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No. S-234515
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: FTI Consulting Canada Inc. in its capacity as the Receiver of Eagle Graphite Corporation, and not in its personal capacity

To: The Petitioner and the Respondent

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on August 16, 2023 at 9:00 a.m. for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order approving the Sales and Investment Solicitation Process ("SISP"), including the attached Stalking Horse agreement, substantially in the form attached as **Schedule "A"** hereto; and
2. Such other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

Background

1. Eagle Graphite Corporation ("**Eagle**") is a mining company that is federally incorporated, with a registered office at 6420 Eagles Drive, Courtenay, British Columbia.
2. Eagle holds certain contracts, rights, permits, licences, mineral claims and mining leases in relation to a graphite production and processing facility known as the "Black Crystal" property, located in the Slocan Valley Area of British Columbia, approximately 35 kilometers west of the city of Nelson and 35 kilometers north of the city of Castlegar (the "**Property**"). The Property includes an open-pit quarry allowing access to the graphite deposits (the "**Quarry**"), a processing facility and equipment (the "**Plant and Equipment**") and two mining or mineral leases registered in the name of Eagle under title numbers 390937 and 392322 (the "**Mineral Leases**") and two mineral claims under title numbers 318625 and 318627 (the "**Mineral Claims**").
3. No graphite has been mined from the Quarry since approximately 2013.

The Security

4. Weaver Capital Corp. ("**Weaver**") is a company incorporated under the laws of Ontario, having its address for service in these proceedings only at c/o Clark Wilson LLP, 900 - 885 West Georgia Street, Vancouver, British Columbia.
5. Weaver is a secured creditor of Eagle, with a secured interest in the Property.
6. Eagle's indebtedness, and the security securing that indebtedness, was assigned and transferred to Weaver. The original debt of Eagle arose pursuant to an Annual Supply Contract between Eagle and ANH Refractories Company, for itself and as agent for its affiliates, Harbison-Walker Refractories Company, North American Refractories Company, ANH Canada Incorporated, and A.P. Green Industries Inc. (collectively, the "**Original Secured Parties**") dated September 3, 2010 and amended August 30, 2012, January 1, 2014, and May 30, 2014 (collectively, the "**Supply Agreement**").
7. As security for its indebtedness under the Supply Agreement, Eagle granted various security in favour of the Original Secured Parties, including a general security agreement between Eagle and the Original Secured Parties dated March 5, 2013 (the "**GSA**") and an

assignment of Contracts, Rights, Permits and Licences from Eagle to the Original Secured Parties dated January 1, 2014 (the "**Mining Assignment**", and collectively with the GSA, the "**Security**"). Under the Mining Assignment, Eagle agreed to assign and transfer to the Original Secured Parties Eagle's interest in all contracts, rights, permits and licences held by Eagle including those described or listed in Schedule "A" of the Mining Assignment.

8. HarbisonWalker International, Inc. (the "**Successor Secured Party**") is the successor by merger of, among other entities, North American Refractories Company and Harbison-Walker Refractories Company.
9. HarbisonWalker International Holdings, Inc. is the successor to ANH Refractories Company. HarbisonWalker International Holdings, Inc. has assigned all of its rights, title and interest in and to the Supply Agreement to the Successor Secured Party.
10. As a result of Eagle's indebtedness under the Supply Agreement, Eagle entered into the following agreements with the Successor Secured Party:
 - (a) a Forbearance and Amendment Agreement, dated June 21, 2017;
 - (b) an Amendment to Forbearance Agreement, dated January 16, 2020; and
 - (c) a Letter of Intent dated April 29, 2022 (the "**LOI**").
11. However, Eagle failed to make certain payments and defaulted under the Forbearance Agreements and the LOI.
12. On December 9, 2022, the Successor Secured Party and Weaver entered into an Assignment Agreement (the "**Assignment Agreement**"). Under the Assignment Agreement, among other things, Weaver acquired the Indebtedness and the Successor Secured Party's right, title, interest and benefit in the Supply Agreement and the Security.
13. The Receiver's legal counsel has reviewed Weaver's security and provides an opinion that, subject to the standard and customary qualifications, assumptions and limitations, the security of Weaver over the assets, property and undertakings is valid and enforceable.

14. On July 20, 2023, an order was made by the Supreme Court of British Columbia in these proceedings (the "**Receivership Order**") appointing FTI Consulting Canada Inc. as the receiver of all the assets, undertakings and property of Eagle (the "**Receiver**").
15. To date, the Receiver has:
 - (a) reviewed key financial and operational information available for Eagle;
 - (b) attended the Property and met with the former site manager who lives at the Property;
 - (c) frozen Eagle's bank accounts and notified Eagle's insurer requesting that the beneficiary of the policy be revised to the Receiver;
 - (d) set up a deposit account for the administration of the receivership; and
 - (e) held discussions with Weaver and their legal counsel regarding a potential stalking horse offer to purchase the Property as a whole.

The Sale Procedure and Stalking Horse

16. The Receiver seeks:
 - (a) Approval of a sale procedure; and
 - (b) Approval of a stalking horse bid in connection with that sales process.
17. The Receiver is of the view that the sales procedure, in the manner as set out hereto as **Schedule "A"** hereto (the "**Sale Procedure**"), is the desired method of maximizing recovery for the stakeholders in these proceedings. Capitalized terms not defined herein shall have the meanings set out in the Sale Procedure.
18. The Sale Procedure has, *inter alia*, the following elements:
 - (a) the Receiver will publish a notice of the purchase opportunity and prepare an initial offering summary notifying prospective purchasers of the existence of the Sale Procedure and inviting prospective purchasers to submit an offer to the Receiver in accordance with the terms of the Sale Procedure;

- (b) the Receiver will gather all the relevant documents relating to the Property that are in the possession or control of the Receiver (the "**Due Diligence Materials**");
 - (c) potential purchasers will execute a confidentiality agreement in order to access the Due Diligence Materials;
 - (d) the Receiver will evaluate the potential purchasers to determine if they are Qualified Bidders;
 - (e) Qualified Bidders will be able to submit a bid for the Property on or before September 25, 2023;
 - (f) the Receiver shall determine if the bids are Qualified Bids, and if:
 - (i) there are no Qualified Bids, the Receiver shall declare the Stalking Horse Bid as the Successful Bid; and
 - (ii) there are other Qualified Bids, the Receiver may hold an auction to determine the Successful Bid.
19. The Receiver obtained a stalking horse offer for an "as is where is" sale of the Property for \$3.7 million (the "**Stalking Horse Offer**") from Weaver (the "**Stalking Horse Bidder**").
20. The Stalking Horse Agreement has, *inter alia*, the following material terms:
- (a) the Stalking Horse Bidder submitted an offer to purchase the Property for \$3,700,000 which includes a credit bid amount of \$3,145,000;
 - (b) a cash deposit of \$555,000, which was paid to the Receiver in trust on August 4, 2023;
 - (c) in the event there are no other qualified bids other than the Stalking Horse Offer, the sales process will be terminated, and the Receiver will complete the sale to the Stalking Horse Bidder; and
 - (d) the outside date will be on or around October 31, 2023.
21. The Receiver is of the view that:

- (a) the Stalking Horse Offer sets a baseline price that is reasonable, and provides certainty of a sale which can only result in higher recoveries for stakeholders; and
- (b) the Sale Procedure provides an opportunity for superior offers.

Part 3: LEGAL BASIS

1. The Applicant relies on the Receivership Order pronounced in this proceeding and the inherent jurisdiction of this Court.
2. The use of stalking horse bids to set a baseline for a bidding process in receivership has been recognized by Canadian courts as a legitimate means of maximising recovery in a bankruptcy or receivership sales process.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855

3. It is appropriate to seek Court approval of a stalking horse bid process prior to undertaking such a process.

Farm Credit Canada v. Gidda, 2015 BCSC 2188

4. In deciding to approve a Court bid, the factors to be considered are those set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), including:
 - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the efficiency and integrity of the receiver's sale process by which offers were obtained;
 - (c) whether there has been unfairness in the working out of the process; and
 - (d) the interests of all parties.
5. In this proceeding, a stalking horse bid is appropriate because:
 - (a) the bidding process will provide a public and transparent process under which potential purchasers will be identified and the business will be marketed;

- (b) the process has been designed to obtain the highest price; and
 - (c) the proposed stalking horse agreement sets a floor price that is at least sufficient to pay the claims of all secured creditors as quickly as possible.
6. There is no unfairness to anybody in this process. It proposes to set a floor which is the amount of the secured debt held by the Petitioner and payment of any payables that stand in priority to the Petitioner's security.

Part 4: MATERIAL TO BE RELIED ON

- 1. Receivership Order pronounced July 20, 2023;
- 2. Affidavit #1 of Jaime Landa, made July 18, 2023;
- 3. Receiver's First Report, dated August 11, 2023; and
- 4. Any such further or other materials as counsel may advise, and the Court may permit.

The applicant estimates that the application will take 1 hour.

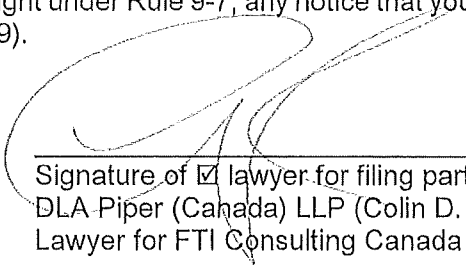
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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).

August 14, 2023
Dated _____



Signature of lawyer for filing party
DLA Piper (Canada) LLP (Colin D. Brousson)
Lawyer for FTI Consulting Canada Inc.

CONTACT DETAILS FOR HEARING BY TELEPHONE

Name of Lawyer attending: Colin D. Brousson
Telephone: 604.643.6400
Email: colin.brousson@dlapiper.com

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

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral 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
- none of the above

SCHEDULE "A"

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE)
))
) THE HONOURABLE JUSTICE)
) COVA;) August 16, 2023
))
))

ON THE APPLICATION of FTI Consulting Canada Inc., court-appointed receiver of Eagle Graphite Corporation (the "Receiver") coming on for hearing at 800 Smithe Street, Vancouver, BC V6Z 2E1 on August 16, 2023, and on hearing Colin D. Brousson and Samantha Arbor, counsel for the Receiver and those other counsels listed in **Schedule "A"**;

THIS COURT ORDERS that:

DEFINITIONS

1. Capitalized terms not defined herein shall have the meanings set out in the Sale Procedure attached hereto as **Schedule "B"**.

SERVICE

2. The time for service of the Notice of Application for this order and the supporting materials therefore, including the Receiver's First Report to Court dated August 11, 2023 (the "First

Report”) is hereby abridged and so that this application is properly returnable today and hereby dispenses with further service thereof.

SALE PROCEDURE

3. The Sale Procedure substantially in the form attached as **Schedule “B”** hereto is hereby approved.
4. The Receiver is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.
5. Pursuant to clause 7(34)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Property (the “**Sale**”). Each prospective purchaser or bidder to whom personal information is disclosed shall maintain and protect the privacy of such information and limited the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver or, and shall return all other personal information.

STALKING HORSE AGREEMENT

6. The Receiver is hereby authorized to enter and execute the Stalking Horse Agreement attached hereto as **Schedule “C”**, provided that nothing herein approves the sale of the Property as defined in the Stalking Horse Agreement on the terms set out in the Stalking Horse Agreement, and that the approval of any sale of the Property by the Court will be subject to a Vesting Order anticipated to be granted in accordance with the Sale Procedure, with such application to be heard on _____, 2023, subject to further order of the Court.

APPROVAL OF THE RECEIVER’S REPORT

7. The First Report and the activities of the Receiver described therein are hereby approved.

GENERAL

8. The Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.
9. Endorsement of this order by parties appearing, other than counsel for the Receiver, 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 Receiver
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

REGISTRAR

SCHEDULE "A"

Name of Counsel	Party Representing
Katie Mak	Petitioner
Vicki Tickle	Respondent

SCHEDULE "B"

Sale Procedure

SALES PROCESS

1. FTI Consulting Canada Inc. is the receiver (the “**Receiver**”) of the assets, undertakings and properties of Eagle Graphite Corporation (the “**Debtor**”).
2. The Receiver and Weaver Capital Corp. (the “**Stalking Horse Purchaser**”) have entered into an Agreement of Purchase and Sale dated August 10, 2023 (the “**Stalking Horse APS**” or “**Stalking Horse Bid**”) and this Sales Process forms part of such Stalking Horse APS.
3. The Receiver will solicit bids in accordance with the Sales Process described herein. Under the Sales Process, all qualified interested parties will be provided with an opportunity to participate in the Sales Process. The Sales Process is intended to solicit interest in the property, assets and undertakings of the Debtor including the processing facility and equipment, mineral leases and mineral claims as defined in the Stalking Horse APS (the “**Property**” or “**Purchased Assets**”) pursuant to this transaction (the “**Transaction**”).
4. The purpose of this Sales Process is to determine whether a better Transaction than the Stalking Horse APS may be obtained by the Receiver. For the purposes of this Sales Process, a “**Superior Offer**” shall mean: a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to be a counterparty to a Transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse APS.
5. The order of the Supreme Court of British Columbia (the “**Court**”) approving the Sales Process, and any other orders of the Court, shall exclusively govern the process for soliciting and selecting bids for the sale of the Property free and clear of any and all liabilities and encumbrances, except as agreed by the parties.
6. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Vancouver, British Columbia).

Publication Notice

7. As soon as reasonably possible after the approval of this Sales Process by the Court, the Receiver shall publish notice of this purchase opportunity in any publications considered appropriate by the Receiver which shall include *The Globe & Mail* (National Edition) and *The Northern Miner* publication.

Solicitation of Interest

8. As soon as reasonably practicable, the Receiver will prepare an initial offering summary (the “**Teaser Letter**”) notifying prospective purchasers of the existence of the Sales Process and inviting prospective purchasers to express their interest in making an offer in respect of the Property pursuant to the terms of the Sales Process.

“As Is, Where Is”

9. Any purchase of the Property will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver, or any of its respective directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a Binding APS (as defined herein) and approved by the Court. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtor and its Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Debtor’s Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties or guarantees, express, implied, statutory or otherwise, regarding the Debtor or its Property or the completeness of any information provided in connection therewith, except as expressly stated in this Sales Process or as set forth in a Binding APS and approved by the Court.

Participation Requirements

10. Each person who wishes to participate in the Sales Process (a “**Potential Bidder**”), must deliver the following documents to the Receiver by email to Craig.Munro@fticonsulting.com, prior to the distribution of any confidential information as follows:

- (a) an executed confidentiality agreement (“**NDA**”) as provided by the Receiver; and
- (b) a letter setting out: (i) the identity of the Potential Bidder, (ii) the contact information of the Potential Bidder and its legal counsel, if any, and (iii) full disclosure of the principals and ultimate parent of the Potential Bidder.

11. Upon receipt of the documents set out in paragraph 10 herein, the Receiver will send to such Potential Bidder, as soon as reasonably practicable, a confidential information memorandum and access to an electronic data room (the “**Data Room**”), which will provide, among other things, information considered relevant to the Sales Process.

12. If it is determined by the Receiver, in its sole discretion, that a Potential Bidder:

- (a) has a *bona fide* interest in pursuing a Transaction;
- (b) has delivered the documents set out in paragraph 10 herein, and
- (c) has, in addition to the documents set out in paragraph 10 herein, delivered to the Receiver written evidence upon which the Receiver may reasonably conclude that the Potential Bidder has the necessary financial ability to close the Transaction. Such information may include, among other things, the following:
 - (i) the Potential Bidder’s current financial statements (audited if they exist);
 - (ii) contact names and numbers for verification of financing sources;
 - (iii) evidence of the Potential Bidder’s resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
 - (iv) any such other form of financial disclosure or credit-quality support information demonstrating that the Potential Bidder has the ability to close the contemplated transaction,

then such Potential Bidder will be deemed to be a **“Qualified Bidder”**.

Due Diligence

13. The Receiver, subject to competitive and other business considerations, may give each Qualified Bidder such access to additional due diligence materials and information relating to the Debtor as the Receiver deems appropriate, in its sole discretion, which may include on-site inspections and other matters which a Qualified Bidder may reasonably request and as to which the Receiver may agree. Neither the Receiver, nor any of its representatives, will be obligated to furnish any information relating to the Debtor to any person, in its discretion. The Receiver makes no representation or warranty, express or implied, as to the information provided through this due diligence process or otherwise, except as may be set forth in a Binding APS with the Successful Bidder (as defined herein).

Bid Deadline

14. A Qualified Bidder that desires to make a bid shall deliver written copies of its bid, in the form of the template APS located in the Data Room, together with a blackline outlining all changes made to the APS and the Deposit in the form of a certified cheque, bank draft or wire transfer (a **“Binding APS”** or **“Qualified Bid”**), to the Receiver as follows: FTI Consulting Canada Inc., 701 West Georgia Street, Suite 1450, P.O. Box 10089, Vancouver, BC V7Y 1B6, Attn: Craig Munro, so as to be received by no later than September 25, 2023 at 5:00 p.m. (PT) (or as set by the Receiver or as may be extended as set out below, the **“Bid Deadline”**). The Receiver may extend the Bid Deadline, once or successively, but is not obligated to do so. If the Bid Deadline is extended, the Receiver will promptly notify all Qualified Bidders.

Binding APS

15. A Binding APS must comply with all of the following:
- (a) the bid is an offer to purchase some or all of the Property on terms and conditions acceptable to the Receiver and delivered to the Receiver and prior to the Bid Deadline;
 - (b) it is duly authorized and executed, and includes a purchase price for the Purchased Assets expressed in Canadian dollars (the **“Purchase Price”**), together with all exhibits, schedules and all applicable ancillary agreements thereto;
 - (c) includes a letter of acknowledgment stating that the Qualified Bidder’s offer is irrevocable and open for acceptance until a Transaction closes;
 - (d) it is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, in its sole discretion, of the ability of the Qualified Bidder to consummate the proposed Transaction, and that will allow the Receiver to make a determination as to the Qualified Bidder’s financial and other capabilities to consummate the proposed sale and pay the Purchase Price;
 - (e) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property

and the Debtor prior to making its bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property, the Debtor or the completeness of any information provided in connection therewith;

- (f) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Binding APS submitted by the Qualified Bidder;
- (g) provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");
- (h) it is received by the Receiver by the Bid Deadline; and,
- (i) the bid contemplates closing the transaction set out therein within 5 Business Days of the satisfaction or waiver of the conditions in the Binding APS (the "**Closing Date**").

16. The Receiver may determine in its sole discretion whether to entertain bids for the Property that do not conform to one or more of the requirements specified herein but is not obligated to do so.

17. For greater certainty, the Stalking Horse APS shall be deemed to be a Binding APS.

18. Deposits received by the Receiver will be held by the Receiver in a non-interest bearing account pending determination by the Receiver of the Successful Bid with Deposits returned to all Qualified Bidders, other than to the Successful Bidder, within five (5) business days after the selection of the Successful Bidder. The Deposit paid by the Successful Bidder shall be applied to the purchase price of such transaction at closing.

Evaluation of Binding APS

19. Each submitted Binding APS will be considered by the Receiver based upon several factors including, without limitation, items such as the Purchase Price and the net value provided by such bid, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, the Property included or excluded from the bid, any related transaction costs, the likelihood and timing of consummating such transactions, whether the Transaction results in a Superior Offer, and such other matters as the Receiver determines in its sole discretion. The Receiver may also, in its sole discretion, invite one or more Qualified Bidders together with the Stalking Horse Purchaser to submit a further and higher bid (the "**Final Binding APS**"). Any Qualified Bidder so invited may elect to increase its bid by way of a Final Binding APS or to reaffirm its Binding APS.

20. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder, the Binding APS or the Final Binding APS. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Binding APS or Final Binding APS.

Selection of Successful APS

21. The Receiver will review and evaluate each Binding APS and Final Binding APS, if any, and: (i) the Receiver may identify the highest or otherwise best offer for the Property (the "**Successful Bid**" or "**Successful Bidder**"), or (ii) if no Binding APS or Final Binding APS, other than the Stalking Horse Bid, has been received by the Bid Deadline, then the Receiver shall declare the Stalking Horse Bid as the Successful Bid.

22. Neither a Binding APS nor a Final Binding APS may be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Bid being determined.

The Auction and Auction Procedures

21. If the Receiver determines that it has received more than one Qualified Bid, it may, at its sole discretion, invite Qualified Bidders to participate in an Auction, as described in more detail below (the "**Auction**"). If an Auction is held, the Receiver shall provide notification and details to the Qualified Bidders of its intention to proceed with the Auction.

22. If the Receiver does not receive any Qualified Bids other than the Stalking Horse APS, it will not hold an Auction, in which case the Stalking Horse APS will be deemed the Successful Bid.

23. If an Auction is to be held, within 5 days of receiving notification of the Auction from the Receiver, each Qualified Bidder must inform the Receiver, by email, whether it intends to participate in the Auction (the "**Auction Bidders**").

24. At least two days' prior to the Auction, the Receiver will inform each Auction Bidder of the Successful Bid (the "**Starting Bid**"). Other than the purchase price, no changes to the Successful Bid selected by the Receiver will be permitted.

25. Only the authorized representatives, professionals or agents of the Stalking Horse Purchaser and each other Auction Bidder identified in advance to the Receiver, shall be eligible to participate at the Auction.

26. The Auction, if any, shall be conducted by the Receiver at a location selected by the Receiver or via Zoom.

27. The Auction will be conducted through a series of "rounds of bidding" (each a "**Round**"). In each Round:

- (a) the Receiver will present the highest Qualified Bid from the preceding Round (the "**Floor Bid**") to the Auction Bidders. In the first Round, the Starting Bid will be the Floor Bid;
- (b) the Auction Bidders will be given an opportunity within a set period of time to improve their Auction Qualified Bid such that the total consideration offered for the Property exceeds the sum of (A) the total consideration offered in the Floor Bid, plus (B) \$200,000.00 (the "**Auction Minimum Bid Increment**") (each an "**Improved Bid**"); and
- (c) the Receiver will consider the Floor Bid and each Improved Bid to determine, in its reasonable business judgment, which is the highest offer for the Property; and

- (d) the Rounds will continue until such time as no Improved Bids are received within the time limit set by the Receiver in its sole discretion, or until the Receiver determines, in its reasonable business judgment, that no Improved Bid is higher than the Floor Bid. The Floor Bid in the last Round of the Auction will be the “**Successful Auction Bid**” and the Auction Bidder making such Successful Auction Bid, the “**Successful Auction Bidder**”. The Receiver shall enter into a binding agreement of purchase and sale with the Successful Auction Bidder.

28. The Successful Auction Bidder agrees to do all such things as may be required by the Receiver to obtain Court approval of the Successful Auction Bid.

29. Subject to the Receiver obtaining the vesting order in respect of the Successful Auction Bid, if the Successful Auction Bidder fails to consummate the transaction by the 5th Business Day following the satisfaction or waiver of conditions in the Binding APS (or such date that may otherwise be mutually agreed upon in writing), the Receiver shall be authorized but not required to deem that the Successful Auction Bidder has breached its obligations pursuant to the Successful Auction Bid, has forfeited its Deposit to the Receiver, and the Receiver is authorized to seek an alternative bidder for the Property.

30. The Potential Bidders and/or Qualified Bidders shall not be allowed any break, termination or similar fee or expense reimbursement. For greater certainty, Potential Bidders and/or Qualified Bidders shall be responsible for all of their own professional and other fees and costs relating to their investigation or closing of any transaction in this regard.

31. The Receiver shall have the right to adopt and implement such other rules for the Auction as may be necessary to promote the goals of this bid process generally.

32. The highest or any offer in the Auction will not necessarily be accepted by the Receiver.

Sale Application Hearing

33. The application for an order of the Court approving any Successful Bid or Successful Auction Bid and a vesting order (the “**Sale Application**”) shall be determined by the Receiver and shall be brought promptly. The Sale Application shall be heard on a date determined by the Receiver and subject to the Court’s availability.

34. All of the Binding APSs, the Final Binding APSs and/or Revised Bids, other than the Successful Bid or Successful Auction Bid, if any, shall be deemed rejected by the Receiver on and as of the date of closing of the Transaction contemplated by the Successful Bid or Successful Auction Bid.

Reservation of Rights

35. The Receiver may: (a) determine which Binding APS, Final Binding APS and/or Revised Bid, if any, is the highest or otherwise best offer; (b) notwithstanding anything contained herein, reject any bid that is (i) inadequate or insufficient as determined by the Receiver, in its sole discretion, or (ii) not in conformity with the requirements of the Sales Process or any order of the Court; and (c) may modify the Sales Process or impose additional terms and conditions on the sale of the Property at any time in its sole discretion.

Miscellaneous

36. The Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Sales Process.

Limitation of Liability

37. The Receiver shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder or Qualified Bidder, or any creditor or other stakeholder, for any act or omission related to this Sales Process.

SCHEDULE "C"

Stalking Horse

FTI CONSULTING CANADA INC., solely in its capacity as the court-appointed receiver of the assets, property and undertaking of Eagle Graphite Corporation, and not in its personal capacity and without personal or corporate liability (the "Vendor" or the "Receiver")

- and -

WEAVER CAPITAL CORP. (the "Purchaser")

AGREEMENT OF PURCHASE AND SALE

August 10, 2023



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THIS AGREEMENT OF PURCHASE AND SALE is made this 10 day of August, 2023

BETWEEN:

FTI CONSULTING CANADA INC., solely in its capacity as the court-appointed receiver of the assets, property and undertaking of Eagle Graphite Corporation, and not in its personal capacity and without personal or corporate liability (the "**Vendor**" or the "**Receiver**")

-and-

WEAVER CAPITAL CORP. (the "**Purchaser**")

RECITALS

Pursuant to the appointment of the Receiver by the British Columbia Supreme Court (the "**Court**") of all of the assets, undertakings and properties (collectively, the "**Property**") of Eagle Graphite Corporation (the "**Debtor**") by Order dated July 20, 2023 (the "**Appointment Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended, (the "**Receivership Proceeding**"), and subject to (i) the designation of the within transaction as the successful bid; (ii) the granting of an approval and vesting order; and (iii) other conditions set forth in this Agreement, the Receiver has agreed to sell, convey, transfer and deliver to the Purchaser, and the Purchaser has agreed to purchase, acquire, assume and accept from the Receiver the Purchased Assets (as these terms are defined hereinafter), on the terms and subject to the conditions set out in this Agreement;

Under the Appointment Order, the Receiver is empowered and authorized to sell the Purchased Assets;

Subject to the approval of the Court, the Receiver wishes to sell and the Purchaser wishes to purchase on an "as is, where is" basis, all of the right, title and interest of the Receiver or the Debtor in the Purchased Assets pursuant to the terms and conditions of this Agreement.

In conjunction with the sales process contemplated herein, the Receiver will be seeking an Order of the Court approving this Agreement as a stalking horse bid and the procedures for marketing and selling the Purchased Assets.

NOW THEREFORE WITNESS THAT in consideration of the sum of Two Dollars now paid by the Purchaser to the Receiver, the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties covenant and agree as follows:

ARTICLE 1 **DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

1.1 Definitions

Whenever used in this Agreement, including the schedules to this Agreement, the following words and terms shall have the meanings set out below:

"**Acceptance Date**" means the date this Agreement is executed and delivered by both the Vendor and the Purchaser.

"**Agreement**" means this agreement of purchase and sale executed by the Purchaser and accepted by the Vendor, including all schedules, and all amendments or restatements, and references to "**Article**", "**Section**" or "**Schedule**" mean the specified Article or Section of, or Schedule to, this Agreement;



"**Ancillary Agreements**" means, collectively, any assignment and assumption agreements, and such other agreements, documents, assignments, or instruments of transfer and conveyance reasonably satisfactory in form and substance to the Purchaser and the Receiver, none of which shall contain any representations or warranties of the Receiver except for those provided herein;

"**Appointment Date**" means the date of the Appointment Order;

"**Appointment Order**" has the meaning given in the Recitals;

"**Assigned Contracts**" means those Contracts, which are not Excluded Contracts, for which no consent to assignment is required or where consent to assignment is required, such consent has been obtained;

"**Assumed Liabilities**" has the meaning given in Section 2.3;

"**Bill of Sale**" means one or more bills of sale duly executed by the Receiver in respect of the personal property forming part of the Purchased Assets; none of which shall contain any representations or warranties of the Receiver except for those provided herein;

"**Books and Records**" means, collectively, the books and records of the Debtor relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media;

"**Business**" means mining graphite at the production and processing facility known as the "Black Crystal" property or project, located in the Slocan Valley area of British Columbia, approximately 35 kilometres west of the city of Nelson and 35 kilometres north of the city of Castlegar;

"**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

"**Claims**" includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions or other similar processes;

"**Closing**" means the completion of the Transaction;

"**Closing Cash Payment**" means an amount sufficient to pay (i) any outstanding Priority Claims, and (ii) any Cure Costs, in the event the Deposit is insufficient to pay out such amounts;

"**Closing Certificate**" has the meaning given in Section 8.5;

"**Closing Date**" means the date on which the Closing occurs as set forth in Section 6.1(a);

"**Closing Time**" has the meaning given in Section 6.1(b);

"**Consent**" means any approval, authorization, consent, Order, licence, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person;

"**Contract Notice Date**" has the meaning given in Section 2.4(a);

"**Contracts**" means the contracts, licences, leases, agreements, arrangements, documents, commitments, entitlements or engagements to which the Debtor is a party or by which the Debtor is bound, as more particularly set out in Schedule A hereto;

A handwritten signature in black ink, appearing to be 'Jin', located in the bottom right corner of the page.

"Court" has the meaning given in the Recitals;

"Credit Bid Amount" means the total of \$3,145,000, which is the partial amount owing by the Debtor to the Purchaser pursuant to various credit documents, including but not limited to the Acknowledgement, Consent and Release dated December 5, 2022 between the Debtor, the Purchaser and HarbisonWalker International, Inc. and secured by, amongst other things, a general security agreement between the Debtor and HarbisonWalker International, Inc. dated March 5, 2013;

"Cure Costs" means the amount, if any, that is required to cure any monetary defaults of the Debtor under any Assigned Contract;

"Debtor" has the meaning given in the Recitals;

"Deposit" means the sum of \$555,000 paid in accordance with Section 2.6.

"Encumbrance" means any mortgage, charge, the Receiver's Borrowings Charge, the Receiver's Charge, construction or builder's lien, assignment by way of security, pledge, hypothec, security interest, lien (statutory or otherwise), conditional sales contract or other title retention agreement, trust, deemed or statutory trust, judgment, execution, writ, debenture, levy, financial or monetary claim, encumbrance, adverse claim or interest, exception, reservation, easement, right of way, encroachment, servitude, restrictions on use, any right of occupancy, any right or claim of specific performance, any matter capable of registration against title, option, right of first refusal or similar right, right of pre-emption or privilege or any contract creating any of the foregoing, and any other encumbrance, interest or instrument charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein including, but shall not include the Permitted Encumbrances

"Environmental Law" means any and all applicable International, federal, provincial, state, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environmental occupational health and safety, health protection or Hazardous Materials;

"Excluded Assets" means the assets listed in Schedule B hereto;

"Excluded Contract" means any contracts, licences, leases, agreements, arrangements, documents, commitments, entitlements or engagements to which the Debtor is a party or by which the Debtor is bound that is not a Contract;

"Fixtures and Chattels" means the right, title and interest of the Debtor to all fixtures, chattels, and other items but excluding the Excluded Assets;

"Final Order" means, in respect of any Order, such Order after (i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such Order, final determination of such appeal or application by the applicable court or appellate tribunal;

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof, over part or all of the Purchased Assets, the transaction contemplated in this Agreement and/or one or both of the parties hereto and shall include a board or association of insurance underwriters; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over part or all of the Purchased Assets, the transaction contemplated in this Agreement and/or one or both of the parties hereto and shall include a board or association of insurance underwriters. Without limitation, Governmental Authorities shall include



the Mineral Titles Branch (British Columbia), the Chief Gold Commissioner (British Columbia) and the Deputy Chief Gold Commissioner (British Columbia);

"**Hazardous Materials**" means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation, to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authorities, and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono-or poly-chlorinated biphenyl wastes;

"**Laws**" means currently existing applicable statutes, by-laws, rules, regulations, Orders, ordinances or judgments, in each case of any Governmental Authority having the force of law;

"**Order**" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority;

"**Ordinary Course of Business**" means the ordinary and usual course of the routine daily affairs of the Business consistent with past practice;

"**Outside Date**" means October 31, 2023, or such later date as agreed to by the Parties;

"**Parties**" means the Receiver and the Purchaser, collectively, and "**Party**" means any one of them;

"**Permitted Encumbrances**" means those Encumbrances which are identified in **Schedule C** hereto;

"**Person**" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"**Priority Claims**" means any valid statutory claims or portion thereof that are determined to rank in priority to the secured debt, including without limitation, (a) any source deduction claim in favour of any Governmental Authority, including the Canada Revenue Agency arising from the failure to deduct, withhold or remit any Taxes, (b) any claim in favour of an employee pursuant to section 81.4 of the *Bankruptcy and Insolvency Act* (Canada), (c) any claim for amounts owing under the *Excise Tax Act* (Canada) (for greater certainty, solely to the extent any such claim is determined to rank in priority to the Secured Debt), (d) any claims for realty taxes, and (e) the Receiver's Charge and Receiver's Borrowings Charge;

"**Property**" has the meaning given in the Recitals including a graphite mine located in the Slocan Valley area of British Columbia, approximately 35 kilometres west of the city of Nelson and 35 kilometres north of the city of Castlegar, with an open-pit quarry allowing access to graphite deposits (the "**Quarry**"), a processing facility and related equipment (the "**Plant and Equipment**") and two mining or mineral leases registered in the name of the Debtor under title numbers 390937 and 392322 (the "**Mineral Leases**"), and two mineral claims under title numbers 318625 and 318627 (the "**Mineral Claims**"), and including any Fixtures, Chattels and intellectual property;

"**Purchase Price**" has the meaning given in Section 2.5;

"**Purchased Assets**" means all of the right, title and interest of the Debtor, in and to the tangible and intangible properties, assets, interests, rights and claims related to the Property and/or the Business, wherever located including British Columbia, as of the Closing Date including without limitation the Quarry, Plant and Equipment, Mineral Leases and Mineral Claims and the following assets, if any:

- (a) all inventory;
- (b) all chattels, fixtures and equipment;
- (c) all intellectual property;
- (d) all rights under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents or with third parties;
- (e) the Assigned Contracts, if any, and the Permitted Encumbrances; and
- (f) all other personal property not contemplated by the foregoing, but excluding the Excluded Assets;

"Purchaser" means Weaver Capital Corp.;

"Receiver" means FTI Consulting Canada Inc., in its capacity as the court-appointed receiver of the Property and not in its personal or corporate capacity;

"Receiver's Charge" means the Receiver's Charge as defined in the Appointment Order and to be used or applied therein upon the appointment of the Receiver;

"Receiver's Borrowings Charge" has the meaning given in the Appointment Order and to be used or applied therein upon the appointment of the Receiver;

"Receiver's Certificates Obligations" means all outstanding obligations of any kind pursuant to the Receiver's Certificate, and secured by the Receiver's Borrowings Charge;

"Receiver's Certificates" has the meaning given in the Appointment Order and to be used or applied therein upon the appointment of the Receiver;

"Receiver's Website" means <http://cfcanada.fticonsulting.com/EagleGraphite>;

"Receivership Proceeding" has the meaning given in the Recitals;

"Sale Application" means an application by the Receiver seeking, inter alia, the Vesting Order;

"Sales Process" means the sales process or procedure in the form attached hereto as **Schedule D** setting out the terms and conditions of a procedure for the solicitation of offers to purchase the Property;

"Stalking Horse and Sales Process Order" means the Order of the Court approving the Sales Process, substantially in the form attached hereto without schedules as **Schedule E**;

"Stalking Horse APS" means this Agreement;

"Stalking Horse Purchaser" means the Purchaser;

"Successful Auction Bid" has the meaning given to it in the Sales Process;

"Successful Auction Bidder" has the meaning given to it in the Sales Process;

"Successful Bid" has the meaning given to it in the Sales Process;

"Successful Bidder" has the meaning given to it in the Sales Process;



"Tax" and "Taxes" includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Transaction" means the purchase and sale of all of the Purchased Assets;

"Transfer Direction" means a written direction from the Purchaser calling for and directing that the Purchased Assets be transferred to the Purchaser or one or more designees;

"Transfer Taxes" has the meaning given in Section 8.2(c);

"Vesting Order" means the Order of the Court approving the sale by the Receiver to the Purchaser of the Purchased Assets, and vesting all right, title and interest of the Receiver and the Debtor, free and clear of all Encumbrances (other than Permitted Encumbrances), in a form satisfactory to the Receiver and Purchaser acting reasonably.

1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** — All references to money amounts are to lawful currency of Canada;
- (b) **Governing Law** — This Agreement is a contract made under and shall be governed by and construed in accordance with the Laws of the Province of British Columbia and the federal Laws of Canada applicable in the Province of British Columbia;
- (c) **Headings** — Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) **Including** — Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation";
- (e) **No Strict Construction** — The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (f) **Number and Gender** — Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (g) **Severability** — If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances; and
- (h) **Time Periods** — Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by

extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire all right, title and interest of the Receiver, if any, and of the Debtor. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Receiver or any of its affiliates, subsidiaries, agents, employees or representatives.

1.4 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

SCHEDULE A - CONTRACTS

SCHEDULE B - EXCLUDED ASSETS

SCHEDULE C - PERMITTED ENCUMBRANCES

SCHEDULE D - SALES PROCESS

SCHEDULE E - STALKING HORSE AND SALES PROCESS ORDER

SCHEDULE F - VESTING ORDER

SCHEDULE G - ASSUMED LIABILITIES

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the terms and conditions of this Stalking Horse APS (which conditions, for greater certainty, include the issuance of the determination by the Receiver that this Agreement is the Successful Bid or Successful Auction Bid, and the issuance of the Vesting Order), the Receiver shall transfer, sell, convey, and assign unto the Stalking Horse Purchaser or its designee(s), all right, title and interest of the Receiver, if any, and of the Debtor, in and to the Purchased Assets and the Stalking Horse Purchaser or its designee(s) shall acquire and accept the Purchased Assets pursuant to the Vesting Order, free and clear of all Encumbrances other than the Permitted Encumbrances.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the Excluded Assets and nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets.



2.3 Assumed Liabilities

The Purchaser shall assume as of 12:01 a.m. (Vancouver time) on the Closing Date, and shall pay, discharge and perform, as the case may be, the liabilities and obligations listed on **Schedule G** (collectively, the "Assumed Liabilities").

Other than the Assumed Liabilities and the Permitted Encumbrances, the Purchaser shall not assume and shall not be liable for any liabilities or obligations of the Debtor of any nature whatsoever, whether present or future, known or unknown, absolute or contingent, and whether or not relating to the Business or the Property, including without limitation, any Encumbrances.

2.4 Assignment and Assumption of Contracts

- (a) The Purchaser covenants to the Receiver that, no later than ten (10) Business Days prior to the return date of the Sale Application, the Purchaser shall advise the Receiver in writing as to which Contracts shall be Excluded Contracts (the "**Contract Notice Date**"). At any time on or prior to the Contract Notice Date, the Purchaser may elect to exclude any Contracts from the Purchased Assets, and add such Contracts to the Excluded Contracts list by giving written notice to the Receiver of its intention to do so. For greater certainty any exclusion of Contracts pursuant to this Section 2.4 shall not affect the Purchase Price.
- (b) The Assigned Contracts shall form part of the Purchased Assets assigned and transferred to the Purchaser or its designee(s) at or after Closing, the consideration for which is included in the Purchase Price. The Purchaser will assume and agree to perform and discharge the Assumed Liabilities under the Assigned Contracts pursuant to this Agreement and the applicable Ancillary Agreements.
- (c) At or prior to Closing, the Receiver and the Purchaser shall use commercially reasonable efforts to obtain all necessary Consents to assign the Contracts (other than the Excluded Contracts) to the Purchaser. In the event that any Consent is not obtained by the Closing, the Receiver will co-operate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Contracts to the Purchaser, including assisting the Purchaser in attempting to obtain any such Consent after Closing for a period of four (4) weeks following Closing, provided that pursuant to such arrangements the Purchaser agrees to pay and fully indemnifies the Receiver for all costs (including any fees and disbursements of the Receiver and its legal counsel), obligations or liabilities incurred thereunder or in connection therewith.
- (d) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, to the extent such Contract is not assignable under applicable Laws without the consent of any other Person party thereto where the Consent of such Person has not been given or received.
- (e) For greater certainty, if any necessary Consent is required to assign a Contract but not obtained, neither the Receiver nor the Purchaser shall be in breach of this Agreement nor shall the Purchase Price be adjusted or the Closing delayed.

2.5 Purchase Price

The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be the aggregate of the following (the "**Purchase Price**");

- (a) the Credit Bid Amount (\$3,145,000.00);
- (b) the amount of the Deposit (\$555,000.00);



- (c) the Assumed Liabilities, if any; and
- (d) the Closing Cash Payment, if any.

to be satisfied in the manner set forth in Section 2.6. All applicable Transfer Taxes shall be paid by the Purchaser, on the Closing subject to the terms hereof and the availability of any exemptions, deferrals or elections under any applicable legislation for such applicable Transfer Taxes.

2.6 Deposit

The Purchaser shall pay the Deposit to the Receiver by way of certified cheque, bank draft, or wire concurrently with delivery of this Agreement by the Purchaser. The Deposit shall be held by the Receiver in trust in a non-interest bearing account.

The Deposit shall be dealt with in accordance with the Sales Process and Section 2.8.

2.7 Closing Cash Payment

On or before two Business Days prior to the Closing, the Purchaser shall deposit with the Receiver the Closing Cash Payment, if any, which shall be held in trust by the Receiver pending the Closing, provided that notwithstanding any terms to the contrary herein, in the event that a Closing Cash Payment is required to be made by the Purchaser in accordance with the terms herein, the Purchaser shall have the option to terminate this Agreement by written notice to the Receiver given prior to the Closing Date in which event the Deposit shall be returned to the Purchaser and the terms of Section 7.2 shall apply.

2.8 Payment of Priority Claims and Cure Costs

Promptly upon Closing, the Receiver shall apply the Deposit and the Closing Cash Payment, if any, to pay the Priority Claims, if any, and the Cure Costs, if any.

2.9 Satisfaction of Purchase Price

The Purchase Price shall be satisfied on Closing by applying a credit to the Purchaser for the following:

- (a) the Closing Cash Payment, if applicable;
- (b) the Deposit;
- (c) the Credit Bid Amount; and
- (d) the assumption by the Purchaser of the Assumed Liabilities, if applicable.

2.10 Purchase Price Allocation

Within two business days of the Purchaser being notified by the Receiver that this Agreement has been determined to be the Successful Bid or Successful Auction Bid pursuant to the Sales Process, the Purchaser shall prepare a written initial allocation of the amounts of the credits in Section 2.6 above and the Assumed Liabilities, if any, comprising the Purchase Price in respect of each of the Purchased Assets. The Parties, acting reasonably, shall agree, prior to the Closing, on such allocation.



ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1 Representations and Warranties of the Receiver

The Receiver hereby represents and warrants to the Purchaser, as of the date hereof and as of Closing Date, the matters set out below.

- (a) The Receiver has been appointed by the Court as receiver of the Property pursuant to the Appointment Order, a copy of which is available on the Receiver's Website.
- (b) Subject to the issuance of the Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Law, and the Receiver has the necessary power and authority to carry out its obligations hereunder.
- (c) The Receiver has not authorized any Encumbrance affecting any of the Purchased Assets (other than any Permitted Encumbrances, any charge created by the Appointment Order, or arising by operation of Laws in the normal course of the Business).

3.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Receiver, as of the date hereof and as of the Closing Date, the matters set out below:

- (a) The Purchaser has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business.
- (b) The execution, delivery and performance of this Agreement by the Purchaser does not result in the violation of any of the provisions of its constituting documents or by-laws.
- (c) This Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) Except for the Vesting Order, no Consent and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or the performance by the Purchaser of its obligations hereunder.
- (e) The Purchaser or its designee will be a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada) on Closing.
- (f) The Purchaser will not be a non-resident of Canada for purposes of the *Income Tax Act* (Canada) on or prior to Closing.



ARTICLE 4
PROCEDURES

4.1 Stalking Horse and Sales Process Order and Vesting Order

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to Court approval of the Stalking Horse and Sales Process Order, (ii) Closing the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid or Successful Auction Bid, and (iii) to the issuance of the Vesting Order.
- (b) If this Agreement is determined to be the Successful Bid or Successful Auction Bid pursuant to the Sales Process, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the documents in relation to the Sale Application, on notice to parties satisfactory to the Purchaser acting reasonably.
- (c) The Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Vesting Order, and any other order of the Court reasonably necessary to consummate the Transaction.

4.2 Pre-Closing Cooperation

- (a) Prior to the completion of the Transaction, upon the terms, and subject to the conditions of this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Laws to consummate the Transaction, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing, and the taking of such actions as are necessary to obtain any requisite Consent, provided that the Receiver shall not be obligated to make any payment or deliver anything of value to any Person (other than filing with and payment of any application fees to Governmental Authorities, all of which shall be paid, funded or reimbursed by the Purchaser) in order to obtain any Consent.
- (b) Each of the Receiver and the Purchaser shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 5.1 or Section 5.2 not being satisfied.

4.3 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are being purchased on an "as is, where is" basis as at the Closing,
- (b) It has conducted or will conduct its own searches and investigations relating to the Purchased Assets;
- (c) It has conducted such inspections of the Purchased Assets as it deemed appropriate, satisfied itself with respect to the Purchased Assets and all matters connected with or related to the Purchased Assets, and has relied entirely upon its own investigations and inspections in entering into this Agreement to acquire the Purchased Assets without regard to any information made available or provided by the Receiver or its officers, directors, employees or agents;
- (d) it will accept the Purchased Assets in their state, condition and location as at the Closing Time and except as expressly set forth in this Agreement. The Receiver makes no



representations, warranties, statements or promises on its own behalf or on behalf of the Debtor in favour of the Purchaser concerning the Purchased Assets, or the Receiver's or the Debtor's right, title or interest in or to the Purchased Assets, which the Purchaser acknowledges are being acquired on an as-is where-is basis, or the uses or applications of the Purchased Assets, whether express or implied, statutory or collateral, arising by operation of Law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental laws, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (British Columbia) do not apply to the sale of the Purchased Assets and are hereby waived by the Purchaser; and,

- (e) without limiting the generality of the foregoing, it acknowledges and accepts that the description of the Purchased Assets and any portion thereof contained in the Schedules hereto or otherwise provided by the Receiver is for the purpose of identification only; and that no representation, warranty or condition has or will be given by the Receiver or any other party concerning completeness or the accuracy of such descriptions or with respect to any data room set up by the Receiver.

From the Acceptance Date through the earlier of the termination of this Agreement or the Closing, as applicable, the Purchaser shall be entitled to access the Purchased Assets for purposes of inspection of the same upon reasonable prior written notice to the Receiver. In connection with any such inspection(s), the Purchaser will ensure no damage is caused to the Purchased Assets and will be responsible for and will indemnify the Vendor for all damages, costs, expenses and other adverse consequences of the Purchaser's actions, or the actions of any of the Purchaser's employees, contractors or consultants.

4.4 Sales Process

This Agreement is subject to the Sales Process as set out in Schedule D to this Agreement, and such Sales Process shall form part of this Agreement as though repeated herein at length.

ARTICLE 5 CONDITIONS

5.1 Conditions of the Purchaser

The obligations of the Purchaser to complete the purchase of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Receiver made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall have received a certificate from a senior officer of the Receiver confirming to the knowledge of such senior officer, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Receiver shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Receiver shall have executed and delivered, or caused to be executed and delivered, to the Purchaser on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Purchaser or its solicitors;



- (d) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined that this Agreement is the Successful Bid or Successful Auction Bid in accordance with the Sales Process; and
- (f) the Vesting Order shall be a Final Order and no order shall have been issued which restrains or prohibits the completion of the Transaction;

The Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

The conditions set out in Section 5.1 are conditions to completion of the Transaction but are not conditions to the enforceability of this Agreement.

5.2 Conditions of the Receiver

The obligations of the Receiver to complete the purchase of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions (each of which is acknowledged to be inserted for the exclusive benefit of the Receiver and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct as at the Closing Time and with the same effect as if made at and as at the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Receiver shall have received a certificate from a senior officer of the Purchaser confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to be executed and delivered to the Receiver on or prior to the Closing Date the documents required to complete the Transaction as may reasonably be required by the Receiver or its solicitors;
- (d) there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Laws;
- (e) the Receiver shall have determined that this Agreement is the Successful Bid or Successful Auction Bid in accordance with the Sales Process;
- (f) the Appointment Order and the Vesting Orders shall be Final Orders and no Order shall have been issued which restrains or prohibits the completion of the Transaction; and

- (g) the Receiver shall have received the funds equal to the Purchase Price.

The Receiver may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfillment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

The conditions set out in Section 5.2 are conditions to completion of the Transaction but are not conditions to the enforceability of this Agreement.

ARTICLE 6

CLOSING AND DELIVERIES

6.1 Closing

- (a) Closing shall occur on a Business Day (the "**Closing Date**") to be designated by the Purchaser and reasonably acceptable to the Receiver within 5 Business Days after the satisfaction or waiver of all conditions set out in Sections 5.1 and 5.2 unless otherwise agreed to by the Parties.
- (b) Closing shall take place at 10:00 a.m. PST (the "**Closing Time**") on the Closing Date at the offices of the Receiver's solicitors, or such other time and location as the Parties may agree upon in writing. Any tender of documents hereunder may be made upon the Receiver or the Purchaser or upon the solicitors acting for the Party on whom tender is desired. Any tender of money hereunder shall be made to the Receiver. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

6.2 Receiver's Deliveries

At the Closing,

- (a) the sale, transfer, assignment, and conveyance by the Receiver of the Purchased Assets to the Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, shall be effected by the issued and entered Vesting Order and by execution and delivery by the Receiver of the Bill(s) of Sale and Ancillary Agreements (completed in accordance with the Transfer Direction);
- (b) the Purchaser shall receive delivery, pursuant to the Vesting Order, of free and clear title and possession of the Purchased Assets on an "as is, where is" basis in accordance with Section 4.3 subject to the Permitted Encumbrances, provided that delivery shall occur in situ or in the original place wherever such Purchased Assets are located on the Closing Date;
- (c) the Receiver shall deliver a true and complete copy of the Vesting Order and the Closing Certificate; and
- (d) the Receiver shall deliver a bring-down certificate executed by the Receiver, in a form satisfactory to the Purchaser, acting reasonably, certifying that all of the representations and warranties of the Receiver hereunder remain true and correct in all material respects as of the Closing.



6.3 Purchaser's Deliveries

At the Closing,

- (a) the Purchaser shall advance funds equal to the Closing Cash Payment to the Receiver;
- (b) the Purchaser shall pay the applicable Transfer Taxes to the Receiver on the Purchased Assets being acquired on Closing other than PST which shall be self-assessed;
- (c) the Purchaser shall deliver the Ancillary Agreements to which it is party, executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably;
- (d) the Purchaser shall deliver a bring-down certificate executed by the Purchaser, in a form satisfactory to the Receiver, acting reasonably, certifying that all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing;
- (e) the Purchaser shall deliver a document setting out the allocation of the Purchase Price, in form and substance satisfactory to the Receiver, acting reasonably; and,
- (f) the Purchaser shall deliver the Transfer Direction, in form and substance satisfactory to the Receiver, acting reasonably.

6.4 Subsequent Deliveries

The Purchaser may from time to time at or after the Closing require that the Receiver execute and deliver to the Purchaser or as it may direct such further Ancillary Documents and Bill(s) of Sale as may be reasonably required to allow the transfer of all or any part of the Purchased Assets not previously effectively transferred. The Receiver shall execute and deliver such additional documentation as soon as reasonably possible after request therefor.

ARTICLE 7 TERMINATION

7.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately upon the selection by the Receiver of a Successful Bid or Successful Auction Bid if this Agreement is not the Successful Bid or Successful Auction Bid selected at such time;
- (b) subject to any approvals required from the Court, if any, by mutual written consent of the Receiver and the Purchaser;
- (c) by notice from the Receiver to the Purchaser or from the Purchaser to the Receiver, following the issuance of an Order or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets as contemplated hereby;
- (d) automatically and without any action by either the Receiver or the Purchaser if Closing has not occurred on or before the Outside Date;



- (e) by the Receiver, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.2 and such violation or breach has not been waived by the Receiver or cured, unless the Receiver is in material breach of its obligations under this Agreement; and
- (f) by the Purchaser, if there has been a material violation or breach by the Receiver of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in Section 5.1 and such violation or breach has not been waived by the Purchaser or cured, unless the Purchaser is in material breach of its obligations under this Agreement.

7.2 Effects of Termination

This section is applicable only if the Purchaser is the Stalking-Horse Purchaser. If this Agreement is terminated pursuant to Section 7.1 or Section 2.7:

- (a) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other; and
- (b) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver and the Debtors, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof.

ARTICLE 8 OTHER COVENANTS OF THE PARTIES; GENERAL

8.1 Access of the Receiver to Books and Records

The Receiver shall, for a period of six (6) years from the completion of the Transaction, have access to the Books and Records relating to the Business, the Purchased Assets and the Assumed Liabilities which are transferred and conveyed to the Purchaser pursuant to this Agreement, and the right to copy such material at its own cost, to the extent necessary or useful in connection with the completion of the administration of the Receivership Proceeding.

8.2 Tax Matters

- (a) The Purchaser and the Receiver agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) The Purchaser and the Receiver shall each be responsible for the preparation of their own statements, if any, required to be filed under the *Income Tax Act* (Canada) and other similar focus in accordance with applicable Tax Laws.
- (c) All amounts payable by the Purchaser to the Receiver pursuant to this Agreement are exclusive of any, sale, goods and services, harmonized sales, value added, use, consumption, personal property, customs, excise, transfer or similar Taxes, duties, or charges, or any recording or filing fees or similar charges otherwise exigible in respect of the acquisition of the Purchased Assets by the Purchaser (collectively, "Transfer Taxes")



and all such Transfer Taxes are the responsibility of and for the account of the Purchaser. The Purchaser and the Receiver agree to cooperate to determine the amount of Transfer Taxes payable in connection with the Transaction. If the Receiver is required by applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Purchaser, the Purchaser shall pay such Transfer Taxes to the Receiver on Closing, against a statement from the Receiver separately indicating the amount of Transfer Tax payable, unless the Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case the Receiver shall not collect any such applicable Transfer Taxes from the Purchaser provided the Purchaser, in lieu of payment of such applicable Transfer Taxes to the Receiver, delivers to the Receiver such certificates, elections or other documentation required by applicable Law or the administration thereof to substantiate and affect the exemption claimed by the Purchaser. The GST/PST registration number of the Debtor is to be confirmed at a later date before the Closing Date.

- (d) The Purchaser shall indemnify and save the Receiver harmless from and against all claims and demands for payment of the Transfer Taxes referenced in this Section 8.2, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.
- (e) The Purchaser and the Receiver shall also execute and deliver such other Tax elections and forms as they may mutually agree upon, including without limitation joint elections pursuant to section 167(1) of Part IX of the *Excise Tax Act* (Canada) and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar Tax, that no such Tax be payable with respect to the purchase and sale of the Purchased Assets under this Agreement. The Receiver and the Purchaser shall make such election(s) in prescribed form, to be prepared by the Purchaser and approved by the Vendor (such approval not to be unreasonably withheld) promptly following the Closing.

8.3 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to the Sales Process and this Agreement, including in its execution, FTI Consulting Canada Inc. has acted and is acting solely in its capacity as the receiver of the Property pursuant to the Appointment Order and not in its personal, corporate, or any other capacity and the Receiver and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

8.4 Receiver Disclosures

The Receiver shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, to the parties in interest to the Receivership Proceedings, and to any parties entitled to access in accordance with the Sales Process and to publish this Agreement on the Receiver's Website. The Parties will consult with and be cooperative with each other in respect of any press release or public statement or public communication with respect to this Agreement or Transaction.

8.5 Closing Certificates

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file with the Court a certificate, substantially in the form attached to the Vesting Order (the "Closing Certificate") upon receiving written confirmation from the Purchaser that all conditions to Closing have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate



8.6 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by e-mail:

In the case of a notice to the Purchaser at:

Weaver Capital Corp.,
28 Nightfall Court,
Kleinburg, Ontario L0J 1C0,

Attention: Jeffrey Wood,
Email: jwood@treelawngroup.com

with a copy (which shall not constitute notice) to:

Clark Wilson LLP
885 West Georgia Street, Unit 900
Vancouver, British Columbia V6C 3H1

Attention: Christopher Ramsay and Katie Mak
Email: cramsay@cwilson.com and kmak@cwilson.com

in the case of a notice to the Receiver at:

FTI Consulting Canada Inc.
701 West Georgia Street, Suite 1450, P.O. Box 10089
Vancouver, British Columbia V7Y 1B6

Attention: Craig Munro
Email: craig.munro@fticonsulting.com

with a copy (which shall not constitute notice) to:

DLA Piper (Canada) LLP
1133 Melville Street, Suite 2700
Vancouver, British Columbia V6E 4E5

Attention: Colin Brousson
Email: colin.brousson@dlapiper.com

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section 8.6.



8.7 Assignment

The Purchaser may only assign this Agreement with the prior written consent of the Receiver, which consent may not be unreasonably withheld. If the Receiver consents to an assignment after the Vesting Order has been obtained and revisions to the Vesting Order are required as a result of the assignment the Purchaser shall be responsible for all costs related to obtaining the revised Vesting Order.

8.8 Expenses

Except as set forth in this Agreement, each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the Transaction, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

8.9 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties under this Agreement.

8.10 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

8.11 Amendment

No amendment, supplement, modification or waiver of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

8.12 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the Transaction, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

8.13 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

8.14 Survival

No covenants, representations or warranties of any Party contained in this Agreement or any document delivered pursuant hereto will survive the completion of the sale and purchase and assumption of the Purchased Assets and the Assumed Liabilities hereunder, except for the covenants that by their terms are to be satisfied after the completion of the Transaction, which covenants will continue in full force and effect in accordance with their terms.

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IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

FTI CONSULTING CANADA INC., solely in its capacity as court-appointed receiver of the assets, property and undertaking of and not in its personal capacity and without personal or corporate liability.

Per: _____

Name:

Title:

I have authority to bind the Corporation

WEAVER CAPITAL CORP.

Per: _____

Name: *Jeff Wood*

Title: *President*

I have authority to bind the Corporation

**SCHEDULE A
CONTRACTS**

Regarding the Property, two mining or mineral leases registered in the name of the Debtor under title numbers 390937 and 392322 (the "Mineral Leases"), and two mineral claims under title numbers 318625 and 318627 (the "Mineral Claims").

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**SCHEDULE B
EXCLUDED ASSETS**

1. Cash on Hand of the Debtor prior to the Closing Date;
2. Personal Items;
3. Accounts Receivable of the Debtor in respect of the Business existing at the Closing Date and attributable to any period of time prior to the Closing Date; and
4. All insurance policies of the Debtor or the Receiver in respect of the Purchased Assets.

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**SCHEDULE C
PERMITTED ENCUMBRANCES**

1. Any rights reserved to or vested in any Governmental Authorities by any statutory provision or authority with respect to the Property;
2. Any rights of expropriation, access or use or any other rights conferred or reserved by or in any statute of Canada, or the Province of British Columbia regarding the Property including the Quarry and/or Plant and Equipment;
3. Any unregistered interest in the Property (including, without limitation, leases, claims and other encumbrances) of which the Purchaser has actual notice;
4. Any unregistered easements regarding the provision of utilities to the Quarry and/or Plant and Equipment; and
5. Any reservations, limitations, provisions, conditions or exceptions, including royalties, charges or user fees, related to the Mineral Leases and/or Mineral Claims.

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SCHEDULE D
SALES PROCESS

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SCHEDULE E
STALKING HORSE AND SALES PROCESS ORDER (WITHOUT SCHEDULES)

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SCHEDULE F
INTENTIONALLY DELETED



SCHEDULE G
ASSUMED LIABILITIES

None

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No. S-234515
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

ORDER MADE AFTER APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 039071-00005

SAA/day

No. S-234515
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WEAVER CAPITAL CORP.

PETITIONER

AND:

EAGLE GRAPHITE CORPORATION

RESPONDENT

NOTICE OF APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
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CDB/saa