ltd., et al. \(Re\), ABQB Court File No. 1801-06866, Order granted September 5, 2018](#)
23. [Nortel Networks Corp., Re, 2009 CanLII 39492 \(Ont SCJ \[Commercial List\]\)](#)
24. [Polish Alliance of Canada v Polish Assn. of Toronto Ltd., 2015 ONSC 6458](#)
25. [Pure Global Cannabis Inc. \(Re\), ONSC Court File No. CV-20-00638503-00CL, Order granted January 7, 2021](#)
26. [Re Nemaska Lithium Inc., 2020 QCCA 1488](#)
27. [Re Woodward's Ltd., 1993 CanLII 870 \(BC SC\), leave to appeal dismissed 1993 CanLII 305 \(BC CA\)](#)
28. [River Rentals Group Ltd. v Hutterian Brethren Church of Codesa, 2010 ABCA 16](#)
29. [Royal Bank v Soundair Corp. \(1991\), 4 OR \(3d\) 1 \(Ont CA\)](#)
30. [Sanjel Corporation, Re, 2016 ABQB 257](#)
31. [Servus Credit Union Ltd v Trimove Inc., 2015 ABQB 745](#)
32. [Sydco Energy Inc., Re, 2018 ABQB 75](#)
33. [Ted Leroy Trucking Ltd., Re, 2010 SCC 60](#)
34. [Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508](#)
35. [Tradesman Enterprises Limited Partnership, et al \(Re\), ABQB Court File No. 2101-04670, Order granted July 15, 2021](#)
36. [Traverse Energy Ltd., Re, ABQB Court File No. 1901-16844 - Order granted February 14, 2020](#)
37. [US Oil Sands Inc. and US Oil Sands \(Utah\) Inc., Re, ABQB Court File No. 1701-12253 – Order granted February 16, 2018](#)
38. [Vert Infrastructure Ltd. \(Re\), ONSC Court File No. CV-20-00642256-00CL - Order granted June 8, 2021](#)
39. [269893 Alberta Ltd v Otter Bay Developments Ltd., 2010 BCSC 1972, aff'd 2011 BCCA 90](#)
40. [9354-9186 Québec Inc v Callidus Capital Corp, 2020 SCC 10](#)