

**C A N A D A**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT  
(Commercial Division)**

No: 500-11-065405-256

**IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT OF:**

**NATIONAL BANK OF CANADA**

Secured Creditor

-and-

**PELICAN INTERNATIONAL INC.**

-and-

**PELICAN US TOPCO LLC**

-and-

**CONFLUENCE OUTDOOR INC.**

Debtors

-and-

**FTI CONSULTING CANADA INC.**

Monitor

-and-

**9539-5893 QUÉBEC INC.**

Impleaded Party (Purchaser)

-and-

**GROUPE MACH ACQUISITION INC.**

Guarantor

**OUTLINE OF ARGUMENTS OF THE MONITOR IN SUPPORT OF  
THE APPLICATION FOR THE ISSUANCE OF AN APPROVAL,  
VESTING AND ASSIGNMENT ORDER**

**I. OVERVIEW**

1. The present Outline of Arguments is submitted in support of the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.
2. On February 28, 2025, Pelican International Inc. filed a Notice of Intention to Make a Proposal under the relevant provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**Pelican NOI Proceedings**”), and KPMG Inc. was appointed as the proposal trustee in the Pelican NOI Proceedings.
3. On March 19, 2025, at the request of National Bank of Canada (“**NBC**”) in its capacity as lender and administrative agent, collateral agent and hypothecary representative of Bank of Montreal, Fédération des Caisses Desjardins du Québec and the Toronto-Dominion Bank (together with NBC in its capacity as lender, the “**Lenders**”) further to the *Amended Application for the issuance of an initial order, an amended and restated initial order and a sale and investment solicitation process order*, the Court issued a First Day Initial Order pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) and a Sale and Investment Solicitation Process Order (the “**SISP Order**”).
4. The SISP Order, *inter alia*, approved the initiation of an expedited three (3) week Sale and Investment Solicitation Process in respect of the Debtors’ business and assets (the “**Going Concern SISP**”) and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed thereto as Schedule “A” (the “**SISP Procedures**”), as appears from the Court record.
5. On March 28, 2025, the Court issued an Amended and Restated Initial Order (the “**ARIO**”).

6. With the Application, the Monitor seeks the issuance of an Approval, Vesting and Assignment Order (“**AVO**”) approving the Transaction (as defined below) and authorizing the execution by the Monitor for and on behalf of Pelican and Confluence Outdoor Inc. (collectively, the “**Sellers**” and together with Pelican Us Topco LLC, the “**Debtors**”) of an agreement entitled *Asset Purchase Agreement* dated April 23, 2025 (the “**APA**”) between the Sellers, as vendors, and 9539-5893 Québec Inc. (the “**Purchaser**”), as purchaser, and Groupe Mach Acquisition Inc. (“**Mach**”), as guarantor of the Purchaser, for the sale of the Purchased Assets (as defined below) (the “**Transaction**”).
7. Additionally, the Monitor is seeking the issuance of an order extending the Stay Period until July 15, 2025 (the “**Stay Extension Order**”) and of an order sealing confidential documents (the “**Sealing Order**”).

## II. ISSUES AND APPLICABLE LAW

8. The present Outline of Argument submitted in support of the Application addresses the following issues for which relief is sought:

- A. The Transaction Should be Approved

- a. The Terms of the Transaction

- b. The Criteria for a Court-Issued Approval and Vesting Order are Met

- B. The Releases are Appropriate and Should be Approved

- C. Issuance of a Stay Extension Order

- D. Sealing of Confidential Documents

### A. The Transaction Should be Approved

#### (a) *The Terms of the Transaction*

9. The Monitor respectfully submits that the Transaction contemplated in the APA should be approved.

10. The principal terms and conditions of the Transaction, which contemplates the purchase and sale of the Purchased Assets, are set out in the Application.
11. The AVO sought by the Application provides the necessary authorizations and relief to give effect to the Transaction.

(b) ***The Criteria for a Court-Issued Approval and Vesting Order are Met***

12. Pursuant to section 36 of the CCAA, this Court has jurisdiction to approve a sale outside of the ordinary course of business. Indeed, subsections 36(3)(4) provides a non-exhaustive list of factors that the Court may consider when deciding whether to approve such a sale:

**36(3) Factors to be considered** – In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**(4) Additional factors — related persons** – If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

13. These criteria have been held not to be cumulative or exhaustive. Rather, the Court must look at the proposed transaction as a whole and decide if it is appropriate, fair and reasonable.<sup>1</sup>
14. In addition, these criteria largely overlap with the factors enumerated in *Soundair*, which guided the Court prior to the enactment of section 36 of the CCAA and continue to be referenced by the Court when it considers the statutory test in deciding to approve, or not, a proposed transaction. The *Soundair* factors are as follows:
  - (a) whether sufficient effort has been made to get the best price and the receiver or debtor (as applicable) has not acted improvidently;
  - (b) whether the interests of all parties have been considered;
  - (c) the efficacy and integrity of the process by which offers have been obtained; and
  - (d) whether there has been unfairness in the working out of the process.<sup>2</sup>
15. Further, subsection 36(7) of the CCAA provides that the Court must be “satisfied that the company will and can make payments that would have been required under paragraphs 6(5)(a) and 6(6)(a) if the court had sanctioned the compromise or arrangement”. These paragraphs require, among other things, the payment of certain priority amounts to employees and former employees.

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<sup>1</sup> *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at para 26, leave to appeal ref'd, [8901341 Canada inc. c. Bloom Lake, g.p.l.](#), 2015 QCCA 754 [TAB 1].

<sup>2</sup> *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at para 16 (“*Soundair*”) [TAB 2]; *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6460 at paras 36-38 [TAB 3]; *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at para 27 [TAB 1], citing *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6460 [TAB 3]; *Arrangement relatif à Goli Nutrition Inc.*, 2024 QCCS 1246 at para 69 [TAB 4].

16. The Monitor submits that the Transaction meets the criteria enumerated at subsections 36(3) of the CCAA as well as the *Soundair* principles for the following reasons:

(a) The solicitation process was reasonable. The Going Concern SISP was conducted by the Monitor in accordance with the SISP Order and the SISP Procedures previously approved by this Court. The Transaction is the culmination of an expedited three-week solicitation effort on the part of the Monitor. As part of this process, the Monitor broadly canvassed the market through a fulsome, fair, and transparent process by contacting approximately 250 potentially interested parties, which resulted in four (4) binding offers being received, including the Mach Binding Offer. After carefully reviewing the submissions, in consultation with the Lenders, the Monitor concluded that the Mach Binding Offer represented the best available option in the circumstances compared to the other submissions received, including based on the proposed consideration offered as well as on price and closing certainty. Further details concerning the Going Concern SISP can be found in the Application.

(b) The consideration is fair and reasonable. The consideration to be received in connection with the Transaction is fair and reasonable as it has been established through the Going Concern SISP, which generated significant interest<sup>3</sup>, and through the Liquidation Bid<sup>4</sup>. Indeed, the Monitor is of the view that the Mach Binding Offer represents the best financial recovery available for stakeholders. Consequently, it is respectfully submitted that Transaction clearly satisfies this prong of the test.

(c) The Transaction is beneficial to all stakeholders. The Transaction will be beneficial to the Debtors' stakeholders, as well as to the various stakeholders who have an interest in the preservation and continued operations of the Debtors. Furthermore, the Lenders were consulted

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<sup>3</sup> Appendix C to the Third Report of the Monitor.

<sup>4</sup> Appendix B to the Third Report of the Monitor.

throughout the Going Concern SISP and support the Transaction. In any event, the Transaction is significantly more beneficial to the stakeholders than a liquidation under a bankruptcy, which would likely result in a materially worse outcome for all stakeholders.

(d) The Monitor supports the Transaction. The Monitor is asking for the approval of the Transaction and conducted the Going Concern SISP. It is well-established that the Monitor's support is deserving of a very high degree of deference.<sup>5</sup> In the present case, the outcome – the choice of the best executable transaction resulting from a court-approved sale an investment solicitation process – is well within a reasonable range of alternatives.

(e) It is the best available alternative. The Monitor, in consultation with the Lenders, has determined that the Transaction is the best available option for monetizing the Debtors' interest in the Purchased Assets, thus making it the best available option for the Debtors' creditors and other stakeholders. It provides considerable value, certainty of price, certainty of closing and benefits to the Debtors and their stakeholders. The Transaction represents the best possible outcome in the context of these CCAA Proceedings.

(f) The Transaction benefits the whole economic community. In addition to benefiting the Debtors' secured creditors, the Transaction will result in the preservation of the Debtors' business, the maintaining of approximately 450 jobs, and the continued going concern operations.

17. In the present case, the Purchaser includes former executives of the Debtors. While the Monitor considers that the Purchaser is not related person under s. 36(4) of the CCAA (and s. 4(2)(c) of the *Bankruptcy and Insolvency Act*), the Monitor

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<sup>5</sup> [\*Bloom Lake, g.p.l. \(Arrangement relatif à\)\*](#), 2015 QCCS 1920, at para 28 [TAB 1], citing [\*AbitibiBowater inc. \(Arrangement relatif à\)\*](#), 2010 QCCS 1742 at paras 70-71 [TAB 5]; [\*AbitibiBowater inc. \(Arrangement relatif à\)\*](#), 2009 QCCS 6460 at para 59 [TAB 3]; [\*White Birch Paper Holding Company \(Arrangements relatif à\)\*](#), 2011 QCCS 7304, at paras 68-74 [TAB 6].

submits that even if the Purchaser was considered a related party, the criteria set out in section 36(4) of the CCAA are met in the present case.

18. Firstly, good faith efforts were made to sell the assets to persons who are not related to the company. As appears from the Application, the Monitor conducted an expedited three-week sale and investment solicitation process in which approximately 250 potential buyers were contacted. This process resulted in 53 NDAs being entered into and ultimately four (4) binding offers, two (2) of which were going concern bids for substantially all of the assets and operations of the Sellers (the **“Going Concern Bids”**). Consequently, the Monitor respectfully submits that material good faith efforts were made to market and sell the assets to third parties and that this prong of the test is satisfied.
19. Secondly, the consideration to be received is superior to the consideration that would be received under any other going concern offer made by a non-related party. Both Going Concern Bids were made by related parties for the purposes of section 36(4) of the CCAA. After carefully considering the four (4) binding offers received in the context of the Going Concern SISF, the Monitor determined that the consideration envisioned by the Going Concern Bids was superior to the other offers received from non-related parties as well as superior to the liquidation value of the assets. Furthermore, after careful consideration and consultation with the Lenders, the Monitor selected the Purchaser as the best offer available and the successful bidder in the context of the Going Concern SISF. Consequently, the second prong of the test is also satisfied.
20. The Transaction also meets the criteria under subsection 36(7) of the CCAA. The Monitor has and will continue to pay all employee wages and compensation referred to in paragraph 6(5)(a), and the Debtors do not owe any obligations of the type described in paragraph 6(6)(a).

21. In light of the foregoing, the criteria allowing for a court-issued approval and vesting order are met and this Court should therefore approve the Transaction.<sup>6</sup>

**B. The Releases are Appropriate and Should be Approved**

22. The AVO contains releases (the “**Releases**”) in favour of the (i) the Sellers, (ii) the present and former directors and officers of the Sellers; (iii) their respective legal counsel and advisors; (iv) the Purchaser, its directors and officers, and the legal counsel and advisors of the Purchaser; and (v) the Monitor and its legal counsel (together, the “**Released Parties**”) with respect to any and all present and future claims relating to the Transaction and any statutory obligations and liabilities relating to employees, payroll or tax under any Canadian law, as more fully set out at paragraph 44 of the draft AVO.
23. The Releases were negotiated in the context of the Transaction and form part of the proposed transaction.
24. Additionally, they are necessary and reasonable to the orderly wind-down of the CCAA Proceedings, particularly in the light of the completion of the Going-Concern SISP.
25. Third party releases are commonly granted in CCAA proceedings, either in the context of a transaction or a plan of arrangement. In *Arrangement relatif à Blackrock Metals Inc.*, this Court noted that “[i]t is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction”.<sup>7</sup>

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<sup>6</sup> Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies Chrono aviation inc., 9266-4325 Québec inc., Chrono jet inc., 9351-7399 Québec inc., Services aériens Lux inc./Lux Air Services Inc. et Avionique WASS inc./WASS Avionics Inc., C.S. Québec, 200-11-029690-248, November 4, 2024 at paras 13, 18 and 19 [TAB 7].

<sup>7</sup> *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, par. 128 [TAB 8]. See also *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 79 [TAB 9]: “CCAA courts have frequently approved releases, both in the context of a plan and in the absence of a CCAA plan, both on consent and in contested matters. These releases have been in favour of the parties, directors, officers, monitors, counsel, employees, shareholders and advisors.”

26. In considering whether to approve releases in favour of third parties, Courts have taken into account the particular circumstances of the case and the objectives of the CCAA,<sup>8</sup> as well as a series of certain factors discussed below, with no single factor being determinative.<sup>9</sup>
27. For the reasons set out below, the Monitor submits that these factors support the approval of the Releases in the present case:
- (a) Whether the claims to be released are rationally connected to the purpose of the restructuring. The claims released are rationally connected to the Debtors' restructuring. By extinguishing these claims, the Releases reduce potential liabilities against the Released Parties. This, in turn, decreases the likelihood of indemnification claims against the Administration Charge and the Directors and Officers' Charge (as both terms are defined in the ARIO at paragraphs 71 and 52, respectively), thus maximizing creditor recovery. As determined by the Superior Court of Ontario in *Harte Gold Corp. (Re)*, "[g]iven that a purpose of a CCAA proceeding is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the Company's restructuring."<sup>10</sup> In addition, the Releases prevent the Released Parties from ever instituting a claim-over against either the Purchaser or the Sellers after the Transaction has been concluded and will ensure that all parties to the Transaction have certainty and finality about their liabilities and the duration of these CCAA Proceedings.
- (b) "Whether the releasees contributed to the restructuring". The Released Parties were instrumental in the context of these CCAA Proceedings,

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<sup>8</sup> *Lydian International Limited (Re)*, 2020 ONSC 4006, par. 54 [TAB 10].

<sup>9</sup> *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, par. 130 [TAB 8]; *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 78-86 [TAB 9]; *Lydian International Limited (Re)*, 2020 ONSC 4006, par. 54 [TAB 10].

<sup>10</sup> *Harte Gold Corp. (Re)*, 2022 ONSC 653, par. 81 [TAB 9].

including with respect to the conduct of the Going Concern SISP. More specifically, the Released Parties played a significant role in:

- (i) Securing the interim financing required to maintain the Debtors' operations during the CCAA Proceedings and to implement the Going Concern SISP;
  - (ii) Continuing to maintain the Debtors' business as a going concern notwithstanding the pendency of the CCAA Proceedings, including maintaining relationships with employees, suppliers and customers;
  - (iii) Implementing the Going Concern SISP leading to the Transaction which, if approved by the Court, will result in a successful outcome for the Debtors and, more importantly, for the Debtors' creditors and other stakeholders, including their employees.
- (c) Whether the Releases are fair, reasonable and not overly broad. The Releases are fair and reasonable, as well as appropriately narrow in scope. In addition, claims that cannot be released pursuant to section 5.1(2) of the CCAA are unaffected, as well as claims arising from fraud, gross negligence or wilful misconduct. The Released Parties retain potential liability for such claims. The language of the Releases was also specifically negotiated with the Lenders to ensure the preservation of identified obligations. The business judgment of the parties and the Monitor is that the negotiated bargain, including the Releases, is fair and reasonable.
- (d) Whether the restructuring could succeed without the Releases. The Releases were negotiated in the context of the Transaction and form part of the Transaction. They are being sought with the support of the Debtors and the Purchaser.
- (e) Whether the Releases benefit the Debtors as well as the creditors generally. As mentioned above, the Transaction will ensure the Debtors' continuation as a going concern for the benefit of all stakeholders. The Releases will also maximize creditor recovery, notably by decreasing the likelihood of indemnification claims against the Administration Charge and the Directors and Officers' Charge.

- (f) Creditors' knowledge of the nature and effect of the Releases. All creditors on the service list, including the Lenders, received notification of the Application, its supporting exhibits (including the draft AVO with the proposed Releases at paragraph 44), as well as the Third Report of the Monitor. Creditors and other stakeholders therefore had knowledge of the Releases prior to the hearing of the Application and had an opportunity to appear and make their views heard.

28. Given the above, it is appropriate and fair in the circumstances that the Released Parties benefit from the Releases, which balance certainty and finality with fairness to creditors.

### **C. Issuance of a Stay Extension Order**

29. In addition to seeking approval of the Transaction, the Monitor is requesting that this honourable Court issue a Stay Extension Order providing for a further extension of the Stay Period which currently expires on April 28, 2025 until July 15, 2025.
30. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period "it considers necessary". To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Debtors have acted, and are acting, in good faith and with due diligence.<sup>11</sup>
31. The requested extension of the Stay Period is necessary notably to proceed with the closing of the Transaction in accordance with the terms of the APA.
32. Additionally, the extension of the Stay Period will provide the Monitor with the sufficient time to notably:
- (i) continue and complete the sale and investment solicitation process in respect of GSI Outdoors LLC;

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<sup>11</sup> CCAA, s. 11.02(3).

- (ii) seek approval of the Transaction by the U.S. Bankruptcy Court; and
  - (iii) effect distributions to creditors and to the beneficiaries of the KERP, if any.
- 33. Accordingly, the requested Stay Period extension until July 15, 2025 is appropriate and necessary in the circumstances.
- 34. Based on the projections set out in Schedule B to the Monitor's Third Report, the Monitor expects to have sufficient funding and liquidity to cover anticipated restructuring costs and expenses during the extended Stay Period.
- 35. As such, the Monitor is of the view that extending the Stay Period until July 15, 2025 is reasonable and necessary in the circumstances.
- 36. The Debtors have acted and continue to act in good faith and with diligence throughout these CCAA Proceedings, and the requested extension is appropriate in the circumstances.

#### **D. Sealing of Confidential Documents**

- 37. This Court has the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.<sup>12</sup>
- 38. The test to determine whether a sealing order is appropriate is set out in *Sierra Club* as recast in *Sherman Estate*:
  - whether court openness poses a serious risk to an important public interest;
  - whether the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

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<sup>12</sup> *Code of Civil Procedure*, CQLR c C-25.01, s. 12.

- as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>13</sup>
39. In each of *Sierra Club* and *Sherman Estate*, the Supreme Court of Canada explicitly recognized that preserving confidential information that if disclosed could adversely harm a party's legitimate commercial interests constituted an "important public interest" for the purposes of this test.<sup>14</sup>
40. The Monitor respectfully submits that the complete unredacted copy of the APA (Exhibit P-2B and P-2D) as well as Appendices C and D of the Third Report of the Monitor should be kept strictly confidential and should be kept under seal or filed in redacted form.
41. If publicly disclosed, this information would be highly prejudicial to the Debtors should the Transaction not close. Additionally, the Monitor submits that the financial information in respect of the bids received in the Going Concern SISP should be kept confidential until the conclusion of the GSI Outdoors LLC sale and investment solicitation process.
42. As such, public disclosure of such sensitive financial information and documentation would be very prejudicial to the Debtors, their stakeholders, and the restructuring efforts.
43. At the same time, this will cause no prejudice to the Debtors' creditors, as the information will nevertheless be filed with this Court and may be made available to said creditors upon execution of a confidentiality agreement or undertaking.
44. Similarly, a redacted copy of the APA (Exhibit P-2A and P-2C) is made available to the public, with only the commercially sensitive financial information being redacted.

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<sup>13</sup> [\*Sierra Club of Canada v Canada \(Minister of Finance\)\*](#), 2002 SCC 41 at para 53 [TAB 11]; [\*Sherman Estate v Donovan\*](#), 2021 SCC 25 at paras 37-38 [TAB 12].

<sup>14</sup> [\*Sierra Club of Canada v Canada \(Minister of Finance\)\*](#), 2002 SCC 41 at paras 55, 60-61 [TAB 11]; [\*Sherman Estate v Donovan\*](#), 2021 SCC 25 at para 41 [TAB 12].

45. In sum, the salutary effects of the sealing order, which protects the general commercial interest of maintaining confidentiality over a party's commercial interests, far outweighs the deleterious effects of restricting the accessibility of court proceedings.
46. It is therefore reasonable and appropriate to grant the requested Sealing Order, sealing Exhibits P-2B and P-2D and Appendices C and D of the Third Report of the Monitor.

### III. CONCLUSION

47. For the reasons set forth above, the Monitor submits that it is both appropriate and necessary that the relief sought be granted. With such relief, the Monitor will be able to pursue the restructuring initiatives for the benefit of all stakeholders.
48. As mentioned, the Monitor supports the present Application and the issuance of the orders sought, as appears from its Third Report of the Monitor.

**THE WHOLE RESPECTFULLY SUBMITTED.**

MONTREAL, April 28, 2025

*Osler, Hoskin & Harcourt LLP*

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**SUPERIOR COURT**  
(Commercial Division)  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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-and-

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**9539-5893 QUÉBEC INC.**

Impleaded Party (Purchaser)

-and-

**GROUPE MACH ACQUISITION INC.**

Guarantor

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