

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

THURSDAY, THE 16th

JUSTICE HAINEY)

DAY OF MARCH, 2017

BETWEEN:

JCF CAPITAL ULC

Applicants

- and -

TALON INTERNATIONAL INC., MIDLAND DEVELOPMENT INC., 1456253
ONTARIO INC., 2025401 ONTARIO LIMITED, BARREL TOWER HOLDINGS
INC., HARVESTER DEVELOPMENTS INC., TALON INTERNATIONAL
DEVELOPMENT INC., TFB INC., 2263847 ONTARIO LIMITED AND 2270039
ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3 AS AMENDED

APPROVAL AND VESTING ORDER
(Waterous)

THIS MOTION, made by FTI Consulting Canada Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Talon International Inc. ("**Talon**"), Midland Development Inc., 1456253 Ontario Inc., 2025401 Ontario Limited, Barrel Tower Holdings Inc., Harvester

Developments Inc., TFB Inc., 2263847 Ontario Limited Talon International Development Inc., and 2270039 Ontario Limited (collectively the "**Debtors**") for an order (i) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Waterous Agreement**") between Talon as vendor and Janet Katherine Waterous as purchaser (the "**Purchaser**") dated as of February 19, 2016 and appended to the third report of the Receiver dated March 8, 2017 (the "**Third Report**") and vesting in the Purchaser all right, title and interests of the Debtors, and any right title and interest of Harvester to which the Crown may have rights, in and to the Unit as defined in the Waterous Agreement (the "**Unit**") and any personal property located thereon to the extent to be transferred in accordance with the Waterous Agreement (collectively, the "**Purchased Assets**"), (ii) directing Talon to take such additional steps and execute such additional documents as may be reasonably necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, including without limitation, assisting with the completion of the statement of adjustments; (iii) directing the Purchaser to pay the Net Proceeds (as defined below) on closing of the Transaction to the Receiver, on behalf of Talon; and (iv) authorizing the Receiver to hold the Net Proceeds on behalf of Talon and to hold same subject to a further order of the Court; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Stephanie Waugh sworn March 9, 2017 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and the Receiver is hereby authorized to execute such minor amendments to the Waterous Agreement as may be agreed between the Receiver and the Purchaser. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be

necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS** that Talon is hereby authorized and directed, as requested by the Receiver, to take such additional steps and execute such additional documents as may be reasonably necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, including without limitation, assisting with the completion of the statement of adjustments.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all right, title and interests of the Debtors, and any right title and interests of Harvester to which the Crown may have rights, in and to the Purchased Assets including the real property listed on Schedule B hereto (the "**Real Property**") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order Appointing Receiver made by Justice Hainey dated November 1, 2016 as amended by the Order of Justice Hainey dated December 20, 2016 in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the

Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that, for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Purchaser is hereby authorized and directed on closing of the Transaction to pay the Net Proceeds to the Receiver on behalf of Talon or as further directed in writing by the Receiver.

7. **THIS COURT ORDERS** that the Receiver is hereby authorized to hold the Net Proceeds on behalf of Talon and to hold same subject to a further order of this Court.

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

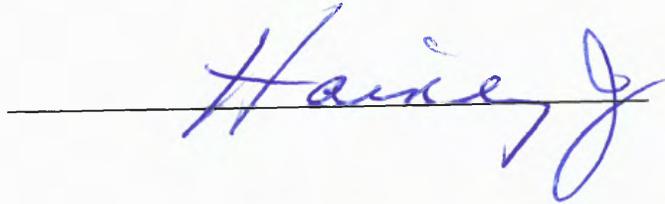
9. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of any of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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

MAR 16 2017

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-16-11573-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

JCF CAPITAL ULC

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- and -

TALON INTERNATIONAL INC., MIDLAND DEVELOPMENT INC., 1456253 ONTARIO INC., 2025401 ONTARIO LIMITED, BARREL TOWER HOLDINGS INC., HARVESTER DEVELOPMENTS INC., TALON INTERNATIONAL DEVELOPMENT INC., TFB INC., 2263847 ONTARIO LIMITED AND 2270039 ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED

**RECEIVER’S CERTIFICATE
(WATEROUS AGREEMENT)**

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hailey of the Ontario Superior Court of Justice (the “**Court**”) dated November 1, 2016 as amended and restated by order of the Court dated December 20, 2016, FTI Consulting Canada Ltd. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Talon International Inc. (“**Talon**”), Midland Development Inc., 1456253 Ontario Inc., 2025401 Ontario Limited, Barrel Tower Holdings Inc., Harvester Developments Inc.,

TFB Inc., 2263847 Ontario Limited Talon International Development Inc., and 2270039 Ontario Limited (collectively, the “**Debtors**”).

B. Pursuant to an Order of the Court dated March 16, 2017 (the “**Sale Approval Order**”), the Court approved the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Waterous Agreement**”) between Talon as vendor and Janet Katherine Waterous as purchaser (the “**Purchaser**”) dated as of February 19, 2016 and provided for the vesting in the Purchaser of the right, title and interest of the Debtors, and any right title and interest of Harvester to which the Crown may have rights, in and to the Purchased Assets, which vesting is to be effective with respect to Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets to the Receiver; (ii) that the conditions to Closing as set out in the Waterous Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Waterous Agreement or the Sale Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Net Proceeds for the Purchased Assets payable on the Unit Transfer Date pursuant to the Waterous Agreement;
2. The conditions to closing as set out in the Waterous Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

FTI Consulting Canada Ltd., in its capacity as Receiver of the undertaking, property and assets of Talon International Inc., Midland Development Inc., 1456253 Ontario Inc., 2025401 Ontario Limited, Barrel Tower Holdings Inc., Harvester Developments Inc., TFB Inc., 2263847 Ontario Limited Talon International Development Inc., and 2270039 Ontario Limited, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Real Property

Firstly: **76279-0209 (LT)**: Unit 5, Level 19, Toronto Standard Condominium Plan No. 2279 and its appurtenant interest; subject to and together with easements as set out in Schedule A as in AT3197446; City of Toronto

Secondly: **76279-0033 (LT)**: Unit 32, Level 4, Toronto Standard Condominium Plan No. 2279 and its appurtenant interest; subject to and together with easements as set out in Schedule A as in AT3197446; City of Toronto

**Schedule C – Claims to be deleted and expunged from title to Real Property
for both 76279-0209 (LT) & 76279-0033 (LT)**

1. Instrument No. AT1599258 registered on October 9, 2007, being a Charge in favour of BNY Trust Company of Canada
2. Instrument No. AT1599259 registered on October 9, 2007, being a Notice of General Assignment of Rents – General in favour of BNY Trust Company of Canada
3. Instrument No. AT1599260 registered on October 9, 2007, being a Charge in favour of Midland Resources Holding Limited
4. Instrument No. AT1614823 registered on October 26, 2007, being a Charge in favour of Lombard General Insurance Company of Canada
5. AT1614824 registered on October 26, 2007, being a Postponement (Midland Resources Holding Limited to Lombard General Insurance Company of Canada)
6. Instrument No. AT2050987 registered on April 20, 2009, being a Postponement (BNY Trust Company of Canada to City of Toronto)
7. Instrument No. AT2050988 registered on April 20, 2009, being a Postponement (BNY Trust Company of Canada to City of Toronto)
8. Instrument No. AT2050989 registered on April 20, 2009, being a Postponement (Midland Resources Holding Limited to City of Toronto)
9. Instrument No. AT2050990 registered on April 20, 2009, being a Postponement (Lombard General Insurance Company of Canada to City of Toronto)
10. Instrument No. AT3155593 registered on October 19, 2012, being a Postponement (Midland Resources Holding Limited to SP1 Nominee Inc., SP Nominee Inc. and Talon International Inc.)
11. Instrument No. AT3155657 registered on October 19, 2012, being a Postponement (Northbridge General Insurance Corporation to SP1 Nominee Inc., SP Nominee Inc. and Talon International Inc.)
12. Instrument No. AT3156473 registered on October 19, 2012, being a Transfer of Charge from BNY Trust Company of Canada to Computershare Trust Company of Canada

...continued

13. Instrument No. AT3156498 registered on October 19, 2012, being a Notice of Assignment of Rents - General in favour of Computershare Trust Company of Canada
14. AT3156688 registered on October 19, 2012, being a Postponement (Computershare Trust Company of Canada to SP1 Nominee Inc., SP Nominee Inc. and Talon International Inc.
15. AT450271 registered on March 3, 2017, being an Application to Register Court Order (Receivership)

**Schedule D – Permitted Encumbrances, Easements and Restrictive
Covenants
related to the Real Property**

(unaffected by the Vesting Order)

for both 76279-0209 (LT) & 76279-0033 (LT)

1. Plan 63BA1120 registered on January 6, 1978, being a Boundaries Act Plan
2. Instrument No. AT944480 registered on October 7, 2005, being a Notice (City of Toronto and Talon International Inc.)
3. Instrument No. AT1670733 registered on December 21, 2007, being a Notice (City of Toronto and Talon International Inc.)
4. Instrument No. AT2050578 registered on April 20, 2009, being a Notice (City of Toronto)
5. Instrument No. AT2604403 registered on January 21, 2011, being a Transfer of Easement from Talon International Inc. in favour of Rogers Communications Inc.
6. Instrument No. AT3045037 registered on June 14, 2012, being a Notice (SP1 Nominee Inc., SP Nominee Inc. and Talon International Inc.)
7. Instrument No. AT3195529 registered on December 12, 2012, being a Notice (Toronto Standard Condominium Corporation No. 2267 and Talon International Inc. and Trump Toronto Hotel Management Corp.)
8. Instrument No. TCP2279 registered on December 13, 2012, being a Standard Condominium Plan
9. Instrument No. AT3197446 registered on December 13, 2012 being a Condominium Declaration (Talon International Inc.)
10. Instrument No. AT3232772 registered on February 6, 2013, being a Condominium By-law (Toronto Standard Condominium Corporation No. 2279)
11. Instrument No. AT3232781 registered on February 6, 2013, being a Condominium By-law (Toronto Standard Condominium Corporation No. 2279)

12. Instrument No. AT3232787 registered on February 6, 2013, being a Notice (Toronto Standard Condominium Corporation No. 2279 and Talon International Inc.).

JCF CAPITAL ULC

- and -

TALON INTERNATIONAL INC., MIDLAND DEVELOPMENT INC., 1456253 ONTARIO INC., 2025401 ONTARIO LIMITED, BARREL TOWER HOLDINGS INC., HARVESTER DEVELOPMENTS INC., TALON INTERNATIONAL DEVELOPMENT INC., TFB INC., 2263847 ONTARIO LIMITED AND 2270039 ONTARIO LIMITED

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<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST PROCEEDINGS COMMENCED AT TORONTO</p>
<p>APPROVAL AND VESTING ORDER (WATEROUS)</p>
<p>CASSELS BROCK & BLACKWELL LLP Scotia Plaza 2100 - 40 King Street West Toronto, ON M5H 3C2</p>
<p>R. Shayne Kukulowicz LSUC No.: 30729S Tel: 416.860-6463 Fax: 416.640-3176 Email: skukulowicz@casselsbrock.com</p>
<p>Jane Dietrich LSUC No.: 49302U Tel: 416.860.5223 Fax: 416.640.3144 Email: jdietrich@casselsbrock.com</p>
<p><i>Lawyers for Receiver</i></p>