

COM March 25, 2024



COURT FILE NUMBER 2401-01422

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

APPLICANTS AND IN THE MATTER OF GRIFFON PARTNERS OPERATION CORP., GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., GRIFFON PARTNERS HOLDING CORP., 2437801 ALBERTA LTD., 2437799 ALBERTA LTD., 2437815 ALBERTA LTD., STELLION LIMITED, and SPICELO LIMITED

DOCUMENT **SECOND REPORT OF ALVAREZ & MARSAL CANADA INC. IN ITS CAPACITY AS MONITOR**

MARCH 21, 2024

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MONITOR
ALVAREZ & MARSAL CANADA INC.
Bow Valley Square IV
Suite 1110, 250 – 6th Avenue SW
Calgary, Alberta T2P 3H7
Orest Konowalchuk/Duncan MacRae
Telephone: (403) 538-4736 / (403) 538-7514
Email: okonowalchuk@alvarezandmarsal.com / dmacrae@alvarezandmarsal.com

COUNSEL TO THE MONITOR
Torys LLP
525 - 8th Avenue SW, 46th Floor, Eighth Avenue Place East
Calgary, Alberta T2P 1G1
Kyle Kashuba
Telephone: (403) 403-776-3744
Email: kkashuba@torys.com
File: 39108-2010

TABLE OF CONTENTS OF THE SECOND REPORT OF THE MONITOR

INTRODUCTION3

PURPOSE.....5

TERMS OF REFERENCE AND DISCLAIMER6

ACTIVITIES OF THE MONITOR.....7

ACTUAL CASH FLOW RESULTS COMPARED TO FORECAST.....8

SISP UPDATE.....10

ENHANCED MONITOR POWERS12

SPICELO STAY EXTENSION.....17

MARSHALLING ISSUE18

CONCLUSIONS AND RECOMMENDATIONS.....20

APPENDIX

CONFIDENTIAL APPENDIX 1 SISP Update

INTRODUCTION

1. On August 25, 2023, Griffon Partners Operation Corp. (“**GPOC**”), Griffon Partners Holding Corp. (“**GPHC**”), Griffon Partners Capital Management Ltd. (“**GPCM**”), 2437801 Alberta Ltd. (“**801 AB**”), 2437799 Alberta Ltd. (“**799 AB**”), 2437815 Alberta Ltd. (“**815 AB**”), Stellion Limited (“**Stellion**”)¹, and Spicelo Limited (“**Spicelo**”) each filed Notices of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”). Alvarez & Marsal Canada Inc. (“**A&M Inc.**”) consented to act as Trustee under the Proposal.
2. For the purposes of this second report (the “**Second Report**” or “**this Report**”), GPOC, Spicelo and the Holding Companies are collectively referred to as the “**Companies**” or the “**Applicants**”.
3. Pursuant to section 50.4(8) of the BIA, the initial NOI period during which the Companies were required to file a proposal under the NOI proceedings (the “**NOI Proceedings**”) was from August 25, 2023 to September 24, 2023. The Companies subsequently applied to the Court of King’s Bench of Alberta (the “**Court**”) on various dates and were granted a variety of stay extension orders, an order approving a sales and investment solicitation process (“**SISP**”) and orders approving the actions, activities and conduct and professional fees and costs of the A&M Inc., acting in its capacity as the Proposal Trustee in the entire NOI proceedings.
4. On February 7, 2024, this Honourable Court granted the Companies an initial order (the “**Initial Order**”) as well as the amended and restated initial order (“**ARIO**”) to continue the NOI Proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (as amended the “**CCAA**” or the “**CCAA Proceedings**”), which granted, among other things, a stay of proceedings up to and including March

¹ GPHC, GPCM, 801 AB, 799 AB, 815 AB and Stellion are collectively referred to as the “**Holding Companies**”.

- 6, 2024 and appointed A&M Inc. as monitor pursuant to the provisions of the CCAA (in such capacity, the “**Monitor**”).
5. On March 6, 2024, this Honourable Court granted a further extension to the stay of proceedings for GPOC and the Holding Companies up to and including April 17, 2024. Spicelo was granted a separate extension to the stay of proceedings up to and including March 26, 2024 (the “**Spicelo Stay Period**”).
 6. The Applicants are now applying to this Honourable Court seeking the following relief, among other things:
 - a) granting of enhanced powers of the Monitor (“**Enhanced Monitor Powers**”) in order to allow the Monitor to carry out many of the functions, duties and powers that would normally be carried out by the director of Spicelo, or a receiver appointed over Spicelo, to ensure an orderly and efficient transaction of Spicelo’s assets (or so much thereof as may be necessary) to pay the Senior Secured Lenders (as defined herein) their outstanding indebtedness in full;
 - b) extending the stay of proceedings for Spicelo to April 17, 2024;
 - c) declaring that Tamarack Valley Energy Ltd. (“**Tamarack**”) has no claim against the assets of Spicelo, whether pursuant to the doctrine of marshalling (“**Marshalling**”) or otherwise, and other related relief; and
 - d) such further and other relief as may be sought by the Applicants and that this Honourable Court may deem appropriate.
 7. The senior secured lenders, Signal Alpha C4 Limited and Trafigura Canada Ltd. (together, the “**Senior Secured Lenders**”), have applied to this Court seeking to place Spicelo and its assets into receivership. This application, together with the Companies’ application seeking the Enhanced Monitors Powers, is scheduled to heard on March 26, 2024. The application respecting the Marshalling arguments between the Companies and Tamarack is scheduled to be heard on March 25, 2024.

8. This Report should be read in conjunction with the affidavit of Mr. Daryl Stepanic sworn March 15, 2024. These documents, together with other documents and information regarding the NOI Proceedings and the CCAA Proceedings, have been posted on the Monitor’s website at www.alvarezandmarsal.com/griffonpartners (the “**Website**”).

PURPOSE

9. The purpose of this Second Report is to provide this Honourable Court and the Companies’ stakeholders with the Monitor’s considerations and recommendations with respect to the following:
 - a) a brief update of the activities of the Monitor since the First Report of the monitor dated February 28, 2024;
 - b) GPOC’s cash flow actual receipts and disbursements as compared to the Second Cash Flow Forecast as outlined in the Monitor’s First Report;
 - c) an update on the Companies’ restructuring efforts since the First Report (including the application for a restricted court access order – the “**Restricted Court Access Order**”) – concerning Confidential Appendix 1 to this Report);
 - d) the application by the Applicants to grant Enhanced Monitor Powers for the Monitor of Spicelo that will allow an orderly and efficient transaction concerning Spicelo’s assets (or so much thereof as may be necessary) to pay the Senior Secured Lenders their outstanding indebtedness in full;
 - e) the extension of the Spicelo Stay Period;
 - f) background on the issue of Marshalling and the Monitor’s views thereon;
and
 - g) the Monitor’s recommendations and conclusions.

10. Further background of the Companies, their operations and the SISP is contained in the materials filed in the NOI Proceedings and CCAA Proceedings, which can be found on the Website.

TERMS OF REFERENCE AND DISCLAIMER

11. In preparing this Report, A&M Inc., in its capacity as the Monitor, has been provided with and has relied upon unaudited financial information and the books and records prepared by the Companies and has held discussions with the Companies' management and their respective counsel and directors (collectively, the "**Information**"). Except as otherwise described in this Report in respect of the Companies' cash flow forecast:
 - a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the Chartered Professional Accountants Canada Handbook (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
 - b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.
12. Future oriented financial information referred to in this Report was prepared based on the Companies' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
13. All references to dollars are in Canadian currency unless otherwise noted.

ACTIVITIES OF THE MONITOR

14. The Monitor's activities since the First Report have included the following:
- a) continued discussions with Management, the Monitor's legal counsel and the Companies' legal counsel relating to matters relevant to the CCAA Proceedings and the Companies' operations, generally;
 - b) numerous communications and meetings with Management, the Monitor's legal counsel ("Torys"), the Companies' legal counsel and the Transaction Agent relating to the SISP and restructuring matters;
 - c) various communication with the selected bidder and their counsel respecting a final definitive agreement and completion of final due diligence with the bidder in consultation with Torys, the Companies and their legal counsel, and the Transaction Agent;
 - d) various communications and meetings with the Senior Secured Lenders responding to questions relating to matters relevant to the CCAA Proceedings, the SISP and the Companies' operations;
 - e) various communication with Tamarack (the subordinated secured lender) and responding to questions relating to matters relevant to the CCAA Proceedings, the SISP and the Companies' operations;
 - f) a review of the materials filed by Tamarack in relation to their arguments concerning the Marshalling issue, and a legal analysis by the Monitor's counsel concerning same;
 - g) multiple communications and ongoing meetings with Management and Sproule respecting the Companies' operations and financial cash flow reporting;
 - h) monitoring the Companies' cash flow actual results to Management's forecasts and discussing variances with Management;
 - i) providing continual updates on the Companies' cash flow results and forecasting to the Senior Secured Lenders;

- j) facilitating communication and encouraging the Applicants and the Senior Secured Lenders to enter into potential settlement discussions with respect to the Applicant’s outstanding obligations with the Senior Secured Lenders (subject to Court approval). This has led to various “without prejudice” proposals and counter-proposals between the parties and, although positive communications were noted by the Monitor, no agreements have been reached to date;
- k) communication with the MER and the AER and providing updates on the SISP and the CCAA Proceedings; and
- l) ongoing monitoring of the Companies’ financial affairs, and other activities by the Monitor.

ACTUAL CASH FLOW RESULTS COMPARED TO FORECAST

15. GPOC’s actual cash receipts and disbursements during the period of February 17, 2024 to March 8, 2024 (the “**Reporting Period**”) as compared to the updated weekly cash flow forecast for the same period as outlined in the Monitor’s First Report (the “**Second Cash Flow Forecast**”), along with actual results since the date of the Initial Order (February 7, 2024), is in the chart below:

Griffon Partners CCAA Cash Flow Variances weeks–ending March 8, 2024 \$CAD 000's	Weeks 1-3				Weeks 1-7 Seven-week CCAA Period Total
	Second Cash Flow Forecast	Actuals	Variance	Notes	
Cash Receipts					
Sales (production settlement)	1,437	1,760	323	<i>a</i>	3,293
Settlement holdback	-	(370)	(370)	<i>b</i>	(370)
Other receipts & holdbacks	-	(2)	(2)		17
Total cash receipts	1,437	1,388	(49)		2,940
Operating Cash Disbursements					
Field contract operator payments	(170)	(140)	30		(315)
Office contract consultant payments	(136)	(26)	110	<i>c</i>	(167)
JV Partner payments	(246)	(14)	232	<i>d</i>	(26)
Operating and transportation	(648)	(232)	416	<i>c</i>	(887)
Drilling, facilities and other acquisitions	-	-	-		-
Abandonment and reclamation	-	(3)	(3)		(25)
Surface and mineral leases	(133)	-	133	<i>c</i>	(54)
Royalties	(180)	(63)	117	<i>c</i>	(254)
Carbon taxes	(8)	-	8		(9)
Subtotal	(1,521)	(478)	1,043		(1,737)
Non-Operating Disbursements					
General and administrative	(8)	(34)	(26)		(43)
GST remittance	(15)	(15)	-		(21)
Companies' counsel fees	(125)	(104)	21		(252)
Transaction agent fees	(45)	-	45		(148)
Subtotal	(193)	(153)	40		(464)
Net Cash Flow (before NOI Professionals)	(277)	757	1,034		739
CCAA Professional Fee Disbursements					
Monitor's fees	(195)	(102)	93	<i>c</i>	(102)
Monitor's counsel's fees	(50)	(50)	-		(120)
Net Cash Flow	(522)	605	1,127		517
Net Change in Cash					
Beginning of period	1,874	1,874	-		1,962
Net Cash Flow	(522)	605	1,127		517
Ending of period	1,352	2,479	1,127		2,479

16. Over the Reporting Period, GPOC experienced a positive cash flow variance of approximately \$1.1 million, primarily as a result of the following timing differences, which are described below:

- a) a permanent positive variance driven by a short term spike in realized gas prices for a period in January;

- b) GPOC's marketer (Trafigura) held back \$369,600 from GPOC's revenue. Trafigura advised the purchaser ("**Liquids Purchaser**") of condensate and natural gas liquids ("**NGL**") held back the same amount, who claimed they have overpaid GPOC and other customers for past condensate and NGL volumes that were incorrectly calculated. The Liquids Purchaser has been unable to produce any support to GPOC regarding this claim, advising it will take months to sort out. The Monitor is advised that this issue remains under review and consideration by GPOC and legal counsel;
 - c) positive temporary timing variances with respect to disbursements to be paid upon receipt of invoices in the following weeks; and
 - d) a positive temporary timing variances with respect to disbursements of certain payments to GPOC's working partner interests.
17. GPOC has advised that it will continue to utilize the Second Cash Flow Forecast as outlined in the Monitor's First Report for continued evaluation of actual cash flow performance. The Monitor has considered Management's assumptions (previously and at present) and also concurs that the Second Cash Flow Forecast continues to be an appropriate forecast to measure actual results during the current stay of proceedings of GPOC to April 17, 2024, and does not require a restatement at this particular time.
18. As detailed below, the SISP is expected to conclude with the sale of GPOC on or around April 2, 2024, after which time the purchaser will get the benefit of GPOC's revenue, expenses and cash flow. The remaining Companies do not have cash flow or any material assets with the exception of Spicelo and its ownership of GFR shares (as defined below).

SISP UPDATE

19. This Honourable Court granted an order approving the SISP on October 18, 2023. The SISP is intended to solicit interest in, and opportunities for: (a) the purchase of some or all of the assets of GPOC; (b) an investment in GPOC, including through

- the purchase or acquisition of some or all of the shares of GPOC; (c) a refinancing of the Companies through the provision of take-out or additional financing in the Companies, or some combination thereof. The Companies' sales advisor, Alvarez & Marsal Canada Securities ULC (the "**Transaction Agent**"), was engaged, with approval of this Honourable Court, to assist in delivering and executing upon the SISP.
20. As discussed in Confidential Appendix 1 of the First Report, on February 22, 2024, a Successful Bid was selected.
 21. Since February 22, 2024, the Companies and the Transaction Agent continue to advance the Successful Bid. A \$350,000 deposit has been collected and deposited into the Monitor's trust account. On March 4, 2024, a share purchase and sale agreement ("**SPA**") was delivered to the Transaction Agent, which was executed by the Successful Bidder, but not GPOC. GPOC requested certain key, yet limited changes to the SPA before agreeing to countersign.
 22. GPOC's legal counsel and the Successful Bidder's external legal counsel, along with the Transaction Agent and the Companies, have been working diligently to get to a final form of SPA for execution. All due diligence has been completed, the SPA has been agreed to and the remaining item to be evaluated on by the Successful Bidder relates to GPOC's tax pools, which are being reviewed by the Successful Bidder tax advisor. The SPA is expected to be executed on or before March 22, 2024.
 23. GPOC and the Transaction Agent, along with the Monitor, have been providing regular updates (as they become available) to the Senior Secured Lenders and Tamarack on the SPA. Once the SPA is executed, the Monitor is advised that GPOC will bring forward an application to this Honourable Court on April 2, 2024 (or such other date as may be available and agreed with the stakeholders) for approval of the SPA and a reverse vesting order ("**RVO**"). Key dates in the SPA, include an anticipated Closing Date of April 2, 2024, and an Outside Date of April 30, 2024.

(It is possible that GPOC may also be required to obtain an Order from the Saskatchewan Courts recognizing and implementing the RVO in that province.)

24. A further update of proposed SPA is included as a Confidential Appendix 1 to this Report. Due to the confidential nature of the information, the Monitor is concerned that, if the information contained in Confidential Appendix 1 is disclosed to third parties prior to the completion of the SISP, the disclosure could materially jeopardize the realizations during the SISP. As such, the Monitor is respectfully of the view that it is appropriate for this Honourable Court to seal Confidential Appendix 1, in accordance with the proposed form of the Restricted Court Access Order, as they contain the consideration of the remaining bidders.

ENHANCED MONITOR POWERS

Background

25. Spicelo is an investment company incorporated pursuant to the laws of the Republic of Cyprus and extra-provincially registered in Alberta, whose primary asset is the shares held in a private company called Greenfire Resources Inc. (“**Greenfire**”)². Spicelo’s liabilities consist of being the guarantor of the Senior Secured Debt (as defined below). Spicelo is owned by Ioannis Charalambides, in trust for Jonathan Klesch.
26. Upon conversion of the shares Spicelo owns in Greenfire, Spicelo will own 5,499,506 shares in the publicly traded Greenfire Resources Ltd. (the “**Pledged Shares**”) (ticker symbol ‘**GFR**’).
27. On July 21, 2022, GPOC borrowed USD \$35,869,565.21 (the “**Senior Secured Loan**”) from a syndicate of Signal Alpha C4 Limited and Trafigura Canada Ltd. (the “**Senior Secured Lenders**”). On August 16, 2023, counsel for the Senior Secured Lenders issued demands for repayment to each of the Companies

² Greenfire has since undergone a business combination whereby the shares were combined with various entities, with the newly combined company’s shares listed on the NYSE under the ticker symbol “GFR”.

- demanding payment for the full amount of the obligations owed by GPOC being USD \$37,938,054.69 representing the amount of outstanding indebtedness as of August 16, 2023, and all fees and expenses and other amounts owing as part of the Indebtedness, including solicitor and client legal expenses (the “**Indebtedness**”).
28. On March 8, 2024, the Senior Secured Lenders confirmed with the Monitor that the Indebtedness increased by approximately USD\$1.57 million over approximately the past 6.5 months from USD \$37,938,054.69 (August 16, 2023) to USD \$39,512,536.00 (March 1, 2024), broken down as follows: (i) principal amount outstanding - USD \$34,188,509.31; (ii) accrued interest, plus default interest and agent fees totaling USD \$4,688,756.65; and (iii) Senior Secured Lender legal fees totaling USD \$635,270.04. The Indebtedness translated to CAD at a 1.356 USD/CAD foreign exchange rate (as at March 1, 2024), totalling CAD \$53,578,998.82.
29. As part of the security package for the Senior Secured Loan, Spicelo provided a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”), with respect to the Pledged Shares and the dividend (as discussed below) (the “**Spicelo Collateral**”).
30. As at closing of March 19, 2024, the Spicelo Collateral alone is valued at approximately USD \$38.2 million (using a closing share price of GFR of USD \$5.76 and including a dividend of approximately USD \$6.6 million owed to Spicelo). Since the Greenfire initial public offering, the shares have traded at a low of USD \$4.80 (resulting in the Spicelo Collateral value of USD \$33.0 million, inclusive of the dividend). Notwithstanding the foregoing, for March 1, 2024 to March 19, 2024 the share price has averaged approximately \$5.18, with a low of \$4.96 and high of \$5.76 per share, albeit with volume trades in the range of 800 – 91,300 shares per day.
31. The marketing and sale of the GFR shares held by Spicelo were specifically excluded from the SISP, but were included insofar that a restructuring and or

refinancing offer that used the shares as collateral may have been presented to the Companies as part of the SISP.

32. The Companies are re-seeking the Court's authorization to grant enhanced powers to the Monitor in order to allow the Monitor to carry out many of the functions, duties and powers that would normally be carried out by the director of Spicelo, or a receiver appointed over Spicelo, to ensure an orderly and efficient transaction of Spicelo's assets (or so much thereof as may be necessary) to pay the Senior Secured Lenders their outstanding Indebtedness in full.
33. The Monitor is advised that the Senior Secured Lenders do not support the Companies' application to seek Enhanced Monitor's Powers authorizing and empowering the Monitor to take possession and control of the GFR shares and providing them with the ability to market the GFR shares in the CCAA Proceedings, rather they have brought an application to appoint a receiver over Spicelo and its assets (i.e. the GFR shares).

Cash Flow Statement

34. Spicelo does not currently have active operations, and as such has no forecast receipts or disbursements, or any receipts or disbursements in the CCAA Proceedings, but has material ownership of a public company (and the related dividend receivable). While Spicelo may seek to sell (through Court approval) some of its shares, the timing and amount of such realizations is unknown.

Monitor's Views

35. The Monitor continues to be of the view that it is appropriate to develop an immediate strategy for the marketing and realization of the GFR shares that are owned by Spicelo. This is particularly the case while the SISP concludes and provides clarity on the value of the Companies' oil and gas assets, and the parties proceed towards the closing of the Successful Bid. In any event, the proceeds of the SISP are not sufficient to satisfy all of the obligations of the Senior Secured Lenders and will require some degree of realization of the Spicelo collateral. Respecting the

GFR shares, the Monitor believes that an effective realization strategy that will create stability in the marketplace, while achieving the greatest realizations and see the Senior Secured Lenders paid out in full and as soon as possible, will be important. Equally as important, it will be critical to achieve the highest values from these illiquid and unique shares, that would exceed full payout of the Senior Secured Lenders and have realizations that may be available for other stakeholders and shareholders.

36. Depending on the price that can be realized from a sale of the GFR shares, there are possible scenarios whereby the proceeds of the sale of the GPOC assets, and a combination of a portion of the Greenfire dividend and only a portion of the GFR shares would need to be sold in order to fully satisfy the Companies obligations to the Senior Secured Lenders. Considering the current value of the shares as at March 19, 2024 (as discussed above) and the proposed purchase price on the GPOC assets, as disclosed in Confidential Appendix 1 to this Report, this would appear to be the case.
37. The determination of whether Spicelo and the GFR shares should be placed into receivership or remain within the CCAA Proceedings for the GFR shares to be realized upon, is the respectful decision of this Honourable Court. The Monitor is in the Court's hands on this decision and will fulfill whatever mandate or role the Court wishes to have its officer undertake, including the proposed enhanced role of the Monitor.
38. To assist the Court in its determination as to why the GFR shares and Spicelo may be beneficial to remain within the CCAA Proceedings, the Monitor has the following observations:
 - a) Until the Successful Bid is executed and the transaction closes (which is subject to Court approval), retaining the GFR shares and continuing with Spicelo as part of the CCAA Proceedings will be important as it acts as additional security to the overall estate;

- b) The Monitor believes there will be benefits of coordination if all assets remain within the CCAA Proceedings, where there may be increased difficulty and costs in the coordination efforts that may arise with the appointment of a Receiver. The Monitor is of the respectful view that there would be a continued practical benefit in keeping all remaining assets (GPOC and Spicelo) under “one-roof” and in the same proceeding, including completing a cost-allocation exercise amongst the Applicants, for the Court’s consideration, respecting professional fees and costs and other expenditures incurred in the NOI and CCAA Proceedings. The Monitor continues to be of the belief that no creditor (including the Senior Secured Lenders) will be materially prejudiced should the Enhanced Monitors Powers be granted. At present, based on the facts available to the Monitor, it appears that full payout of the Senior Secured Lenders obligation should occur;
- c) The Monitor and its independent legal counsel have the benefit of understanding the GFR shares and matters pertaining to Spicelo, which should assist in efficiencies. As such, there is no learning curve involved on matters impacting Spicelo and the other CCAA entities and stakeholders in the CCAA Proceedings. The Monitor believes that it could efficiently work with the Senior Secured Lenders, Spicelo, and the other stakeholders in developing a framework and overall sales strategy for the GFR shares. The Monitor estimates that the professional fees of the Monitor and its counsel may be in the range of \$125,000 - \$200,000, to facilitate and execute upon a sale strategy and ultimate sale of the GFR shares, as outlined in the proposed Enhanced Monitor’s Powers, assuming all stakeholders work collaboratively and no material issues arise in the selling of the GFR shares, such as the length of time of the marketing process and overall market conditions out of the control of the Monitor, the Applicants and stakeholders. The Monitor anticipates engaging the services of an independent broker to assist with the sales strategy and ultimate sale of the GFR shares (the Transaction Agent will not be utilized)

and the Monitor anticipates working closely with the Senior Secured Lenders, the Company and the selected broker in developing an effective sales strategy and would report to this Honourable Court on the best path forward, under the circumstances; and

- d) Should the Court appoint a receiver over Spicelo and the GFR shares, the Monitor anticipates that it would be required to coordinate its efforts and work with the Receiver and its independent counsel with respect to establishing a sales process, as the recoveries over the GFR shares will have a direct impact on the recoveries to the stakeholders in the CCAA Proceedings. The Monitor would report to this Honourable Court on same.

- 39. To conclude, the Monitor is of the view that granting the proposed Enhanced Monitor Powers are acceptable to the Monitor and it appears to be reasonable approach under the circumstances. Respectfully, it appears this arrangement would provide practical benefits to the estate in coordinating the realization of all assets in one proceeding versus incorporating an additional insolvency proceeding (receivership) at this stage.
- 40. Notwithstanding the above, the Monitor is an independent court officer and takes its direction from this Honourable Court on what additional roles this Court may wish the Monitor to undertake. The Monitor wishes to make it clear that it is not advocating for the Enhanced Monitor Powers, but views this as a reasonable and efficient approach to administer the remainder of the CCAA Proceedings. The Monitor is prepared to take on these new additional roles should this Court deem this to be the appropriate path forward.

SPICELO STAY EXTENSION

- 41. Pursuant to the order of March 6, 2024, the Spicelo Stay Period will expire on March 26, 2024. The Applicants are seeking an extension of the Spicelo Stay Period to April 17, 2024 (the “**Spicelo Stay Extension**”) to align with the existing stay of proceedings for the other Applicants.

42. The Monitor supports the Spicelo Stay Extension for the following reasons:
- a) no creditor of Spicelo will be materially prejudiced by the extension of the Stay Period;
 - b) the Applicants continue to maintain sufficient cash availability to continue to operate during the existing stay period of April 17, 2024 and does not require any interim financing (and has not required to date);
 - c) in the Monitor’s opinion, Spicelo has acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order and;
 - d) this will allow the Monitor to utilize the Enhanced Monitor Powers to realize the Spicelo Collateral to the benefit of the Senior Secured Lenders.

MARSHALLING ISSUE

Marshalling Background

43. GPOC purchased its assets from Tamarack on July 21, 2022, for CAD \$70 million. As part of the sale, Tamarack issued a CAD \$20 million seller financing note (the “**Subordinated Secured Debt**”), which has a maturity date of July 21, 2025, and bears interest at 12% per annum. Interest not paid in cash can be paid in-kind (“**PIK**”) at 14% interest rate and deemed to be added to the principal amount. To date, all interest has been PIK.
44. The Subordinated Secured Debt is only secured by the assets of GPOC and does not share the same security package as the Senior Secured Lenders (who alone benefit from the Spicelo Collateral).
45. On February 2, 2024, Tamarack submitted a Bench Brief asserting that the doctrine of marshalling dictates that if a creditor has two funds to draw upon to satisfy a debt, this Honourable Court should require it to take satisfaction from that fund upon which another creditor has no security, and that this was relevant in the distribution of funds from the SISP and the Spicelo Collateral. Tamarack submitted

that marshalling requires that the Senior Secured Lenders realize upon the Pledged Shares in full, followed by a determination of how the proceeds from the Pledged Shares and the SISP should be marshalled and the determination of the question as to whether Spicelo has any right of subrogation.

Subrogation

46. The Applicants also seek a declaration that, to the extent that Spicelo is required to make payment to the Senior Secured Lenders pursuant to the terms of the Spicelo Guarantee by which Spicelo unconditionally guaranteed the due and punctual payment, and the due performance of the Guaranteed Obligations (as that term is defined in the Spicelo Guarantee) and upon payment of the Indebtedness owing to the Senior Secured Lenders, then Spicelo is, to the extent of such payment to the Senior Secured Lenders under the Spicelo Guarantee, entitled to be subrogated to the Senior Secured Lenders' security against GPOC, in priority to Tamarack.

Monitor's Counsel's Preliminary Views

47. Given the conflicting positions of both the Applicants and Tamarack on the Marshalling Argument, the Monitor believes it may be helpful and likely appropriate to provide its preliminary independent views on the matter for the Court. As such, and at the request of Monitor, Torys independently reviewed the Marshalling Argument. The Monitor's preliminary view is that doctrine of marshalling as described by Tamarack likely does not apply in this case based on the underlying presented facts.
48. Typically, the doctrine of marshalling has only been enforced by the courts when the security held by a creditor is owned by the same debtor (the "**Single Debtor Rule**"). As a result, this does not appear applicable in this case, as GPOC and Spicelo are separate legal entity debtors.
49. The exception to the Single Debtor Rule is the surety exception. Torys' view is that the surety exception applies where the senior creditor has security against its primary debtor, and also has security against a guarantor; and the junior creditor

- has subordinate security (as a primary obligation) only against the guarantor. The surety exception to the Single Debtor Rule would compel the senior creditor to realize on its security against the primary debtor first before being permitted to realize on its security against the guarantor.
50. In this case, the surety rule would apply if Tamarack's primary (and sole) security was against the guarantor (Spicelo), and would require the Senior Secured Creditors to realize on the security of GPOC first before being permitted to realize on its security against Spicelo. However, this does not appear to be the case, as Tamarack's security is not against Spicelo (the guarantor) but against GPOC (the primary debtor).
51. Although not straightforward (as the doctrine of marshalling can be a complex matter to address), based on the facts presented, the Monitor's counsel is of the preliminary view that the doctrine of marshalling likely does not require the Senior Secured Lenders to realize upon the entirety of Spicelo's Pledged Shares between it and the Senior Secured Lenders prior to realizing upon any of proceeds from the sale of all or any portion of GPOC's assets pursuant to the ongoing SISP in these CCAA Proceedings.
52. The Monitor is of the respectful view that the decision of this Honourable Court with respect to the Marshalling Argument will provide direction to the Monitor (with enhanced powers) or the proposed receiver, respecting the realization of the GFR shares (whether in part or in full in order to satisfy the Indebtedness), and may need to be dealt with on an expedited basis.

CONCLUSIONS AND RECOMMENDATIONS

53. The Monitor respectfully recommends that this Honourable Court approve the following:
- a) the Monitor's request for the Restricted Court Access Order;
 - b) granting the Enhanced Monitor Powers, as the request appears reasonable and acceptable in the circumstances; and

- c) extending the stay of proceedings for Spicelo up to and including April 17, 2024.

All of which is respectfully submitted this 21st day of March, 2024

**ALVAREZ & MARSAL CANADA INC.,
in its capacity as Monitor of the Companies
and not in its personal or corporate capacity**



Orest Konowalchuk, CPA, CA, CIRP, LIT
Senior Vice President



Duncan MacRae, CPA, CA, CIRP, LIT
Vice President

CONFIDENTIAL APPENDIX 1

SISP Update