Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and –

2441472 ONTARIO INC.

Respondent

MOTION RECORD
(Approval and Vesting Order)

Date: August 31, 2021

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
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Lawyers for Grant Thornton Limited

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

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2441472 ONTARIO INC.

Respondent

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TAB 1

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

NOTICE OF MOTION
(Returnable August 12, 2021)

Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties (the "**Property**") of 2441472 Ontario Inc. ("**244**"), should this Honourable Court find it appropriate to grant the receivership application of Crystal Wealth Mortgage Strategy (the "**Mortgage Fund**"), by its Court-appointed receiver and manager, GTL (in such capacity, the "**CW Receiver**"), will make a motion to a judge presiding over the Commercial List on September 7, 2021, at 11:00 a.m. via judicial videoconference due to the COVID-19 emergency via the following Zoom coordinates: <https://airdberlis.zoom.us/j/95702384746?pwd=a1duNWJ6WVRtTXFaL29waFJxbnpBZz09>.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR**, among other things:

(a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;

(b) approving the agreement of purchase and sale between GTL, in its capacity as the interim receiver (in such capacity, the "**Interim Receiver**") and proposed receiver of the Property, and St. Marys Cement Inc. (Canada) (the "**Purchaser**") dated

August 13, 2021 (the “**Sale Agreement**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);

(c) vesting in the Purchaser all of 244’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) free and clear of any claims and encumbrances;

(d) sealing the Confidential Appendices (as defined in the first report (the “**First Report**”) to the Court submitted by the Interim Receiver and proposed receiver until closing of the Transaction or further Order of this Court; and

(e) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE**:

(a) 244 is an Ontario corporation, incorporated on November 12, 2014. 244’s registered office is located in Langley, British Columbia, and 244’s sole director and officer is Craig Clydesdale (“**Clydesdale**”);

(b) 244 installs and operates energy production equipment, and specifically for the Purchaser, 244 installed the equipment described as the MCS Cogen Mark 6 CoEnergy PoD (the “**CHP System**”) and heating, ventilation and air-conditioning equipment (the “**HVAC Equipment**”, and together with the CHP System, the “**Equipment**”), located at the premises of the Purchaser at 55 Industrial St., Toronto, Ontario (the “**SMC Property**”);

(c) the Equipment is operated by 244 pursuant to an Energy Services Agreement made between the Purchaser and 2363265 Ontario Inc. and subsequently assigned to 244;

(d) GTL was appointed by as the interim receiver (in such capacity, the "**Interim Receiver**") of the Property way of an Order of the Honourable Mr. Justice Cavanagh dated August 12, 2021 (the "**IR Order**");

(e) the purpose of the Interim Receiver's and Receiver's appointment is to monetize 244's sole asset, being the Equipment. The Equipment includes the HVAC Equipment, which is installed and operating at the SMC Property, and the CHP System, which is installed at the SMC Property, but which the Receiver understands does not function correctly;

(f) before seeking the appointment of the Interim Receiver, the CW Receiver engaged in extensive discussions and diligence with the Purchaser, to determine whether and how it would be possible to realize on the Equipment;

(g) as part of the CW Receiver's due diligence, the Purchaser provided the CW Receiver with the investigating engineering study prepared by Blackstone on July 2, 2020 (the "**Blackstone Report**"). Additionally, at the request of the CW Receiver, McGregor Allsop Limited completed an appraisal (the "**McGregor Appraisal**") of the Equipment on July 8, 2021;

(h) with the benefit of these reports, the CW Receiver determined that the only reasonable outcome would be to sell the Equipment directly to the Purchaser, at whose premises the Equipment was already installed, and which had indicated an interest in purchasing the Equipment, provided that a suitable purchase price could be negotiated;

(i) the Receiver is of the view that the Purchaser's offer to purchase the Equipment would net the highest realization and be the most appropriate transaction for the stakeholders, as:

(i) the CW Receiver, through its counsel, negotiated with the Purchaser's counsel for a prolonged period of time in an effort to get the best price for the Equipment;

(ii) it is unlikely for the Purchaser or any other party to pay more than nominal value for the CHP System, which does not currently operate. The Blackstone Report recommended the termination of the CHP System on the basis of "less than satisfactory operational issues and poor financial returns likely to be expected". Similarly, while the McGregor Appraisal noted that it was possible for the economics of the CHP System to be improved through modifications, there is no guarantee that such attempts would ever be successful;

(iii) the Purchaser's offer would not require the Receiver to expend resources to manage an auction process. Given the specialized nature of the Equipment, it is unlikely for the auction to generate sufficient interest to justify the costs;

(iv) in the Receiver's view, even if an auction process was to be conducted for the Equipment, it is extremely unlikely to result in a higher purchase price, because the estimated salvage value of the Equipment (as set out in the MacGregor Appraisal) is significantly lower than the offer by the Purchaser; and

(v) the proposed transaction provides the Receiver with an assured purchase price, rather than having to rely on a percentage of the auction sales to determine the recovery;

(j) the negotiations undertaken to arrive at the Sale Agreement were lengthy, but they eventually resulted in the execution of the Sale Agreement;

(k) the Sale Agreement is subject to certain conditions, including, without limitation: (i) the appointment of GTL as the Receiver; and (ii) this Court issuing an approval and vesting order approving the Sale Agreement and the Transaction and vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser free and clear of all encumbrances;

(l) the Receiver believes that the terms and purchase price of the Sale Agreement are commercially reasonable in the circumstances;

(m) the Receiver is seeking a sealing order in respect of the Confidential Appendices 1, 2, 3 and 4 to the First Report (collectively, the "**Confidential Appendices**") as they each contain commercially-sensitive information, the release of which prior to the closing of the Transaction would be prejudicial to the stakeholders of 244 should the Transaction not close;

(n) such other grounds as are set out in the First Report;

(o) subsections 47(1) and 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

(p) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;

(q) rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(r) such further and other grounds as counsel may advise and this Honourable Court may deem just.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

(a) the First Report, and the appendices attached thereto;

(b) such further and other evidence as counsel may advise and this Honourable Court may permit.

August 31, 2021

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Barristers & Solicitors
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Lawyers for the Grant Thornton Limited

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED and **2441472 ONTARIO INC.**

Applicant Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

FIRST REPORT TO THE COURT SUBMITTED BY GRANT THORNTON LIMITED IN ITS CAPACITY AS THE INTERIM RECEIVER AND PROPOSED RECEIVER

August 31, 2021

INTRODUCTION

1. This first report to the Court (the "**Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the interim receiver (in such capacity, the "**Interim Receiver**") and proposed receiver, without security, of all of the assets, undertakings and properties (the "**Property**") of 2441472 Ontario Inc. ("**244**"). This Report is filed in connection with:

   (a) an application made to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") by GTL, in its capacity as the Court-appointed receiver and manager (in such capacities, the "**CW Receiver**") of Crystal Wealth Management System Limited (the "**Company**") and certain additional persons and entities, including fifteen proprietary open-ended mutual fund trusts created and managed by the Company (individually or collectively, "**Crystal Wealth**"), including the Crystal Wealth Mortgage Strategy (formerly named Crystal Enhanced Mortgage Fund), seeking an Order, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, appointing GTL as the Court-appointed receiver (in such capacity, the "**Receiver**") over the Property; and

   (b) if this Court finds it appropriate to appoint GTL as the Receiver, a motion brought by the Receiver:

      (i) approving the agreement of purchase and sale between GTL, in its capacity as the interim receiver and proposed receiver of 244, and St. Marys Cement Inc. (Canada) (the "**Purchaser**") dated August 13, 2021 (the "**Sale Agreement**") and authorizing the Receiver to complete the transaction contemplated thereby (the "**Transaction**");

(ii) vesting in the Purchaser all of 244's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) free and clear of any claims and encumbrances; and

(iii) sealing the Confidential Appendices (as defined herein) to this Report until closing of the Transaction or further Order of this Court.

LIMITATIONS OF THIS REPORT

2. The information contained in this Report (the "**Information**") has been obtained from the records of Crystal Wealth, publicly available information, and/or is based upon discussions with, and representations made by, individuals connected with or professional advisors retained in this matter. The Interim Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness the Information in a manner that would comply with Canadian Generally Accepted Auditing Standards and the reader is, therefore, cautioned that this Report may not disclose all significant matters about 244.

3. The Interim Receiver assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction or use of this Report. Any use that a party makes of this Report, or any reliance on or decisions to be made based on it, is the responsibility of such party.

4. A copy of this Report and other relevant documents with respect to these proceedings will be made available on the Interim Receiver's website at: https://www.grantthornton.ca/service/advisory/creditor-updates/#2441472-Ontario-Inc.

BACKGROUND

5. 244 is an Ontario corporation, incorporated on November 12, 2014. 244's corporate profile report indicates that 244's registered office is located in Langley, British Columbia, and 244's sole director and officer is Craig Clydesdale ("**Clydesdale**"). 244's corporate profile report is attached hereto as **Appendix "A"**.

6. 244 installs and operates energy production equipment, and specifically for the Purchaser, 244 installed the equipment described as the MCS Cogen Mark 6 CoEnergy PoD (the "**CHP System**") and heating, ventilation and air-conditioning equipment (the "**HVAC Equipment**", and together with the CHP System, the "**Equipment**"), located at the premises of the Purchaser at 55 Industrial St., Toronto, Ontario (the "**SMC Property**").

7. The Equipment was operated by 244 pursuant to an Energy Services Agreement made between the Purchaser and 2363265 Ontario Inc. and subsequently assigned to 244 (collectively, the "**SMC ESA**"). Copies of the SMC ESA and the related assignments are attached collectively hereto as **Appendix "B**".

8. The Interim Receiver was appointed by way of an Order of the Honourable Mr. Justice Cavanagh dated August 12, 2021 (the "**IR Order**"). A copy of the IR Order is attached hereto as **Appendix "C"**. A copy of two related endorsements dated August 12, 2021 and August 13, 2021 are attached hereto as **Appendix "D"**.

ACTIONS OF THE INTERIM RECEIVER UPON APPOINTMENT

9. On Thursday, August 12, 2021, immediately after its appointment, the Interim Receiver instructed Blackstone Energy Services Inc. ("**Blackstone**") attend at the SMC Property to: (a) take

possession of and exercise control over the Equipment; (b) prevent any interruption of electricity, heating, air conditioning and ventilation services; and (c) preserve and protect the Equipment.

10. On Friday, August 13, 2021, upon the Interim Receiver receiving notice that the Equipment was properly secured by Blackstone, counsel to the Interim Receiver advised 244 and its counsel, Bill McKenzie (“**McKenzie**”) of the Interim Receiver’s appointment and the related hearing scheduled to proceed on September 7, 2021 at 11:00 a.m. for the receivership application and sale approval motion. A copy of such correspondence is attached hereto as **Appendix “E”**.

11. On Saturday, August 14, 2021, Blackstone reported to the Interim Receiver and advised that it had disabled remote access to the Equipment, ensured proper operation of the HVAC Equipment and completed a general investigation of the CHP System. Blackstone specifically noted that outstanding tasks included (a) completing further testing of the automatic switch gear and diesel back-up generator, and (b) creating a method to allow the Purchaser’s building operator to access the building automation system.

12. On Monday, August 16, 2021, McKenzie wrote to counsel to the Interim Receiver to request: (a) all documents that were filed in connection with the IR Order; (b) a “full report” on why the IR Order contains permissive language such as “but not obligated”; and (c) “a full status report on a daily basis” until satisfied that the Interim Receiver has taken full responsibility for the Equipment. A copy of such correspondence is attached hereto as **Appendix “F”**.

13. On Friday, August 20, 2021, Blackstone reported to the Interim Receiver that it was continuing its efforts to test the Equipment, provide visibility into the building automation system and prepare for the ongoing maintenance and management of the system.

14. On Friday, August 20, 2021, counsel to the Interim Receiver advised McKenzie and Clydesdale that the Interim Receiver had taken full responsibility for the operation of the Property subject to the interim receivership. A copy of such correspondence is attached hereto as **Appendix "G"**.

15. On Monday, August 30, 2021, McKenzie wrote to counsel to the Interim Receiver to: (a) serve the responding motion record of 244; and (b) request that the Interim Receiver file 244's responding motion record with the Commercial List on behalf of 244, and rectify the hyperlink to the E-Service Protocol of the Commercial List found in the IR Order and the Model Receivership Order. A copy of such correspondence is attached hereto as **Appendix "H"**.

16. As of the date of this Report, the Interim Receiver had not received any further communications from McKenzie and Clydesdale, other than as set out herein. The Interim Receiver continues to work with Blackstone to prevent any interruption of services and preserve the Equipment.

17. The terms of the IR Order provides that the Interim Receiver's mandate shall only continue until the earlier of:

(a) the taking of possession of the Property by a receiver within the meaning of subsection 243(2) of the BIA;

(b) the taking of possession of the Property by a trustee in bankruptcy; and

(c) the expiry of 30 days after the date o the IR Order.

MOTION FOR APPROVAL AND VESTING ORDER

18. The purpose of the Interim Receiver's and proposed receiver's appointment is to monetize 244's sole asset, being the Equipment. The Equipment includes the HVAC Equipment, which is installed and operating at the SMC Property, and the CHP System, which is installed at the SMC Property, but which the Receiver understands does not function correctly.

19. Before seeking the appointment of the Interim Receiver, the CW Receiver engaged in extensive discussions and diligence with the Purchaser, to determine whether and how it would be possible to realize on the Equipment.

20. As part of the CW Receiver's due diligence, the Purchaser provided the CW Receiver with the investigating engineering study prepared by Blackstone on July 2, 2020 (the "**Blackstone Report**"). The Blackstone Report is attached hereto as **Confidential Appendix "1"**. Additionally, at the request of the CW Receiver, McGregor Allsop Limited completed an appraisal (the "**McGregor Appraisal**") of the Equipment on July 8, 2021. A copy of the McGregor Appraisal is attached hereto as **Confidential Appendix "2"**.

21. With the benefit of these reports, the CW Receiver determined that the only reasonable outcome would be to sell the Equipment directly to the Purchaser, at whose premises the Equipment was already installed, and which had indicated an interest in purchasing the Equipment, provided that a suitable purchase price could be negotiated.

22. The proposed receiver is of the view that the Purchaser's offer to purchase the Equipment would net the highest realization and be the most appropriate transaction for the stakeholders, as:

(a) the CW Receiver, through its counsel, negotiated with the Purchaser's counsel for a prolonged period of time in an effort to get the best price for the Equipment. A copy of one such chain of correspondence is attached hereto as **Confidential Appendix "3"**;

(b) it is unlikely for the Purchaser or any other party to pay more than nominal value for the CHP System, which does not currently operate. The Blackstone Report recommended the termination of the CHP System on the basis of "less than satisfactory operational issues and poor financial returns likely to be expected". Similarly, while the McGregor Appraisal noted that it was possible for the economics of the CHP System to be improved through modifications, there is no guarantee that such attempts would ever be successful;

(c) the Purchaser's offer would not require the proposed receiver to expend resources to manage an auction process. Given the specialized nature of the Equipment, it is unlikely for the auction to generate sufficient interest to justify the costs;

(d) in the proposed receiver's view, even if an auction process was to be conducted for the Equipment, it is extremely unlikely to result in a higher purchase price, because the estimated salvage value of the Equipment (as set out in the MacGregor Appraisal) is significantly lower than the offer by the Purchaser; and

(e) the proposed transaction provides the proposed receiver with an assured purchase price, rather than having to rely on a percentage of the auction sales to determine the recovery.

23. The negotiations undertaken to arrive at the Sale Agreement were lengthy, but they eventually resulted in the execution of the Sale Agreement. A redacted copy of such Sale Agreement is attached hereto as **Appendix "I"**. An unredacted copy of the Sale Agreement is attached as **Confidential Appendix "4"**.

24. The Sale Agreement is subject to certain conditions, including, without limitation: (a) the appointment of GTL as the Receiver; and (b) this Court issuing an approval and vesting order approving the Sale Agreement and the Transaction and vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser free and clear of all encumbrances.

25. The proposed receiver believes that the terms and purchase price of the Sale Agreement are commercially reasonable in the circumstances.

26. The proposed receiver is seeking a sealing order in respect of the **Confidential Appendices "1", "2", "3" and "4"** (collectively, the "**Confidential Appendices**") as they each contain commercially-sensitive information, the release of which prior to the closing of the Transaction would be prejudicial to the stakeholders of 244 should the Transaction not close.

CONCLUSION

27. The Interim Receiver and proposed receiver respectfully requests that this Court grant the relief sought in this Report, in the form of the draft Order enclosed with the Motion Record.

[*signature page follows*]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of August, 2021.

GRANT THORNTON LIMITED, in its capacity as the interim receiver and proposed receiver of 2441472 Ontario Inc. and not in its personal or corporate capacity

Bruce S. Bando, CPA, CA, CIRP, LIT
Vice President

Appendix "A"

CORPORATION PROFILE REPORT

Ontario Corp Number
2441472

Corporation Name
2441472 ONTARIO INC.

Incorporation Date
2014/11/12

Jurisdiction
ONTARIO

Corporation Type
ONTARIO BUSINESS CORP.

Corporation Status
ACTIVE

Former Jurisdiction
NOT APPLICABLE

Registered Office Address
CRAIG CLYDESDALE
440 REYNOLDS STREET

OAKVILLE
ONTARIO
CANADA L6J 3M4

Date Amalgamated
NOT APPLICABLE

Amalgamation Ind.
NOT APPLICABLE

New Amal. Number
NOT APPLICABLE

Notice Date
NOT APPLICABLE

Letter Date
NOT APPLICABLE

Mailing Address

200 NORTH SERVICE ROAD

Suite # 385
OAKVILLE
ONTARIO
CANADA L6M 2Y1

Revival Date
NOT APPLICABLE

Continuation Date
NOT APPLICABLE

Transferred Out Date
NOT APPLICABLE

Cancel/Inactive Date
NOT APPLICABLE

EP Licence Eff.Date
NOT APPLICABLE

EP Licence Term.Date
NOT APPLICABLE

Number of Directors Minimum	Number of Directors Maximum	Date Commenced in Ontario	Date Ceased in Ontario
00001	00010	NOT APPLICABLE	NOT APPLICABLE

Activity Classification
NOT AVAILABLE

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2441472	2441472 ONTARIO INC.

Corporate Name History	Effective Date
2441472 ONTARIO INC.	2014/11/12

Current Business Name(s) Exist: NO

Expired Business Name(s) Exist: NO

Administrator:
Name (Individual / Corporation)

CRAIG

CLYDESDALE

Address

200 NORTH SERVICE ROAD WEST
UNIT 1
Suite # 385
OAKVILLE
ONTARIO
CANADA L6M 2Y1

Date Began	First Director	
2014/11/12	NOT APPLICABLE	

Designation	Officer Type	Resident Canadian
DIRECTOR		Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2441472	2441472 ONTARIO INC.

Administrator:
Name (Individual / Corporation)

CRAIG

CLYDESDALE

Address

200 NORTH SERVICE ROAD WEST
UNIT 1
Suite # 385
OAKVILLE
ONTARIO
CANADA L6M 2Y1

Date Began	First Director	
2014/11/12	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	PRESIDENT	Y

Administrator:
Name (Individual / Corporation)

CRAIG

CLYDESDALE

Address

200 NORTH SERVICE ROAD WEST
UNIT 1
Suite # 385
OAKVILLE
ONTARIO
CANADA L6M 2Y1

Date Began	First Director	
2014/11/12	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	SECRETARY	Y

CORPORATION PROFILE REPORT

Ontario Corp Number

2441472

Corporation Name

2441472 ONTARIO INC.

Administrator:
Name (Individual / Corporation)

CRAIG
H
CLYDESDALE

Address

534 GOLFVIEW COURT

OAKVILLE
ONTARIO
CANADA L6M 4W6

Date Began	First Director	
2014/11/12	NOT APPLICABLE	

Designation	Officer Type	Resident Canadian
DIRECTOR		Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2441472	2441472 ONTARIO INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2020/05/13

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

CORPORATION DOCUMENT LIST

Ontario Corporation Number
2441472

Corporation Name
2441472 ONTARIO INC.

ACT/CODE	DESCRIPTION	FORM	DATE (YY/MM/DD)	
CIA	CHANGE NOTICE PAF: DEVINE, PAMELA	1	2020/05/13	
BCA	DEFAULT BCA (REG. OFFICE)	241+3	2019/08/15	
CIA	REQUIREMENT TO FILE	7	2019/03/20	
CIA	ANNUAL RETURN 2018 PAF: DEVINE, PAMELA	1C	2019/03/03	
CIA	ANNUAL RETURN 2017 PAF: CLYDESDALE, CRAIG	1C	2017/11/05	(ELECTRONIC FILING)
CIA	ANNUAL RETURN 2016 PAF: CLYDESDALE, CRAIG	1C	2017/07/02	(ELECTRONIC FILING)
CIA	CHANGE NOTICE PAF: JAMES, LISA	1	2016/10/28	(ELECTRONIC FILING)
CIA	ANNUAL RETURN 2015 PAF: CLYDESDALE, CRAIG	1C	2016/10/02	(ELECTRONIC FILING)
CIA	CHANGE NOTICE PAF: CLYDESDALE, CRAIG	1	2015/07/28	(ELECTRONIC FILING)
CIA	INITIAL RETURN PAF: CLYDESDALE, CRAIG	1	2014/11/26	(ELECTRONIC FILING)
BCA	ARTICLES OF INCORPORATION	1	2014/11/12	(ELECTRONIC FILING)

CORPORATION DOCUMENT LIST

Ontario Corporation Number
2441472

Corporation Name
2441472 ONTARIO INC.

ACT/CODE	DESCRIPTION	FORM	DATE (YY/MM/DD)

THIS REPORT SETS OUT ALL DOCUMENTS FOR THE ABOVE CORPORATION WHICH HAVE BEEN FILED ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

ALL "PAF" (PERSON AUTHORIZING FILING) INFORMATION IS DISPLAYED EXACTLY AS RECORDED IN ONBIS. WHERE PAF IS NOT SHOWN AGAINST A DOCUMENT, THE INFORMATION HAS NOT BEEN RECORDED IN THE ONBIS DATABASE.

Appendix “B”

Strictly Private and Confidential

ENERGY SERVICES AGREEMENT

ST MARYS CEMENT INC. (CANADA)

and

MCS ENERGY.

ENERGY SERVICES AGREEMENT

THIS AGREEMENT, dated as of this 27 day of November, 2013 ("Execution Date") by and between St. Marys Cement Inc. (Canada) (hereinafter "**Customer**"), a corporation existing under the laws of Ontario and 2363265 Ontario Inc c.o.b. MCS Energy, ("**Supplier**") a corporation existing under the laws of Ontario witnesses that whereas:

This Agreement evidences the terms and conditions on which Customer has agreed to purchase from the Supplier, and the Supplier has agreed to sell to Customer, Energy generated from the MCS COGEN MARK 6 CoEnergyPoD (hereinafter called 'MCS PoD') which will be located on the SMC premises located at 55 Industrial St., Toronto, Ontario M4G 3W9 ("**Property**").

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed between the Supplier and Customer as follows:

DEFINITIONS

1.1 Definitions.

In this Agreement, the following words shall have the following meanings unless the context requires otherwise, and will apply equally to single and plural forms:

"**Affiliate**" means, with respect to any Person, any other Person which directly or indirectly Controls, is Controlled by, or is under common Control with such Person.

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, ordinances, rules, by-laws, guidelines, treaties and Regulations, and all applicable directives, Orders, judgments, injunctions, awards and decrees of any Governmental Authority whether or not having the force of law, including, without limitation, Environmental Laws.

"**Applicable Rate**" means that annual rate of interest announced from time to time by the Royal Bank as its prime rate for commercial loans in Toronto, plus 1%.

"**Bankruptcy Event**" means, with respect to a party, such party (A) is dissolved; (B) admits in writing its inability generally to pay its debts as they become due; (C) makes a general assignment, arrangement or compromise with or for the benefit of its creditors; (D) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (E) has a resolution passed for its winding-up or liquidation; (F) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets and/or those assets relating to the MCS PoD by reason of its insolvency; or (G) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"**Business Day**" means a day on which banks are open for business in the Province of Ontario other than a Saturday, Sunday or statutory holiday in Ontario.

"**Claim Notice**" means a notice by a Customer or a Supplier seeking indemnification pursuant to Article 8.

"**Commencement Date**" means the date when the MCS PoD begins generating electricity.

"**Commissioning**" means the process whereby the MCS PoD (which is installed, or is complete or near completion) is tested to verify if it functions according to its design objectives and specifications.

"**Confidential Information**" means all information of a confidential nature, including financial and operational information, which has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

"**Consultant's Recommendations**" has the meaning given in Section 7.2(a)(i).

"**Contract Capacity**" means the supply on demand of a maximum of 270 (two hundred and seventy) kilowatts per hour of electricity and 900 (nine hundred) BTU per hour of heat.

"**Contract Year**" means the twelve month periods commencing on the Commencement Date or any anniversary thereof and ending on the day immediately preceding the next anniversary of the Commencement Date.

"**Control**" means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

"**CPI**" shall mean the Consumer Price Index for Canada as published by Statistics Canada and as adjusted after initial publication, if applicable, or if such index is no longer published or the method of computation thereof is substantially modified, a mutually agreeable alternative index.

"**Customer**" means SMC, and its successors and assigns.

"**Customer Default**" means the events described in Section 7.1(b).

"**Customer Statement**" has the meaning set out in Section 10.2(g).

"**Disclosing Party**", with respect to Confidential Information, is the party providing or disclosing such Confidential Information and may be the Customer or the Supplier, as applicable.

"**Documents**" means this Agreement and the License Agreement.

"**Electricity Contract Capacity**" means the Contract Capacity.

"**Electricity Delivery Point**" means the location designated by Customer as the point(s) at which the Supplier is to deliver the electricity to be supplied hereunder.

"**Energy**" means electricity and heat.

"**Energy Center Assets**" means the MCS PoD and including the structure and all of the equipment and other physical assets that are installed as well as all permissions and easements required in order to provide the services described in this agreement.

"**Energy Charge**" means the amount set out in Section 1.5(a).

"**Energy Transfer Station**" means the equipment which is functionally located between the MCS PoD and the Customer Energy Systems, including, without limitation, the point of interconnection between the Supplier's equipment and the Customer Energy Systems, piping, valves, meters and control equipment, and which is installed by the Supplier in the Licensed Area pursuant to Section 3.1 for use in providing energy services to Customer.

"**Environmental Laws**" means all Applicable Laws, Regulations, standards, requirements, ordinances, policies, guidelines, Orders, approvals, Notices, Permits or directives, or parts thereof, pertaining to environmental or occupational health and safety matters, in effect as at the date hereof and as may be brought into effect or amended at a future date.

"**Expenses**" means any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including, without limitation, court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

"**Force Majeure**" has the meaning set out in Section 6.1(a).

"**Fuel**" means natural gas.

"**Fuel Surcharge Fee**" has the meaning set out in Section 1.3 and Schedule 1.3.

"**Good Utility Practices**" means first class utility practices employed by industry leading electrical energy utilities so as to maximize reliability of supply to its customers, including the employment of industry best practices in respect of maintenance, operation and capital renewal/upgrades.

"**Governmental Authority**" means any government, parliament, legislature, or commission or board of any government, parliament or legislature, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity having or, in the case of any of the foregoing, constituted under federal, state or other legislation, purporting to have jurisdiction in the relevant circumstances, or any Person acting or purporting to act under the authority of any of the foregoing (including, without limitation, any arbitrator) or any other authority charged with the administration or enforcement of Applicable Laws. For greater certainty, the IESO shall be considered a Governmental Authority for the purposes of this Agreement.

"**IESO**" means the applicable Independent Electricity System Operator, or any successor thereto.

"**IESO Market Rules**" means the market rules made by the IESO, as amended from time to time.

"**including**" means including without limitation, and "**includes**" means includes without limitation.

"**Indemnified Party**" means the party seeking indemnification pursuant to Section 8.3.

"**Indemnitor**" means the party from which indemnification is sought pursuant to Section 8.3.

"**Initial Term**" has the meaning set out in Section 9.1.

"**kWh**" means the number of kilowatts produced in an hour.

"**Loss**" means any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges, to the extent they result from any matter indemnified against hereunder.

"**MCS PoD**" means the on-site Mark6 Power-on-Demand power plant that is owned, operated and maintained by MCS Energy.

"**Normal Operating Period**" means the period commencing on the Commencement Date and ending at the end of the Term.

"**Notice**" shall mean any citation, directive, Order, claim, litigation, inspection report, investigation report, complaint, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any Person, including any Governmental Authority.

"**Orders**" means all applicable orders, decisions, directives, declarations, decrees, injunctions, writs, judgments, rulings, awards, requests, or the like, rendered by any Governmental Authority including, without limitation, those issued under or pursuant to any Environmental Laws.

"**Payment Default**" has the meaning set out in Section 7.1(b)(i).

"**Performance Failure**" has the meaning set out in Section 7.1(a)(i).

"**Permits**" means all permits, consents, waivers, applications, authorizations, licences, certificates, approvals, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Governmental Authority, or by any other third party, including, without limitation, any Permits pertaining to Environmental Laws.

"**Person**" means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative or governmental authority.

"**Plant**" when it relates to the structure and equipment being in installed means the Smart Generation, Power-on-Demand energy production system being the MCS PoD.

"**Receiving Party**", with respect to Confidential Information, is the Party receiving Confidential Information and may be the Customer or the Supplier, as applicable.

"**Regulations**" means all rules, regulations, by-laws or the like promulgated under or pursuant to any Applicable Laws, including, without limitation, environmental Regulations.

"**Renewal Term**" has the meaning given in Section 9.1.

"**Secured Lender**" means a secured lender under a Secured Lender Security Agreement.

"**Secured Lender's Security**" means an agreement or instrument, including a deed of trust or similar instrument containing a security interest, or similar instrument with respect to all or any part of the Supplier's Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

"**Service and Quality Committee**" has the meaning set out in Section 4.2.

"**Supplier**" means MCS Energy

"**Supplier Default**" means the events described in Section 7.1(a).

"**Supplier's Interest**" means the right, title and interest of the Supplier in or to the MCS PoD, the Documents, or any benefit or advantage of any of the foregoing.

"**Tax**" means any present or future tax (including all sales and use taxes), levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any federal, state or local taxing authority on electrical service provided by Supplier or on any payments made by Customer, under this Agreement, excluding Supplier's income tax.

"**Term**" means the Initial Term together with all Renewal Terms, if applicable, unless earlier terminated in accordance with the terms of this Agreement..

"**Utility**" means the applicable electric utility or common electricity distribution/ transmission carrier.

1.2 Schedules.

The following are the Schedules annexed hereto, incorporated by reference and deemed to be a part hereof:

Schedule 1.3	Energy Surcharge Fee
Schedule 12.2	Arbitration Procedures

ARTICLE 1

ENERGY SERVICE

1.3 Energy.

(a) Commencing on the Commencement Date, the Supplier agrees to supply to Customer at the Electricity Delivery Point electricity necessary to meet the electricity needs of Customer, available electricity generation capacity not to exceed 270 (two hundred and seventy) kilowatts per hour. Supplier shall also supply available energy heat generation to Customer not to exceed 900 (nine hundred) BTU per hour. Provided however that heat generation shall not be available during periods necessary for servicing or maintenance) or during periods where an adequate supply of natural gas is not available to the Supplier.

(b) The Supplier shall deliver electricity to the Customer from the MCS PoD and/or the Utility or the electricity transmission grid in order to meet the Energy obligations set out in this Agreement..

(c) If, for any reason, the Supplier is unable to supply and deliver from the MCS PoD Energy to Customer which meets Customer's requirements as contemplated by this Agreement, the Supplier shall transmit, carry and deliver electricity from the electricity grid or Utility.

(d) To the extent that there is electricity unutilized by the Customer at any given time, the Supplier shall sell such electricity to the Utility or into the electricity grid, if available, provided that at no time the Customer is disadvantaged. Supplier shall pay to SMC an agreed upon portion of the revenue derived from Supplier selling electricity to the Utility and/or into the electricity grid.

1.4 Operational Covenants.

(a) Within 45 days of the Execution Date of this agreement the Customer shall pay to the Supplier Three Hundred Thousand and 0/100 Dollars ($300,000.00) as a deposit.

(b) Within 360 days of the Execution Date of this agreement, Supplier shall deliver and install, at its sole risk and expense, the MCS PoD, to the extent the MCS PoD is producing Energy, on the Licensed Area, set out in the License Agreement (a copy of which is attached as Schedule A which Licenced Area is to be leased to MCS Energy pursuant to the agreement to lease which is Schedule B hereto. If Supplier fails to meet the aforementioned obligations, Customer may either (1) terminate this Agreement by notifying Supplier in writing and Supplier shall promptly, within five (5) business days of receipt of written notice, remove the MCS PoD from Licensed Area at Supplier's sole risk and expense or (2) provide Supplier with a thirty (30) day extension to install the MCS PoD so that it produces Energy.

(c) At all times during the Term, the Supplier shall supply Energy and maintain all equipment and appurtenances to the MCS PoD, including performing routine maintenance and maintenance and upgrades of a capital nature thereon, in a good and workmanlike manner and at Supplier's sole expense.

(d) At all times during the Term, the Supplier and Customer jointly shall supply natural gas to the MCS PoD in quantities sufficient for the continuous operation of the MCS PoD. The supply of natural gas shall be measured by a meter installed for or by the Supplier in or near the MCS PoD which shall at all times be accessible to the either party.

(e) The Supplier represents and warrants that the use, handling, storage and disposal of all chemicals, fuel, treated water or hazardous substances used at the MCS PoD shall be in accordance with Applicable Law.

(f) The Supplier shall advise the Customer at least fourteen (14) days in advance of all planned servicing, maintenance and outages of the MCS PoD and coordinate such maintenance and outages such that there shall be no disruption to the supply of Energy to the Customer.

(g) The Supplier will not at any time engage in any conduct or permit any Persons engaged or employed by the Supplier to engage in any conduct that the Customer, acting reasonably determines is contrary to the public interest or prejudicial to the integrity or reputation of the Customer.

(h) The Supplier represents and warrants that its employees and agents will comply with all Applicable Laws and the site policies of the Customer from time to time in force and communicated to the Supplier in writing.

1.5 Energy Charge and Payment.

(a) Beginning on the first day of the month following the Commencement Date the Customer agrees to pay the Supplier in respect of its consumption of electricity the sum of $25,950 (Twenty Five Thousand Nine Hundred and Fifty and 0/100 Dollars) per month plus applicable taxes where required by law (the "**Energy Charge**"). This Energy Charge shall be paid by an automated clearing house to the bank account designated by the Supplier on the first business day of every month during the term of this agreement without set off or deduction for any other reason.

(b) The Customer acknowledges and agrees that on each occasion when the cost of natural gas which is being utilized by the Supplier pursuant to this agreement increases after the date of execution of this agreement then the Supplier shall be entitled to charge an **Energy Surcharge Fee** each month which shall be calculated according to Schedule 1.3 to this agreement and paid on the first of each month along with the payment as set out above.

(c) The Parties agree that the amounts to be paid by the Customer under Section 1.5(a) are inclusive of all costs, fees, levies and charges associated with supplying the Contract Capacity and delivering Energy to the Customer.

1.6 Adjustments to Energy Price.

Commencing on the first anniversary of the Commencement Date and on every anniversary thereafter, the Energy Charge shall be adjusted by the annual change in CPI.

The Customer will pay all Taxes owed by the Customer in connection with any payments hereunder, including without limitation, any Taxes which the Supplier is required by law to collect. Such Taxes as Supplier is required to collect will be included with the payment set out in Section 1.3 (a).

1.7 Changes to Energy Charges.

The Energy Charge shall not change except as provided herein. For clarity, such charge shall not be affected by any increases in the Supplier's labour, operating, maintenance, environmental or other costs associated with providing electricity, including those which result from the adoption of, or any change in, any Applicable Laws or Regulations of any Governmental Authority after the date hereof, or from any change in the interpretation of same by any court, tribunal or regulatory authority of any Applicable Law or Regulation after such date. Provided however if there is any new tax or levy imposed by any authority subsequent to the execution of this agreement then the Customer shall pay it only if the tax is levied against the Customer.

1.8 Set-Off.

Notwithstanding any other provisions of this or any other agreement between the parties the Customer shall not be entitled, at any time, to set off against, or make any deduction from, amounts owing by it by the Supplier under this or any other Agreement, any amounts asserted by the Customer to be owing to the Customer by the Supplier.

Article 2
ENERGY TRANSFER STATIONS, CONNECTION OF SYSTEM

2.1 Energy Transfer Stations.

(a) The Supplier shall, at its sole cost and expense, conduct its operations in order to ensure delivery of the Contract Capacity to the Customer as set out in Article 2. The MCS PoD Assets including all wiring and piping shall remain personal property and no item thereof shall become a fixture, notwithstanding its installation on or attachment to real property or any improvement located thereon. Plates or markings may be affixed by the Supplier to the MCS PoD Assets (including the Energy Transfer Stations) owned by the Supplier to indicate its ownership thereof.

(b) The service stop valves and meter stop valves and other equipment on the Supplier's side of the Energy Transfer Station shall be operated only by authorized personnel of the Supplier, except that the Customer may close the service stop valves or open switches when necessary due to emergency circumstances which require immediate cessation of the electrical supply, and the Customer shall give the Supplier immediate notice of any such cessation. The Supplier shall close the service stop valves on the Energy Transfer Station to allow the Customer to repair or perform maintenance on the Customer's own Energy Systems as and when reasonably requested by the Customer.

(c) The service stop valves and switches comprising part of the Customer Energy Systems shall be operated only by authorized personnel of Customer, except that the Supplier may close the service stop valves or open switches when necessary due to emergency circumstances which require immediate cessation of the operation of Customer Energy Systems, and the Supplier shall give Customer immediate notice of any such cessation.

Article 3
REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations, Warranties and Covenants of Supplier.

The Supplier hereby represents, warrants and covenants to the Customer as follows:

(a) the Supplier has the necessary capacity and authority required by Applicable Law and by its constating documents to enter into this Agreement and fulfil its obligations hereunder;

(b) the execution and delivery by the Supplier of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite corporate action;

(c) that the entering into of this Agreement and the fulfilment of the Supplier's obligations hereunder does not contravene any law, statute or contractual obligation of the party giving the representation or warranty;

(d) all permits, approvals, licenses and other authorizations from Governmental Authorities and the Utility necessary to operate the MCS PoD and to deliver energy as contemplated by this Agreement shall have been obtained during the installation process and remain in force during the Term; and

(e) the Supplier shall diligently perform all of its obligations under the Documents and all documents and agreements delivered thereunder or contemplated thereby.

The Supplier acknowledges that Customer is relying on the representations and warranties set out in this Section 3.1 which shall continue in force during the Term.

3.2 Representations and Warranties by Customer.

Customer hereby represents and warrants to Supplier as follows:

(a) the Customer has the necessary capacity and authority required by Applicable Law to enter into this Agreement and fulfil its obligations hereunder;

(b) the execution and delivery by the Customer of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite corporate action;

(c) the entering into of this Agreement and the fulfilment of the Customer's obligations hereunder does not contravene any law, statute or contractual obligation of the party giving the representation or warranty; and

Customer acknowledges that the Supplier is relying on the representations and warranties set out in this Section 3.2 which shall continue in force during the Term.

3.3 Survival.

The representations and warranties contained in this Article 3 shall survive the execution and delivery of this Agreement.

Article 4
ACCESS AND ADDITIONAL COVENANTS AND RIGHTS

4.1 Right of Access.

Subject to the License Agreement and compliance with Applicable Law, the Supplier's representatives shall have the right of access to the Energy Transfer Stations and all of the Supplier's other equipment and piping in and attached or adjacent to the Licensed Area on a 24-hour, every-day basis for the purposes of operating, installing, inspecting, testing, protecting, servicing, maintaining, replacing and removing the Energy Transfer Stations or the Energy Center Assets or any component thereof and its other equipment and other property, or for any other proper purpose, so long as said access does not interfere with Customer's operations.

4.2 Service and Quality Committee.

Within ninety (90) days after the Commencement Date, the parties shall, upon request of the Customer, form a Service and Quality Committee (the "**Service and Quality Committee**") in respect of the provision of energy. The mandate of this committee shall be to review and report to management on any issues raised between the parties with respect to installation, operations and supply of energy as contemplated by this agreement.

4.3 Record Retention and Audit.

The Supplier shall keep complete and accurate records and all other data required, including energy production, consumption and delivery data and detailed operational records for the MCS PoD, for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Applicable Law but for no less than for four (4) years after the creation of the record or data. The Supplier upon prior written notice from the Customer and during normal business hours, shall provide access to the Customer to all of the relevant and appropriate operating records and data kept by it relating to this Agreement to verify or audit information provided in accordance with this Agreement. Moreover, the Supplier agrees and consents to the IESO (if applicable), the Utility, if applicable, or any other relevant third party providing to the Customer all relevant meter and invoice data regarding the MCS PoD required by the Customer in order to verify information provided pursuant hereto. The Customer may use its own employees for purposes of any such review of records or may at its own expense appoint an auditor to conduct its audit. If an audit or examination discloses that Supplier has understated Energy supplied by Supplier for any period, then Supplier shall credit Customer, within 15 days after receipt of written demand from Customer, the under supply of Energy. Customer's acceptance of the credit from Supplier shall be without prejudice to Customer's examination, audit, and other rights under this Agreement.

4.4 Insurance Coverage.

The Supplier shall obtain and maintain in full force and effect during the term of this Agreement, (a) Worker's Compensation Insurance as required by applicable law and employer's liability insurance with limits of at least $1 million bodily injury by accident; (b) commercial general liability insurance as shall protect Customer from claims for damages for bodily injury and property damage with limits of at least $3 million per each occurrence of bodily injury and property damage; and (c) auto liability with limits of not less than $3 million for owned, hired, and non-owned motor vehicles. Customer shall be named as additional insured's under the commercial general liability and auto liability policies. A waiver of subrogation shall apply in favor of Customer on the general liability, auto liability and workers compensation policies. Coverage of the umbrella or excess liability the policy maintained by Seller shall follow the primary liability coverage form and endorsements. These insurance policies shall stipulate that the insurance afforded the additional insured's shall apply as primary insurance and that any other insurance claimed by the additional insured's will be excess only and will not contribute with Customer's insurance. These policies shall contain the usual separation of insured wording indicating that, except for limits of liability, the policies shall operate as though separate policies were issued to each insured. The insurance limits specified above may be met by a combination of primary insurance policy limits and/or umbrella/excess limits. Before entering the Property, Supplier must furnish Customer with copies of the policies of insurance required by this Agreement or certificates of insurance together with copies of the endorsements evidencing the requirements set forth in this Section 4.4.

4.5 Environmental Credits.

All environmental attributes associated with a generating facility having decreased environmental impacts (including emission reduction credits) (collectively, "Environmental Credits") associated with the MCS PoD shall belong to the Supplier and Customer equally. The Customer agrees to assist the Supplier and provide the Supplier with all documentation and other evidence as necessary to enable the Supplier to register, verify, quantify and obtain the full benefit of all such Environmental Credits, at the Supplier's cost and expense.

Article 5
CONFIDENTIAL INFORMATION

5.1 Obligation not to Disclose.

From Execution Date of this Agreement to and following the expiry of the Term or termination of this Agreement, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

(a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 5 by any of its Representatives;

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 5.2; and

(c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or investor or prospective Secured Lenders or investors and its advisors, to the extent necessary for securing financing for the MCS PoD, provided that any such lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such lender or investor has covenanted in favour of the Customer to hold such Confidential Information confidential on terms substantially similar to this Article 5.

5.2 Notice Preceding Compelled Disclosure.

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

5.3 Return of Information.

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/ archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any

Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations and shall keep such retained copy subject to the terms of this Article 5.

5.4 Injunctive and Other Relief.

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third party to whom the Disclosing Party owes a duty of confidence and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Article 5.

5.5 Survival.

The provisions of this Article 5 shall survive any termination or expiry of this Agreement for s period of three (3) years and which shall prevail over any inconsistent provisions in this Agreement.

Article 6
FORCE MAJEURE

6.1 Force Majeure.

(a) In this Agreement, "Force Majeure" means an event, condition or circumstance (and the effects thereof) beyond the reasonable control and without the fault or negligence of the party claiming Force Majeure condition that prevents a Party from performing its obligations hereunder, and shall include

(i) acts of God, including extreme wind, ice, hail, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;

(ii) fires or explosions;

(iii) local, regional or national states of emergency;

(iv) delays or disruptions in fuel supply resulting from a Force Majeure event (whether such event is in respect of a party hereto or a third party), and provided that it shall be considered a Force Majeure event if delays or disruptions in fuel supply arise as a result of the Supplier or Customer being unable to secure transportation capacity for fuel supply to the MCS PoD after having made commercially reasonable efforts to do so, but it shall not be considered a Force Majeure event if such transportation capacity was available and the Supplier or Customer failed to secure it or failed to maintain it after having secured it;

(v) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics; and

(vi)an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected party has not applied for or assisted in the application for and has used commercially reasonable efforts to oppose said order, judgment, legislation, ruling or direction.

For greater certainty, except as provided herein, any of the events described above suffered by one party may, nevertheless, be Force Majeure of the other party.

(b) A party shall not be entitled to invoke Force Majeure to the extent that the failure to perform obligations under this Agreement results from:

(i) the negligence of the party claiming Force Majeure,

(ii) lack of funds;

(iii) labour disturbances of or with its employees, lock-outs by its management, strikes by its employees; or

(iv) non-compliance with Applicable Laws.

(c) If a party is rendered wholly or partly unable to perform its obligations under this Agreement as a result of the occurrence of an event of Force Majeure, that party shall be excused from whatever performance is affected by such event of Force Majeure to the extent so affected, provided that:

(i) the party claiming the event of Force Majeure shall, as soon as reasonably practicable after the occurrence of the claimed event of Force Majeure, give the other party prompt oral notice, followed by a written notice fully describing the particulars of the occurrence and its expected duration;

(ii) the party claiming an event of Force Majeure shall submit to the other party, as soon as reasonably practicable after the occurrence of the claimed event of Force Majeure, a remediation plan indicating the measures to be taken by the party affected by such event of Force Majeure to remedy its inability to perform its obligations, the effects of such event of Force Majeure on its ability to perform its obligations and the expected duration of the event of Force Majeure;

(iii) the suspension of the performance of a party's obligations in the event of Force Majeure shall be of no greater scope and of no longer duration than is reasonably required by such event of Force Majeure;

(iv) the party affected by such event of Force Majeure shall furnish regular reports to the other party regarding its measures taken to remediate such event of Force Majeure;

(v) the party affected by such event of Force Majeure shall use its best efforts to remedy its inability to perform its obligations and resume its activities; and

(vi) as soon as reasonably practicable following the termination of such event of Force Majeure, the party affected by the event of Force Majeure shall submit to the other party a plan for the resumption of its obligations hereunder and shall then resume the performance of its obligations as soon as possible.

(d) The burden of proof as to whether an event of Force Majeure has occurred, is continuing, and as to the consequences of such event of Force Majeure, shall be upon the party claiming Force Majeure.

(e) The parties shall make all reasonable efforts to prevent or avoid any event, condition or circumstance that would result in an event of Force Majeure, to mitigate the effects of an event of Force Majeure and to reduce any ensuing delay or disruption in the performance of any obligations imposed hereunder.

(f) The Supplier may not claim Force Majeure in connection with the supply of electricity unless the Force Majeure event extends to the Supplier's ability to comply with Section 1.3(b) and such Force Majeure Event prevents the Supplier from delivering electricity to the Customer.

(g) During such time as Supplier is unable to perform or comply with its obligations as a result of a Force Majeure Event all payments by the Customer hereunder shall be abated for the duration of an event of Force Majeure.

Article 7
DEFAULTS

7.1 Events of Default.

(a) The occurrence at any time with respect to the Supplier of any of the following events constitutes a "**Supplier Default**":

(i) failure of the Supplier to use best efforts to provide electricity service on an uninterrupted basis and said failure continues for a period of thirty (30) days. Notwithstanding the aforementioned, Supplier shall not be in default if Supplier's failure to provide electricity arises from the occurrence of a Force Majeure event basis (any such failure being a "**Performance Failure**");

(ii) a Bankruptcy Event with respect to the Supplier;

(iii) a breach by the Supplier of any material obligation under this Agreement if such breach is not cured within thirty (30) Business Days after written notice thereof is delivered by the Customer to the Supplier;

(iv) an event of Force Majeure has prevented the Supplier from supplying all or a significant portion of the Customer's energy requirements for a period of three (3) months or longer;

(b) The occurrence at any time with respect to the Customer of any of the following events constitutes a "Customer Default":

(i) failure by Customer to make, when due, any payment required to be made by it hereunder which has not been cured within 10 (ten) Business Days following notice of such payment failure having been provided to Customer ("**Payment Default**");

(ii) a failure, other than a Payment Default, by Customer to comply with or perform any agreement or obligation to be complied with or performed by Customer in accordance with this Agreement if such failure is not remedied on or before the 30th Business Day after notice of such failure is given to Customer by the Supplier.

(iii) a Bankruptcy Event with respect to the Customer, which causes, or can reasonably be expected to cause, a Payment Default.

7.2 Customer's Remedies; Customer's Right to Terminate.

(a) If the Supplier shall fail to correct any Performance Failure, Customer shall, in addition to any other rights or remedies available to it have the right to exercise any one or more of the following rights:

(i) to cause the Supplier to hire, at the expense of the Supplier, a consultant to make representations in writing as to the cause of the default and the actions necessary to remedy them, and

(ii) in the event that the Supplier fails to promptly implement the consultant's recommendations within a reasonable time the Customer shall have the right to terminate this Agreement by written notice to the Supplier specifying the effective date of termination and Supplier will remove its MCS PoD, and all affiliated equipment, prior to this date.

7.3 Continuation of Right and Obligations.

If Customer provides the Supplier with a notice of termination under any provision of this Agreement, such action shall be without prejudice to the other rights and obligations of the parties hereunder, under any of the Documents or at law, and shall not relieve the Supplier of its obligation to provide the Electricity Contract Capacity hereunder until the effective date of termination, provided that any intervening or subsequent correction by the Supplier of the Supplier Default which is the basis for such notice of termination shall cure the default and there shall be no termination.

7.4 Customer Default.

Upon the occurrence of a Customer Default, including a Payment Default, the Supplier shall be entitled to terminate this Agreement upon providing notice to Customer and Customer does not cure said Default within the applicable period of time set out in Section 7.1(b) above.

7.5 Continuation of Right and Obligations – Supplier

If the Supplier provides the Customer with a notice of termination under any provision of this Agreement, such action shall be without prejudice to the other rights and obligations of the parties hereunder, under any Documents or at law.

Article 8
INDEMNIFICATION; OTHER REMEDIES

8.1 Indemnification by the Supplier.

The Supplier agrees to indemnify and hold harmless Customer, and its Affiliates, their respective directors, officers, employees, servants, assigns, licensees, and agents or any of them from and against any and all Loss and/or Expense, incurred by Customer in connection with or arising from:

(a) a Supplier Default, other than a Performance Failure; or

(b) any unauthorized operation, maintenance or alteration of, or action affecting, the Customer's Existing Energy Systems or the Customer's other equipment, or any component thereof, by the Supplier or those Persons under its direction or control; or

(c) any accident, injury or death to any individual or damage to property (including damage to any component of the Energy Transfer Station or other equipment and piping and any and all property of Customer) or damage to the Licensed Area caused by or resulting from actions or omissions of the Supplier or those persons under its direction or control; or

(d) any allegations of adverse environmental impacts or conditions on the Licensed Area, or the surrounding Property, or any violations of Environmental Laws that are attributable to the acts or omissions of the Supplier, its officers, directors, employees, servants, agents or any other party Supplier is responsible for by law.

provided, however, that the Supplier will not be liable under this Agreement for any Loss or Expense to the extent caused by the gross negligence or wilful misconduct of the Customer, its officers, directors, employees, servants or agents.

8.2 Indemnification by Customer.

The Customer agrees to indemnify and hold harmless Supplier, its directors, officers, employees, servants and agents or any of them from and against each and all loss and/or Expense incurred by the Supplier in connection with or arising from:

(a) a Customer Default;

(b) any unauthorized operation, maintenance or alteration of or action affecting the MCS PoD or Supplier's other equipment or any component thereof, by the Customer or those Persons under its direction or control;

(c) any accident, injury, death to any individual or damage to property (including to any component of the Energy Transfer Station, MCS PoD, or other equipment and piping and any other property of the Supplier caused by or resulting from negligent actions or omissions of the Customer or those Persons under its direction or control.

8.3 Notice of Claims.

(a) Any Indemnified Party seeking indemnification hereunder shall give to the Indemnitor a Claim Notice describing the facts underlying, and the amount of, its indemnification claim. A notice in respect of any action at law or suit in equity by or against a third Person as to which indemnification will be sought shall be given promptly after the Indemnified Party has notice that such action or suit has commenced; provided that failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except to the extent it will have been prejudiced by such failure.

(b) In calculating any Loss or Expense there shall be deducted (i) any insurance recovery by the Indemnified Party in respect thereof (and no right of subrogation will accrue hereunder to any insurer), (ii) the amount of any tax benefit to the Indemnified Party (or any of its Affiliates) with respect to such Loss or Expense (after giving effect to the tax effect of receipt of the indemnification payments) and (iii) any amount of insurance proceeds that are available but not claimed by the Indemnified Party or any insurance proceeds that would have been available to the Indemnified Party had it placed insurance as required by this Agreement.

(c) After any Claim Notice has been given pursuant hereto, the amount of indemnification to which an Indemnified Party is entitled under this Article 8 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Indemnified Party and the Indemnitor agree.

Article 9
TERM AND TERMINATION

9.1 Term.

This Agreement shall become effective as of the Commencement Date and, unless sooner terminated as provided herein, shall remain in effect until August 30th, 2028 (the "**Initial Term**"). .

9.2 Termination for Convenience.

In addition to any other rights of the Customer hereunder, the Customer shall have the right to terminate this Agreement at any time following the 5th anniversary of this Agreement by providing at least 6 months written notice to the Supplier (the "**Early Termination Notice**"), which shall specify the effective termination date (the "Effective Termination Date") and upon payment of the applicable fee "(Early Termination Fee") set out in Schedule 9.2.. If the Customer exercises such right of early termination (i) this Agreement shall terminate on the date specified in the Early Termination Notice and the applicable Early Termination Fee shall be the only amount payable by the Customer in connection with such termination.

9.3 Effect of Termination.

Upon the termination or expiration of this Agreement:

(i) the Supplier shall disconnect and remove the MCS PoD Assets in accordance with the terms of the License Agreement and the Customer shall provide access to allow such removal;

(ii) the Customer shall pay the Supplier all amounts then payable to the Supplier hereunder; and

(iii) the Customer and the Supplier shall have no further obligations hereunder other than (A) obligations accruing prior to the date of such termination, (B) Customer's obligations to provide access rights pursuant to Section (i), and (C) obligations under Article 5 and Article 8, all of which shall survive the expiration or termination of this Agreement for a period of three (3) years.

ARTICLE 10

LENDERS' RIGHTS

10.1 Lender Security.

Notwithstanding Section 12.2, the Supplier, from time to time on or after the date of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security with a third party. Secured Lender's Security shall be subject to the following conditions:

(a) The Secured Lender's Security may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.

(b) No Secured Lender's Security shall be binding upon the Customer in the enforcement of the Customer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the Secured Lender to which notices may be sent have been delivered to the Customer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security, such assignment shall not be binding upon the Customer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Customer by the Supplier or the Secured Lender.

(c) If the Supplier is in default under or pursuant to the Secured Lender's Security and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Customer at least five (5) Business Days prior to exercising any such rights.

(d) Any number of permitted Secured Lender's Security may be outstanding at any one time, provided that each such Secured Lender complies with the provisions of this Article 10.

(e) All rights acquired by a Secured Lender under any Secured Lender's Security shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security is outstanding, the Customer and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned or delayed . A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.

(f) Despite any enforcement of any Secured Lender's Security, the Supplier shall remain liable to the Customer for the payment of all sums owing to the Customer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

10.2 Rights and Obligations of Secured Lenders.

While any Secured Lender's Security remains outstanding, and if the Customer has received the notice referred to in Section 10.1(b) or the contents thereof are embodied in the agreement entered into by the Customer in accordance with Section 10.3, the following provisions shall apply:

(a) No Supplier Default shall be grounds for the termination by the Customer of this Agreement until:

(i) any notice required to be given has been given to the Supplier and to the Secured Lender, if any; and

(ii) the cure period set out in Section 10.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.

(b) In the event the Customer has given any notice required to be given, the Secured Lender shall, within the applicable cure period from the date of receipt of notice by the Secured Lender (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Customer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.

(c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.

(d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in this Section 10.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the MCS PoD and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security, may sell or assign the Supplier's Interest with the consent of the Customer as required under Section 10.2(f).

(e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other

Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at arms' length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, if the Secured Lender's Security remains outstanding, provided that the Secured Lender shall retain its rights under this Agreement.

(f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Customer:

(i) acting reasonably, if such transferee is at arms' length with the Secured Lender; or

(ii) acting in its sole and subjective discretion, if such transferee is not at arms' length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Customer in form and substance satisfactory to the Customer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer.

(g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Default, the Customer shall, within thirty (30) days before the date of such termination, deliver to each Secured Lender which is at Arms' Length with the Supplier a statement of all sums then known to the Customer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Customer is willing to enter into a New Agreement (the "**Customer Statement**"). Subject to the provisions of this Article 10, each such Secured Lender shall thereupon have the option to obtain from the Customer a New Agreement in accordance with the following terms:

(i) upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Customer Statement, the Customer shall enter into a New Agreement;

(ii) such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Customer's obligation to enter into a New Agreement is conditional upon the Secured Lender paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination;

when the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender's security, that Person may exercise any of the Secured Lender's rights under this Section (g).

(h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 10 shall enure only to the benefit of the holders of a Secured Lender's Security. If the holders of more than one such Secured Lender's Security who are at Arms' Length with the Supplier make written requests to the Customer in accordance with this Section 10.2(h) to obtain a New Agreement, the Customer shall accept the request of the holder whose Secured Lender's Security had priority immediately prior to the termination of this Agreement over the Secured Lender's Security of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender's Security, the Customer may rely upon the opinion as to such priorities of any law firm qualified to practise law in the Province of Ontario retained by the Customer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

10.3 Cooperation.

The Customer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender's Security protection provisions contained in this Agreement. The Customer, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender's Security or proposed Secured Lender's Security that may require an amendment to this Agreement, provided that the rights of the Customer are not adversely affected thereby, the obligations of the Supplier to the Customer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

Article 11
DISPUTE RESOLUTION

11.1 Informal Dispute Resolution.

If either party considers that any dispute has arisen under or in connection with this Agreement that the parties cannot resolve, then such party may deliver a notice to the other party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive from each party shall meet, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, then the parties shall first try in good faith to settle the dispute by mediation pursuant to Section 11.2.

11.2 **Mediation.**

Either party may initiate mediation. The party commencing the mediation shall first give a written notice (a "Mediation Notice") to the other party setting forth the nature of the dispute. If the dispute has not been resolved by mediation then at the option of either party by written notice, the dispute shall be determined by arbitration pursuant to Section 11.2. The costs of the mediator and the mediation service shall be shared equally by the Parties; each party shall otherwise bear its own costs incurred in connection with the mediation, including its own attorneys' fees.

11.3 Binding Arbitration.

If the parties are not able to resolve a dispute in connection with this Agreement pursuant to a Senior Conference, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration to be conducted in accordance with the procedures set out in Schedule 11.2.

Article 12
GENERAL PROVISIONS

12.1 Notices.

All notices or other communications required or permitted hereunder shall be in writing addressed to the respective party as set forth below and shall be personally served, or sent by facsimile or by prepaid courier service and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by facsimile, on the date of transmission if transmitted on a Business Day before 5:00 p.m., Toronto, Ontario time, otherwise on the next Business Day (provided in either case, that receipt of such transmission is electronically confirmed); and (c) if delivered by courier, on the date actually delivered by the courier if delivered on a Business Day before 5:00 p.m., Toronto, Ontario time, otherwise on the next Business Day. Notices and other communications shall be addressed to the applicable party as follows:

(a) If to the Supplier, to:

MCS ENERGY.
Attention: Craig Clydesdale, President
Telephone: 1-647-339-4353
E-Mail: craig@mcsenergy.net

with electronic copies to:

Attention: Morley Kocken E-Mail: morley@mcsenergy.net

If to Customer, to:

ST. MARYS CEMENT INC. (CANADA)

Attention: Martin Vroegh and/or Rosa Sousa
Telephone: 416-696-4482/416-696-4455________
E-Mail: _mxvroegh@vcsmc.com/rmsousa@vcsmc.com_______

with electronic copies to:

_ Rosa Sousa ___ rmsousa@vcsmc.com _________

Any party hereto may change its address for notices and other communications hereunder by a notice delivered to the other party hereto in accordance with this Section 12.1 as then in effect.

12.2 Assignment; Change of Control; Successors and Assigns

(a) This Agreement shall not be assigned by the Supplier nor shall the obligations of the Supplier be performed by any Person other than the Supplier or persons under the direction or control of the supplier, without the prior written consent of Customer, which consent may be withheld in Customer's sole and absolute discretion. Without limiting the generality of the foregoing, no Person, including, without limitation, any lender, receiver, receiver and manager, interim receiver, custodian, liquidator, agent or trustee, may assume any of the rights or obligations of the Supplier under this Agreement, pursuant to the terms of any instrument, indenture, contract or agreement to which the Supplier is a party or otherwise, except as expressly permitted pursuant to Article 10, without the consent of Customer which consent may be arbitrarily withheld.

(b) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any Person (other than the parties and successors and assigns permitted by this Section 12.2) any right, remedy or claim under or by reason of this Agreement.

12.3 Entire Agreement; Amendments.

This Agreement and the Schedules and attachments referred to herein, and the Documents and the documents contemplated thereby contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements or understandings between or among any of the parties hereto. This Agreement will not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the parties hereto.

12.4 Interpretation.

Article titles and headings to Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.5 Waivers.

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver will be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement will not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement will be held to constitute a waiver of any other or subsequent breach.

12.6 Expenses.

Each party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

12.7 Partial Invalidity.

Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision will be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. Upon any such determination that any term or other provision hereof is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner, to the end that the transactions contemplated hereby are fulfilled to the extent possible in the circumstances.

12.8 Execution in Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be considered an original instrument, but all of which will be considered one and the same agreement, and will become binding when one or more counterparts have been signed by each of the parties hereto and delivered to the Supplier and Customer.

12.9 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

Time is of the essence hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

ST. MARYS CEMENT INC. (CANADA)

By:

Per:

Name: Martin Vroegh

Title: Director of Environmental Affairs

I/We have the authority to bind the corporation

2363265 Ontario Inc. MCS ENERGY

Per:

Name: CRAIG CROSSOTTE

Title: PRESIDENT

I/We have the authority to bind the corporation

SCHEDULE 1.3

FUEL SURCHARGE FEE

The Fuel Surcharge Fee shall be calculated as follows:

The **base fuel fee** shall be the amount that is being paid by the Supplier for a cubic foot of natural gas at the MCS PoD location as of the Commencement Date.

At any point in time thereafter the Fuel Surcharge Fee shall be amount of money that represents the increase or decrease above or below the base fuel fee that the Supplier is required to pay for a cubic foot of natural gas multiplied by the number of cubic feet of natural gas utilized by the Supplier in the preceding month. .

SCHEDULE 9.2
EARLY TERMINATION FEE

The Early Termination Fee shall be payment of an amount sufficient to defray the actual close up expenses incurred by MCS at the time including all outstanding financial commitments relating to the original capitalization of the project. Specifically the close up expenses will not include any provision for loss of profit or variable costs.

SCHEDULE 11.3

ARBITRATION PROCEDURES

The following rules and procedures (the "Rules") shall govern, exclusively, any matter or matters to be arbitrated between the parties under this Agreement.

1. **Commencement of Arbitration** – If the parties and have been unable to reach agreement by informal dispute resolution pursuant to Sections 11.1 and 11.2 of the Agreement, then either party shall commence arbitration by delivering a written notice (the "Request") to the other party. Within twenty (20) days of the delivery of the Request, either party shall deliver to the other party a written notice nominating an arbitrator who shall be familiar with energy and commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Customer's notice nominating its arbitrator, the Supplier shall by written notice to the Customer nominate an arbitrator who shall be familiar with energy and commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two arbitrators nominated shall then select a chair person of the arbitration panel (the "Arbitration Panel") who shall be a former judge of a Superior Court or appellate court in Canada.

2. **Application to Court** - If the Supplier has not nominated an arbitrator within twenty (20) days of the receipt of the Customer's notice nominating its arbitrator, the Customer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator on behalf of the Supplier. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Suppliers' arbitrator, any supplier or the Customer may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.

3. **General** - The Arbitration Panel, once appointed, shall proceed immediately to determine the outstanding issue(s) as the case may be, in accordance with the Ontario Arbitration Act. Unless otherwise agreed by the parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below.

4. **Decision** - The decision or award of the Arbitration Panel shall be made within six months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the parties or any reasonable delay due to unforeseen circumstances.

5. **Costs** – The parties shall pay their own costs of participating in the arbitration proceedings.

6. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for their time and attendances, which fees together with any hearing room fees, shall be paid equally by the Customer and the Supplier.

7. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:

(a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;

(b) statutory holidays shall not be counted;

(c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and

(d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Ontario time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

8. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

This Amendment to the Agreement between St. Mary's Cement Inc. (Canada) ('Customer') and MCS Energy ('Supplier') dated November 27, 2013 sets out the terms and conditions on which the Customer has agreed to purchase from the Supplier and the Supplier has agreed to sell to the Customer Energy generated from the MCS TRIGEN Mark 8 TriEnergy PoD ('TRIGENPOD ')

For valuable consideration the parties hereby agree to amend the Energy Services Agreement as follows:

The Contract Capacity shall be increased to a maximum of 25,000 GJ's of electricity and thermal energy in the form of heat and chilling.

Schedule B is added to the agreement listing the TRIGEN PoD equipment to be installed which shall remain the property of MCS Energy.

Clause 1.4(b) of the Agreement is amended to extend the scheduled completion date in the original contract by 100 days to allow for the installation of both the MCS Pod and The TRIGEN Pod.

Clause 1.5 (a)of the Agreement is amended such that the payment shall be $38,950 per month.

Schedule "B"

SMC Amended Scope for Tri-gen Chiller Outdoor Equipment and Operations
Description
June – August 2014 - emergency chilling supply, install, maintenance and operations

Added New HVAC infrastructure equipment

- 4 hydronic Air Handling Units for roof of office tower
- BAC Building Automation System
- Remote Ethernet control capabilities
- Absorbsion chiller with remote condenser
- Mechanical Chiller with remote condenser
- Boiler system for hydronic and absorbsion chiller operation
- Insulated 12' - 6" x 45'-0" Equipment Enclosure
- Chemical management system for hydronic system
- Chilled water Duplex Pump Set
    - 4" Duplex Cold Water Pump Package with 300 gpm at 80 HF
    - 2 pump system with expansion tank and contactors
- Hot Water Duplex Pump Set
    - 6" Duplex Hot Water Pump Package with 571 gpm at 80 HF
    - 2 pump system with expansion tank and contactors
- Condenser water Duplex Pump Set
    - 6" Duplex Cold Water Pump Package with 550 gpm at 80 HF
    - 2 pump system with expansion tank and contactors

- Cooling Tower w/ access ladder and platforms for fill valve and fan motor service
- Cooling Tower Support Steel
- Cooling Tower fan control
- Piping system for condenser, boiler, generator, absorbsion and mechanical chiller
- 4 pipe plenum up outside of office building wall
- New Electrical Distribution 600 V / 3 ph
- New PDC 200A, heating, lighting, chemical supply, testing, control systems
- Step down transformer 120 / 208 V
- New gas line extension across property from original location
- Potable water supply
- Sanitary sewer to accommodate needs of new equipment
- Sound attenuation

Dated July 17, 2014

____

Signed for St. Mary's Cement Inc.

____

Signed for MCS Energy

This Amendment to the Agreement between St. Mary's Cement Inc. (Canada) ('Customer') and MCS Energy ('Supplier') dated November 27, 2013 sets out the terms and conditions on which the Customer has agreed to purchase from the Supplier and the Supplier has agreed to sell to the Customer Energy generated from the MCS TRIGEN Mark 8 TriEnergy PoD ('TRIGENPOD ')

For valuable consideration the parties hereby agree to amend the Energy Services Agreement as follows:

The Contract Capacity shall be increased to a maximum of 25,000 GJ's of electricity and thermal energy in the form of heat and chilling.

Schedule B is added to the agreement listing the TRIGEN PoD equipment to be installed which shall remain the property of MCS Energy.

Clause 1.4(b) of the Agreement is amended to extend the scheduled completion date in the original contract by 100 days to allow for the installation of both the MCS Pod and The TRIGEN Pod.

Clause 1.5 (a)of the Agreement is amended such that the payment shall be $34,950 per month.

Schedule "B"

SMC Amended Scope for Tri-gen Chiller Outdoor Equipment and Operations

Description

June – August 2014 - emergency chilling supply, install, maintenance and operations

Added New HVAC infrastructure equipment

- 4 hydronic Air Handling Units for roof of office tower
- BAC Building Automation System
- Remote Ethernet control capabilities
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- Boiler system for hydronic and absorbsion chiller operation
- Insulated 12' - 6" x 45'-0" Equipment Enclosure
- Chemical management system for hydronic system
- Chilled water Duplex Pump Set
  - 4" Duplex Cold Water Pump Package with 300 gpm at 80 HF
  - 2 pump system with expansion tank and contactors
- Hot Water Duplex Pump Set
  - 6" Duplex Hot Water Pump Package with 571 gpm at 80 HF
  - 2 pump system with expansion tank and contactors
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- New gas line extension across property from original location
- Potable water supply
- Sanitary sewer to accommodate needs of new equipment
- Sound attenuation

Dated July 17, 2014

Signed for St. Mary's Cement Inc. 09/22/14

Signed for MCS Energy

ASSIGNMENT OF ENERGY SERVICES AGREEMENT

THIS ASSIGNMENT made the 20th day of November, 2014

BETWEEN:

2363265 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario;

- and –

2404873 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario

(2363265 Ontario Inc. and 2404873 Ontario Inc. hereinafter collectively -referred to as the "**Assignors**")

- and –

2441472 Ontario Inc., a special purpose corporation incorporated under the laws of the Province of Ontario (hereinafter referred to as the "**Assignee**")

RECITALS

WHEREAS:

A. 2363265 Ontario Inc. is party to a Energy Services Agreement entered into with St. Marys Cement Inc. (Canada) (the "**Customer**") and dated as of November 27, 2013, and amended September 22nd, 2014 pursuant to which 2363265 Ontario Inc. as the Supplier agreed to supply energy and certain services to the Customer (the "**Energy Services Agreement**");

B. 2363265 Ontario Inc. has assigned and transferred certain of its business, undertaking and assets to 2404873 Ontario Inc. including the trade name and business style "MCS Energy" and it is contemplated that 2404873 Ontario Inc. will henceforth carry on business under the name and style "MCS Energy";

C. The Assignors wish to assign to the Assignee, effective as of November 20, 2014 (the "**Effective Date**"), all of their respective right, title and interest in and to the Energy Services Agreement so that the full benefit of the Energy Services Agreement is irrevocably assigned, transferred and conveyed to the Assignee, and the Assignee wishes to accept such assignment;

D. The Energy Services Agreement is to be further assigned to Crystal Enhanced Mortgage Fund (the "**Secured Lender**") as security for the obligations of the Assignee to the Secured Lender;

E. Notwithstanding the assignment made herein, the Assignee will engage and appoint 2404873 Ontario Inc. to perform certain obligations of the Assignee to the Customer under the Energy Services Agreement;

F. The Energy Services Agreement requires the consent of the Customer to any assignment and the Customer has provided the required consent;

NOW, THEREFORE, THIS AGREEMENT WITNESSES THAT in consideration of the premises and the agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto) the parties do hereby agree as follows:

1. Assignment

The Assignors and each of them does hereby absolutely, irrevocably and unconditionally assign, grant, transfer and convey to the Assignee, from the Effective Date, all of the Assignor's estate, right, title, interest, claim and demand whatsoever, both at law and in equity, in and to the Energy Services Agreement, with full power and authority for the Assignee to use the name of the Assignor in enforcing the performance of all covenants and other matters and things contained in the Energy Services Agreement. The estate, right, title, interest, claim and demand hereby assigned includes (without restricting the generality of the foregoing):

(a) all claims for damages for breach by the other parties to the Energy Services Agreement of any of the terms or conditions of the Energy Services Agreement, and all warranties and indemnity provisions contained therein;

(b) any right to terminate the Energy Services Agreement; and

(c) the right of the Assignors or any of them to perform the Energy Services Agreement and to compel performance of the terms thereof.

2. Acceptance of Assignment

The Assignee hereby accepts the assignment of the Energy Services Agreement in its favour herein contained.

3. Covenant of the Assignee

The Assignee will, from the Effective Date and throughout the residue of the term of the Energy Services Agreement, be bound by and observe and perform all covenants, terms, conditions and other provisions set forth in the Energy Services Agreement to be observed and performed by the Assignor therein.

4. Covenant of Assignor

The Assignors shall, on a joint and several basis, be liable to the Assignee for, and shall indemnify and save harmless the Assignee of and from, all manner of actions, causes of action, proceedings, claims, demands, losses, costs, damages and expenses whatsoever (and without limiting the generality of the foregoing, legal costs on a solicitor and his own client full indemnity basis) which may be brought or made against the Assignee or which the Assignee may sustain, pay or incur as a result of or in connection with any breach or non-observance, on or prior to the Effective Date, by the Assignors of their respective obligations under the Energy Services Agreement.

5. Assignment in Trust

If the estate, right, title, interest and claim of the Assignors in and to the Energy Services Agreement or any parts thereof (the "**Interests**") are not assignable to the Assignee (because the Interests are by their terms personal to the Assignor or because the assignment thereof is conditional upon the approval or consent of another party and such approval or consent has not been obtained as at the Effective Date or because the remedies for enforcement thereof would not pass to the Assignee as an incident of the same), then the Assignors and each of them shall hold the Interests in trust (to the extent not illegal or prohibited) for the Assignee and perform the rights in respect of such Interests in the Assignor's name and at the expense of the Assignee, and the benefits and all liabilities derived thereunder shall be for the account of the Assignee; provided that, where the assignment of such Interests is conditional upon the approval of some other party, such trusts shall terminate and the assignment to the Assignee of the Interests shall become effective immediately upon obtaining the aforementioned approval or consent.

6. Time

Time shall be of the essence of this Assignment.

7. Amendment

This Assignment may only be amended by an agreement in writing signed by all of the parties hereto.

8. Entire Agreement

This Assignment sets forth the entire agreement of the parties respecting the subject matter hereof and merges all prior discussions between them.

9. Further Assurances

The parties hereto and each of them do hereby covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Assignment in accordance with the intentions of the parties.

10. Governing Law

This Assignment is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. The parties hereto hereby attorn to the jurisdiction of the courts of the Province of Ontario and agree that any litigation between the parties which arises pursuant to or in connection with this Assignment, or any of its provisions, shall be referred to the courts in the Province of Ontario and shall not be referred to the courts of any other jurisdiction.

11. Enurement

This Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. Counterparts and Facsimile

This Assignment may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date of this Assignment. This Assignment shall be considered properly executed by a party if executed by that party and transmitted by facsimile or other electronic means, including Tagged Image Format Files (TIFF) or Portable Document Format (PDF).

IN WITNESS WHEREOF the parties have each executed this Assignment as of the day and year first above written.

2363265 ONTARIO INC.

Per: ______________________

2404873 ONTARIO INC.

Per: ______________________

2441472 ONTARIO INC.

Per: ______________________

ASSIGNMENT OF ENERGY SERVICES AGREEMENT

THIS ASSIGNMENT made the 20th day of November, 2014

BETWEEN:

2441472 Ontario Inc., a special purpose corporation incorporated under the laws of the Province of Ontario (hereinafter referred to as the "**Assignor**")

- and –

CRYSTAL ENHANCED MORTGAGE FUND
3385 Harvester Road, Suite 200
Burlington, Ontario L7N 3N2

(the "**Fund**")

RECITALS

WHEREAS:

A. The Assignor and the Fund are parties to a certain Loan Agreement dated the date hereof;

B. The Assignor is entitled to certain rights and benefits under an Energy Services Agreement with St Marys Cement (the "**Customer**");

C. As continuing security for its obligations to the Fund under the Loan Agreement (the "**Obligations**"), the Assignor wishes to assign to the Fund all of its right, title and interest in and to the Energy Services Agreement so that the full benefit of the Energy Services Agreement is irrevocably assigned, transferred and conveyed to the Fund;

NOW, THEREFORE, THIS AGREEMENT WITNESSES THAT in consideration of the premises and the agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto) the parties do hereby agree as follows:

1. Assignment

As continuing security for, and as a source of repayment of, the Obligations, the Assignor hereby irrevocably assigns, transfers, conveys and sets over to the Fund and hereby grants to the Fund a security interest in, on and with respect to all of the Assignor's right, title and interest in and to the Energy Services Agreement including, without limitation, its right to receive all payments due thereunder together with any interest payable thereon by the Customer.

The Fund shall have full power and authority to use the name of the Assignor in enforcing the performance of all covenants and other matters and things contained in the Energy Services Agreement. The right, title and interest hereby assigned includes (without restricting the generality of the foregoing):

(a) all claims for damages for breach of the Energy Services Agreement and of any of the terms or conditions thereof, and all warranties and indemnity provisions contained therein;

(b) any right to terminate the Energy Services Agreement; and

(c) the right of the Assignor to perform the Energy Services Agreement and to compel performance of the terms thereof.

(d) MCS Energy and SMC SPC hereby acknowledges and agrees that any payments received by it in disregard of this A & D Agreement shall be received and held by it in a separate bank account in trust for the Secured Lender and shall be remitted to the Secured Lender forthwith.

2. Direction re Payments

The Assignor shall irrevocably and unconditionally authorize, instruct and direct the Customer to pay all amounts under the Energy Services Agreement which become owing or payable by the Customer (including without limitation the Energy Charge as may be adjusted, the Energy Surcharge Fee and any Environmental Credits to which the Assignor may be entitled) directly to the Fund by wire transfer or direct deposit as the Fund may advise: The Assignor hereby acknowledges and agrees that any payments received by it from the Customer in disregard of this Agreement shall be received and held by it in trust for the Fund and shall be remitted to the Fund forthwith

3. No Assumption by the Fund of Assignor's Obligations to Perform under ESA

The Assignor and the Fund agree that the Fund has been granted certain security rights and interests but has not assumed any obligations or liabilities of the Assignor under the Energy Services Agreement and Assignor agrees that the Customer shall not look to the Fund for the performance and discharge of such obligations and liabilities.

4. Representations and Warranties

The Assignor acknowledges that the Fund is and will be relying on the following representations and warranties in entering into the Loan Agreement with the Assignor and hereby represents and warrants that to the Fund that:

(a) it has all necessary power and authority, and has taken and will continue to take all steps necessary, to enter into, perform and deliver both this Agreement and the Energy Services Agreement, and

(b) both this Agreement and the Energy Services Agreement, constitute a legal, valid and binding obligation of the Assignor, enforceable against it in accordance with its respective terms, subject to (i) bankruptcy, insolvency and similar laws of general application concerning creditors' rights; and (ii) the discretion of a court of competent jurisdiction; and

(c) as of the date hereof, to the best knowledge of the Assignor, the Energy Services Agreement has been complied with by the parties thereto, is in full force and effect, and no event has occurred which constitutes or which will constitute with the passage of time, an event of default entitling either party thereto to terminate or reduce its commitments pursuant thereto; and

(d) the Assignor agrees to give notice to the Fund immediately upon becoming aware of any default under the terms of the Energy Services Agreement or under the terms of any present or future agreement entered into by the Customer and the Assignor with respect to the supply of energy to the Customer.

5. Assignment in Trust

If the estate, right, title, interest and claim of the Assignor in and to the Energy Services Agreement or any parts thereof (the "**Interests**") are not assignable to the Fund (because the Interests are by their terms personal to the Assignor or because the assignment thereof is conditional upon the approval or consent of another party and such approval or consent has not been obtained or because the remedies for enforcement thereof would not pass to the Fund as an incident of the same), then the Assignor shall hold the Interests in trust (to the extent not illegal or prohibited) for the Fund and perform the rights in respect of such Interests, and the benefits derived thereunder shall be for the account of the Fund; provided that, where the assignment of such Interests is conditional upon the approval of some other party, such trusts shall terminate and the assignment to the Fund of the Interests shall become effective immediately upon obtaining the aforementioned approval or consent.

6. Time

Time shall be of the essence of this Assignment.

7. Amendment

This Assignment may only be amended by an agreement in writing signed by all of the parties hereto.

8. Entire Agreement

This Assignment sets forth the entire agreement of the parties respecting the subject matter hereof and merges all prior discussions between them.

9. Further Assurances

The parties hereto and each of them do hereby covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Assignment in accordance with the intentions of the parties.

10. Governing Law

This Assignment is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario. The parties hereto hereby attorn to the jurisdiction of the courts of the Province of Ontario and agree that any litigation between the parties which arises pursuant to or in connection with this Assignment, or any of its provisions, shall be referred to the courts in the Province of Ontario and shall not be referred to the courts of any other jurisdiction.

11. Enurement

This Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. Counterparts and Facsimile

This Assignment may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date of this Assignment. This Assignment shall be considered properly executed by a party if executed by that party and transmitted by facsimile or other electronic means, including Tagged Image Format Files (TIFF) or Portable Document Format (PDF).

IN WITNESS WHEREOF the parties have executed this Assignment as of the day and year first above written.

2441472 ONTARIO INC.

Per: ______________________

CRYSTAL ENHANCED MORTGAGE FUND by its Manager, CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED

Per: ______________________

[SIGNATURE PAGE TO ASSIGNMENT OF ENERGY SERVICES AGREEMENT]

Appendix “C”

Court File No. CV-21-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	THURSDAY, THE 12TH DAY
	)	
JUSTICE CAVANAGH	)	OF AUGUST, 2021

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

ORDER
(Appointment of Interim Receiver)

THIS MOTION made, without notice, by the Applicant for an Order pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the "**CJA**"), appointing Grant Thornton Limited ("**GTL**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of 2441472 Ontario Inc. (the "**Debtor**"), was heard this day by judicial videoconference due to the COVID-19 emergency via Zoom.

ON READING the Pre-Filing Report of GTL in its capacity as the proposed interim receiver dated August 9, 2021 and the appendices thereto (the "**Pre-Filing Report**"), the affidavit of J. William Asselstine sworn August 9, 2021 and the exhibits thereto, and the consent of GTL to act as the Interim Receiver, and on hearing the submissions of counsel for the

Applicant and counsel for St. Marys Cement Inc. (Canada), no one appearing for any other person,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to subsection 47(1) of the BIA and section 101 of the CJA, GTL is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the equipment described as the MCS Cogen Mark 6 CoEnergy PoD and heating, ventilation and air-conditioning equipment located at the premises of St. Marys Cement Inc. (Canada) at 55 Industrial St., Toronto, Ontario, including all proceeds thereof (the "**Property**"), until earlier of:

   a) the taking of possession of the Property by a receiver within the meaning of subsection 243(2) of the BIA;

   b) the taking of possession of the Property by a trustee in bankruptcy; and

   c) the expiry of 30 days after the date of this Order.

INTERIM RECEIVER'S POWERS

2. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

   a) to engage Blackstone Energy Services Inc. ("**Blackstone**") on the terms of the engagement letter attached as Appendix "Q" to the Pre-Filing Report;

   b) to take possession of and exercise control over the Property with the assistance of Blackstone and any and all proceeds, receipts and disbursements arising out of or from the Property;

c) to preserve and protect the Property with the assistance of Blackstone, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;

e) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable; and

f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

3. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, advisors, consultants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

4. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, operating manuals, schematics, diagrams, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

6. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver,

or any person acting on behalf of the Interim Receiver, except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

9. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

10. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court. For greater certainty and without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums as would be paid in the ordinary course in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases with respect to such premiums.

INTERIM RECEIVER TO HOLD FUNDS

11. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments that may be received or collected directly by the Interim Receiver from and after the making of this Order from any source whatsoever shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "**Post Interim Receivership Accounts**") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

14. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements,

both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a charge on the Property in priority to the security interests in favour of the Applicant but behind all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (the “**Encumbrances**”), in favour of any Person that has not been served with the notice of the application or this Order, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The Applicant and the beneficiaries of the Interim Receiver shall be entitled to seek priority ahead of all Encumbrances, on notice to those parties likely to be affected by such priority.

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

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to the security interests in favour of the Applicant

but behind all other Encumbrances in favour of any Person that has not been served with the notice of application of this Order, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The Applicant and the beneficiaries of the Interim Receiver's Borrowings Charge shall be entitled to seek priority ahead of all Encumbrances, on notice to those parties likely to be affected by such priority.

19. **THIS COURT ORDERS** that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <www.grantthornton.ca/2441472>.

GENERAL

23. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

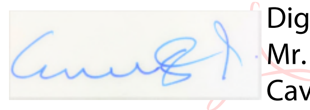
24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtor.

25. **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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that the Applicant shall have its costs of this Motion, up to and including entry and service of this Order, provided for by the terms of the Applicant’s security or, if not so provided by the Applicant’s security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor’s estate with such priority and at such time as this Court may determine.

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



Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $_____________________

1. **THIS IS TO CERTIFY** that Grant Thornton Limited, the interim receiver (the "**Interim Receiver**"), without security, of all of the assets, undertakings and properties of 2441472 Ontario Inc. (the "**Debtor**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of August, 2021 (the "**Order**") made in an action having Court file number ___-CL-__________, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of $___________, being part of the total principal sum of $___________ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of ___________________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of ______________, 2021.

GRANT THORNTON LIMITED, solely in its capacity as Interim Receiver of the Debtor, and not in its corporate or personal capacity

Per: ________________________________

Name:

Title:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED and 2441472 ONTARIO INC.

Applicant | Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointment of Interim Receiver)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Tel: 416.863.1500
Fax: 416.863.1515
Email: sgraff@airdberlis.com / mspence@airdberlis.com / dlu@airdberlis.com

Steven L. Graff – LSO# 31871V
Miranda Spence – LSO# 60621M
Damian Lu – LSO# 80070O

Lawyers for the Applicant

Appendix “D”

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: August 13, 2021 8:47 AM
To: Damian Lu; Damian Lu; Miranda Spence
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: RE: Crystal Wealth Mortgage Strategy, by its Court-Appointed Receiver and Manager , Grant Thornton Limited v. 2441472 Ontario Inc.

Supplementary Endorsement:

The application for a receivership order and any motion for an approval and vesting order shall be heard on September 7, 2021 at 11:00 a.m. for one (1) hour. The Record and any supplemental motion record shall be served on 2441472 Ontario Inc. in accordance with the E-Service Protocol of the Commercial List not less than seven (7) days prior to such hearing date.

Cavanagh J.

From: Cavanagh, Justice Peter (SCJ)
Sent: August 12, 2021 6:06 PM
To: Damian Lu <dlu@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; Miranda Spence <mspence@airdberlis.com>
Cc: Commercial General (toronto.commerciallist@jus.gov.on.ca) <toronto.commerciallist@jus.gov.on.ca>
Subject: Crystal Wealth Mortgage Strategy, by its Court-Appointed Receiver and Manager , Grant Thornton Limited v. 2441472 Ontario Inc.

Counsel:

Damian Lu and Miranda Spence for Grant Thornton Limited in its capacity as Court-Appointed Receiver and Manager of Crystal Wealth Mortgage Strategy

Endorsement:

Crystal Wealth Mortgage Strategy (formerly named Crystal Enhanced Mortgage Fund) (the "Mortgage Fund"), by its court-appointed receiver and manager, Grant Thornton Limited (the "CW Receiver") moves, without notice, for the appointment of Grant Thornton Limited as interim receiver, without security, of all of the assets, undertakings and properties of 2441472 Ontario Inc. ("244"), including all proceeds thereof.

By order dated April 26, 2017 (the "Appointment Order"), the CW Receiver was appointed as the receiver and manager of the assets, undertakings and properties of Crystal Wealth Management System Limited ("the Company") and certain additional persons and entities, including 15 proprietary open-ended mutual fund trusts created and managed by the Company (individually or collectively, "Crystal Wealth"), including the Mortgage Fund. The Appointment Order empowered the CW Receiver to collect and receive all monies and accounts owed or which may be owed in the future to Crystal Wealth, and to exercise all remedies available to Crystal Wealth in collecting such monies.

244 is an Ontario corporation and its sole director and officer is Craig Clydesdale. 244 installs and operates energy production equipment and, specifically for St. Marys Cement Inc. (Canada) ("SMC"), 244 installed certain equipment described in the materials as the "CHP System" and heating, ventilation and air conditioning (“HVAC”) equipment (together, the "Equipment"). The Equipment is located at the premises of SMC at 55 Industrial Street, Toronto, Ontario. The Equipment is operated by 244 pursuant to an Energy Services Agreement assigned to 244 (the “ESA”).

244 is indebted to the Mortgage Fund pursuant to a loan agreement dated November 7, 2014. As security for its obligations to the Mortgage Fund, 244 provided security including a general security agreement and an assignment of the ESA. Pursuant to the terms of the general security agreement, the Mortgage Fund is contractually entitled to appoint a receiver and/or receiver and manager over 244.

By October 2017, 244 failed to make required interest payments when due under the terms of the 244 loan agreement. Additionally, 244 granted security interests to certain related entities of 244 that are controlled by Mr. Clydesdale which constituted events of default under the 244 loan agreement. The moving party also relies upon the failure by 244 to deliver certain documentation in connection with the 244 loan agreement and security as an event of default.

The CW Receiver provided notice to 244 of defaults by letter dated October 26, 2017. By letter dated November 13, 2017, the CW Receiver made formal demand on 244 for payment of its indebtedness to the Mortgage Fund. A Notice of Intention to Enforce Security pursuant to subsection 244 (1) of the *Bankruptcy and Insolvency Act* accompanied the demand. As of November 13, 2017, $1,872,657.83 was owing for principal and accrued interest under the credit facilities pursuant to the 244 loan agreement. 244 failed to make payment in accordance with the demand for payment or to make alternative arrangements acceptable to the CW Receiver, or initiate any filings under the BIA.

In support of this motion, SMC has provided evidence, through the affidavit of J. William Asselstine. Mr. Asselstine has given evidence that SMC believes that 244 may view any enforcement step with respect to the Equipment as grounds to cease providing any services and suspend the operation of the HVAC equipment. He has also expressed that SMC is concerned that 244 may consider itself entitled to disrupt or terminate the supply of electricity from Toronto Hydro through the Equipment to SMC buildings, and that this is something that appears possible for 244 to do based on the electrical system configuration. Mr. Asselstine provides evidence that shortly after a December 12, 2017 letter from the CW Receiver providing notice of 244's default, 244's counsel advised SMC and the CW Receiver that if SMC complied with the Receiver's direction to pay, then 244 would not maintain its operations at the SMC property. 244's counsel proposed a standstill agreement and he encouraged the parties to execute the standstill agreement on an expedited basis "so there will be no problems until then resulting from my client's bills not being paid". To avoid interruption of the provision of power and HVAC services, the monthly service fees were paid into an escrow account until the parties could discuss an appropriate agreement on the payment of fees. When the distribution of funds accumulating in an escrow account could not be settled, in a letter dated February 5, 2018 to SMC's counsel, counsel for 244, wrote:

> “My client would point out that it is wrong to assert that the Toronto Hydro issue is justification for withholding the payments that the Receiver has directed. Firstly the ESA contains a "no set off" clause (par. 1.5(a)) which was put in place specifically to avoid the situation your client is suddenly creating i.e., does it intend that 244 stop supplying it services? : Please answer this question: shall my client terminate all services to St. Mary's for nonpayment? (HVAC, Pond, come to mind).
>
> Please remind your client that 244 supplies heating and chilling services to the St. Mary's headquarters. Surely it is not your client's intention to have all of those services terminate by breaching the ESA?”

In his letter, 244's counsel proposed dispute resolution under the ESA.

On December 11, 2017, the CW Receiver obtained an Order which, amongst other things, directed that Mr. Clydesdale provide to the CW Receiver all information previously sought, and authorized the CW Receiver to examine Mr.

Clydesdale under oath. This examination was conducted and during the examination, counsel for 244 confirmed that the Equipment is owned by 244. The effort to resolve the issues continued until March 20, 2019 and they were unsuccessful. The CW Receiver continues to receive only partial payments for amounts owing under the ESA.

An interim receiver may be appointed pursuant to section 47 of the BIA and section 101 of the *Courts of Justice Act*. Where notice is sent under subsection 244 (1) of the BIA, sections 47 (1) and 47 (3) of the BIA provide that an interim receiver may be appointed if it is shown to the court to be necessary for the protection of: (a) the debtor's estate; or (b) the interests of the creditor who sent the notice under subsection 244 (1). Section 101 of the CJA permits the appointment of a receiver by interlocutory order where it is "just and convenient" to do so. Courts require that there be some risk to the assets in order to appoint an interim receiver which is more than merely speculative, but do not require the applicant to go so far as to prove an actual immediate risk to the assets. See *Maximum Financial Services Inc. v. Corporate Cars Limited Partnership* (2006), 29 C.B.R. (5th) 110 (Ont. S.C.J.), at para. 15.

I am satisfied that there is a need to preserve and protect the assets of 244 by the appointment of an interim receiver, and that it is just and convenient to do so. I am satisfied that an interim receiver is necessary for the protection of 244's estate, the interests of the Mortgage Fund and, perhaps, other stakeholders, including SMC, in relation to the Equipment. The CW Receiver intends to simply secure possession and control of the Equipment to prevent unauthorized access. Given this, I am satisfied that there is no non-compensable prejudice to 244. I am satisfied that it is proper for this application to be brought without notice because of the risk that if 244 disrupts the operation of the Equipment, SMC would be at risk of suffering real loss or substantial damage, which, if it occurred, may constitute irreparable harm. Examples of the harm that could be caused to SMC as a result of disruptions to the power and HVAC services are set out in Mr. Asselstine's affidavit at paragraph 30. The letter from counsel for 244 appears to have been addressing a situation that may arise upon non-payment by SMC to 244, but, on the evidence before me, there is a reasonable concern on the part of SMC that notice of this motion could result in disruption to its electrical or HVAC services, which could cause very serious consequences for SMC. Given this risk, I am satisfied that this motion was properly brought without notice.

Following the securing of possession and control, 244 will be served with the materials, including this Endorsement. I direct that it do so forthwith after the Equipment is secured.

For these reasons, I grant the motion. Order to issue in form of attached order signed by me.

Cavanagh J.

Appendix “E”

From: Miranda Spence
Sent: August 13, 2021 12:34 PM
To: kwm@kwmckenzielaw.com; lawyerbill@rogers.com
Cc: Steve Graff; Damian Lu; Bruce Bando (bruce.bando@ca.gt.com); craig@oomenergy.com
Subject: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.
Attachments: Order (Appointment of Interim Receiver) dated August 12, 2021.pdf; Endorsement of Justice Cavanagh dated August 12, 2021.pdf; Supplementary Endorsement of Justice Cavanagh dated August 13, 2021.pdf

Dear Mr. McKenzie,

Please see the attached Order and Endorsements of the Honourable Justice Cavanagh dated August 12 and August 13, 2021.

Please also note the further hearing date of September 7, 2021 at 11:00 am.

Yours truly,

Miranda Spence

T 416.865.3414
F 416.863.1515
E mspence@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

AIRD BERLIS

Appendix “F”

From: lawyerbill@rogers.com
Sent: August 16, 2021 7:46 AM
To: Miranda Spence
Cc: Steve Graff; Damian Lu; 'Bruce Bando'; craig@oomenergy.com
Subject: RE: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Good morning counsel. Please provide all documents that were filed including the factum before this can be considered proper service. This is especially important since this a motion without notice where full disclosure was required.

We also expect to receive a full report from the Receiver including an explanation why they sought an order that said they don't have to follow it- the wording says **" but not obligated** " - please update me today. My client needs to know what the Receiver has done or is doing with plenty of notice so what is the effective date when it will be required to stop operating the agreement?.

244 will require a full status report on a daily basis until it is satisfied that the Receiver has taken over full responsibility for the Property and its operation. We note this is crucial to the ongoing operation of Saint Mary's.

Regards, Bill McKenzie
Kwmckenzielaw.com

From: Miranda Spence <mspence@airdberlis.com>
Sent: Friday, August 13, 2021 12:34 PM
To: kwm@kwmckenzielaw.com; lawyerbill@rogers.com
Cc: Steve Graff <sgraff@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; Bruce Bando (bruce.bando@ca.gt.com) <bruce.bando@ca.gt.com>; craig@oomenergy.com
Subject: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Dear Mr. McKenzie,

Please see the attached Order and Endorsements of the Honourable Justice Cavanagh dated August 12 and August 13, 2021.

Please also note the further hearing date of September 7, 2021 at 11:00 am.

Yours truly,

Miranda Spence

T 416.865.3414
F 416.863.1515
E mspence@airdberlis.com

Aird & Berlis LLP | Lawyers

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

AIRD BERLIS

Appendix “G”

From: Miranda Spence
Sent: August 20, 2021 11:02 AM
To: lawyerbill@rogers.com
Cc: Steve Graff; Damian Lu; 'Bruce Bando'; craig@oomenergy.com
Subject: RE: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Good morning Mr. McKenzie,

We confirm that the Receiver has taken full responsibility for the operation of the Property that is subject to the interim receivership. A complete set of the materials relied upon is available at the Receiver's website:
https://www.grantthornton.ca/service/advisory/creditor-updates/#2441472-Ontario-Inc

Regards,

Miranda Spence
Aird & Berlis LLP

T **416.865.3414**
E **mspence@airdberlis.com**

From: lawyerbill@rogers.com <lawyerbill@rogers.com>
Sent: August 16, 2021 7:46 AM
To: Miranda Spence <mspence@airdberlis.com>
Cc: Steve Graff <sgraff@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; 'Bruce Bando' <bruce.bando@ca.gt.com>; craig@oomenergy.com
Subject: RE: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Good morning counsel. Please provide all documents that were filed including the factum before this can be considered proper service. This is especially important since this a motion without notice where full disclosure was required.

We also expect to receive a full report from the Receiver including an explanation why they sought an order that said they don't have to follow it- the wording says **" but not obligated** " - please update me today. My client needs to know what the Receiver has done or is doing with plenty of notice so what is the effective date when it will be required to stop operating the agreement?.

244 will require a full status report on a daily basis until it is satisfied that the Receiver has taken over full responsibility for the Property and its operation. We note this is crucial to the ongoing operation of Saint Mary's.

Regards, Bill McKenzie
Kwmckenzielaw.com

From: Miranda Spence <mspence@airdberlis.com>
Sent: Friday, August 13, 2021 12:34 PM
To: kwm@kwmckenzielaw.com; lawyerbill@rogers.com

Cc: Steve Graff <sgraff@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; Bruce Bando (bruce.bando@ca.gt.com) <bruce.bando@ca.gt.com>; craig@oomenergy.com
Subject: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Dear Mr. McKenzie,

Please see the attached Order and Endorsements of the Honourable Justice Cavanagh dated August 12 and August 13, 2021.

Please also note the further hearing date of September 7, 2021 at 11:00 am.

Yours truly,

Miranda Spence

T 416.865.3414
F 416.863.1515
E mspence@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

AIRD BERLIS

Appendix "H"

From: lawyerbill@rogers.com
Sent: August 30, 2021 2:41 PM
To: Miranda Spence; kwm@kwmckenzielaw.com
Cc: Steve Graff; Damian Lu
Subject: RE: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.
Attachments: CommercialListmisfire.jpeg; 210907RESPONDINGRecordof244.pdf

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hi Miranda- here is the responding record so now you are served. However there is a problem with filing because the Order is in error and I will ask you to forward it to the correct email address for the court and copy me so we will know they got it. Then I will send the factum and book of authorities. Note that an hour is not enough time for my argument and you will want to reply so I am good to go at an earlier date.

The Order says:
SERVICE AND NOTICE
22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-serviceprotocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the
following URL <www.grantthornton.ca/2441472>.

I am asking you to email this to the commercial list people and would ask that you be sure they receive it to alleviate any issues regarding this curious wording in the order. They will want to fix that. Here is a screenshot of the website in the Order so I am sure we can find a way to be sure all is well. Please let me know if we need to do anything else to be sure this is filed.

Thanks, Bill McKenzie

Kwmckenzie.com

From: Miranda Spence <mspence@airdberlis.com>
Sent: Friday, August 13, 2021 12:34 PM
To: kwm@kwmckenzielaw.com; lawyerbill@rogers.com
Cc: Steve Graff <sgraff@airdberlis.com>; Damian Lu <dlu@airdberlis.com>; Bruce Bando (bruce.bando@ca.gt.com) <bruce.bando@ca.gt.com>; craig@oomenergy.com
Subject: Crystal Wealth Mortgage Strategy and 2441472 Ontario Inc.

Dear Mr. McKenzie,

Please see the attached Order and Endorsements of the Honourable Justice Cavanagh dated August 12 and August 13, 2021.

Please also note the further hearing date of September 7, 2021 at 11:00 am.

Yours truly,

Miranda Spence

T 416.865.3414
F 416.863.1515
E mspence@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

AIRD BERLIS

Appendix “I”

ASSET PURCHASE AGREEMENT

BETWEEN

GRANT THORNTON LIMITED
solely in its capacity as the Court-appointed interim receiver of, and proposed Court-appointed receiver of, 2441472 Ontario Inc., and not in its corporate or personal capacity

- and -

ST. MARYS CEMENT INC. (CANADA)

Dated: August 13, 2021

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 13th day of August, 2021.

BETWEEN:

GRANT THORNTON LIMITED
solely in its capacity as the Court-appointed interim receiver of, and the proposed Court-appointed receiver of, 2441472 Ontario Inc., and not in its corporate or personal capacity

(the "**Receiver**")

\- and -

ST. MARYS CEMENT INC. (CANADA)

(the "**Purchaser**")

WHEREAS pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on April 26, 2017 (the "**CW Appointment Order**"), Grant Thornton Limited ("**GTL**") was appointed as the receiver (in such capacity, the "**CW Receiver**") of all of the assets, undertakings and properties of Crystal Wealth Management System Limited (the "**Company**") and certain additional persons and entities, including fifteen (15) proprietary open-ended mutual fund trusts created and managed by the Company (collectively, "**Crystal Wealth**"), including the Crystal Wealth Mortgage Strategy mutual fund (the "**Mortgage Fund**");

AND WHEREAS pursuant to the CW Appointment Order, the CW Receiver was authorized to receive and collect all monies and accounts owed or which may become owing in the future to Crystal Wealth, and to exercise all remedies available to Crystal Wealth in collecting such monies and accounts, including initiating proceedings with respect to the recovery of such monies and accounts;

AND WHEREAS 2441472 Ontario Inc. (the "**Debtor**") is indebted to the Mortgage Fund with respect to certain secured credit facilities made available to the Debtor by the Mortgage Fund pursuant to and under the terms of a loan agreement dated November 7, 2014 (as the same may have been amended, replaced, restated, or supplemented from time to time, the "**244 Loan Agreement**");

AND WHEREAS the Debtor installs and operates energy production equipment, and specifically for the Purchaser, the Debtor installed the Purchased Assets (as hereinafter defined), located at the premises of the Purchaser (the "**SMC Property**") at the Building (as hereinafter defined), which equipment is also operated by the Debtor pursuant to an energy services agreement made between the Debtor and the Purchaser dated November 27, 2013 (as same may have been amended, replaced, restated, or supplemented from time to time, the "**SMC ESA**");

AND WHEREAS each of the Parties (as defined below) hereby acknowledges that (a) the Debtor and certain affiliates of the Debtor may have entered into certain intercompany arrangements involving the Purchased Assets and (b) neither the Receiver nor the Purchaser have the ability to inspect all of the Purchased Assets and as a result, the Parties may have incomplete information regarding the ownership and condition of the Purchased Assets;

AND WHEREAS the Purchaser wishes to purchase, and the Receiver wishes to sell, the Purchased Assets upon the terms and subject to the conditions set out herein;

AND WHEREAS the Purchaser has good reason to believe that the delivery of electricity, heating, air conditioning and ventilation to the SMC Property may be interrupted if the Debtor receives notice of the Receiver's intention to sell the Purchased Assets to the Purchaser;

AND WHEREAS the CW Receiver sought and obtained an interlocutory *ex parte* Order (the "**Interim Receivership Order**") appointing GTL as the interim receiver of all of the assets, undertakings and properties of the Debtor (the "**Property**") to gain control of the Purchased Assets, and, subsequently to seek an Order appointing GTL as full receiver over the Property for the purpose of effecting the sale of the Purchased Assets to, and vesting title of the Purchased Assets free and clear of all Encumbrances in, the Purchaser (the "**Receivership Order**"); and

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 Definitions.

In this Agreement:

"**244 Loan Agreement**" has the meaning set out in the recitals hereof;

"**Access Period**" has the meaning set out in section 12.2(1) hereof;

"**Act**" means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time;

"**Affiliate**" has the meaning given to it in the Act;

"**Agreement**" means this asset purchase agreement, including all schedules and all amendments or restatements, as permitted, and references to "**article**", "**section**" or "**schedule**" mean the specified article, section of, or schedule to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

"**Amendment Agreement**" means the agreement dated July 17, 2014, amending the SMC ESA;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, (a) all applicable laws, statutes, regulations, rules, principles of common law or equity, by-laws, ordinances, protocols, treaties, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority and (b) the provisions of any licence, permit, authorization, approval or consent of any Governmental Authority;

"**Approval and Vesting Order**" means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and vesting the Purchased Assets in the Purchaser free and clear of all Encumbrances and which order shall be in a form substantively similar to the draft order attached as Schedule A" hereto;

"**Blackstone**" has the meaning set out in section 6.1 hereof;

"**Blackstone Engagement Letter**" has the meaning set out in section 6.1 hereof;

"**Building**" means the building located at 55 Industrial St., Toronto, Ontario;

"**Business Day**" means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

"**CHP Component**" means, collectively, any and all of the equipment and other tangible and intangible assets that are installed as part of, or required for the full and proper operation of, the combined heat and power system pursuant to the SMC ESA, or are required to connect such system to the Building systems and to the applicable electrical utility, which system may be described as MCS Cogen Mark 6 CoEnergyPod or MCS TRIGEN Mark 8 TriEnergy PoD, including but not limited to all equipment currently within the Debtor's container marked "OOM" located at the SMC Property;

"**Claims**" means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, and "**Claim**" means any one of them;

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

"**Closing Date**" means the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, and, (iii) such other date as agreed in writing by the Parties;

"**Closing Time**" means 12:01 a.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

"**Court**" has the meaning set out in the recitals hereof;

"**Company**" has the meaning set out in the recitals hereof;

"**Crystal Wealth**" has the meaning set out in the recitals hereof;

"**CW Appointment Order**" has the meaning set out in the recitals hereof;

"**CW Receiver**" has the meaning set out in the recitals hereof;

"**Debtor**" has the meaning set out in the recitals hereof;

"**Encumbrances**" means all liens, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"**ETA**" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"**Governmental Authority**" 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, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and "**Governmental Authority**" means any one of them;

"**GTL**" has the meaning set out in the recitals hereof;

"**HST**" means harmonized sales tax imposed under Part IX of the ETA;

"**HVAC Component**" means, collectively, any and all of the equipment and other tangible and intangible assets that are described as, or installed as part of, or required for the full and proper operation of the heating, ventilation and air conditioning systems installed at, and connected to the Building, including but not limited to those assets listed on Schedule "B" hereto;

"**Interim Period**" means the period between 12:01 a.m. (Toronto Time) on the date that the Interim Receivership Order is granted and the Closing Time.

"**Interim Receivership Order**" has the meaning set out in the recitals hereof;

"**Interim Services**" has the meaning set out in section 6.1 hereof;

"**ITA**" means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

"**Mortgage Fund**" has the meaning set out in the recitals hereof;

"**Notice**" has the meaning set out in section 15.2 hereof;

"Outside Date" means September 30, 2021, or such other date as the Receiver and the Purchaser may mutually agree, in writing;

"**Parties**" means the Receiver and the Purchaser and their respective successors and assigns;

"**Person**" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

"**Property**" has the meaning set out in the recitals hereof;

"**Purchase Price**" has the meaning set out in section 4.1 hereof;

"**Purchased Assets**" means, collectively, the CHP Component and the HVAC Component and, for greater certainty, shall include all tangible and intangible assets that form part of the Energy Center Assets (as defined in the SMC ESA) and that are listed in Schedule "B" to the Amendment Agreement;

"**Purchaser**" means St. Marys Cement Inc. (Canada), a corporation duly formed and validly subsisting under the laws of the Province of Ontario, or an Affiliate of the Purchaser;

"**Receiver**" has the meaning set out in the recitals hereof;

"**Receivership Order**" has the meaning set out in the recitals hereof;

"**SMC ESA**" has the meaning set out in the recitals hereof;

"**SMC Property**" has the meaning set out in the recitals hereof;

"**Taxes**" means all taxes, HST, charges, fees, levies, imposts and other assessments, or similar charges in the nature of a tax, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"**Transaction**" means the transaction of purchase and sale contemplated by this Agreement; and

"**Transaction Documents**" means this Agreement and the other agreements, instruments, and documents required to be delivered at the Closing.

ARTICLE 2
SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

Schedule	**Description**
Schedule A	Form of Draft Approval and Vesting Order
Schedule B	List of HVAC Component Assets
Schedule C	Blackstone Engagement Letter

ARTICLE 3
AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

Upon and subject to the provisions hereof, the Receiver agrees to sell the Purchased Assets to the Purchaser, and the Purchaser agrees to purchase the Purchased Assets from the Receiver, in each case at the Closing Time.

ARTICLE 4
PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price (the “**Purchase Price**”) for the Purchased Assets shall be [redacted]

4.2 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price to the Receiver on Closing by way of a wire transfer, certified cheque or bank draft being drawn from a Canadian financial institution listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46.

4.3 Allocation of Purchase Price.

The Purchase Price shall be allocated among the Purchased Assets in the following manner:

[redacted]

[redacted]

ARTICLE 5
TAXES

5.1 Taxes.

(1) The Purchaser is completely and solely liable and responsible for the full payment of all Taxes in respect to the purchase and sale of the Purchased Assets and shall provide the Receiver at Closing or on such other date as expressly provided herein with proof of payment of such Taxes or, if applicable, provide the Receiver with appropriate tax exemption certificates. Notwithstanding the foregoing, the Purchaser shall not be responsible for any Taxes imposed on or with respect to the income or revenues of the Receiver or the Debtor.

(2) The Purchaser hereby agrees to indemnify and hold the Receiver harmless from and against all Claims in connection with the payment of any Taxes payable under section 5.1(1) of this Agreement, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such Taxes when due.

ARTICLE 6
INTERIM ARRANGEMENTS

6.1 Receiver's Obligations During Interim Period.

During the Interim Period, the Receiver hereby covenants and agrees that it will contract Blackstone Energy Services Inc. ("**Blackstone**") to perform the services (the "**Interim Services**") described in the engagement letter attached as Schedule "C" hereto (the "**Blackstone Engagement Letter**"), which services shall be for the account of the Purchaser and invoiced directly to the Purchaser by Blackstone.

6.2 Purchaser's Obligations During Interim Period.

During the Interim Period, the Purchaser hereby covenants and agrees that it will:

(1) grant access to the Receiver and to Blackstone, to the fullest extent necessary and possible, to the Property and the Purchased Assets in order to allow Blackstone to perform the Interim Services; and

(2) pay Blackstone's accounts issued in accordance with the Blackstone Engagement Letter during the Interim Period for the Interim Services.

ARTICLE 7
CLOSING ARRANGEMENTS

7.1 Closing.

Closing shall take place at the Closing Time on the Closing Date, or on such other time and at such other place as the Parties may agree in writing.

7.2 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

(1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;

(2) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 8.3 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time; and

(3) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

7.3 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

(1) the payment and satisfaction in full of the Purchase Price according to section 4.2 hereof;

(2) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 8.5 hereof have been fulfilled, performed or waived in all material respects as of the Closing Time;

(3) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time in all material respects, with the same effect as though made on and as of the Closing Time (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and

(4) if necessary, payment or evidence of payment of applicable Taxes or, if applicable, appropriate tax exemption certificates in accordance with Article 5 hereof; and

(5) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by Applicable Law or any Government Authority.

ARTICLE 8
CONDITIONS PRECEDENT TO CLOSING

8.1 Appointment as Full Receiver.

With the exception of the obligations set out at Article 6 and Article 12 hereof, the obligations of the Receiver and the Purchaser hereunder are subject to the satisfaction of the mutual condition that the Receivership Order shall have been granted by the Court in form and substance acceptable to the Purchaser and the Receiver, which shall not have been stayed, reversed or amended, and the time to appeal or seek leave to appeal shall have expired, or in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court.

8.2 Approval and Vesting Order.

With the exception of the obligations set out at Article 6 and Article 12 hereof, the obligations of the Receiver and the Purchaser hereunder are subject to the satisfaction of, or the express written waiver of the Parties, at or prior to the Closing Time, the mutual condition that the Approval and Vesting Order shall have been granted by the Court in form and substance acceptable to the Purchaser and the Receiver, which shall not have been stayed, reversed or amended, and the time to appeal or seek leave to appeal shall have expired, or in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court.

8.3 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

(1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct on the Closing Date in all material respects (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);

(2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Purchaser;

(3) the Purchaser shall have complied with all the terms and conditions contained in this Agreement applicable to the Purchaser prior to the Closing Date; and

(4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

8.4 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 8.3 hereof is not fulfilled on or prior to the Closing Date, then the Receiver may, at its sole discretion and without limiting any rights or remedies available to it at law or in equity:

(1) terminate this Agreement by notice, in writing, to the Purchaser, in which event the Receiver and the Purchaser shall be released from their obligations under this Agreement to complete the Transaction and any funds in respect of the Purchase Price shall be returned to the Purchaser without interest or deduction; or

(2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.5 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

(1) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed in all material respects by the Receiver;

(2) the Receiver shall have complied with all the terms and conditions contained in this Agreement applicable to the Receiver prior to the Closing Date; and

(3) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against the Receiver, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

8.6 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 8.5 hereof are not fulfilled on or prior to the Closing Date, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

(1) terminate this Agreement by notice, in writing, to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and any funds in respect of the Purchase Price shall be returned to the Purchaser without interest or deduction; or

(2) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.7 Outside Date.

The completion of the Transaction is conditional upon the Closing Date occurring on or before the Outside Date, which condition is for the mutual benefit of the Receiver and the Purchaser. In the event that the Transaction is not completed as a result of one or more of the other conditions set out in this Article 8 not being fulfilled, satisfied or waived on or prior to the Outside Date, then the Party for whose benefit such condition is inserted may, on written notice to the other Party, at any time after the Outside Date, elect to terminate this Agreement, and, subject to Article 14 hereof, all further obligations of the Parties hereunder shall terminate and this Agreement shall be of no further force and effect. Notwithstanding the forgoing, the right to terminate this Agreement under this section 8.7 shall not be available to a Party whose default, breach or failure to fulfill any covenant, agreement or condition under this Agreement has been the cause of, or resulted in, the failure of the Transaction to be completed on or prior to the Outside Date.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

(1) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

(1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;

(2) the Purchaser has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

(3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and

(4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11
COVENANTS

11.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are reasonably necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement.

11.2 Receiver's Covenant.

The Receiver hereby covenants and agrees that within 30 days of executing this Agreement, or such later date as the Parties may mutually agree in writing, it will make reasonable best efforts to schedule the return date of its motion for the Receivership Order and the Approval and Vesting Order.

ARTICLE 12
POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets.

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. The Purchaser acknowledges that the Receiver has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement have been satisfied or waived.

12.2 Access to Purchased Assets and Confirmation of Purchased Assets

(1) For the period commencing on the date hereof and ending on the Closing Date (the "**Access Period**"), the Receiver shall cause the Purchaser and its authorized representatives to have access to the locations where the Purchased Assets are located, to the extent the Receiver has lawful authority to grant access to such locations, to, among other things, conduct such inspections of the Purchased Assets as the Purchaser deems appropriate, at the Purchaser's cost and expense.

(2) During the Access Period, the Receiver hereby covenants and agrees to cooperate in good faith with the Purchaser to amend this Agreement to revise the definition of the Purchased Assets set out herein, to capture any material additions or exclusions to the Purchased Assets that the Purchaser reasonably deems necessary, based on its inspections of the Purchased Assets. For clarity, any revision to the definition of the Purchased Assets shall not affect the Purchase Price.

ARTICLE 13
AS IS, WHERE IS

13.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling, and the Purchaser is purchasing, the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental state or compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14
TERMINATION

14.1 Termination of this Agreement.

This Agreement may be terminated:

(1) upon the mutual written agreement of the Parties;

(2) pursuant to section 8.4 hereof by the Receiver;

(3) pursuant to section 8.6 hereof by the Purchaser; or

(4) pursuant to section 8.7 hereof by either the Purchaser or the Receiver.

14.2 Effect of Termination.

Notwithstanding section 14.1, if either Party terminates this Agreement as a result of any breach of a representation, warranty, covenant or obligation of the other Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination.

14.3 Termination If No Breach of Agreement.

If this Agreement is terminated for reasons other than a breach of a representation, warranty, covenant or obligation of a Party, then:

(1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that expressly survive the termination of this Agreement; and

(2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 15
GENERAL CONTRACT PROVISIONS

15.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and the transfer of the Purchased Assets to the Purchaser and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver and/or the Debtor shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

15.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, Article 9, Article 10, section 14.2 and section 14.3 and section 15.1 shall survive the termination of this Agreement or the completion of the Transaction, provided, however, that upon the discharge of GTL as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

15.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a

"**Notice**") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, ON M5H 3T4

Attention: Bruce S. Bando
Tel: (416) 369-6418
Email: Bruce.Bando@ ca.gt.com

and a copy to the Receiver's counsel (which shall not constitute notice) to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Steven L. Graff, Miranda Spence and Damian Lu
Tel: (416) 865-1500
Email: sgraff@airdberlis.com, mspence@airdberlis.com and dlu@airdberlis.com

(b) to the Purchaser:

St. Marys Cement Inc. (Canada)
55 Industrial Street
East York, ON M4G 3W9

Attention: J. William Asselstine and Barbara Zeller
Tel: (416) 696-4414 and (416) 696-4474
Email: bill.asselstine@vcimentos.com and barbara.zeller@vcimentos.com

and a copy to the Purchaser's counsel (which shall not constitute notice) to:

WeirFoulds LLP
TD Bank Tower
66 Wellington Street West, Suite 4100
Toronto, ON, M5K1B7

Attention: Philip Cho
Tel: (416) 619-6296
Email: pcho@weirfoulds.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such delivery did not occur during normal business hours on a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

15.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

15.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

15.6 Governing Law.

This Agreement will be interpreted by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

15.7 Entire Agreement.

This Agreement and the other Transaction Documents constitutes the entire agreement between the Parties with respect to the subject matter contained herein and therein and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

15.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

15.9 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.

15.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. Other than to an Affiliate, the Purchaser shall not assign this Agreement without the Receiver's prior written approval, which approval shall not be unreasonably withheld.

15.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

15.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

15.13 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.

15.14 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

15.15 Receiver's Capacity.

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver of the Property and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect, except as expressly provided for in the CW Appointment Order, or any further order of the Court.

15.16 No Third Party Beneficiaries.

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties hereto and their successors and permitted assigns, and no Person, other than the Parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum, save and except in the event of any action, suit, proceeding, hearing or other forum as it pertains to matters of confidentiality and any particular representative in connection therewith.

15.17 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

15.18 Counterparts.

This Agreement may be executed in counterparts and by facsimile, PDF, DocuSign, or other form of electronic signature, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[**Signature page follows**.]

IN WITNESS WHEREOF the parties hereto have duly executed this Asset Purchase Agreement as of the date first above written.

GRANT THORNTON LIMITED, solely in its capacity as the Court-appointed interim receiver of, and the proposed Court-appointed receiver of, 2441472 Ontario Inc., and not in its corporate or personal capacity

By: ______________________________
Name: Bruce S. Bando
Title: Vice President

ST. MARYS CEMENT INC. (CANADA)

By: ______________________________
Name:
Title:

IN WITNESS WHEREOF the parties hereto have duly executed this Asset Purchase Agreement as of the date first above written.

GRANT THORNTON LIMITED, solely in its capacity as the Court-appointed interim receiver of, and the proposed Court-appointed receiver of, 2441472 Ontario Inc., and not in its corporate or personal capacity

By: ______________________________

Name: Bruce S. Bando
Title: Vice President

ST. MARYS CEMENT INC. (CANADA)

DocuSigned by:

By: Filiberto Ruiz

F6DD630E5B944E1...

Name: Filiberto Ruiz
Title: CEO

SCHEDULE A
FORM OF DRAFT APPROVAL AND VESTING ORDER

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ________	)	<*>DAY, THE <*>TH DAY
	)	
JUSTICE <*>	)	OF <*>, 2021

BETWEEN:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of the respondent, 2441472 Ontario Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and St. Marys Cement Inc. (Canada) (the "**Purchaser**") dated <*> and appended to the Report of the Receiver dated <*> (the "**Report**"), and vesting in the Purchaser all rights, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 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 rights, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all contracts relating to the Purchased Assets, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, retentions of title, pledges, leases, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, matured or unmatured, or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing (collectively, the "**Encumbrances**"): (i) any encumbrances or charges created by the Order of the Honourable Justice <*> dated <*>, 2020 (as subsequently amended); (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, 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.

3. 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 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 from the sale of the Purchased Assets

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.

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

5. 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

6. 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.

SCHEDULE A – FORM OF RECEIVER'S CERTIFICATE

Court File No. __________

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

PLAINTIFF

Plaintiff

- and –

DEFENDANT

Defendant

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "**Court**") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of [DEBTOR] (the "**Debtor**").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "**Purchaser**") and provided for the vesting in the Purchaser all rights, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the 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; (ii) that the conditions to Closing as set out in section ● of the Sale 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section ● of the Sale 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].

[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity

Per: ______________________________

Name:
Title:

SCHEDULE B
LIST OF HVAC COMPONENT ASSETS

4 hydronic AIR Handling Units for roof of office tower
BAC Building Automation System
Remote Ethernet control capabilities
Absorption chiller with remote condenser
Mechanical Chiller with remote condenser
Boiler system for hydronic and absorption chiller operation
Insulated 12' – 6" x 45' -0" Equipment Enclosure
Chemical management system for hydronic system
Chilled water Duplex Pump Set
- **4" Duplex Cold Water Pump Package with 300 gpm at 80 HF**
- **2 pump system with expansion tank and contactors**

Hot Water Duplex Pump Set
- **6" Duplex Hot Water Pump Package with 571 gpm at 80 HF**
- **2 pump system with expansion tank and contactors**

Condenser water Duplex Pump Set
- **6" Duplex Hot Water Pump Package with 550 gpm at 80 HF**
- **2 pump system with expansion tank and contactors**

Cooling Tower w/ access ladder and platforms for fill valve and fan motor service
Cooling fan Support Steel
Cooling Tower fan control
Piping system for condenser, boiler, generator, absorption and mechanical chiller
4 pipe plenum up outside of officer building wall
New Electrical Distribution 600 V/3 ph
New PDC 200A, heating, lighting, chemical supply, testing, control systems
Step down transformer 120/208 V
New gas line extension across property from original location
Potable water supply
Sanitary sewer to accommodate needs of new equipment
Sound attenuation

SCHEDULE C
BLACKSTONE ENGAGEMENT LETTER

See attached.

43623886.6

blackstone energy services

Letter of Engagement

Bruce S. Bando, Vice President
Grant Thornton Limited
11th Floor, 200 King Street West
Toronto, ON
M5H 3T4

Dear Mr. Bando,

As per your request has put together a notional scope of work for the containerized CHP and HVAC equipment (Plant) take-over at St. Marys Cement, 55 Industrial Street, Toronto property Premises. Blackstone will organize a team of trade specialist to access, assess and support the take-over and continued operations of the central heating and cooling systems that are currently under the control of OOM at the Premises.

We will prepare a team that will attend the Premises on August 12, 2021 to undertake the following activities to the best of our ability:

1. Disconnect remote communications to the Plant found in the OOM equipment containers
2. Assess the existing equipment condition, general operating conditions and performance and confirm safe Asset operations exist
3. Attempt to gain access to the Building Automation System (BAS) and assess the control and operating strategies for the systems to ensure reliable and safe operations
4. If we are unable to gain access to the BAS and assume control of the Plant, we will transition the Plant control and operation to local analog/digital control to ensure stable and safe operation
5. If we are unable to transition to local analog/digital control to provide reliable Plant operation and BAS control. We will attempt to operate the Plant manually in field supervised mode and put together a proposal to retrofit the BAS controllers to automate the Plant for reliable operation.
6. We will provide daily inspections and visit the site until we have a permanent solution for reliable and safe operation of the Plant as per your direction as an ongoing service as an additional service to the Plant take-over scope.
7. Please find our quoted hourly rates and estimated hours to achieve this scope of work above:
    a. HVAC Technician - $105.00/hr
    b. Building Automation System Technician - $120.00/hr
    c. Electrical Technician - $110.00/hr
    d. Project Management - $165.00/hr
    e. Project Supervision - $140.00/hr
    f. Overtime premium 1.5 x quoted hourly rate
8. We estimate 2 x 8-hour days of work for 80% of this team with a labour cost of **$7,990.00 plus HST** for the plant-takeover scope of work. This is an estimate cost and will be billed at regular time and overtime rates according to ensure the objective of safe and continued plant operations are achieved. If we feel we are going to exceed this amount we will contact you to seek direction for continuing with the work or to stop work.
9. Ongoing daily supervision will be billed in addition to the Plant take-over scope on an hourly basis at standard rates and at overtime rates for days where work outside of the regular business hours is required to inspect and maintain the Plant as required and directed by you.

10. Material requirements and costs are unknown at this time and will be provided as requirements are defined and costs prepared for your consideration.

Please be advised that we have no current knowledge of the existing Plant equipment condition or how the Plant is controlled or operated. Blackstone and our subcontractors take no responsibility for the equipment condition, operation, or failure as part of this support service effort.

We will work in good faith under your direction to stabilize and support continued operation of the Plant equipment and systems to provide building comfort for the Premises.

Payment Terms are Net 30 days for receipt of invoice. It is acknowledged and agreed by the parties that invoices are to be issued directly to and paid by St. Marys Cement Inc. (Canada). Invoices should be sent directly to Gustavo Petruz at gustavo.petruz@vcimentos.com and cc Barbara Zeller at barbara.zeller@vcimentos.com .

Please confirm you acceptance of our offer for the above scope.

____
Print Name

____
Signature

____
Date

CONFIDENTIAL APPENDIX “1”

CONFIDENTIAL APPENDIX “2”

CONFIDENTIAL APPENDIX “3”

CONFIDENTIAL APPENDIX "4"

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED - and - **2441472 ONTARIO INC.**

Applicant | Respondent

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FIRST REPORT OF THE INTERIM RECEIVER AND PROPOSED RECEIVER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Tel: 416.863.1500
Fax: 416.863.1515
Email: sgraff@airdberlis.com / mspence@airdberlis.com / dlu@airdberlis.com

Steven L. Graff – LSO# 31871V
Miranda Spence – LSO# 60621M
Damian Lu – LSO# 80070O

Lawyers for Grant Thornton Limited

TAB 3

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ____	)	TUESDAY, THE 7TH DAY
	)	
JUSTICE ___________	)	OF SEPTEMBER, 2021

BETWEEN:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of the respondent, 2441472 Ontario Inc. (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the GTL, in its capacity as the interim receiver (in such capacity, the "**Interim Receiver**") and proposed receiver of the Debtor and St. Marys Cement Inc. (Canada) (the "**Purchaser**") dated August 13, 2021 and appended to the report of GTL in its capacity as the Interim Receiver and proposed receiver dated August 31, 2021 (the "**Report**"), and vesting in the Purchaser all rights, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day by judicial videoconference due to the COVID-19 emergency via Zoom.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Damian Lu sworn August 31, 2021, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 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 rights, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all contracts relating to the Purchased Assets, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, retentions of title, pledges, leases, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, matured or unmatured, or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing (collectively, the "**Encumbrances**"): (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 12, 2021; (ii) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 31, 2021 appointing the Receiver; and (iii) 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, 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.

3. **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 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 from the sale of the Purchased Assets

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.

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

5. **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

6. **THIS COURT ORDERS** that Confidential Appendix "1", Confidential Appendix "2", Confidential Appendix "3" and Confidential Appendix "4" to the Report shall be and are hereby sealed, kept confidential and shall not form part of the public record until the earlier of: (a) the filing of the Receiver's Certificate in accordance with paragraph 2 hereto; and (b) further Order of this Court.

7. **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.

SCHEDULE A – FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the "**Court**") dated September 7, 2021, Grant Thornton Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of 2441472 Ontario Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 7, 2021, the Court approved the agreement of purchase and sale made as of August 13, 2021 (the "**Sale Agreement**") between GTL, in its capacity as the interim receiver and proposed receiver of the Debtor and St. Marys Cement Inc. (Canada) (the "**Purchaser**") and provided for the vesting in the Purchaser all rights, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the 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; (ii) that the conditions to Closing as set out in section 8 of the Sale 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section 8 of the Sale 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 ________ on _______.

Grant Thornton Limited, in its capacity as Receiver of the undertaking, property and assets of 2441472 Ontario Inc., and not in its personal capacity

Per: ________________________________

Name:

Title:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED	- and -	**2441472 ONTARIO INC.**
Applicant		Respondent

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Tel: 416.863.1500
Fax: 416.863.1515
Email: sgraff@airdberlis.com / mspence@airdberlis.com / dlu@airdberlis.com

Steven L. Graff – LSO# 31871V
Miranda Spence – LSO# 60621M
Damian Lu – LSO# 80070O

Lawyers for Grant Thornton Limited

TAB 4

~~Revised: January 21, 2014~~

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 7TH DAY
	)	
JUSTICE	)	OF SEPTEMBER, 2021

BETWEEN:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

\- and -

2441472 ONTARIO INC.

Respondent

~~THE HONOURABLE~~	~~)~~	~~WEEKDAY, THE #~~
	~~)~~	
~~JUSTICE~~	~~)~~	~~DAY OF MONTH, 20YR~~

~~B E T W E E N:~~

~~**PLAINTIFF**~~

~~Plaintiff~~

THIS MOTION, made by ~~[RECEIVER'S NAME]~~Grant Thornton Limited (“**GTL**”) in its capacity as the Court-appointed receiver (the ~~"~~“**Receiver**~~"~~”), without security, of all of the ~~undertaking, property and~~ assets~~ of [DEBTOR]~~, undertakings and properties of the respondent, 2441472 Ontario Inc. (the ~~"~~“**Debtor**~~"~~”) for an order approving the sale transaction (the ~~"~~“**Transaction**~~"~~”) contemplated by an agreement of purchase and sale (the ~~"~~“**Sale Agreement**~~"~~”) between the GTL, in its capacity as the interim receiver (in such capacity, the “**Interim Receiver**”) and ~~[NAME OF PURCHASER]~~proposed receiver of the Debtor and St. Marys Cement Inc. (Canada) (the ~~"~~“**Purchaser**~~"~~”) dated ~~[DATE]~~August 13, 2021 and appended to the ~~Report~~report of GTL in its capacity as the Interim Receiver and proposed receiver dated ~~[DATE]~~August 31, 2021 (the ~~"~~“**Report**~~"~~”), and vesting in the Purchaser ~~the Debtor's right~~all rights, title and interest in and to the assets described in the Sale Agreement (the ~~"~~“**Purchased Assets**~~"~~”), was heard this day ~~at 330 University Avenue, Toronto, Ontario~~by judicial videoconference due to the COVID-19 emergency via Zoom.

ON READING the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~the Purchaser and the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~Damian Lu sworn ~~[DATE]~~August 31, 2021, filed~~[1]~~:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,~~[2]~~ and the execution of the Sale Agreement by the Receiver~~[3]~~ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

~~[1] This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

~~[2] In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

~~[3] In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

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 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 ~~of the Debtor's right~~rights, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~[4] shall vest absolutely in the Purchaser, free and clear of and from any and all contracts relating to the Purchased Assets, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, retentions of title, pledges, leases, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, matured or unmatured, or otherwise (collectively, the ~~"~~“**Claims**~~"[5]~~”) including, without limiting the generality of the foregoing (collectively, the “**Encumbrances**”): (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Cavanagh dated ~~[DATE]~~August 12, 2021; (ii) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated August 31, 2021 appointing the Receiver; and (iii) 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] To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

~~[5] The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*][6], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "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.~~

3. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds~~[7]~~ from the sale of the Purchased Assets 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 from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale~~[8]~~, 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.

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

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the~~

~~[6] Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~[7] The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~[8] This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

5. ~~7.~~ **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

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 the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

6. **THIS COURT ORDERS** that Confidential Appendix "1", Confidential Appendix "2", Confidential Appendix "3" and Confidential Appendix "4" to the Report shall be and are hereby sealed, kept confidential and shall not form part of the public record until the earlier of: (a) the filing of the Receiver's Certificate in accordance with paragraph 2 hereto; and (b) further Order of this Court.

7. ~~9.~~ **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.

~~Revised: January 21, 2014~~

~~Schedule A – Form of Receiver's Certificate~~SCHEDULE A – FORM OF RECEIVER'S CERTIFICATE

Court File No. ~~___________~~CV-21-00667707-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

~~B E T W E E N:~~

~~**PLAINTIFF**~~

~~Plaintiff~~

~~-~~

BETWEEN:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and ~~– DEFENDANT~~

~~Defendant~~**Manager, GRANT THORNTON LIMITED**

Applicant

- and -

2441472 ONTARIO INC.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Mr. Justice Cavanagh of the Ontario Superior Court of Justice (the ~~"~~"**Court**~~"~~") dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~September 7, 2021, Grant Thornton Limited was appointed as the receiver (the ~~"~~"**Receiver**~~"~~") of the undertaking, property and assets of ~~[DEBTOR]~~2441472 Ontario Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated ~~[DATE]~~September 7, 2021, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~August 13, 2021 (the ~~"~~"**Sale Agreement**~~"~~") between ~~the Receiver [~~GTL, in its capacity as the interim receiver and proposed receiver of the Debtor~~]~~ and ~~[NAME OF PURCHASER]~~St. Marys Cement Inc. (Canada) (the ~~"~~"**Purchaser**~~"~~") and provided for the vesting in the Purchaser ~~of the Debtor's right~~all rights, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the 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; (ii) that the conditions to Closing as set out in section ~~•~~8 of the Sale 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 Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets ~~payable on the Closing Date~~ pursuant to the Sale Agreement;

2. The conditions to Closing as set out in section ~~•~~8 of the Sale 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]~~.

~~[NAME OF RECEIVER]~~Grant Thornton Limited, in its capacity as Receiver of the undertaking, property and assets of ~~[DEBTOR]~~2441472 Ontario Inc., and not in its personal capacity

Per: ______________________________

Name:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED	- and -	**2441472 ONTARIO INC.**
Applicant		Respondent

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Miranda Spence – LSO# 60621M
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Lawyers for Grant Thornton Limited

~~**Schedule B – Purchased Assets**~~

Document comparison by Workshare Compare on August 30, 2021 11:37:12 PM

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Description	#45729551v2<wsc.airdberlis.com> - Approval and Vesting Order
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Deletions	131
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	247

TAB 5

Court File No. CV-21-_______________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and -

2441472 ONTARIO INC.

Respondent

SERVICE LIST
(Current as of August 30, 2021)

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CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED Applicant	**- and -**	**2441472 ONTARIO INC.** Respondent

Court File No. CV-21-00667707-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
Toronto

MOTION RECORD
(Approval and Vesting Order)

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