

Clerk's Stamp:



COURT FILE NUMBER

COURT

JUDICIAL CENTRE OF

PLAINTIFF:

DEFENDANTS:

COURT OF QUEEN'S BENCH OF ALBERTA
CALGARY

CANADIAN WESTERN BANK

BIG BEAR ENERGY RENTALS LTD., 1509571
ALBERTA LTD., 5556300 MANITOBA LTD.,
BARRICADE ENVIRONMENTAL LTD., DIRECT
ENVIRONMENTAL TECHNOLOGIES INC., JASON
ROBERT LLOYD, KENNETH JOHN GEORGE
CARSTAIRS, ROBERT CHRISTOPHER LLOYD,
and DANIEL ROBERTS

DOCUMENT

INTERIM RECEIVERSHIP ORDER

CONTACT INFORMATION OF PARTY

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File No.: 0179291.0020

DATE ON WHICH ORDER WAS PRONOUNCED:

January 21, 2022

PLACE WHERE ORDER WAS PRONOUNCED:

Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER:

Madam Justice K.M. Horner

INTERIM RECEIVERSHIP ORDER

UPON the without notice application of Canadian Western Bank ("**CWB**") in respect of Big Bear Energy Rentals Ltd., 5556300 Manitoba Ltd., Barricade Environmental Ltd., Direct Environmental Technologies Inc., and 1509571 Alberta Ltd., (collectively, the "**Debtors**"); **AND UPON** having read the Notice of Application (the "**Application**"), the Affidavit of Trent Erickson sworn January 19, 2022 as yet unfiled (the "**Erickson Affidavit**"), and such other sworn evidence subject to a Sealing Order; **AND UPON** reading the consent of Alvarez & Marsal Canada Inc. to act as interim receiver (the "**Interim Receiver**") of the Debtors; **AND UPON** hearing counsel for CWB without notice to the Debtors or other Defendants in these proceedings; **AND UPON** the Court being satisfied that it is appropriate in the

circumstances to grant this order without notice to the Defendants or any other party; AND UPON it appearing to this Honourable Court that, it is necessary to appoint an Interim Receiver for the protection of the interests of CWB and the preservation of the Debtors' estates, and it is both just and convenient to appoint an Interim Receiver in the circumstances; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. Service of Notice of the Application to the Debtors, the Defendants, or any other party is hereby dispensed with.

APPOINTMENT

2. Pursuant to s. 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), s. 13(2) of the *Judicature Act*, RSA 2000, c J-2, s. 242(3) of *Business Corporations Act*, RSA 2000, c B-9, Alvarez and Marsal Canada Inc. shall be and is hereby appointed Interim Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").
3. The Interim Receivership shall terminate on the earliest of:
 - (a) the taking of possession by a receiver, within the meaning of subsection 243(2), or by a trustee in bankruptcy, of the Property; and
 - (b) 35 days after the date of this Order, being 11:59 p.m. (MST) on February 25, 2022, unless renewed by further Order of this Court prior to the expiry date.

INTERIM RECEIVER'S POWERS

4. The Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and the Records (as defined below) 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 monitor the Debtors' receipts and disbursements, the Debtors' business (the "**Business**"), and dealings with the Property, including, without limitation, the right to access all Records, and other information, computers, data, electronic or cloud-stored data, databases, or documents relating to the operations, including, without limiting the generality of the foregoing, having direct access to the Debtors' accounting records, programs, and databases, the Debtors' banking statements, records and online banking data;

- (b) to receive, preserve, and protect the Records, or any part or parts thereof, including, but not limited to, copying and or the relocating of Records to safeguard them;
- (c) to have access to the Debtors' Premises (hereinafter defined) during the times set out in paragraph 13 of this Order, without any requirement for prior notice;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, IT or forensic consultants, managers, legal 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 conduct examinations, under oath of any person with knowledge of the affairs of the Debtors, if deemed necessary by the Interim Receiver in its sole discretion;
- (f) to report to, meet with and discuss with such affected Persons (as defined below), including the Plaintiff, 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;
- (g) to inquire into and report to the Plaintiff and the Court on the financial condition of the Debtors and the Property and any material adverse developments relating to the financial condition of the Debtors, the Property, or both;
- (h) to inquire into and report to the Plaintiff and the Court in relation to (i) any unusual, irregular, abnormal or suspicious financial or accounting entries, recordings or transactions in the Records; (ii) any evidence of any, deceit, deliberate misrepresentation, falsification, or fraudulent activity in relation to the Business, the Debtors, the Property, or the Records; and (iii) a calculation of the current state of the margin requirements in relation to the obligations of the Debtors to the Plaintiff under the terms and conditions of the Commitment Letter Agreement between the Plaintiff and the Debtors dated November 12, 2021;
- (i) to report the Court on any matter it deems appropriate;
- (j) to attend this Court to seek amendments to this Order as it deems necessary or desirable; and
- (k) to take any steps reasonably incidental to the exercise of these powers;

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, including the Debtors, and without interference from any other Person (as defined below), but for clarity,

the Receiver shall not take physical possession of the Property, other than the Records (as defined below) from time to time, nor shall it be deemed to be in control of the Property.

INTERIM RECEIVER'S REVIEW AND EVALUATION OF THE DEBTOR

5. The Interim Receiver will conduct a review and evaluation of the Property, the Business, and the financial condition of the Debtors in a matter it deems advisable, and the Interim Receiver will provide a report to the Court in respect of its findings no later than February 14, 2022. The above report shall also comment on any inaccuracies or inconsistencies in the Records or previous reporting of the financial condition of the Debtors, the Property, or both, and any other matters or issues that the Interim Receiver deems as appropriate.

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

6. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, 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, and shall grant immediate and continued access to the Property to the Interim Receiver.
7. All Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, 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 or in paragraph 8 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 documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
8. 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.

9. Without limiting the foregoing, any Person issuing payment or transferring any funds from the Debtors amongst themselves or to any third party in an amount in excess of \$5,000 shall provide a minimum 3-hour prior written notice to the Interim Receiver of such payment or transfer detailing the payee or transferee, the amount of funds being paid or transferred, the purpose for such payment or transfer and any supporting material as may be requested by the Interim Receiver in a form acceptable to the Interim Receiver.
10. Without limiting paragraph 8, to the extent that Jason Robert Lloyd, Kenneth John George Cairstairs, Robert Christopher Lloyd, Daniel Roberts, Laseredge Inc. or any of them, have any Records in their personal possession, such Records shall not be destroyed, altered, deleted, or modified in any manner whatsoever by any Person and shall be preserved by the person in possession or control of such Records. Each of the aforementioned persons shall immediately deliver up any and all Records in each of their possession or control upon the request of the Interim Receiver.

ACCESS TO THE PREMISES

11. The Interim Receiver shall, as soon as reasonably possible, attend the premises located on the lands described in Schedule "A" (the "**Premises**"), in order to access the Records for the purposes of making copies of the Records, provided that (i) such access to the Premises shall be limited to access on the Premises where the Records or the Property of the Debtors are located; and (ii) if the Interim Receiver cannot gain access to the Premises it shall report to this Court the reasons why access was denied.
12. The (i) Debtor, (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants and shareholders and all other Persons acting on its instructions or behalf, and (iii) any Person appearing in charge of the Premises, shall forthwith permit entry and re-entry into the Premises to the Interim Receiver and any of its employees, agents, consultants, counsel and representatives for the purposes of searching for, identifying, inspecting, preserving and reproducing the Property and the Records.
13. The entry and re-entry to the Premises pursuant to this Order shall be made between 8:00 a.m. and 7:00 p.m. (MST) on any day of the week.

ADDITIONAL DUTIES OF AND RESTRICTIONS ON THE DEBTOR

14. The Debtors shall:

- (a) not sell, transfer, gift, convey or otherwise dispose of any Property, other than in the ordinary course of business, without the prior written consent of the Interim Receiver;
- (b) not make, or enter into any contract, amendment to contract or other agreement that involves, an expenditure greater than \$25,000 without prior 24-hour written notice to the Interim Receiver; and
- (c) provide to the Interim Receiver, upon the request of and on or before the deadline reasonably required by the Interim Receiver, such reporting as may be required by the Interim Receiver in its sole discretion, including, without limitation, Records, financial condition, daily, weekly monthly receipts and disbursements, inventory counts or lists, sales reports, accounts payable and receivable, profit and loss statements, and locations and listings of assets.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

15. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO INTERFERENCE WITH THE RECEIVER

16. No Person shall accelerate, suspend, 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 Debtors, except with the written consent of the Debtors and the Interim Receiver, or leave of this Court.

EMPLOYEES

17. Subject to employees’ rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Debtors legally terminate the employment of such employees. 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*, S.C. 2005, c.47 (“**WEPPA**”).

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. (a) Notwithstanding anything in any federal or provincial law, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Interim Receiver's appointment; or
 - (ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts the Interim Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

- (iii) if the Interim Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

- 19. The Interim Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property as a result of its appointment, the contents of the preliminary report of the Interim Receiver attached to the Erickson Affidavit, or in carrying out the provisions of this Order, provided that such liability or obligation is not a result of gross negligence or wilful misconduct on the part of the Interim Receiver as determined by the Court. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Interim Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

INTERIM RECEIVER'S ACCOUNTS

- 20. CWB shall pay the Interim Receiver and counsel to the Interim Receiver their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings, and shall be entitled to add such fees and disbursements as amounts owed by the Debtors to CWB and shall be secured by any security granted by the Defendants in favour of CWB. Notwithstanding the foregoing, CWB shall be entitled at any time upon giving proper notice to the Defendants and any other interested parties to apply for an Order charging the Property for all amounts already paid to the Interim Receiver by CWB, or any future fees and disbursements to be paid to the Interim Receiver and counsel for the Interim Receiver. In addition, in the event that the Interim Receiver is subsequently appointed Receiver or Receiver-Manager of the Debtors by further Order of this Court, CWB shall be entitled to apply to have such fees and disbursements of the Interim Receiver and counsel to the Interim Receiver form part of any Receiver's Charge subsequently granted on the Property of the Debtors, or if upon the appointment of a trustee in bankruptcy of the Debtors, paid in accordance with the BIA.
- 21. The Interim Receiver and its legal counsel shall pass their accounts from time to time.

GENERAL

- 22. 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.
- 23. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Interim Receiver will report to the Court from time to time, which reporting is not required to be

in affidavit form and shall be considered by this Court as evidence. The Interim Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

24. Nothing in this Order shall prevent the Interim Receiver from acting as a receiver or receiver and manager, or a trustee in bankruptcy of the Debtors.
25. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction 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, to grant representative status to the Interim Receiver in any foreign proceeding, or to assist the Interim Receiver and its agents in carrying out the terms of this Order.
26. 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. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor and own client full indemnity basis.
28. Any interested party may apply to this Court to vary or amend this Order on not less than 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.

FILING AND SERVICE

29. Subject to any Restricted Access Order granted by the Court, and Paragraphs 31 and 32 herein, Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order; and

(b) posting a copy of this Order on the Interim Receiver's Website
and service on any other person is hereby dispensed with.

30. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier.
31. Upon any representative(s) of the Interim Receiver attending at any premises of any of the Debtors, a representative of the Interim Receiver shall provide to any senior management employee or representative of the Debtors (as determined in the discretion of the Interim Receiver) a true unfiled copy of this Interim Receivership Order endorsed by the Justice of the Court granting this Order, and service in this manner shall be deemed to be good and sufficient service of the Interim Receivership Order on the Debtors.
32. Upon service of the Interim Receivership Order as provided in paragraph 31, the Debtors shall grant to the Interim Receiver, and any of its employee, agents, or representatives full unrestricted, unobstructed, and unfettered access to the Property and the Records in accordance with this Interim Receivership Order, and none of the Debtors, nor any of their shareholders, current or previous directors, officers, employees, or anyone else acting on behalf of any of the Debtors shall interfere with, obstruct, deny access to, or otherwise impede the Interim Receiver or its employees, agents or representatives, from lawfully carrying out any provision of this Interim Receivership Order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE “A” - PREMISES

1. 3 Industrial Dr, Sylvan Lake, AB T4S 1P4