

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

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THURSDAY, THE 7TH

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MR. JUSTICE NEWBOULD

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DAY OF JULY, 2016



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF H.B. WHITE CANADA CORP.

(the "**Applicant**")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Philip J. Gund sworn July 6, 2016 (the "**Gund Affidavit**") and the Exhibits thereto, and the pre-filing report dated July 6, 2016 of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the proposed Monitor of the Applicant, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, A&M, Northland Power Inc., Wells Fargo Bank, National Association ("**Wells Fargo**") and Oaktree Power Opportunities Fund III, L.P. and Oaktree Power Opportunities Fund III (Parallel), L.P. (collectively, "**Oaktree**"), no one appearing for any other person although duly served as appears from the affidavit of service of Leonard Loewith sworn July 6, 2016 and on reading the consent of A&M to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Gund Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below)

other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course prior to, on or after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), premiums for surety bonds, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order,

provided that, to the extent such expenses were incurred prior to the date of this Order, the Applicant shall only be entitled to pay such amounts up to a maximum aggregate amount of \$800,000 if they are determined by the Applicant, in consultation with the Monitor, to be necessary to the continued operation of the Business or preservation of the Property and such payments are approved in advance by the Monitor or by further Order of the Court.

8. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein or in the Definitive Documents (as defined below), the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests,

trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any

such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT, PROJECT OWNERS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including August 6, 2016, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of: (i) the Applicant, (ii) the Monitor, (iii) any owner or tenant of the land relating to a HBW Project (as defined below), (iv) any “owner” (as that term is defined in the *Construction Lien Act*, R.S.O. 1990, C.30, as amended (the “**Ontario CLA**”)) relating to a HBW Project, or (v) any Person that contracted with the Applicant or its affiliates for the Engineering, Procurement and Construction of a HBW Project (each of (iii), (iv) or (v), a “**Project Owner**”), or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the surety companies (the “**Bonding Companies**” and each a “**Bonding Company**”) providing performance bonds, labour and materials bonds and/or warranty bonds (collectively, the “**Bonds**”) with respect to the HBW Projects (as defined below) including any right, remedy or claim of any Person against the Bonding Companies in connection with any indebtedness, indemnity, liability or obligation of any kind whatsoever of the Bonding Companies under contract, statute or otherwise, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by indemnity, guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution, indemnity or otherwise, with respect to any matter, action, cause or chose in action, whether existing at present or commenced in future, which indebtedness, indemnity, liability or obligation is derivative of the primary liability of the Applicant except with the written

consent of the Applicant or the Bonding Companies as applicable, and the Monitor, or with leave of this Court.

16. **THIS COURT ORDERS** that without limiting the provisions of paragraphs 14 through 15 of this Order, until further order of this Court, during the Stay Period, no Person shall take any steps or action to interfere with the Applicant completing work on any project on which HBW is a contracting party (an “**HBW Project**”) or exercise any rights or remedies, or commence any Proceeding, in connection with any Bonds relating to the HBW Projects.

17. **THIS COURT ORDERS** that nothing in this Order shall affect the ability of a Bonding Company under a Bond to attend on or investigate the applicable HBW Project subject to such Bond, including discussing such projects with the applicable Project Owner or claimant.

18. **THIS COURT ORDERS** that any Project Owner or claimant under any Bond is entitled to provide notice to the Bonding Companies of any claim that it intends to advance and the applicable Bonding Company shall be entitled to make such investigations as it deems appropriate in the ordinary course under the relevant Bond.

19. **THIS COURT ORDERS** that notwithstanding the terms of paragraphs 17 and 18 of this Order, the Applicant, the Bonding Companies, any Project Owner and/or any Person are directed not to settle, admit, set-off, or pay any Bond claims or other claims relating to any HBW Project without the consent of the Monitor or further Order of this Court.

20. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, partnership, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant, the Monitor, any Project Owner relating to a HBW Project, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on or (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA.

CONSTRUCTION LIENS

21. **THIS COURT ORDERS** that, without limiting the generality of this Order, any party asserting a lien right under the Ontario CLA or any similar applicable legislation in any Province of Canada (the “**Provincial Lien Legislation**”) in respect of an HBW Project be and hereby is

stayed and any Person seeking to enforce such a claim shall be required to seek the rights and remedies set out in this Order.

22. **THIS COURT ORDERS** that no Person shall be permitted to preserve or perfect a lien under Provincial Lien Legislation on account of materials or services provided to the Applicant, including, without restricting the generality of the foregoing, (a) registering a Claim for Lien under s. 34(1)(a) of the Ontario CLA with respect to any lands to which the Applicants have supplied services or materials; (b) registering a Certificate of Action under s. 36 of the Ontario CLA with respect to any lands to which the Applicants have supplied services or materials; and (c) serving a Claim for Lien under s. 34(1)(b) of the Ontario CLA or delivering a Notice of Lien under s. 24(2) of the Ontario CLA, with respect to any HBW Projects except as permitted under this Order.

23. **THIS COURT ORDERS** that any Person who wishes to assert a claim pursuant to the Provincial Lien Legislation after July 7, 2016 (the “**Filing Date**”) in respect of an HBW Project, whether in respect of materials and/or services supplied before or after the Filing Date, shall serve a notice on the Monitor, attention Al Hutchens (ahutchens@alvarezandmarsal.com) with a copy to L. Joseph Latham, counsel to the Monitor (jlatham@goodmans.ca) and with a copy to HBW, c/o Cassels Brock & Blackwell LLP, attention Jane Dietrich (jdietrich@casselsbrock.com), within the timeframes proscribed by the applicable construction lien legislation in order to preserve and perfect their lien claim for that project.

NO INTERFERENCE WITH RIGHTS

24. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

25. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods

or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

26. **THIS COURT ORDERS** that, with respect to any policy of insurance and corresponding reinsurance policy applicable to the Applicant or directors and officers of the Applicant to which another member of the IEA Group (being Infrastructure and Energy Alternatives, LLC and its subsidiaries) is a party, the non-Applicant members of the IEA Group shall take all steps necessary to comply with the provisions of such policy, including with respect to providing written notice of any claim involving the Applicant (including the Business or the Property) or directors or officers of the Applicant, as applicable (an “**IEA Occurrence**”) and any other provision of such policies to enable the Applicant or the directors or officers of the Applicant, as applicable, to make claims and receive payment in respect of such claims; and the Applicant or directors or officers of the Applicant, as applicable, shall be entitled to receive any payments made pursuant to any such policy arising from an IEA Occurrence.

NON-DEROGATION OF RIGHTS

27. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

28. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, including any person, employee or agent of the Applicant (collectively, the “**Directors or Officers**”) with respect to any claim against the Directors or Officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the Directors or Officers are alleged under any law to be

liable in their capacity as Directors or Officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

29. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

30. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 29 of this Order. The Directors' Charge shall have the priority set out in paragraphs 56 and 58 herein.

31. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 29 of this Order.

APPROVAL OF CRO ENGAGEMENT

32. **THIS COURT ORDERS** that the agreement dated as of June 1, 2016 pursuant to which the Applicant has engaged Ankura Consulting Group, LLC to act as Chief Restructuring Organization (the "**CRO**") through the services of Philip J. Gund and B. Lee Fletcher, a copy of which is attached as **Exhibit "L"** to the Gund Affidavit (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

33. **THIS COURT ORDERS** that, subject to the provisions of the CCAA, this Order and any subsequent Orders of this Court, the CRO is authorized to exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter, together with such

other powers, responsibilities and duties as may be agreed upon by the CRO and approved by this Court (collectively, the “**CRO Powers**”), including, without limitation, the power to:

- (a) take such actions and steps, and execute such documents and writings as required to cause or permit the Applicant to do all things authorized, directed and permitted pursuant to the CCAA, the terms of this Order, and any subsequent Orders of this Court, subject to the terms of those Orders;
- (b) subject the terms of this Order, realize and dispose of the Property of the Applicant on behalf of the Applicant, including, without limitation, to negotiate and enter into agreements on behalf of the Applicant with respect to the sale or other disposition of all or any part of the Property;
- (c) execute such documents as may be necessary, for and on behalf of the Applicant;
- (d) apply for and obtain any vesting or other orders which may be necessary or appropriate, in the opinion of the CRO, in consultation with the Monitor, in order to convey any Property to a purchaser or purchasers thereof, or to comply with any agreement entered into by the Applicant in relation to the conveyance of any such Property;
- (e) take such steps as in the opinion of the CRO are necessary or appropriate to maintain control over all receipts and disbursements of the Applicant, including, without limiting the generality of the foregoing, taking such steps as are necessary or desirable to control and use all bank accounts of the Applicant;
- (f) represent the Applicant in any negotiations with any other party;
- (g) communicate with and provide information to the Monitor, and the DIP Lender (as defined below), and their advisors, regarding the Business and affairs of the Applicant;
- (h) assist the Monitor as requested by the Monitor in connection with the powers given to the Monitor; and
- (i) take all such steps and actions, enter into and execute all such agreements and documents and incur such expenses and obligations necessary or incidental to the exercise of the CRO Powers on behalf of the Applicant, as are reasonably required

to carry out the provisions of this Order, including in the name of and on behalf of the Applicant, as applicable,

provided that, in each case such actions, agreements, expenses and obligations shall be construed to be those of the Applicant and not of the CRO personally.

34. **THIS COURT ORDERS** that the CRO shall not be or be deemed to be a director, officer or employee of the Applicant.

35. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO, as the case may be, shall be deemed to be a Person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* of Canada (the “BIA”) and shall be entitled to the benefits and protections in relation to the Applicant and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent Person and its property.

36. **THIS COURT ORDERS** that nothing in this order shall be construed as resulting in the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

37. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

38. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of the CRO are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor, and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor, and the CRO at least ten (10) days prior to the return date of any such motion for leave.

39. **THIS COURT ORDERS** that the obligations of the Applicant to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicant.

40. **THIS COURT ORDERS** that (i) any indemnification obligations of the Applicant in favour of the CRO and (ii) payment obligations of the Applicant to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge (as defined below) set out herein.

APPOINTMENT OF MONITOR

41. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant with the powers and obligations set out in the CCAA and as set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order and all subsequent Orders, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

42. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;

- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other Persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

43. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

44. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

45. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

46. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA and as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

47. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings, subject to any assessments of the Court. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the retainers paid to the Monitor, the Monitor's counsel and the Applicant's counsel are hereby approved.

48. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

49. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 56 and 58 of this Order.

DIP FINANCING

50. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Infrastructure and Energy Alternatives, LLC (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements, restructuring costs and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed US\$5,000,000 unless permitted by further Order of this Court.

51. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of June 29, 2016 (the “**Commitment Letter**”), filed.

52. **THIS COURT ORDERS** that the Applicant or the CRO on behalf of the Applicant, as the case may be, is hereby authorized and empowered to execute and deliver such amended and restated commitment letters, loan or credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

53. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 56 and 58 of this Order.

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Commitment Letter or the Definitive Documents, as applicable, or the DIP Lender’s Charge, the DIP Lender may cease making advances to the Applicant and set off and/or consolidate any

amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender, and the DIP Lender, upon seven (7) days notice to the Applicant and the Monitor, may exercise any and all of its other rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

55. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA, with respect to any advances made under the Commitment Letter or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

56. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$500,000).

57. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect.

58. **THIS COURT ORDERS** that the Administration Charge (as constituted and defined herein) shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), having notice of this application, including the existing Encumbrances of Wells Fargo and Oaktree. Each of the Directors' Charge and the DIP Lender's Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other Encumbrances, in favour of any Person, other than the Administration Charge, the existing security interests of Wells Fargo and Oaktree, any existing Encumbrances that have been perfected by registrations pursuant to the applicable provincial *Personal Property Security Act* prior to the date of this Order, and any Person with a valid and, if applicable, perfected construction lien claims pursuant to the applicable Provincial Lien Legislation to the extent of any holdback amounts.

59. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the DIP Lender's Charge or the Directors' Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, Wells Fargo, Oaktree and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

60. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

61. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

62. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the *Daily Commercial News* and *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA and (ii) within five days after the date of this Order: (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000 (other than individual employees or former employees), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

63. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**E-Service Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the E-Service Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of

Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the E-Service Protocol, service of documents in accordance with the E-Service Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the E-Service Protocol with the following URL '<www.alvarezandmarsal.com/hbwhite>' (the "**Case Website**").

64. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the E-Service Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

65. **THIS COURT ORDERS** that the Applicant, the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulation, Reg. 81000-2-175 (SOR/DORS).

66. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Case Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

GENERAL

67. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

68. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver, and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

69. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

70. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Applicant is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including, with the consent of the Applicant, acting as the foreign representative of the Applicant to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto.

71. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

72. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:



JUL 07 2016



Court File No. **CV16-11452-00CL**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF H.B. WHITE CANADA CORP.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

INITIAL ORDER

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