

ONTARIO
SUPERIOR COURT OF JUSTICE

**In the Matter of the Proposal Proceedings of
Drexler Construction Limited and Folmur Construction (2004) Ltd.
Corporations Incorporated under the Ontario *Business Corporations Act***

**FIFTH REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated April 25, 2022)

I. INTRODUCTION AND BACKGROUND

1. This fifth report ("**Fifth Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with Proposals filed by Drexler Construction Limited ("**Drexler**") and Folmur Construction (2004) Ltd. ("**Folmur**") and together with Drexler, the "**Companies**") on August 30, 2021 pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto as **Appendix "A"** are copies of the Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy ("**OSB**") for both of the Companies.

2. As noted above, the Companies both filed Proposals with the Proposal Trustee on August 30, 2021. The Proposal filed by Drexler was approved by the Court on November 12, 2021 (the "**Drexler Proposal Approval Order**"). The Proposal of Folmur was approved by the Court on February 16, 2022 (the "**Folmur Proposal Approval Order**"). The Drexler Proposal Approval Order and the Folmur Proposal Approval Order are both attached to the Davis Affidavit (defined below) as Exhibit "C". As of the date of this Fifth Report both of the Companies Proposals are in good standing.

3. Originally the Companies, along with Down Under Pipe and Cable Locating Ltd ("**Down Under**"), a company related to both of the Companies, each filed Notices of Intention to Make a Proposal under section 50.4(1) of the BIA on March 18, 2021. Subsequent to the NOI filings, the Proposal Trustee prepared and filed with the Court its First Report, Second Report, Third Report and Fourth Report which are attached hereto as **Appendices "B", "C", "D" and "E"**, respectively, without appendices.

4. Down Under's NOI proceedings were subsequently withdrawn in accordance the Court Order issued by the Honorable Justice M.D. McArthur dated September 10, 2021 (the "**September 10 Order**"). The September 10 Order is attached to the Davis Affidavit (defined below) as Exhibit "E".

5. This Fifth Report has been prepared in response to the Companies' Motion scheduled to be heard on April 29, 2022 (the "**April 29 Motion**") seeking an Order for, among other things, the following relief:

- a. authorizing the Companies to enter into financing facilities with (i) Mitsubishi HC Capital Canada, Inc. (“**Mitsubishi**”) substantially on the terms contemplated in a statement of interest and financing proposition dated March 24, 2022, and (ii) Reciprocal Opportunities Inc. (“**ROI**”) substantially on the terms contemplated in a loan offer dated March 24, 2022 (together, the “**New Facilities**”). The New Facilities are included as Exhibits “A” and “B” to the Davis Affidavit (Defined below).

6. Included in the Companies motion materials is the affidavit of Rodney Davis, the Companies Chief Financial Officer, sworn April 19, 2022 (the “**Davis Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed this affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

7. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies in their April 29 Motion.

II. PURPOSE OF THIS REPORT

8. The purpose of this Fifth Report is to:

- a. provide the Court with relevant information pertaining to the Companies and the relief being sought, which is not otherwise described in the Davis Affidavit; and,
- b. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Companies.

III. SCOPE AND TERMS OF REFERENCE

9. In preparing this Fifth Report, the Proposal Trustee has relied upon certain financial information, the Companies’ books and records, discussions with Rodney Davis and discussions with the Companies’ legal counsel, Goldman Sloan Nash Haber LLP.

10. While the Proposal Trustee has reviewed various documents provided by management and others, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”) or otherwise. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

11. This Fifth Report has been prepared for the use of this Court and the Companies’ stakeholders as general information relating to the Companies and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Fifth Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by

the reader as a result of the circulation, publication, reproduction or use of this Fifth Report contrary to the provisions of this paragraph.

12. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.

13. Terms not otherwise defined herein shall have the meanings ascribed to them in either the First Report, Second Report, Third Report or Fourth Report.

IV. NEW FACILITIES

14. The Companies operate in the construction industry and require large amounts of working capital in order to fund the upfront costs of large projects, including labour and materials, which often are not monetized for several months or longer until the later stages of a project or upon completion. As a result, the Companies require a credit facility in order to bridge the gap between the spring and summer months when they have significant cash outlays and the fall and winter months when the majority of their accounts receivable are collected.

15. As noted in the Davis Affidavit, at the commencement of these restructuring proceedings the Companies' senior secured lender was the Royal Bank of Canada ("**RBC**"). During these restructuring proceedings the Companies indebtedness to RBC was repaid in full using a debtor-in-possession (DIP) facility (the "**DIP Facility**") provided by the DIP lender, Corwin Mortgage Capital Inc. (the "**DIP Lender**"), as well as proceeds of court-approved sales and excess available working capital. As of the date of this report the balance of the DIP Facility is \$2.5 million.

16. Through the September 10 Order, the Court authorized the Companies to enter into a long-term financing facility with Canadian Equipment Finance and Leasing Inc. ("**CEFL**") on the terms contemplated in an equipment financing proposal dated August 25, 2021 from CEFL (the "**CEFL Facility**"). The purpose of the CEFL Facility was to repay the DIP Lender in full and provide the Companies with additional necessary working capital to fund its ongoing operations.

17. The CEFL Facility term sheet was non-binding, and the Trustee has been advised by a representative of CEFL that, for various reasons which are outlined in paragraph 8 of the Davis Affidavit, CEFL could not ultimately commit to providing the CEFL Facility to the Companies on the terms contemplated. As a result, the Companies sought out and obtained the New Facilities.

18. The aggregate quantum of the New Facilities is substantially the same as the CEFL Facility. The interest rates contemplated in the New Facilities are higher than the CEFL facility, however, given the nature of the underlying security provided and the fact that the Companies are involved in an ongoing Proposal process under the Act, these interest rates are, in the Trustee's opinion, fair and reasonable in the circumstances. An accurate comparison of the facility amounts and interest rates as between the CEFL Facility and the New Facilities is set out in paragraph 9 of the Davis Affidavit.

19. It is the Proposal Trustee's opinion that the long-term refinancing facilities with both Mitsubishi and ROI on the terms contemplated in the New Facilities will not materially prejudice any creditor or other stakeholder of either of the Companies. Further, the New Facilities are necessary in order to provide the Companies with the working capital they require to fund new construction projects and continue as a going concern.

V. CASH FLOW PROJECTIONS

20. Both Drexler and Folmur have prepared cash flow projections prepared on a monthly basis for the 12-month period ended March 31, 2023. Attached hereto at **Appendix "F"** are copies of the cash flow projections for both Drexler and Folmur.

21. The Drexler cash flow projection reflects the utilization of the New Facilities and repayment of the DIP Facility to the DIP Lender. This cash flow projection illustrates that the New Facilities are sufficient to: (a) fund the repayment of the DIP Facility; and, (b) provide Drexler with working capital to meet its ongoing disbursements, including the ongoing payments to the Trustee as set out in its Proposal. The Drexler cash flow projection also illustrates that it has sufficient cash flow to meet its capital obligation including repayment of equipment loans, capital leases and financing interest and charges.

22. The Folmur cash flow projection illustrates that it continues to generate sufficient monthly cash flow to meet its ongoing disbursements, including the ongoing payments to the Trustee as set out in its Proposal

VI. PROPOSAL TRUSTEE'S RECOMMENDATION

23. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order authorizing the Companies to enter into the New Facilities.

All of which is respectfully submitted this 25th day of April 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Proposal of
Drexler Construction Limited and
Folmur Construction (2004) Ltd.
and not in its Personal or any other Capacity**

Per: _____
Bryan Gelman, *CIRP, LIT*