Michael P. Cooley (TX Bar No. 24034388)
Keith M. Aurzada (TX Bar No. 24009880)
Dylan T.F. Ross (TX Bar No. 24104435)
REED SMITH
2850 N. Harwood Street, Suite 1500
Dallas, TX 75201
T: 469.680.4200
F: 469.680.4299
mpcooley@reedsmith.com
kaurzada@reedsmith.com
dylan.ross@reedsmith.com

Counsel to the Foreign Representative

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	Chapter 15
	§	
Fossil Creek A2A Limited Partnership, *et al.*,[1]	§	Case No. 24-44299
	§	
	§	
Debtors in a Foreign Proceeding.	§	

DEBTORS' EMERGENCY MOTION FOR PROVISIONAL RELIEF UNDER SECTION 1519 OF THE BANKRUPTCY CODE

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 11:30 AM (PREVAILING CENTRAL TIME) ON NOVEMBER 21, 2024.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE

[1] The Debtors in these chapter 15 cases, along with the Debtors' unique identifiers, are: A2A Developments Inc. (Ontario Corp. No. 2274252), Hills of Windridge A2A GP Inc. (Ontario Corp. No. 2360816), Windridge A2A Developments, LLC (Tax I.D. 32047814366), Fossil Creek A2A GP Inc. (Corporate Access No. 2018090577), Fossil Creek A2A Developments, LLC (Tax I.D. 32047814341), Serene Country Homes (Canada) Inc. (Ontario Corp. No. 2216166), A2A Capital Services Canada Inc. (Corp. No. 835144-9), Fossil Creek A2A Limited Partnership (Registration No. LP18090985), Hills of Windridge A2A LP (Business I.D. No. 230156754), Fossil Creek A2A Trust, and Hills of Windridge A2A Trust. Copies of materials filed with the applicable court in the CCAA proceedings and these chapter 15 cases are available on the website of the Monitor: https://www.alvarezandmarsal.com/A2A.

IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 21, 2024, AT 11:30 AM. (PREVAILING CENTRAL TIME) IN ROOM 204, U.S. COURTHOUSE, 501 TENTH STREET, FORT WORTH, TEXAS 76102.

PARTICIPATION AT THE HEARING WILL ONLY BE PERMITTED BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 1.650.479.3207. VIDEO COMMUNICATION WILL BE BY USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR CLICK THE LINK ON JUDGE MORRIS'S HOME PAGE. THE MEETING CODE IS 2309 445 2313. CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE MORRIS'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS, AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

Alvarez and Marsal Canada Inc. ("***A&M***" or "***Monitor***"), in its capacity as the duly appointed representative (the "***Foreign Representative***") of the above-captioned debtors (collectively, the "***Debtors***" or the "***Company***"), which are the subject of the proceeding pending under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "***CCAA***") in the Court of King's Bench of Alberta, Judicial Centre of Calgary (the "***Canadian Proceeding***" and such court, the "***Canadian Court***"), respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the "***Order***"), granting provisional

relief under title 11 of the United States Code (the "***Bankruptcy Code***") to protect the Debtors and their property within the territorial jurisdiction of the United States pending recognition of the Canada Proceeding. In support of this motion (the "***Motion***"), A&M relies upon the (a) *Declaration of Orest Konowalchuck in Support of the (i) Verified Petition for Entry of an Order Recognizing Foreign Main Proceeding and Granting Additional Relief, and (ii) Debtors' Emergency Motion For Provisional Relief Under Section 1519 of the Bankruptcy Code* (the "***Konowalchuck Declaration***") and the (b) *Verified Petition For Entry of an Order (A) Recognizing Foreign Main Proceeding and Granting Additional Relief* (the "***Verified Petition***"),[2] and respectfully states as follows:

I.
BACKGROUND[3]

1. On November 14, the CCAA Court entered an *CCAA Initial Order* (the "***CCAA Initial Order***") appointing the Monitor in the CCAA Proceedings and authorizing the Monitor to act as Foreign Representative of the Debtors.

2. On the date hereof, the Foreign Representative, on behalf of each Debtor, filed voluntary petitions for relief under chapter 15 of the Bankruptcy Code,[4] thereby commencing the Debtors' chapter 15 cases. In addition, the Foreign Representative filed the Verified Petition seeking, among other things, recognition by this Court of the Monitor's status as the duly authorized Foreign Representative of the Debtors and recognition of the CCAA Proceedings as "foreign main proceedings," or in the alternative "foreign nonmain proceedings" under § 1517.

3. A comprehensive description of the Debtors' business and operations, the CCAA Proceedings, and the factual background leading to the commencement of these chapter 15 cases is set forth in detail in the

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Verified Petition.

[3] The factual statements in this background section are drawn from the sworn declarations filed by various Canadian Investors in support of the Application, as well as the review by the Monitor of information provided by the Canadian Investors and other publicly available information.

[4] Unless otherwise noted all code and section citations shall be to the Bankruptcy Code.

Verified Petition and in the Konowalchuk Declaration, both of which were filed contemporaneously herewith and are incorporated herein by reference.

4. As set forth in the Konowalchuck Declaration filed contemporaneously herewith, the Debtors are real estate investment companies that previously purported to raise money from individual retail investors both in Canada and globally for the stated purpose of investing in real estate developments. The Debtors, and their family of related entities referred to herein as the "**A2A Group**" are entities formed under the laws of Alberta, or the laws of Ontario.

5. In particular, these chapter 15 cases concern two of three residential development projects owned and operated by the A2A Group. Of relevance to these cases are the following two real estate projects:

(a) The Trails of Fossil Creek ("***Fossil Creek***") advertised as a 93-acre residential development with 487 single detached family homes located in Forth Worth, Texas; and

(b) The Hills of Windridge ("***Windridge***" and, together with Fossil Creek, the "***Texas Projects***") advertised as a 415-acre residential development in the Dallas/Fort Worth area in Texas.

6. A third such project—Angus Manor Park ("***Angus Manor***"), which is advertised as a 167-acre residential development project located in Essa, Ontario—is owned by certain of the A2A Group entities but is not the subject of these chapter 15 cases.

7. As discussed in greater detail in the Verified Petition and Konowalchuck Declaration, since the A2A Group's initial solicitation and collection of investment for the Texas Projects, investors have received little to no correspondence regarding their investments. As a result, several legal proceedings have been commenced against the A2A Group and its management, alleging, *inter alia*, breach of contract, fraud, misappropriation of funds and fraudulent transfer, conspiracy, breach of fiduciary duty, a failure to communicate, a failure to distribute net income to beneficiaries,

and a failure to properly manage the trust assets resulting in financial losses, mismanagement, and statutory violations.

8. Based on these and other circumstances, on November 12, 2024 certain of the Canadian investors (the "***Applicant Investors***") who invested in A2A Group real estate developments, including the Texas Projects, filed an *Originating Application* (the "***Application***") with the Canadian Court. In the Application, the Applicant Investors sought entry of an CCAA Initial Order pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, including the appointment of the Monitor with certain enhanced powers in respect of various constituent members of the A2A Group, including each of the Debtors. In the alternative, the Applicant Investors sought appointment of appoint A&M as receiver of the property, assets, and undertakings of those same constituent members of the A2A Group, including each of the Debtors pursuant to the Judicature Act, RSA 2000, c J-2, as amended (the "***Judicature Act***"), with the powers to apply for the CCAA Initial Order and act as the Monitor in any subsequent CCAA proceedings.

9. Following a hearing on November 14, 2024, the Canadian Court granted the Applicant Investors' request for relief under the CCAA and entered the CCAA Initial Order, dated November 14, 2024.

10. The CCAA Initial Order, among other things, (i) commenced the Canadian Proceeding pursuant to the CCAA; (ii) appointed A&M as Monitor in the Canadian Proceeding, with enhanced powers to manage the day to day affairs of the Debtors; (iii) granted a stay of proceedings in favor of the Debtors and their business and properties through November 24, 2024; (iv) granted priority charges in favor of professionals employed by the Monitor and to secure interim financing; (v) authorized the Debtors to continue utilizing the cash management system currently in place; and (vi) authorized the Monitor, on behalf of the Debtors, to obtain and borrow up to CA$500,000 in interim financing from Pillar Capital Corp. ("***Pillar***"), which is also secured by a priority charge.

11. Now, with the concurrent filing of the Verified Petition, the Monitor seeks to commence these chapter 15 cases, to maintain the stability

and integrity of the Debtors' businesses, protect the Debtors' investors, and maximize the overall value of the Debtors for the benefit of all stakeholders.

12. Pursuant to the CCAA Initial Order, the Monitor, is an independent court officer is responsible for overseeing the Debtors' business and financial affairs, in consultation with its independent counsel. Although the CCAA Initial Order grants a broad stay against the Debtors and their assets in Canada, the Debtors' operations and assets in the United States remain vulnerable to, among other things, disruptive creditor and contract counterparty action. Until this Court enters an order recognizing the Canadian Proceeding (the "***Recognition Order***"), the Debtors will not have the benefit of the protections of the Bankruptcy Code, including its automatic stay provisions.

13. Accordingly, emergency relief is necessary for the interim period between the commencement of the chapter 15 cases and the hearing on the Verified Petition (the "***Recognition Hearing***"), to prevent parties in interest from taking action against the Debtors (including but not limited to continuing any litigation against the Texas Projects) or against their assets in the United States (such as commencing enforcement actions against the Texas Projects), each of which could prejudice or disrupt the pursuit and implementation of the restructuring efforts in the Canadian Proceeding.

14. To provide the Debtors with the breathing room and stability necessary to administer the Canadian Proceeding, the Monitor seeks a stay of creditor actions against the Debtors and their property and an extension of the Canadian Court's injunction as granted in the CCAA Initial Order to enjoin actions against the Debtors and their property, in each case, within the territorial jurisdiction of the United States and solely to the extent provided for in the CCAA Initial Order, pending the Recognition Hearing.

15. As described herein, the Debtors have the Texas Projects, significant pieces of real property, here in the United States. Accordingly, the Debtors require provisional relief to, among other things, avoid having (a) creditors "race to the courthouse" to obtain and enforce judgments against the Debtors' assets within the territorial jurisdiction of the United States. In addition, the Monitor is informed and believes that an effort may be

underway to attempt the sale of one or more of the properties owned by the Debtors or the larger A2A Group. A temporary stay of such actions will, in turn, facilitate the success of the Canadian Proceeding by allowing the Monitor to continue focusing its attention and efforts on the value-maximizing restructuring process and providing the Debtors with the stability necessary to continue their operations.

16. The Monitor also seeks interim relief in respect of the Debtors' post-petition financing facility (the "***DIP Facility***") to obtain and borrow up to CA$2,000,000 in interim financing[5] from Pillar and the agreement memorializing the terms of such financing (the "***DIP Credit Agreement***"), on the same terms and subject to the same conditions provided by in the CCAA Initial Order (as may be amended). Specifically, the Monitor requests that this Court provisionally (a) approve the Debtors entry into such loan documentation with Pillar and such other lenders that provide the postpetition commitments thereunder (the "***DIP Lenders***") and (b) grant a superpriority charge over the assets of the Debtors in the territorial jurisdiction of the United States in favor of the DIP Lenders (the "***DIP Charge***") as security for any amounts drawn under the DIP Facility from the commencement of the Canadian Proceeding until the Recognition Hearing.

17. As set forth in the Verified Petition and Konowalchuck Declaration, the Debtors needs access to the DIP Facility to ensure they has sufficient funding available to operate administer the Canadian Proceeding and these chapter 15 cases. Although the CCAA Initial Order does not authorize the Debtors to draw from the DIP Facility, the Debtors are expected to receive such authority at the "comeback" hearing in the Canadian Proceeding scheduled on November 21. At such hearing, the Monitor will request entry of an amended and restated Initial Order (the "***A&R Initial Order***") and will request an increase in the Admin Charge, Interim Lenders Charge, a stay extension, and other relief. The DIP Credit Agreement conditions the Borrowers' ability to draw on the DIP Facility on (a) the entry of the A&R Initial Order and (b) there being no outstanding default under the DIP Credit Agreement. Absent the approval of the DIP Facility and grant of a DIP Charge, the Debtors may encounter a severe liquidity crisis that would

[5] This amount is inclusive of a minimum draw of CAD$500,000.

render them unable to fund and maintain their operations, which could result in the wind-down of their business and the near total loss of asset value. However, this Court's recognition and approval of the DIP Credit Agreement and the DIP Charge will facilitate the Debtors' access to post-petition financing immediately after they receive the permission to draw from the Canadian Court and provide the Debtors with the stability necessary to prosecute the Canadian Proceeding and these chapter 15 cases.

18. The requested provisional relief is necessary to advance a key objective of chapter 15: to protect and maximize the value of the Debtors' assets and to ensure the equal treatment of similarly situated creditors. Without the requested provisional relief, there is a risk that: (a) the Debtors' creditors could seek to invoke self-help remedies or commence enforcement actions against the Debtors' assets in the United States in an attempt to gain an unfair advantage at the expense of the Debtors' other creditors; (b) the Debtors' directors and management in the United States could seek to undermine the Canadian Proceeding; and (c) the Debtors will be unable to find an alternative source of postpetition financing to fund and maintain their operations, which could result in the cessation and liquidation of their business. The Canadian Court has requested this Court's assistance in aid of the Canadian Proceeding, and protecting the Debtors and their assets within the territorial jurisdiction of the United States from the aforementioned risks will fulfill that request, which is exactly the type of cooperation that chapter 15 is meant to foster.

II.
JURISDICTION AND VENUE

19. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b)(2)(P).

20. These chapter 15 have been properly commenced under § 1504 by the filing of petitions for recognition of the Canadian Proceeding under section 1515 of the Bankruptcy Code.

21. Venue is proper pursuant to 28 U.S.C. § 1410.

22. The Debtors, as represented by the Foreign Representative, confirm their consent, pursuant to Rule 7008 of the Bankruptcy Rules to the entry of a final order by the Court in connection with the Petitions to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

23. The statutory bases for the relief requested herein are found at §§ 105(a), 362, 364, 365, 1507, 1517, 1519, 1520 and 1521.

III.
RELIEF REQUESTED

24. Pursuant to §§ 105(a), 1519, and 1521, the Foreign Representative respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit A, granting the following provisional relief pending recognition of the Canadian Proceeding:

(a) recognizing and enforcing the CCAA Initial Order on a provisional basis with respect to the Debtors and their property located in the territorial jurisdiction of the United States;

(b) (i) applying section 362 of the Bankruptcy Code to the Debtors and their property within the territorial jurisdiction of the United States and (ii) extending the Canadian Court's injunction as granted in the CCAA Initial Order to enjoin actions against the Debtors and their property within the territorial jurisdiction of the United States solely to the extent provided for in the CCAA Initial Order. For the avoidance of doubt and without limiting the generality of the foregoing, the Order shall impose a stay prohibiting all persons and entities, other than the Foreign Representative and its representatives and agents, from:

(i) commencing or continuing any suit, action, or proceeding inconsistent with the Canadian Proceeding, including, without limitation, any judicial, quasi-judicial, regulatory, administrative, or other action or proceeding involving or against the Debtors, their assets, or the proceeds thereof;

(ii) seizing, attaching, enforcing, or executing any judgment, assessment, order, lien or arbitration award against the Debtors' assets in the United States (if any) or the proceeds thereof; and

(iii) transferring, encumbering, or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States (if any) without the express consent of the Monitor or as permitted by the CCAA Initial Order in connection with the DIP Credit Agreement;

(c) applying § 364 to each of the Debtors and the property of each of the Debtors that is within the territorial jurisdiction of the United States. For the avoidance of doubt and without limiting the generality of the foregoing, the Order shall:

(i) grant liens and security interests in the property of the Debtors located within the territorial jurisdiction of the United States in respect of the DIP Charge (subject to the priorities, terms, and conditions of the CCAA Initial Order) to secured future amounts outstanding under the DIP Facility; and

(ii) find that any loans made by the DIP Lenders in accordance with the DIP Credit Agreement prior to the entry of the Recognition Order shall be extended in "good faith" as contemplated by § 364(e), such that the validity of the loans incurred under the DIP Facility, and the priority of the DIP Charge in respect of the property of the Debtors located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of the Order on appeal or the entry of an order denying the Debtors' request for entry of the Recognition Order;

(d) finding § 365(e) applicable to the Debtors executory contracts and unexpired leases governed by the law of the United States such that, notwithstanding any provision in any such contract or lease or under applicable law, no executory contract or unexpired lease with any of the Debtors may be terminated, cancelled, or modified (and any rights or obligations in such leases or contracts cannot be terminated or modified) solely because of a provision in any contract or lease of the kind described in § 365(e)(1)(A), (B), or (C), and all contract and lease counterparties located within the United States shall be prohibited from taking any steps to terminate, modify, or cancel any contracts or leases with the Debtors arising from or relating in any way to any so-called "ipso facto" or similar clauses; provided that the Order does not impair or affect the rights of any person under §§ 559 through 561, subject to the terms of the CCAA Initial Order;

(e) recognizing the Monitor as the foreign representative of the Debtors in these chapter 15 cases;

(f) authorizing the Monitor to comply with the terms and conditions of the DIP Facility, including but not limited to, the payment of associated fees and expenses as they come due without further notice or order of this Court;

(g) granting the Monitor the rights and protections to which the Monitor is entitled under chapter 15 of the Bankruptcy Code, including the protections limiting the

jurisdiction of United States Courts over the Monitor in accordance with § 1510 and the granting of additional relief in accordance with §§ 1519(a)(3) and 1521;

(h) providing that notwithstanding any provision in the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") to the contrary, (i) the Order shall be effective immediately and enforceable upon entry, (ii) the Monitor is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Order, and (iii) the Monitor is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Order;

(i) authorizing, in accordance with the CCAA Initial Order, the Monitor to pay or remit (a) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) the nonpayment of which by any Debtor could result in a responsible person associated with that Debtor being held personally liable for such nonpayment and (b) taxes related to income or operations incurred or collected by a Debtor in the ordinary course of business; and

(j) granting such other and further relief as this Court deems just and proper.

IV.
BASIS FOR RELIEF

A. Sections 105 and 1519(a) Authorize the Requested Provisional Relief

25. The Monitor filed these chapter 15 cases seeking recognition of the Canadian Proceeding under § 1517. Section 1519 permits the Court "from the time of filing a petition for recognition until [it] rules on the petition" to grant broad provisional relief pending recognition of the foreign proceeding where such relief is "urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a). Section 1519(a) describes the scope of available provisional relief, which includes, without limitation:

(a) staying execution of the Debtors' assets;

(b) entrusting the administration or realization of all or part of the Debtors' assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(c) any relief referred to in §§ 1521(a)(3), (4), or (7).

26. The Monitor seeks provisional relief under §§ 105(a) and 1519(a). Among other things, it seeks the imposition of §§ 361, 362, 364, and 365(e) for the purpose of maintaining the status quo until the Recognition Hearing. The Monitor also seeks the continuation of the automatic stay pursuant to § 1521(a)(1) upon entry of the Recognition Order.

27. The provisional relief sought implements the policies underlying chapter 15 of the Bankruptcy Code, including by (a) promoting cooperation between courts of the United States and courts of foreign jurisdictions involved in cross-border insolvencies and restructurings, (b) ensuring the "fair and efficient administration of cross border [cases] that protect the interest of all creditors, and other interested entities," including the Debtors, and (c) protecting and maximizing the value of the Debtors' assets. 11 U.S.C. § 1501(a)(3) and (4).

28. Indeed, the provisional relief requested is of a type regularly granted in chapter 15 cases. Bankruptcy courts have imposed the § 362 stay or ordered similar relief to maintain the status quo pending a hearing on recognition of the foreign proceedings, including in respect of recognition proceedings that relate to restructurings of corporations in Canadian courts. Bankruptcy courts have also approved the terms of the debtors' post-petition financing agreements and granted super senior charges to secure such financing on a provisional basis. *See, e.g., In re Just Energy Group Inc., et al.*, No. 21-30823 (MI) (Bankr. S.D. Tex. Mar. 9, 2021) [Docket No. 23] (granting provisional relief under section 362 and 365 of the Bankruptcy Code, authorizing the debtors to comply with the terms and conditions of the applicable post-petition financing agreement, and recognizing and granting

a superpriority charge against the debtors' assets in the United States to secure current and future amounts outstanding on account of such agreement); *In re NextPoint Financial Inc., et al.*, No. 23-10983 (TMH) (Bankr. D. Del. Jul. 27, 2023) [Docket No. 39] (granting provisional relief recognizing and enforcing the CCAA initial order in the United States and applying the DIP charges to the debtors' property in the United States); *In re Acerus Pharms. Corp.*, No. 23-10111 (Bankr. D. Del. Jan. 31, 2023) [Docket No. 25] (granting provisional relief under section 362 of the Bankruptcy Code); *In re CalfracWell Services Corp.*, No. 20-33529 (Bankr. S.D. Tex. July 14, 2020) [Docket No. 23] (granting provisional relief under section 362 of the Bankruptcy Code).

B. Provisional Relief Is Necessary to Protect the Debtors' Assets and Restructuring Efforts

29. A foreign representative is not, by virtue of filing a petition to commence a chapter 15 case, entitled to the application of those Bankruptcy Code provisions that automatically provide a debtor under other chapters of the Bankruptcy Code with expansive relief. Rather, it is only upon the recognition of a foreign proceeding that the Bankruptcy Code's automatic relief applies to a chapter 15 case. Although a "petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time," there is necessarily a gap between the time such petition for recognition is filed and the time the court makes a decision on whether a proceeding should be recognized. 11 U.S.C. § 1517(c). During this interim period, provisional relief may be available to protect a debtor, its assets, and the interests of all stakeholders. See 11 U.S.C. § 1519(a). Indeed, provisional relief should be granted "where relief is urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a).

C. Provisional Relief Is Needed in These chapter 15 cases

30. Absent provisional relief, individual actions brought by creditors or other parties in interest could interfere with the orderly proceedings underway in the Canadian Court and may place at risk the Debtors' ability to successfully reorganize. *See, e.g., In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (former section 304 case finding that irreparable harm would exist by "permitting the [creditors] to execute their

judgments against the bond proceeds, [which would] diminish the recovery available to other creditors and possibly wreck the reorganization efforts"). As described in greater detail in the Verified Petition and Konowalchuck Declaration, the Debtors have significant assets in the United States, including, the Texas Projects located in Texas. Unsecured creditors who, upon commencement of the Canadian Proceeding, will become aware of the Debtors' now-public circumstances and who may take immediate action to obtain and enforce a judgment against these and other valuable assets of the Debtors located in the United States. Tthe Debtors' directors and management in the United States could seek to undermine the Canadian Proceeding. Such creditor or malicious director and management action would circumvent the effective administration of the Canadian Proceeding to the detriment of the restructuring process, the Debtors, and all other creditors and parties in interest.

31. Provisional relief approving the Debtors' entry into the DIP Facility and granting the DIP Charge is also appropriate in these chapter 15 cases as the Debtors are in need of immediate relief applicable in the United States following the issuance of the CCAA Initial Order. Entry of an order of this Court recognizing and enforcing the CCAA Initial Order in the United States and applying the DIP Charge to the Debtors' property located in the territorial jurisdiction of the United States, is necessary to give effect to the CCAA Initial Order as it relates to the Debtors and their property in the United States prior to the Recognition Hearing. This provisional relief will provide essential protection of the Debtors and their property located within the territorial jurisdiction of the United States and enable them to access the critical liquidity if a need emerges prior to the Recognition Hearing and ensure the Debtors can maintain their ongoing operations and work constructively on a reorganization.

D. The Requested Relief Meets the Standards for a Preliminary Injunction

32. Provisional relief under chapter 15 of the Bankruptcy Code is conditioned on a foreign representative demonstrating that a debtor meets the standards applicable to an injunction. *See* 11 U.S.C. § 1519(e) ("[t]he standards, procedures, and limitations applicable to an injunction shall apply

to relief under this section."). In the Fifth Circuit, the general standards for injunctive relief requires a showing of the following elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any damage the injunction might cause the opponent; and (4) that the injunction will not disserve the public interest. *See Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 506 (5th Cir. 2009) (*quoting Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)); *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989).

33. In evaluating these four factors, courts take a "flexible approach and no one factor is determinative." *In re Calpine Corp.*, 365 B.R. 401, 409 (S.D.N.Y. 2007) (internal citations omitted) (*citing Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp.*, Case No. 06 5358, 2006 WL 3755175, at *4 (S.D.N.Y. Dec. 20, 2006)). These four factors are met here.

i. The Monitor Has a Substantial Likelihood of Success on the Merits

34. The Monitor has a substantial likelihood to succeed on the merits and obtain recognition of the Canadian Proceeding under chapter 15 of the Bankruptcy Code. For the reasons stated in the Verified Petition, the Monitor has demonstrated that the Canadian Proceeding is a foreign main proceeding as defined in § 1502(4), and that the Monitor is the proper foreign representative, as defined in § 101(24). CCAA proceedings, as well as similar proceedings in other jurisdictions with insolvency laws that derive from Canadian law, have been recognized as foreign proceedings by courts nationwide within the meaning of the Bankruptcy Code. Thus, the likelihood of success on the underlying merits here is high. *See, e.g.*, *In re Dynamic Technologies Group Inc. et al.*, No. 23-41416-15 (Bankr. N.D. Tex. Jun. 14, 2023) [Docket No. 43] (recognizing Canadian proceeding commenced under CCAA as a foreign main proceeding); *In re Just Energy Group Inc., et al.*, No. 21-30823 (Bankr. S.D. Tex. Apr. 2, 2021) [Docket No. 82] (same); *In re Acerus Pharmaceuticals Corporation, et al.*, No. 23-10111 (Bankr. D. Del. Feb. 27, 2023) [Docket No. 42] (same); *In re Imperial Tobacco Canada*

Limited, No. 19-10771 (Bankr. S.D.N.Y. Apr. 172019) [Docket No. 40] (same); *In re MtGox Co., Ltd. (a/k/a MtGox KK)*, No. 14-31229 (Bankr.. N.D. Tex. Jun. 19, 2014) [Docket No. 151] (recognizing Japanese insolvency proceedings as foreign proceedings).

35. Specifically,

(a) these chapter 15 cases were duly and properly commenced by filing the Verified Petition and the Form 401 petitions accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which the Debtors are a party at the time of the filing of the Verified Petition, and (iii) all entities against whom provisional relief is being sought under § 1519; (c) a statement identifying all foreign proceedings with respect to the Debtors that are known to the Monitor; and (d) a copy of the as-entered CCAA Initial Order;

(b) each of the Debtors is a proper debtor in the Canadian Proceeding;

(c) the Monitor is the proper foreign representative, as defined in § 101(24) because it is a "person or body," as defined under § 101(41), which has also been authorized in the Canadian Proceeding to act as the Debtors' foreign representative; and

(d) the Canadian Proceeding is a "foreign main proceedings" as defined in § 101(23) as there is a compelling case for recognition of the Canadian Proceeding as foreign main proceedings given that (a) the Debtors are entities formed under the laws of Alberta and, in the absence of evidence to the contrary, a debtor's center of main interest for purposes of determining whether a foreign proceeding is a "foreign main proceeding" is the location of its registered office. In the alternative, the Konowalchuck Declaration

> establishes that the Debtors have historical operations in Canada which create an "establishment" in Canada, permitting this Court to recognize the Canadian Proceeding as foreign non-main proceedings.

36. Upon recognition of the CCAA Proceedings as foreign main proceedings, § 1520(a) entitles the Debtors to certain automatic relief, including the application of the automatic stay provided by § 362. 11 U.S.C. § 1520(a). In addition, upon recognition of a foreign proceeding (whether main or non-main), § 1521(a) authorizes the Court to grant "any appropriate relief" at the request of the recognized foreign representative "where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors[.]" including:

> (a) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under § 1520(a);
>
> (b) staying execution against the debtor's assets to the extent it has not been stayed under § 1520(a);
>
> (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under § 1520(a); and
>
> (d) granting any additional relief that may be available to a trustee, except for relief available under §§ 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a).

37. The Court may grant relief under § 1521 if the interests of "the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). Additionally, § 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In the Verified Petition, the Debtors request that the Court exercise its discretion to grant relief similar to the provisional relief on a final basis. The granting of additional relief is consistent with the goals of international cooperation

and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code, and is necessary to administer the Canadian Proceeding.

38. The requested relief is authorized by this Court's discretionary authority under § 1519 and reflects the application of the principles of comity as it is consistent with the relief provided by the CCAA Initial Order. Comity is a central tenet of chapter 15. *Firefighters' Retirement Sys. v. Citco Grp. Ltd.*, 796 F.3d 520, 525 (5th Cir. 2015); *Ad Hoc Group of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The United States Supreme Court defines comity as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 143 (1895).

39. The extension of comity to orders issued by Canadian courts in proceedings commenced under the CCAA is common in courts in this circuit and across the country. *See In re Just Energy Group Inc., et al*, Case No. 21-30823 (Bankr. S.D. Tex. Apr. 2, 2021) [Docket No. 82]; *In re NextPoint Financial Inc., et al.*, No. 23-10983 (Bankr. D. Del. Aug. 16, 2023) [Docket No. 54]. In fact, exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a fellow common law jurisdiction with statutory procedures akin to those set forth in chapter 11 of the Bankruptcy Code insofar as they both provide a "breathing spell" from creditors' collection efforts, a centralized process to assert and resolve claims against the debtor's estate, a fair and equitable process for distribution to creditors in order of priority, and for the reorganization of a debtor through the implementation of a court-supervised process that a debtor's creditors and other parties in interests may participate in. *See Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) ("The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.").

40. There is a substantial likelihood that relief under § 1521(a)(1) will be granted, thereby resulting in the application of relief similar to the provisional relief the Motion requests on a final basis. Courts within the Fifth Circuit have granted provisional and final relief similar to the provisional relief sought by this Motion.

ii. There Is a Substantial Threat of Irreparable Harm if the Provisional Relief Is Not Granted

41. In the reorganization context, courts generally have found irreparable harm to exist when failing to enjoin conduct would interfere with the reorganization process of a foreign debtor. *See In re Calpine Corp.*, 354 B.R. 45, 48–50 (Bankr. S.D.N.Y. 2006) (finding debtor would suffer irreparable harm to its reorganization if litigation was not stayed); *Garcia Avila*, 296 B.R. at 114 (finding debtors would suffer irreparable harm if local creditors sought to interfere with the reorganization process).

42. If the Monitor's authority is not honored in the United States, or if creditors or parties in interest take collection actions, the ordinary course operations of the Debtors and the Monitor's ability to conduct and effectuate the reorganization could be jeopardized. *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) ("It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury."); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.").

43. Without recognition and enforcement of the CCAA Initial Order:

(a) the Monitor could be frustrated from performing its duties. For example, if a litigation action is commenced against the Debtors, the attention of the Monitor and the Debtors' limited financial resources will have to be redirected to addressing such proceeding. Courts have previously recognized that absent a stay prohibiting the commencement or continuation of proceedings, irreparable harm could result. *See In re Calpine Corp.*,

354 B.R. 45, 48–50 (Bankr. S.D.N.Y. 2006) (finding debtor would suffer irreparable harm to its reorganization if litigation was not stayed); and

(b) irreparable harm could result from creditors or other parties in interest taking unilaterally collection or enforcement actions against the assets of the Debtors in the United States (and thereby gaining an unfair advantage over similarly situated creditors). *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors."); *In re Energy Coal S.P.A.*, 582 B.R. 619, 626–27 (Bankr. D. Del. 2018) (stating that harm to an estate exists where orderly determination of claims and fair distribution of assets are disrupted); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group");

iii. The Threatened Injury to the Debtors Outweighs Any Damage the Provisional Relief Would Cause a Creditor

44. The substantial threat of harm and injury to the Debtors outweighs any damage the Order might cause to parties in interest. The Order seeks to maintain the status quo with respect. to the Debtors' assets and operations, so that the Debtors' can ensure there is a fair and equitable restructuring that provides for an orderly distribution of assets. See, e.g., *In re Basis Yield Alpha Fund (Master)*, No. 07-12762 (Bankr. S.D.N.Y. 2007) [Docket No. 5] (stating that failing to issue a restraining order against creditors could "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors."). Ultimately, these actions benefit the Debtors' stakeholders as a whole. *See Innua Canada Ltd*., 2009 WL 1025088, at *4 (finding that temporarily maintaining the status quo pending recognition of the foreign proceedings would benefit creditors "by allowing for an orderly administration of the debtors' financial affairs under the Canadian proceeding.").

45. The approval of the DIP Facility and the grant of the DIP Charge will not harm the Debtors' creditors. The unsecured creditors are not harmed by the grant of a DIP Charge, as such charge should have no impact on their recovery. To the contrary, all creditors and parties in interest are benefited by preventing a "race to the courthouse" and allowing an orderly reorganization to maximize value. Further, with the injection of liquidity from the DIP Facility (if a draw is needed prior to the Recognition Hearing), the Debtors will be able to continue to finance the Canadian Proceeding, the chapter 15 cases, the implementation of a restructuring, and their ongoing business, for the benefit of the Debtors and their stakeholders.

46. Any harm caused to any particular party in interest by the relief requested in the Order is minimal, temporary in nature, subject to the right of such party in interest to appear before this Court to request relief from the Order and may be addressed through the party in interest's participation in the Canadian Proceeding. The balance of harms is tipped in favor of the Monitor as the harm to the Debtors and their assets that would occur absent entry of the Order is far greater than any potential prejudice to stakeholders that might wish to pursue individual remedies in the United States, in contravention of the CCAA Initial Order.

iv. The Provisional Relief Will Not Disserve the Public Interest

47. The provisional relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it facilitates a cross-border restructuring that will provide a benefit to the Debtors creditors, employees, and other stakeholders. *See Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) ("The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization."). Moreover, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a); *see also In re ABC Learning Centers Ltd.*, 728 F.3d 301, 306 (2013) (emphasizing that chapter 15 serves the

"universalism" approach to transnational bankruptcy, preferring that courts in the United States act in aid of foreign proceedings).

48. The grant of the DIP Charge will facilitate the Debtors' access to that liquidity necessary to fund these chapter 15 cases if a draw is needed prior to the Recognition Hearing and ensure the Monitor's continued ability to discharge its duties in the Canadian Proceeding, which ultimately serves the public interest.

49. The provisional relief sought would cause little harm, if any, to creditors and other parties in interest as it would be temporary, pending the Recognition Hearing, and would not hamper the ability of parties in interest to assert their rights in the Canadian Proceeding. Even so, that certain creditors "may be denied an advantage over the Debtors' other . . . creditors is not a valid reason to deny relief to the foreign representative." *In re Atlas Shipping A/S*, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009). The harm to the Debtors and their assets that would occur absent granting the provisional relief would be far greater than any potential prejudice to stakeholders that might wish to pursue their individual remedies in the United States in disregard of the Canadian Proceeding.

E. Additional Relief Is Appropriate

50. The Monitor has requested that the Court authorize additional relief under § 1519 including application of:

(a) § 365(e), with respect to the termination or modification of any executory contracts or unexpired leases of the Debtors;

(b) § 364, which authorizes a trustee to incur debt with a priority charge (i.e., obtain access to a post-petition credit facility that is granted priority liens);

51. Section 1519(a) allows for the granting of provisional relief, including pursuant to 11 U.S.C. § 1521(a)(7). Section 1521(a)(7) in turn provides that, with certain exceptions, the Court may grant any additional relief that may be available to a trustee. 11 U.S.C. § 1521(a)(7). This

provision does not require the application of injunction standards. 11 U.S.C. § 1521(e).

52. As a result, pursuant to § 1521(a)(7), the Monitor requests that this Court order that § 365(e) immediately apply with respect to the termination or modification of any executory contracts or unexpired leases of the Debtor. The requested relief is necessary to effectuate the purpose of these chapter 15 cases and to protect the assets of the Debtors or the interests of the creditors. See 11 U.S.C. § 1521(a).

F. The Requirements of Bankruptcy Rule 1007(a)(4)(B) Should Be Waived

53. Bankruptcy Rule 1007(a)(4)(B) requires a list of all entities against whom provisional relief is being sought under § 1519, unless the court orders otherwise. The relief sought herein could affect other parties to the extent such parties could seek to commence litigation against the Debtors or commence enforcement actions against their property. In other words, it is possible that unknown parties may be affected by the relief sought herein. *See In re Andrade Gutierrez Engenharia S.A.*, 645 B.R. 175, 184 (Bankr. S.D.N.Y. 2022) (holding that the foreign representative cannot be expected to anticipate every potential party that could seek to bring claims against them in the United States).

54. The Monitor has filed such a list with respect to each Debtor in each Debtors' Form 401 petition. Out of an abundance of caution, and given that other, unknown parties may be affected, the Monitor requests that the Court waive any further requirement under Rule 1007(a)(4)(B) with respect to the temporary restraining order and provisional relief sought by this Motion.

V.
BASIS FOR EMERGENCY RELIEF

55. Pursuant to Bankruptcy Rule 6003, the Monitor requests emergency consideration of this motion. The Monitor seeks emergency provisional relief under §§ 105(a) and 1519, staying execution against the Debtors' assets until the Court's consideration of the Monitor's chapter 15 petitions filed contemporaneously with this Motion. Prior to entry of a

recognition order, the Debtors do not automatically have the protections of the Bankruptcy Code, including the automatic stay provisions. Emergency provisional relief is necessary to prevent creditors and other parties from commencing or continuing litigation or taking action against the Debtors' assets in the United States that could prejudice and disrupt the Canadian Proceeding, thereby interfering with the Monitor's ability to conduct operations and the reorganization of the Debtors. Emergency provisional relief is also necessary to ensure the Debtors maintain access to the DIP Facility prior to the Recognition Hearing.

VI.
WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 65(C)

56. Bankruptcy Rule 7065 expressly provides that "a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c)." To the extent Rule 65 of the Federal Rules of Civil Procedure applies, the Monitor believes that the security requirements imposed by Rule 65(c) are unwarranted under the circumstances and requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

VII.
NOTICE

57. The Monitor will provide notice of this Motion to the following parties or their counsel: (a) all persons or bodies authorized to administer the Canadian Proceeding; (b) the Office of the United States Trustee for the Northern District of Texas; (c) the Office of the United States Attorney; (d) the Internal Revenue Service; (e) the Office of the United States Attorney General for the State of Texas; (f) all other applicable government agencies to the extent required by the Bankruptcy Rules or Local Rules; (g) the creditors who have the 20 largest unsecured claims against the Debtors on a consolidated basis; (h) all other parties who the Monitor believes to be affected substantively by the relief requested; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Monitor submits that no further notice is required.

58. The Monitor proposes that once a Hearing Date has been set by the Court, the Monitor will provide notice of this Motion consistent with

Bankruptcy Rule 2002(q), as further set forth in the *Debtors' Emergency Motion Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9007 Requesting Entry of an Order (I) Scheduling a Recognition Hearing, (II) Specifying Form and Manner of Service of Notice, and (III) Granting Related Relief*, filed contemporaneously with this Motion. In light of the nature of the relief requested, the Monitor submits that no further notice is required.

VIII.
CONCLUSION

WHEREFORE, the Monitor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A: (a) granting the relief requested herein and (b) granting such other and further relief as may be just and proper.

Dated: November 20, 2024
Dallas, Texas

Respectfully submitted,

REED SMITH LLP

By: */s/ Michael P. Cooley*

Michael P. Cooley (SBN 24034388)
Keith M. Aurzada (SBN 24009880)
Dylan T.F. Ross (SBT 24104435)
2850 N. Harwood St., Ste. 1500
Dallas, Texas 75201
T: 469.680.4200
F: 469.680.4299
kaurzada@reedsmith.com
mpcooley@reedsmith.com
dylan.ross@reedsmith.com

Counsel to the Foreign Representative

Certificate of Service

I certify that on November 20, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Michael P. Cooley
Michael P. Cooley