



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.

NOTICE OF APPLICATION

NAME OF APPLICANTS: Crowe MacKay & Company Ltd. ("**Crowe MacKay**"), in its capacity as the Proposal Trustee (in such capacity, the "**Proposal Trustee**") of Bear Creek Contracting Ltd. (the "**Company**")

TO: Service List attached as **Schedule "A"** hereto

TAKE NOTICE that an application will be made by the Proposal Trustee to the presiding Judge by telephone at the courthouse at 800 Smithe Street, Vancouver, British Columbia, at **9:45 a.m.** on **Tuesday, September 7, 2021**, for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"**, sought by the Proposal Trustee.
2. Such further and other relief as counsel may advise and this Court may allow.

Part 2: FACTUAL BASIS

Background

1. The Company is a British Columbia corporation. The Company's core business is heavy construction with a focus on road construction, transport, and excavation services.

Report of Trustee on Proposal in Form 40, to be filed ("**Form 40 Report**") at Exhibit "G.3" ("**Proposal Report**") at para 10

2. In or around 2015, the Company obtained several large contracts across Canada and experienced rapid growth. To fulfill these contracts, the Company acquired several pieces of equipment during the 2016 to 2018 fiscal years. Most of this equipment was financed with debt.

Form 40 Report at para 15

3. In or around 2017, the Company entered into various verbal change order agreements with its customers (the "**Verbal Change Orders**"). The Company completed the work contemplated in the Verbal Change Orders, but was frequently not paid for this work, resulting in the Company incurring multi-million dollar losses on numerous projects. As a result of this non-payment, the Company began experiencing liquidity issues and could not meet its debt obligations in the ordinary course of its business.

Form 40 Report at para 15

4. In 2017, the Company initiated, or otherwise became involved in, legal proceedings and claims against various owners and contractors in respect of the Verbal Change Orders and related projects.

Proposal Report at para 63

5. In or around April 2017, the Company commenced an action against Pretium Exploration Inc, RRPC Limited Partnership and Rokstad Power GP Inc in relation to significant losses suffered in relation to the Brucejack Mine Project, claiming approximately \$14.56 million (the "**Pretium Claim**"). In October 2020, the Company was granted leave to file a Third Amended Notice of Civil Claim, which it filed on April 16, 2021.

Proposal Report at para 63

6. While the outcome in the Pretium Claim is uncertain, the Company and its counsel, McLean & Armstrong LLP ("**M&A**"), have advised that the claim is strong. The Company's legal counsel estimates that the legal fees required to pursue the Pretium Claim will be between \$600,000 to \$1.2 million. The Company has entered into a retainer agreement with M&A that will allow it to continue to pursue the Pretium Claim.

Proposal Report at para 63

The proposal proceedings

7. On February 26, 2021 (the "**Filing Date**"), the Company filed a notice of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"). On the same date, Crowe MacKay was appointed as the Proposal Trustee.
8. The Company applied for, and this Court pronounced, the following orders extending the time for the Company to file a proposal to its creditors:
 - (a) on March 19, 2021, an extension to May 12, 2021; and
 - (b) on May 12, 2021, an extension to June 25, 2021.

The Proposal

9. The Company filed a proposal to its creditors on June 24, 2021, which was amended on July 15, 2021 (the "**Proposal**").

Form 40 Report at paras 2, 3

10. The Proposal is made solely to unsecured creditors with claims affected by the Proposal ("**Affected Creditors**" and each an "**Affected Creditor**").
11. Affected Creditors are further separated into the following three sub-classes:
 - (a) Affected Creditors with a claim totaling less than \$500 (the "**Convenience Creditors**");
 - (b) Affected Creditors who elect to receive \$500 in full satisfaction of their claim (the "**Cash Election Creditors**"); and
 - (c) all other Affected Creditors that are not Convenience Creditors or Cash Election Creditors (the "**Remaining Creditors**").

Proposal Report at para 112

12. Under the Proposal:
 - (a) Convenience Creditors and Cash Election Creditors will be paid in full up to a maximum of \$500;
 - (b) the net proceeds of the Pretium Claim, comprising all amounts actually received by the Company from or in relation to the Pretium Claim, less:
 - (i) any amounts payable under any retainer agreement between the Company and M&A, or other counsel relating to the provision of legal services in relation to the pursuit of the Pretium Claim;
 - (ii) any amounts payable by the Company under a "Litigation Funding Agreement", if any, as defined in the Proposal;
 - (iii) any amounts paid by the Company to any persons as ordered by a court or arbitrator or as agreed by way of settlement in relation to the Pretium Claim; and
 - (iv) the amounts paid to Accord Small Business Finance Corp ("**Accord**") under the Proposal,will be paid *pro rata* to the Remaining Creditors; and
 - (c) Crown claims, including the balance of interest and penalties in source deductions will be paid within six months following the date on which the Court grants an order approving the Proposal.

Proposal Report at para 112

13. For the purposes of voting to approve the Proposal, each Affected Creditor other than Cash Election Creditors was entitled to vote and be counted as one creditor with a vote equivalent to the value of its proven claim. The Cash Election Creditors were deemed to vote in favour of the Proposal.

14. The claims of the following persons are unaffected under the terms of the Proposal (each an “**Unaffected Creditor**”):
- (a) the Company’s post-filing creditors;
 - (b) the Company’s secured creditors;
 - (c) the Crown (to the extent of any Crown claims);
 - (d) Ian Munson, who will not take any distribution in respect of his claim against the Company;
 - (e) any persons with a valid and enforceable trust claim as against the property or assets of the Company pursuant to the provisions of the *Builders Lien Act*, SBC 1997, c 45 and/or the *BIA*;
 - (f) employees of the company in respect of accrued but unpaid vacation pay as at the Filing Date; and
 - (g) beneficiaries of the administrative charge granted in the Initial Relief Order pronounced by Mr Justice Punnett pronounced on March 15, 2021.

Proposal Report at para 112

The Meeting

15. On July 15, 2021, a meeting of the Affected Creditors was held to consider and vote on the Proposal (the “**Meeting**”). The Meeting was chaired by the Office of the Superintendent of Bankruptcy with the assistance of the Proposal Trustee.

Form 40 Report at para 7

16. At the time of the Meeting, 111 proofs of claim were filed, totaling \$14,530,751.81. Of these proofs of claim:
- (a) 107 proofs of claim totalling \$13,284,901.76 were admitted for voting purposes;
 - (b) one proof of claim was from an Unaffected Creditor;
 - (c) two proofs of claim were disallowed for voting purposes; and
 - (d) one proof of claim was subsequently withdrawn.

Form 40 Report at paras 10, 12

17. Of the 107 Affected Creditors with proofs of claim admitted for voting purposes, 81 were present at the Meeting and either:
- (a) were in attendance virtually by videoconference;
 - (b) had submitted a voting letter; or

(c) were represented by proxy.

18. At the Meeting, 79 of the Affected Creditors voted in favour of the acceptance of the Proposal, with claims totaling \$9,099,361.96 and two voted against the acceptance of the Proposal, with claims totaling \$83,575.67.

Form 40 Report at para 13

19. Accordingly, 97.53% of the Affected Creditors in number and 99.09% of the Affected Creditors in dollar value that voted at the Meeting voted in favour of the acceptance of the Proposal.

Form 40 Report at para 13

20. At the Meeting, the Affected Creditors also voted on the appointment of inspectors in relation to the implementation of the Proposal. Both Steve A Watson and Michelle Frey were appointed as inspectors.

Form 40 Report at Appendix "H"

Part 3: LEGAL BASIS

Approval of the Proposal

1. Subsection 59(1) of the *BIA* provides that this Court must hear a proposal trustee's report on a proposal and hear any other affected person prior to approving a proposal:

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, and any opposing, objecting or dissenting creditor and such further evidence as the court may require.

BIA, s 59(1)

2. Subsection 59(2) of the *BIA* provides that this Court may refuse to approve a proposal if its terms are unreasonable or not calculated to benefit the general body of creditors:

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

BIA, s 59(2)

3. Accordingly, before approving a proposal, this Court must be satisfied that:

- (a) its terms are reasonable;
 - (b) its terms are calculated to benefit the general body of the Company's creditors;
- and

(c) it is made in good faith.

Wiivv Wearables Inc (Re), 2021 BCSC 511 at para 49

Magnus One Energy Corp (Re), 2009 ABQB 200 at para 10

4. Further, this Court must be satisfied that the formalities of the *BIA* have been complied with and that the terms required by the *BIA* to be included in the proposal are included.

Wiivv at para 50

5. Where a proposal has been recommended by a proposal trustee and approved by a large majority of creditors, substantial deference will be given to those views.

Wiivv at para 52

Abou-Rached (In Bankruptcy), 2002 BCSC 1022 at para 65

The terms of the Proposal are reasonable

6. As outlined above, under the Proposal the Company will pursue the Pretium Claim and, if successful, the Proposal will be funded from the proceeds of the Pretium Claim litigation.

7. The Proposal Trustee has reviewed the Company's cash flow projections and believes they are reasonable and achievable based on the information provided by the Company.

Form 40 Report at para 15

8. The Company has secured counsel and funding to pursue the litigation of the Pretium Claim.

Form 40 Report at para 16

9. While no timeline or guarantee for the completion of the litigation is specified, the Company should be motivated to resolve the Pretium Claim and to implement the Proposal as quickly as possible.

Form 40 Report at para 16

10. Accordingly, the terms of the Proposal are reasonable.

The Proposal is calculated for the benefit of the general body of creditors

11. The Proposal is supported by Accord, the Company's senior secured creditor. In a bankruptcy scenario, Accord would recover in priority to most other stakeholders, and the Proposal offers the creditors the potential for greater recovery than they might otherwise receive in a bankruptcy.

Form 40 Report at para 16

12. The Proposal Trustee, with the assistance of the Company, prepared a liquidation analysis to compare the estimated recovery by Affected Creditors under the Proposal and in a bankruptcy. The Proposal Trustee estimates that the recovery to Affected Creditors under the Proposal is between \$NIL and \$0.37 for every \$1.00 of proven claims. In contrast, in a bankruptcy, the Proposal Trustee estimates that the recovery to Affected Creditors would be between \$NIL and \$0.05 for every \$1.00 of proven claims.

Form 40 Report at para 16

13. In addition, if the Proposal is approved, the Company will remain in operation and there is a possibility that the Company's creditors could benefit from on-going business with the company. The approval of the Proposal could also benefit employees, who may continue their employment, and would have positive impacts on the local economy.

Form 40 Report at para 16

14. Accordingly, the Proposal is calculated to benefit the general body of the Company's creditors.

The Company has acted in good faith and the formalities of the BIA have been satisfied

15. The Proposal Trustee believes that the Company has acted, and continues to act, in good faith.

Proposal Report at para 124

16. The formalities of the *BIA* have been complied with and the terms required by the *BIA* to be included in the proposal are included in the Proposal.

Recommendation of the Proposal Trustee

17. Given the factors discussed above, the Proposal:

- (a) is reasonable;
- (b) is calculated for the benefit of the general body of creditors; and
- (c) was made in good faith.

18. The Proposal was supported at the Meeting by the vast majority of Affected Creditors, representing 97.53% in number and 99.09% in value.

Form 40 Report at para 13

19. The Proposal is also supported by Accord, the Company's senior secured creditor.

Form 40 Report at para 16

20. The Proposal Trustee is also supportive of the Proposal.

21. Accordingly, the Proposal Trustee recommends that this Court approve the Proposal.

Part 4: MATERIAL TO BE RELIED ON

1. Report of Trustee on Proposal in Form 40, to be filed; and
2. Such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the Application will take one day.

This matter is not within the jurisdiction of a Master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this Application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: July 20, 2021



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(H. Lance Williams and Forrest Finn)

To be completed by the Court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

SCHEDULE "A"

No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF BEAR CREEK CONTRACTING LTD.

SERVICE LIST

(Current to: July 15, 2021)

<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson Glen Nesbitt</p> <p>Tel: 604.631.4786 (K. Jackson) 604.631.4833 (G. Nesbitt)</p> <p>Email: kjackson@fasken.com gnesbitt@fasken.com svolkow@fasken.com misobe@fasken.com</p> <p><i>Counsel for Bear Creek Contracting Ltd.</i></p>	<p>Bear Creek Contracting Ltd.</p> <p>Attention: Ian Munson Savanna Noel</p> <p>Email: imunson@bearcreekgroup.onmicrosoft.com snoel@bearcreekgroup.onmicrosoft.com</p> <p><i>Bear Creek Contracting Ltd.</i></p>
<p>Cassels Brock & Blackwell LLP 2200 – 885 West Georgia Street Vancouver, BC V6E 3C8</p> <p>Attention: H. Lance Williams Forrest Finn</p> <p>Tel: 604.691.6112 (L. Williams) 604.630.5455 (F. Finn)</p> <p>Email: lwilliams@cassels.com ffinn@cassels.com sdanielisz@cassels.com</p> <p><i>Counsel for Proposal Trustee</i></p>	<p>Crowe MacKay & Company Ltd. 1100 – 1177 West Hastings Street Vancouver, BC V6E 4T5</p> <p>Attention: Derek Lai</p> <p>Tel: 604.697.5257</p> <p>Email: Derek.Lai@crowemackay.ca</p> <p><i>Proposal Trustee</i></p>

<p>Clyde & Co LLP Suite 700 – 555 Burrard Street Vancouver, BC V7X 1M8</p> <p>Attention: Seema Lal</p> <p>Tel: 604.684.0727</p> <p>Email: seema.lal@clydeco.ca jc.roberge@clydeco.ca</p> <p><i>Counsel for Gitga'at Matrix Workforce Services Ltd.</i></p>	<p>Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Thomas D. Boyd William L. Roberts Marko Vesely Craig A.B. Ferris, Q.C.</p> <p>Tel: 604.631.9132 (T. Boyd)</p> <p>Email: tboyd@lawsonlundell.com wroberts@lawsonlundell.com mvesely@lawsonlundell.com cferris@lawsonlundell.com</p> <p><i>Counsel for Pretium Exploration Ltd.</i></p>
<p>Daniel Le Dressay #1010 – 736 Granville Street Vancouver, BC V6Z 1G3</p> <p>Tel: 604.739.0017</p> <p>Email: dan@ledressay.com</p> <p><i>Counsel for More Core Diamond Drilling Services Ltd.</i></p>	<p>McQuarrie Hunter LLP 1500 – 13450 102 Avenue Surrey, BC V3T 5X3</p> <p>Attention: Douglas J. Conolly Ashley Dhaliwal</p> <p>Tel: 604.580.7066</p> <p>Email: dconolly@mcquarrie.com adhaliwal@mcquarrie.com asalak@mcquarrie.com</p> <p><i>Counsel for Blue Max Drilling Inc.</i></p>
<p>Ministry of Attorney General (British Columbia) Legal Services Branch PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7</p> <p>Email: AGLSBRevTaxInsolvency@gov.bc.ca Aaron.Welch@gov.bc.ca Cindy.Cheuk@gov.bc.ca</p> <p><i>Secured Creditor</i></p>	<p>Northbridge General Insurance Corporation Societe D'Assurance Generale Northbridge 105 Adelaide Street West Toronto, ON M5H 1P9</p> <p>Attention: Iqbal Bhinder James Choleras</p> <p>Email: iqbalbhinder@unitedsurety.ca James.Choleras@nbfc.com info@nbfc.com</p> <p><i>Secured Creditor</i></p>

<p>Accord Small Business Finance Corp. c/o Alexander Holburn Beaudin & Lang LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8</p> <p>Attention: David Garner James Jang Jennifer Moir</p> <p>Tel: 604.484.1708 (D. Garner)</p> <p>Email: dgarner@ahbl.ca jjang@AccordFinancial.com jmoir@AccordFinancial.com</p> <p><i>Senior Secured Creditor</i></p>	<p>Arundel Capital Corporation Suite 420, 5119 Elbow Drive SW Calgary, AB T2V 1H2</p> <p>Attention: Vik Ghosh</p> <p>Fax: 403.287.9847</p> <p>Email: vghosh@arundelcapital.com</p> <p><i>Equipment Financers</i></p>
<p>Current Financial Corp. Tower 1 2020, 10060 Jasper Avenue Edmonton, AB T5J 3R8</p> <p>Attention: Maya Winfrey</p> <p>Fax: 780.665.4901</p> <p>Email: mwinfrey@currentfinancial.com</p> <p><i>Equipment Financers</i></p>	<p>Dynamic Capital Equipment Finance Inc. 208, 1824 Gordon Drive Kelowna, BC V1Y 0E2</p> <p>Attention: Dustin White</p> <p>Fax: 877.521.9273</p> <p>Email: dwhite@dynamic-capital.ca</p> <p><i>Equipment Financers</i></p>
<p>Ford Credit Canada Company PO Box 2400 Edmonton, AB T5J 5C7</p> <p>Tel: 877.636.7346 Fax: 780.443.5352</p> <p>Email: n/a</p> <p><i>Equipment Financers</i></p>	<p>Terrace Totem Ford Sales Ltd. 4631 Keith Avenue Terrace, BC V8G 1K3</p> <p>Tel: 855.908.2929 Fax: n/a</p> <p>Email: Mitch@totemford.net</p> <p><i>Equipment Financers</i></p>
<p>DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p>Attention: Jeffrey Bradshaw Taryn Urquhart</p> <p>Tel: 604.643.2941 (J. Bradshaw) 604.642.2942 (T. Urquhart)</p> <p>Email: jeffrey.bradshaw@dlapiper.com taryn.urquhart@dlapiper.com</p> <p><i>Counsel for John Deere Financial</i></p>	<p>Burrard Law LLP 1320 – 355 Burrard Street Vancouver, BC V6C 2G8</p> <p>Attention: David Plunkett</p> <p>Tel: 604.235.3205</p> <p>Email: dplunkett@burrardlaw.com</p> <p><i>Counsel for Pomerleau Inc.</i></p>

<p>Rick Bandstra Bandstra Transportation Systems Smithers, BC</p> <p>Tel: 250.847.6456</p> <p>Email: rickbandstra@bandstra.com</p>	
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SCHEDULE "B"

No. B-210198
Vancouver Registry
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

)
)
)
)

TUESDAY, THE 7TH DAY OF

SEPTEMBER, 2021

ON THE APPLICATION of Crowe MacKay & Company Ltd., in its capacity as the trustee under a proposal (in such capacity, the "**Proposal Trustee**") of Bear Creek Contracting Ltd. (the "**Company**"), coming on for hearing by telephone at 800 Smithe Street, Vancouver, British Columbia, on September 7, 2021; AND ON HEARING H. Lance Williams and Forrest Finn, counsel for the Proposal Trustee, and those other counsel listed in **Schedule "A"** attached hereto; AND UPON READING the amended proposal of the Company dated June 24, 2021 and amended July 15, 2021 (the "**Proposal**") attached hereto as **Schedule "B"**, as approved by the affected creditors of the Company at a meeting held on July 15, 2021, the reports of the Proposal Trustee filed herein, and other material filed herein;

THIS COURT ORDERS THAT:

1. Capitalised terms used but not otherwise defined in this Order have the meanings ascribed to them in the Proposal.
2. The Proposal, and the transactions contemplated thereby, are approved pursuant to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

3. The Proposal Trustee, the Company, and the directors of the Company are hereby authorised and directed to take all actions and steps necessary or appropriate to implement and complete the Proposal, including authorisation and direction to make all payments and distributions required to be made pursuant to the Proposal and any necessary corporate steps and filings.
4. This Order shall have full force and effect in all provinces and territories of Canada and abroad and as against all persons against whom it may otherwise be enforceable.
5. Endorsement of this Order by counsel appearing, other than counsel for the Proposal Trustee, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for the Proposal
Trustee, Crowe MacKay & Company Ltd.
Cassels Brock & Blackwell LLP
(H. Lance Williams)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

NAME	PARTY REPRESENTED
K. Jackson and G. Nesbitt	Bear Creek Contracting Ltd.
D. Le Dressay	More Core Diamond Drilling Services Ltd.

SCHEDULE "B"

No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF
BEAR CREEK CONTRACTING LTD.

AMENDED PROPOSAL TO CREDITORS

JULY 15, 2021

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Interpretation.....	6
1.3 Currency.....	7
1.4 Interest.....	7
1.5 Date for Any Action.....	7
1.6 Schedules.....	7
ARTICLE 2 PURPOSE AND EFFECT OF PROPOSAL	8
2.1 Purpose of this Proposal.....	8
2.2 Overview of Proposal.....	8
2.3 Proposal Trustee Under this Proposal.....	9
2.4 Persons Affected by this Proposal	10
2.5 Unaffected Claims.....	10
2.6 Equity Claims.....	10
2.7 Release of Company, Directors and Officers and Proposal Trustee by Affected Creditors.....	10
ARTICLE 3 TREATMENT OF CREDITORS	11
3.1 Classes of Creditors	11
3.2 Affected Creditors.....	11
3.3 Unaffected Claims.....	11
3.4 Crown Claims and Priority Claims.....	12
3.5 Proposal Trustee's Costs.....	12
3.6 No Other Entitlements	12
ARTICLE 4 MEETING OF CREDITORS	12
4.1 Proving Claims.....	12
4.2 Meeting	13
4.3 Conduct of Meeting	13
4.4 Voting at the Meeting	13
4.5 Parties Not Entitled to Vote	13
4.6 Convenience Creditor Election	13
4.7 Adjournment of the Meeting.....	13
4.8 Proxies and Voting Letters.....	14
4.9 Inspectors	14
ARTICLE 5 CONDITIONS PRECEDENT	14
5.1 Conditions Precedent to the Implementation of this Proposal.....	14
ARTICLE 6 AMENDMENTS AND MODIFICATIONS	15
6.1 Amendment of Proposal before or at Meeting.....	15
6.2 Modification of Proposal after Meeting.....	15
ARTICLE 7 APPLICATION FOR COURT APPROVAL	16
7.1 Application for Court Approval.....	16
ARTICLE 8 NOTICE, UNDELIVERABLE DISTRIBUTIONS AND THE LEVY	16
8.1 Notices and Payments to Affected Creditors	16

8.2	Undeliverable Distributions	16
8.3	Withholding Taxes and Superintendent's Levy	16
ARTICLE 9 GENERAL		16
9.1	BIA Sections 95 to 99, and Section 101	17
9.2	Capacity of Proposal Trustee	17
9.3	Certificate of Completion.....	17
9.4	No Default.....	17
9.5	Conflicts Between this Proposal and Other Agreements	17
9.6	Severability	17
9.7	Further Assurances.....	18
9.8	Governing Law	18
9.9	Notice to Company or Proposal Trustee	18
9.10	Successors and Assigns.....	19
9.11	Date and Reference	19

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Proposal, unless otherwise stated or the context otherwise requires:

“**263 B.C. Ltd.**” means 263303 B.C. Ltd.

“**Accord Group**” means, collectively, Accord Small Business Finance Corp., Accord Small Business Leasing Corp. and Varion Capital Corp.

“**Accord Group Payment**” means the amount to be paid to the Accord Group from the Litigation Proceeds, which shall be a percentage of the Litigation Proceeds based on the Accord Group Payment Schedule attached hereto as Schedule “A”, provided that such payment shall not exceed the amount owing by the Company to the Accord Group at the time of such payment.

“**Accord Group Payment Schedule**” means the schedule setting out the amount to be paid to the Accord Group from the Litigation Proceeds, a copy of which is attached hereto as Schedule “A”.

“**Administration Charge**” means the charge provided for at paragraph 1 of the Order made on March 15, 2021 securing the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company.

“**Affected Claims**” means all Claims other than Unaffected Claims.

“**Affected Creditors**” means any Creditor having an Affected Claim, but only with respect to, and to the extent of, such Affected Claim.

“**Affected Creditors Class**” means the class consisting of the Affected Creditors established under and for the purposes of this Proposal, including voting in respect thereof.

“**Approval Order**” means the Order that, among other things, approves and directs the implementation of this Proposal and all actions and transactions set out herein, effective as at the Implementation Date in accordance with the terms of this Proposal.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**Brucejack Mine**” means the underground gold and silver mine located near Stewart, British Columbia, including related mine facilities, milling facility, man camp, and related infrastructure including access roads and a 57 kilometer power transmission line.

“**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Vancouver, British Columbia.

“**Claim**” means any right or claim of any Person against the Company which constitutes a “*claim provable in bankruptcy*” as that term is defined under the BIA, whether or not asserted in

connection with any indebtedness, liability or obligation of any kind whatsoever owed to such Person, which indebtedness, liability or obligation was in existence at the Filing Date, as well as any interest that may accrue thereon, including any indebtedness, liability or obligation owed to such person as a result of any breach of duty (including any legal, statutory, equitable or fiduciary duty), 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 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 or indemnity or otherwise with respect to any matter, action, cause or chose of action, whether existing at present or commenced in the future, which claim is based in whole or in part on facts which existed prior to the Filing Date and, for clarity, includes Crown Claims.

“**Claims Bar Date**” has the meaning ascribed to it in Article 4.1 of this Proposal.

“**Company**” means Bear Creek Contracting Ltd.

“**Conditions Precedent**” means those conditions precedent to the implementation of this Proposal as defined and enumerated in Article 5.1 hereof.

“**Convenience Claim**” means: (a) any Proven Claim of an Affected Creditor in an amount that is less than or equal to \$500; and (b) any Proven Claim of an Affected Creditor that has delivered a Convenience Creditor Election to the Proposal Trustee in accordance with Section 4.6 hereof.

“**Convenience Creditor**” means an Affected Creditor having a Convenience Claim.

“**Convenience Creditor Election**” means an election form to be completed by an Affected Creditor with a Proven Claim in excess of \$500 that wishes to be treated as a Convenience Creditor for the purposes of distributions under this Proposal and delivered to the Proposal Trustee in accordance with Section 4.6 hereof.

“**Court**” means the Supreme Court of British Columbia, in bankruptcy and insolvency.

“**Creditor**” means any Person having a Claim.

“**Crown**” means Her Majesty the Queen in right of Canada or a province.

“**Crown Claim**” means a Claim of the Crown for amounts that are outstanding as at the Filing Date and are subject to a demand under:

- (a) subsection 224(1.2) of the *Income Tax Act*;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (i) has been withheld or deducted by a Person from a payment to another Person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
 - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.

“**Director**” means anyone who was, or is deemed to have been, a director of the Company at any time prior to the Implementation Date.

“**Electronic Meeting Protocol**” means the protocol for conducting the Meeting electronically, substantially in the form attached hereto as Schedule “B”.

“**Filing Date**” means February 26, 2021, the date on which the Company filed a Notice of Intention to File a Proposal with the Office of the Superintendent of Bankruptcy Canada.

“**Funding Date**” means the date on which the Company pays the full amount of the Net Litigation Proceeds to the Proposal Trustee, which shall be no later than 10 Business Days after the Pretium Claim Resolution Date.

“**Ian Munson**” means Ian George Munson, the sole director of the Company.

“**Ian Munson Claims**” means all Claims of Ian Munson, which as at the Filing Date totalled \$2,284,275.18.

“**Implementation Date**” means the date on which all Conditions Precedent have been satisfied.

“**Inspectors**” has the meaning ascribed to it in Article 4.9 of this Proposal.

“**Litigation Costs**” means any and all costs and expenses incurred by the Company in relation to the Company’s pursuit of the Pretium Claim, including (irrespective of the source of funding in respect of such payments): (a) any amounts payable to counsel retained under a Retainer Agreement on the date of this Proposal, whether incurred before or after the Filing Date; (b) any amounts payable by the Company under any Retainer Agreement entered into subsequent to the date of this Proposal; (c) any amounts payable by the Company under any Litigation Funding Agreement; and (d) any amounts paid by the Company to any Persons as ordered by a court or arbitrator or as agreed by way of settlement in relation to the Pretium Claim.

“**Litigation Funding Agreement**” means an agreement among the Company and any other Person by which such Person agrees to provide funding or extend credit to the Company to fund any part of the Litigation Costs.

“Litigation Proceeds” means any and all amounts actually received by the Company from or in relation to the Pretium Claim, including pursuant to any judgments, orders or awards, or by way of settlement, and including any amount received on account of any claim for or award of costs. For clarity, Litigation Proceeds shall be net of any amounts payable to Trust Claimants from funds otherwise payable to the Company in relation to the Pretium Claim.

“Meeting” means the meeting of the Affected Creditors Class held in accordance with Section 51(1) of the BIA and the Electronic Meeting Protocol for the purpose of considering and, if thought fit, voting to approve this Proposal and agreeing to the compromises and arrangements constituted hereby, and includes any subsequent reconvened meeting should any meeting be adjourned.

“Munson Enterprises” means Munson Enterprises Ltd.

“Net Litigation Proceeds” means the Litigation Proceeds less: (a) the Litigation Costs; and (b) the Accord Group Payment.

“Notice to Prove Claim” means the notice made pursuant to Section 149 of the BIA to be sent by the Proposal Trustee to all known Persons having a Claim that have not yet filed a Proof of Claim with the Proposal Trustee, advising such Creditors that if their Claims are not proven within 30 days after the sending of such notice (i.e. the Claims Bar Date), the Proposal Trustee will proceed to declare a dividend or final dividend without regard to that Creditor’s Claim. For clarity, this notice will not be sent until after the Pretium Claim Resolution Date.

“Officers” means, collectively, all current and former officers of the Company.

“Order” means an order of the Court made in the Proposal Proceedings.

“Person” means any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate (including a limited liability company and an unlimited liability company), corporation, unincorporated association or organization, governmental authority, syndicate or other entity, whether or not having legal status.

“Post-Filing Claim” means a Claim arising from the supply of goods or services to the Company after the Filing Date or a claim for sales or excise taxes, source deductions or assessments and premiums arising in relation to such Claims. Post-Filing Claims do not include claims in respect of an obligation incurred prior to the Filing Date but which is payable after the Filing Date.

“Post-Filing Creditor” means a Creditor having a Post-Filing Claim.

“Preferred Shares Redemption Agreements” means agreements among 263, Munson Enterprises and the Company pursuant to which: (a) 263 will assign a portion of the indebtedness owed to it by the Company to Munson Enterprises; and (b) Munson Enterprises will redeem the preferred shares in Munson Enterprises owned by the Company and pay the redemption amount by way of setoff against such newly acquired indebtedness.