

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION  
(2004) LIMITED, AND DOWN UNDER PIPE AND CABLE  
LOCATING LIMITED, CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT***

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**MOTION RECORD**

**(extension of time to file a proposal, approval of proposal trustee's fees and activities)  
(returnable July 16, 2021)**

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July 12, 2021

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Lawyers for the moving parties and debtor companies, Drexler Construction Limited, Folmur Construction (2004) Limited, and Down Under Pipe and Cable Locating Limited

**ONTARIO  
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**TAB 1**

Notice of Motion returnable July 16, 2021

Estate No. 35-2721716

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION  
(2004) LIMITED, AND DOWN UNDER PIPE AND CABLE  
LOCATING LIMITED, CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT***

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**NOTICE OF MOTION**

**(extension of time to file a proposal, approval of proposal trustee's fees and activities)  
(returnable July 16, 2021)**

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Drexler Construction Limited, Folmur Construction (2004) Limited and Down Under Pipe and Cable Locating Limited (together, the “**Companies**”) will make a motion to a judge of the Ontario Superior Court of Justice on Friday, July 16, 2021, at 10:00 a.m. or as soon thereafter as the motion can be heard, via teleconference, the details for which will be posted on The Middlesex Law Association website at [www.middlaw.on.ca](http://www.middlaw.on.ca) at 4:30 p.m. the day prior to the return date of this motion.

**PROPOSED METHOD OF HEARING:** orally.

**THE MOTION IS FOR:** orders in suggested accordance with the draft in the motion record:

- a. extending to Monday, August 30, 2021, the time for Albert Gelman Inc. in its capacity as trustee (in such capacity, the “**Proposal Trustee**”) to the notice of intention to make a proposal to creditors (“**NOI**”) proceeding of each of the Companies, to file, on behalf of the Companies (individually or collectively, as the

case may be), a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada), and

- b. approving the third report of the Proposal Trustee, to be served and filed separately (the “**Third Report**”), as well as the Proposal Trustee’s fees and activities described therein.

**THE GROUND FOR THE MOTION ARE:**

1. The Companies have each filed NOIs on March 18, 2021. The Proposal Trustee acts as such in each of the NOI proceedings, which have been administratively consolidated in this court file by order dated April 16, 2021.
2. The Proposal Trustee supports and recommends the relief sought. Counsel do not expect any opposition including from the senior ranking creditor, Royal Bank of Canada (“**RBC**”).
3. **Extension of time** – The current extension expires at the end of July 16, 2021. The sought extension is to allow the Companies to work further on the viable restructuring path (i.e., primarily, locating replacement financing to fully repay RBC) identified in the affidavit of Jerome Drexler sworn July 12, 2021 filed in support of this motion (the “**Drexler July Affidavit**”), towards a proposal. The Companies have acted, and are acting, in good faith and with due diligence and no creditor would be materially prejudiced if the extension being applied for were granted. The test for extension is met.
4. **Approval of Third Report and Proposal Trustee’s fees and activities** – This court’s prior orders dated April 16 and May 28, 2021 approved the Proposal Trustee’s prior reports as well as the activities and fees described therein. The Proposal Trustee’s activities and activities have been properly reported to stakeholders, including in the Third Report and

the Fee Affidavits (term defined in the Third Report). Their approval would have the salutary effects noted in the caselaw. The court may therefore make the orders sought.

**MAIN STATUTORY PROVISIONS**

- a. BIA s. 50.4 (extension of time).
- b. Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rules 2.03 and 3.02.
- c. Such other and further grounds as counsel may advise and the court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- a. the Drexler July Affidavit,
- b. the Third Report, and
- c. such further and other materials as counsel may advise and the court may permit.

July 12, 2021

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Lawyers for the moving parties and debtor companies, Drexler Construction Limited, Folmur Construction (2004) Limited, and Down Under Pipe and Cable Locating Limited

**TO: THE SERVICE LIST**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION (2004) LIMITED, AND DOWN UNDER PIPE AND CABLE LOCATING LIMITED, CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT***

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in LONDON**

**NOTICE OF MOTION  
(extension of time to file a proposal, approval of  
proposal trustee's fees and activities)  
(returnable July 16, 2021)**

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Lawyers for the moving parties and debtor companies, Drexler Construction Limited, Folmur Construction (2004) Limited, and Down Under Pipe and Cable Locating Limited

**TAB 2**

Affidavit of Jerome Drexler sworn July 12, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION  
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LOCATING LIMITED, CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT***

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**AFFIDAVIT OF JEROME DREXLER  
(sworn July 12, 2021)**

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I, Jerome Drexler of Rockwood in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and officer of Drexler Construction Ltd. (“**Drexler**”), which is the parent company of Folmur Construction (2004) Ltd. (“**Folmur**”) and Down Under Pipe and Cable Locating Ltd. (“**Down Under**”, and together with Drexler and Folmur, the “**Companies**”). As such I have knowledge of the matters to which I refer. In preparing this affidavit, I consulted with legal, financial and other advisors of the Companies and other members of the Companies’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it to be true.

**I. OVERVIEW**

2. The affidavit is in support of the Companies’ motion for orders:
  - a. extending to Monday, August 30, 2021, the time for Albert Gelman Inc. in its capacity as trustee (in such capacity, the “**Proposal Trustee**”) to the notice of intention to make a proposal to creditors (“**NOI**”) proceeding of each of the Companies, to file, on behalf of the Companies (individually or collectively, as the

case may be), a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”). The current extension expires on July 16, 2021. The sought extension is to allow the Companies to work further on the viable restructuring path identified below, towards a proposal.

- b. approving the third report of the Proposal Trustee, to be served and filed separately (the “**Third Report**”), and the Proposal Trustee’s fees and activities described therein, to streamline the files’ administration.
3. The Proposal Trustee recommends the relief sought. Leading counsel for the Companies, Brendan Bissell, informs me that he does not expect opposition from Royal Bank of Canada (“**RBC**”), the senior ranking creditor of the Companies, nor from any other person.

## **II. BACKGROUND**

### **a. The Companies and their business**

4. I provided the full background in my prior affidavit sworn April 12, 2021 filed in this court file, of which I attach a copy without exhibits as **Exhibit “A”** for reference.
5. To summarize, the business was initially set up by myself and my 7 brothers, of which 4 remain involved as the sole shareholders of Drexler, which is itself the sole shareholder of Folmur and Down Under, making the latter fully-owned subsidiaries. All the Companies operate in the construction industry, offering a wide spectrum of services including excavating, hydro, and concrete. The Companies attract notable clients including municipalities throughout Ontario. For reference, Drexler made a gross profit of approximately \$4,483,355 in 2018 and \$5,113,471 in 2019, and employs between 50 and 110 non-unionized employees depending on the season. Folmur made a gross profit of approximately \$1,689,684 in 2018 and \$2,233,232 in 2019, and has 25 non-unionized

employees. Down Under made a gross profit of approximately \$316,813 in 2018 and \$217,259 in 2019, and has 2 non-unionized employees.

**b. Causes of insolvency, main creditors, restructuring approach**

6. The Companies are all indebted to RBC, each as borrower under a number of credit facilities and as guarantor of the other two Companies' obligations to RBC, for approximately \$2,087,000 based on RBC's demand letters and notices to enforce security dated March 8, 2021. RBC holds (i) collateral charges/mortgages over Drexler's Catherine Property (as defined in my April affidavit (Exhibit "A")) totalling \$435,000 and (ii) general security agreements from each of the Companies. The Proposal Trustee obtained a legal opinion from independent counsel, which, subject to standard assumptions and qualifications, concludes that such RBC security interests are valid and enforceable in accordance with their terms. Before filing the NOIs, the Companies were in discussions (through counsel) with RBC about a forbearance, but, despite significant efforts on both sides, a mutually agreeable arrangement was not possible.
7. The Companies' other creditors and potential creditors are further discussed in my April affidavit (Exhibit "A") and include *Personal Property Security Act* registrants (mostly in respect of equipment and motor vehicles) and related companies. With their NOIs, Drexler lists approximately \$1,000,000 arms' length unsecured claims, Folmur approximately \$400,000, and Down Under approximately \$47,000. As to the Canada Revenue Agency ("CRA"), Drexler and Folmur have outstanding amounts on account of HST and source deductions based on a CRA proof of claim received by the Proposal Trustee, being a combined approximate \$215,000 for Drexler and \$200,000 for Folmur, subject to normal

course repayments and reductions (including after sales of Redundant Equipment, discussed below) as more fully addressed in the Third Report.

8. At present, each of the Companies is insolvent primarily because of (i) being unable to repay the amounts owing to RBC, (ii) the COVID-19 crisis having had a general adverse impact on costs, timelines to complete projects, and viability of actual and potential jobs, and (iii) two unusual and isolated financial setbacks in 2020, being a loss of approximately \$324,000 on a job due to an estimator's error, and a \$299,000 CRA interest charge.
9. However, the Companies' assets greatly exceed their liabilities, including based on the confidential valuations of the Properties, which are subject to a sealing order, and the book value of their other properties including substantial accounts receivable and capital assets, as more fully set out in my April affidavit (Exhibit "A"). This allows for a restructuring approach centered around locating, with the assistance of the Proposal Trustee, counsel to the Companies, the Financial Advisor and the Broker (terms defined below), a new source of financing to repay RBC (as well as the DIP loan, discussed below), making a viable proposal to creditors, and returning to solvency. This would benefit the Companies' stakeholders including their clients, suppliers, employees, equity holders, and creditors.
10. Each of the Companies therefore filed an NOI under the BIA on March 18, 2021 (collectively, the "**NOI Proceedings**"). The Proposal Trustee is the proposal trustee in each of the NOI Proceedings.

**c. State of file**

11. On April 16, 2021, this court granted an order (the “**April 16 Order**”), of which a copy is attached as **Exhibit “B”**, on an unopposed basis. The April 16 Order provides for the following main relief:
- a. administratively consolidating the NOI Proceedings in this court file,
  - b. extending the time to file a proposal to June 1, 2021,
  - c. approving a debtor-in-possession (DIP) financing facility and creating a \$1,500,000 DIP charge on the Properties (as defined in the April 16 Order), subordinate to RBC’s position,
  - d. creating a \$100,000 administration charge on the same properties, subordinate to the DIP charge,
  - e. allowing the sale of any or all of the Redundant Equipment (as defined in the April 16 Order), and
  - f. approving the Proposal Trustee’s first report and supplemental report thereto, along with the activities described therein.
12. On May 28, 2021, this court granted an order (the “**May 28 Order**”), of which a copy is attached as **Exhibit “C”**, on an unopposed basis. The May 28 Order provides for the following main relief:
- a. extending the time to file a proposal to July 16, 2021,
  - b. augmenting the April 16 Order with respect to sales of Redundant Equipment to provide for a “vesting-upon-sale” mechanism, and otherwise providing that the April 16 Order, subject to such augmentation, remains in force in accordance with its terms with respect to sales of Redundant Equipment, and

- c. approving the Proposal Trustee's second report as well as the activities and fees described therein.
13. Therefore the current stay period expires at the end of July 16, 2021.
  - d. Restructuring efforts**
    - i. Up to the May 28 Order
14. The Companies' restructuring efforts leading to the April 16 Order and the May 28 Order are respectively more fully set out in my April affidavit (Exhibit "A") as well as my prior affidavit sworn May 22, 2021, of which I attach a copy without exhibits as **Exhibit "D"**.  
Primarily and among other things, during that latter period, the Companies:
  - a. retained GreySuits Advisors Inc. (the "**Advisor**") as their external chief financial officer and advisor,
  - b. retained a mortgage broker (the "**Broker**") to assist the Companies in locating alternative financing to repay RBC,
  - c. worked with the Proposal Trustee towards the Revised Cash Flow Forecasts (as defined in the Third Report), and
  - d. entered into an auction agreement with Canam Appraiz Inc. ("**Canam**") with respect to the sale of Redundant Equipment.
  - ii. Since the May 28 Order
15. The Companies' restructuring efforts since the May 28 Order to today include:
  - a. terminating the Companies' internal accountant/controller whose function is now fulfilled by the Advisor.

- b. continuing efforts towards locating alternative financing to repay RBC, leveraging the involvement of the Proposal Trustee, the Companies' counsel, the Advisor, and the Broker.
  - c. obtaining audited financial statements for the fiscal year ended March 31, 2021, which is important for potentially interested lender(s).
  - d. assisting Canam in conducting auctions with respect to Redundant Equipment.
  - e. generally, continuing to work, including with the Proposal Trustee and counsel, with transparency and good faith, in providing information to and responding to inquiries from stakeholders (including RBC), attending meetings with the professionals to discuss the Companies' restructuring options and all attendant matters, and providing all the information required by the Proposal Trustee to allow *inter alia* the monitoring of receipts and disbursements.
16. As to sales of Redundant Assets:
- a. based on a reassessment of changing conditions in the construction market, the Companies determined that some of the Redundant Equipment they had originally intended to sell was no longer redundant in the sense that such was no longer economical against the Companies' renewed need for it and upkeep costs. As a result, the net minimum amount guaranteed by Canam under the auction agreement was revised from approximately \$560,000 to \$496,050 to account for the smaller pool of items sold. In return the Companies undertook to "top-up" any difference between the prior minimum guarantee amount and the revised minimum guarantee amount in the event that sale proceeds did not reach the former. This notably satisfied RBC based on communications among counsel.

- b. an auction was completed on June 28, 2021 and the Redundant Equipment sold was removed by the purchaser(s). The \$453,746.80 proceeds generated were less than the revised amount guaranteed by Canam, so the Companies received such guaranteed amount from Canam (\$496,050). Those funds, plus the difference with the original guaranteed amount (approx. \$560,000), are in the process of being distributed, in accordance with the applicable priorities and the procedure set out in the April 16 Order, to CRA and RBC on account of the Companies' prior-ranking pre-filing obligations to them, as more fully set out in the Third Report.
17. To not hinder the efforts towards locating alternative financing, confidentiality is appropriate and so I am limited in the comments I should publicly make in an affidavit as to which potential lender(s) has/have shown interest, and the level of progress made with such potential lender(s) towards a long-term financing agreement. However, the Companies have provided such information upon request to RBC, the principal stakeholder, and I am advised that more information may be orally provided to the court at the hearing if it is required and some form of satisfactory *in camera* setting is possible.
- iii. Going forward
18. The principal next step in the restructuring, such as through the extension period sought, is to continue efforts towards locating alternative financing to repay RBC. The Companies (and the Proposal Trustee, as more fully appears in the Third Report) are confident they can locate such financing during the sought extension period, or at least, make substantial progress towards the same. Once this is obtained, the Companies will work with the Proposal Trustee on a viable proposal.

19. Looking forward, Drexler also has plans to invest in and develop the Vacant Development Land (as defined in the Third Report), once it obtains site plan approval from the municipality, so as to enhance the long-term value of that asset.
20. The Companies currently contemplate no need to sell any more assets. The Companies have so far had no need to draw on the DIP facility. The DIP facility will be available should any draw be required during the sought extension period. Therefore, and as more fully appears from the Third Report, the Companies will have access to sufficient funds to operate throughout the sought extension.

### **III. RELIEF SOUGHT**

#### **a. Extension of time**

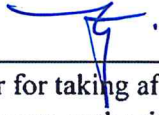
21. As recounted above, the Companies have been working in good faith and with due diligence towards a viable restructuring path. I continue to believe that following the one-time restructuring expense, a viable proposal to creditors can be made to allow the Companies to remain going concerns, to the benefit of all their stakeholders including creditors, clients, suppliers, employees and shareholders.

#### **b. Approval of Proposal Trustee's Third Report, fees and activities**


22. The activities and fees of the Proposal Trustee and its counsel were reported to the court and stakeholders including in the Third Report. The Companies believe those are appropriate, commercially reasonable, and in the best interest of the Companies and their stakeholders. Material in this regard are the April 16 and May 28 Orders, where this court approved the Proposal Trustee's prior reports as well as the activities described therein.

[10]

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 12<sup>th</sup> day of July, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

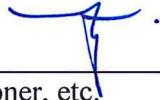


\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

  
**Jerome Drexler**  
(present at Rockwood at the time of swearing)

JOEL TURGEON

This is **Exhibit "A"** to the affidavit of Jerome Drexler sworn before me via Zoom this 12<sup>th</sup> day of July, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

J. TURGEON

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED, A CORPORATION  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

---

**AFFIDAVIT OF JEROME DREXLER  
(sworn April 12, 2021)**

---

I, Jerome Drexler of Rockwood in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and officer of Drexler Construction Ltd. (“**Drexler**”), which is the parent company of Folmur Construction (2004) Ltd. (“**Folmur**”) and Down Under Pipe and Cable Locating Ltd. (“**Down Under**”, and together with Drexler and Folmur, the “**Companies**”). As such I have knowledge of the matters to which I refer. In preparing this affidavit, I consulted with legal, financial and other advisors of the Companies and other members of the Companies’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it to be true.

**I. OVERVIEW**

2. The affidavit is in support of the Companies’ motion for orders:
  - a. administratively consolidating the notice of intention to make a proposal (“**NOI**”) proceedings of the Companies in one court file, to streamline administration and allow economies of scale on costs.

- b. extending to Tuesday, June 1, 2021, the time for Albert Gelman Inc. in its capacity as trustee (in such capacity, the “**Proposal Trustee**”) to the NOI proceeding of each of the Companies, to file, on behalf of the Companies (individually or collectively, as the case may be), a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”). The extension is *inter alia* to allow the Companies to explore the viable restructuring path identified below, towards a proposal.
- c. approving the Companies’ entering into a debtor-in-possession (“**DIP**”) lending facility (the “**DIP Facility**”) with Corwin Mortgage Capital Inc. (the “**DIP Lender**”) up to a maximum borrowing amount of \$1,500,000, which during the extension period sought may be accessed to the limit of (i) up to \$750,000, (ii) a further \$250,000 with the written consent of the Proposal Trustee in consultation with Royal Bank of Canada (“**RBC**”), the ranking secured creditor as discussed below, and (iii) any further amounts with the written consent of RBC or further court order. As seen below, the Companies are in the “investment” phase of certain construction projects, meaning that their cashflow is negative. To allow, *inter alia*, completion and monetization of the projects, and considering that the Companies’ credit facilities with RBC are unavailable as discussed below, interim financing by way of the DIP Facility, in the initial amounts applied for, is required to maintain the going concern nature of the Companies’ operations.
- d. creating a DIP financing charge, to secure the Companies’ obligations to the DIP Lender under the DIP Facility, on the Companies’ interest in and to the real estate properties municipally known as 5274 Wellington Road 27, Rockwood, Ontario (PIN #71180-0203 (LT)) (the “**HQ Property**”) and 183 Catherine Street,

Rockwood, Ontario (PIN #71180-0052(LT)) (the “**Catherine Property**”), which DIP Financing charge is to rank in priority to any “**Encumbrance**” (as defined in the draft order) encumbering either or both of the HQ and Catherine Properties save and except any Encumbrance in favour of RBC and any Encumbrance that primes such RBC’s Encumbrance. This collateralization and priority scheme was discussed among and is acceptable to the Companies, the DIP Lender and RBC.

- e. creating an “**Administration Charge**” to secure the Companies’ payment of the reasonable accounts and invoices of counsel for the Companies, the Proposal Trustee, and counsel to the Proposal Trustee up to a maximum of \$100,000, which charge is to rank in priority to all Encumbrances on either or both of the HQ and Catherine Properties save and except (i) any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC’s Encumbrance, and (ii) the DIP Lender’s Charge.
- f. authorizing the Companies to sell out of the ordinary course of business the “**Redundant Equipment**” (defined in the draft order), provided that each sale is for no less than the appraised amount for that piece of equipment as set out in Confidential Exhibit “3”, discussed below, either through Canam-Appraiz Inc. or privately. The orders sought provide that if an item sold is subject only to the secured claim of RBC as the first-ranking secured creditor generally, then the proceeds of sale are to be paid to RBC immediately and without further court order in repayment of the Companies’ obligations to RBC. It is understood that RBC would allow vacating title to the item from its claim. If the item sold is subject to two or more possible secured claims as determined by the Proposal Trustee, then

save agreement among the secured claimants, a motion for advice and directions would be made to the court as to entitlement to the proceeds.

- g. approving the first report of the Proposal Trustee, to be served and filed separately (the “**First Report**”), and its activities.
  - h. sealing Confidential Exhibit “1”, “2”, and “3” to this affidavit, being various appraisals, pending the earlier of a court order approving a proposal to creditors in respect of all of the Companies, or further court order. This is to protect the integrity of any sale process should that become necessary.
  - i. ordering the Companies to pay the reasonable accounts, fees and disbursements of the Proposal Trustee, counsel to Proposal Trustee and counsel to the Companies, as they become due, as part of the costs of these proceedings and post-filing obligations, it being understood that in the case of the Proposal Trustee and counsel to the Proposal Trustee, such payments are to constitute advances applicable on account of such amounts as may be approved by this court through taxation or under the BIA.
3. The Proposal Trustee supports and recommends the relief sought. Leading counsel for the Companies, Brendan Bissell, informs me that RBC has been consulted about the relief sought and does not oppose it.

## **II. THE COMPANIES AND THEIR BUSINESS**

4. The business was initially set up by myself and my 7 brothers, of which 4 remain involved: myself (Jerome), Martin, Kevin and Alfred. All the Companies operate in the construction industry. My brothers and I started our business operations back in 1972, originally through

Drexler, then through Folmur, which was purchased in 2004, and then Down Under as a new company in 2001. The Companies now offer a wide spectrum of construction services, including excavating, hydro, and concrete, and attract notable clients including municipalities throughout Ontario, as more fully explored below.

**a. Drexler**

5. Drexler was the first of the Corporations to be incorporated and remains the one with the most assets and activities. Its head office is located at the HQ Property.
6. Drexler is a general construction company specializing in excavation, sewer/water works, concrete works and utility installation projects throughout southwestern Ontario. Its clients principally include residential and commercial builders as well as municipalities. Drexler made a gross profit of approximately \$4,483,355 in 2018 and \$5,113,471 in 2019.
7. Drexler employs between 50 and 110 employees depending on the season, with more employees employed during the spring, summer and fall months. Drexler's employees are not unionized.
8. Myself and my brothers Martin, Kevin and Alfred are the sole shareholders of Drexler, which is the sole shareholder of Folmur and Down Under, making the latter fully-owned subsidiaries.
9. I attach a corporation profile report for Drexler as **Exhibit "A"**.

**b. Folmur**

10. Folmur's head office and yard are operated from leased premises located at 7000 Wellington Road 124, Guelph, Ontario.

11. Folmur is principally involved in electrical works for new residential and commercial construction developments throughout southwestern Ontario. Folmur made a gross profit of approximately \$1,689,684 in 2018 and \$2,233,232 in 2019.
12. Folmur has approximately 25 employees, who are not unionized.
13. As stated above, Folmur is a fully-owned subsidiary of Drexler.
14. I attach a corporation profile report for Folmur as **Exhibit “B”**.

**c. Down Under**

15. Down Under’s head office is located at the Duplex Property (defined below), which is owned by Drexler and further described below.
16. Down Under is principally involved in the construction industry as a locator of gas lines, electrical lines and water lines in the ground and buildings. Some of its notable clients include the town of Orangeville and the township of Mapleton. Down Under made a gross profit of approximately \$316,813 in 2018 and \$217,259 in 2019.
17. Down Under has 2 employees, who are not unionized.
18. As stated above, Down Under is a fully-owned subsidiary of Drexler.
19. I attach a corporation profile report for Down Under as **Exhibit “C”**.

**III. CAUSES OF INSOLVENCY**

20. The Companies are all indebted to RBC, each as borrower under a number of credit facilities and as guarantor of the other two Companies’ obligations to RBC. The loan

facilities with RBC include a credit agreement among RBC and Drexler dated November 1, 2013, a credit agreement among RBC and Folmur dated January 3, 2019, and a credit agreement among RBC and Down Under dated June 19, 2008, each as amended and supplemented from time to time, and as secured through the guarantees and collateral charges/mortgages described below. The banking and loan relationship with RBC dates back to 1984.

21. Based on RBC's demand letters and notices to enforce security dated March 8, 2021, of which I attach copies in **Exhibits "D"** (borrower demands) and **"E"** (guarantor demands), (i) Drexler's obligation to RBC as borrower is approximately \$2,050,000, Folmur's is approximately \$35,550, and Down Under's is approximately \$750, (ii) each of the Companies, as guarantor, is further indebted to RBC for corresponding amounts, and (iii) the Companies are in default towards RBC and liable to repay their obligations to RBC in full immediately.
22. RBC holds (i) collateral charges/mortgages over the Catherine Property respectively registered in 1992 (registration number RO663164) and 1993 (registration number RO686143) and totalling \$435,000 (together, the **"RBC Charges"**), as shown in the copy of the parcel register for the Catherine Property which I attach as **Exhibit "F"** together with copies of the parcel register for the HQ and Duplex Properties, and (ii) general security agreements from each of the Companies (together, the **"RBC GSAs"**). As set out in the First Report, the Proposal Trustee has obtained a legal opinion from independent counsel on the validity and enforceability of the RBC Charges and the RBC GSAs which,

subject to standard assumptions and qualifications, concludes that they are valid and enforceable in accordance with their terms.

23. The Companies do not contest that there were defaults under the various loan agreements that entitled RBC to make demand. Before filing the NOIs, the Companies were in discussions (through counsel) with RBC about possible arrangements to forbear on the demands, but, despite significant effort by both the Companies and the bank, a mutually agreeable arrangement was not possible.
24. At present, each of the Companies is insolvent, and the immediate cause of insolvency is the RBC demands described above. The Companies are unable to repay the amounts owing to RBC at this point in time. I believe, however, that the Companies' assets greatly exceed their liabilities, which is supported by the available appraisal information on the real property owned by Drexler and the equipment owned by the Companies as noted below, as well as the accounts receivable of the Companies in the approximate amount of \$3.5 million.
25. The COVID-19 crisis has also had a general adverse impact on the Companies' costs, timelines to complete projects, and viability of actual and potential jobs, which also contributes to the Companies' insolvency. Notably, the COVID-19 crisis resulted in many municipal jobs being delayed or deferred, causing lower earnings.

26. The Companies also suffered two unusual and isolated financial setbacks in 2020, being a loss on a job due to an estimator's error, and a Canada Revenue Agency interest charge:
- a. the first resulted in a line item on a tender being listed as \$142 per cube-meter instead of \$250 per cube-meter. Drexler had to honour the listed price, resulting in a negative difference of \$324,000.
  - b. the second was caused by cashflow issues in the summer of 2020. Unfortunately, sufficient revenues could not be generated in time to avoid the Canada Revenue Agency calculating interest charges for \$299,000.
  - c. I am advised by RLB, the Companies' accountants, that but for those two items, Drexler would have generated positive income in 2020, i.e. approximately \$430,800, instead of a net loss of approximately \$192,000.

#### IV. NOI FILINGS

27. Each of the Companies filed an NOI under the BIA on March 18, 2021 as follows:
- a. in estate/court file number 35-2721716 for Drexler, a copy of which NOI, together with the creditors listing, is attached as **Exhibit "G"**,
  - b. in estate/court file number 35-2721875 for Folmur, a copy of which NOI, together with the creditors listing, is attached as **Exhibit "H"**, and
  - c. in estate/court file number 35-2721896 for Down Under, a copy of which NOI, with the creditors listing, is attached as **Exhibit "I"**.
- (collectively, the "**NOI Proceedings**")
28. The Proposal Trustee is the proposal trustee in each of the NOI Proceedings.

## V. CREDITOR OVERVIEW

### a. RBC: ranking creditor of the Companies

29. Apart from the brothers' equity investments, the Companies' business operations and other capital needs were principally financed through intercompany loans as well as the RBC loan facilities described above.

30. As more fully set out above, the debt RBC claims against the Companies, as borrowers and guarantors, totals approximately \$2,086,300, and the Proposal Trustee has obtained an independent legal opinion confirming the validity and enforceability of the RBC Charges and the RBC GSAs, constituting RBC as the ranking and most sizeable creditor of the Companies.

### b. Other potential secured creditors

31. As more fully appears from copies of *Personal Property Security Act* (Ontario ("PPSA")) reports in respect of each of Drexler, Folmur and Down Under which I respectively attach as **Exhibits "J", "K" and "L"**:

a. the following chattel security registrations are disclosed in respect of Drexler.

Registration Date	Creditor	Collateral Classification
June 10, 2014	Royal Bank of Canada	Inventory, Equipment, Accounts, Other
May 1, 2017	Bank of Montreal	Equipment, Motor Vehicle
October 16, 2017	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
December 7, 2017	The Bank of Nova Scotia	Equipment, Other, Motor Vehicle
June 5, 2018	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
June 19, 2018	Wells Fargo Equipment Finance Company	Equipment, Motor Vehicle
October 22, 2018	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
January 16, 2020	The Bank of Nova Scotia	Equipment, Other, Motor Vehicle
July 6, 2020	TD Auto Finance (Canada) Inc.	Equipment, Other, Motor Vehicle
July 10, 2020	TD Auto Finance (Canada) Inc.	Equipment, Other, Motor Vehicle
August 14, 2020	Canadian Equipment Finance & Leasing Inc.	Equipment, Motor Vehicle
September 30, 2020	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
May 18, 1984	Royal Bank of Canada	Inventory, Equipment, Book Debts, Other, Motor Vehicle

b. the following chattel security registrations are disclosed in respect of Folmur.

Registration Date	Creditor	Collateral Classification
October 30, 2006	Royal Bank of Canada	Inventory, Equipment, Accounts, Other, Motor Vehicle
May 12, 2016	Royal Bank of Canada	Consumer goods, Other, Motor Vehicle
November 9, 2016	Xerox Canada Ltd.	Equipment, Other
November 15, 2017	Royal Bank of Canada	Consumer goods, Other, Motor Vehicle
December 20, 2017	GM Financial Canada Leasing Ltd.	Consumer goods, Equipment, Other, Motor Vehicle
March 13, 2018	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
October 30, 2018	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
June 3, 2019	John Deere Financial Inc.	Equipment, Other, Motor Vehicle
October 14, 2020	The Bank of Nova Scotia	Equipment, Other, Motor Vehicle
October 27, 2020	Royal Bank of Canada	Consumer goods, Other, Motor Vehicle
November 19, 2020	The Bank of Nova Scotia	Equipment, Other, Motor Vehicle
March 12, 2021	John Deere Financial Inc.	Equipment, Other, Motor Vehicle

c. and the following chattel security registration is disclosed in respect of Down Under.

Registration Date	Creditor	Collateral Classification
October 30, 2006	Royal Bank of Canada	Inventory, Equipment, Accounts, Other, Motor Vehicle

32. I note that all of these PPSA registrations, except two (the one by RBC against Drexler in 2014 and the one by Xerox against Folmur in 2016), include motor vehicles in the collateral classification and most include vehicle identification numbers. I understand that the Proposal Trustee believes those registration may indicate purchase-money security interests (PMSIs) under the PPSA, but has not yet obtained any legal opinion in that regard.

**c. Other creditors**

33. The balance of the Companies' known creditors, including related corporations, are unsecured and as set out in the Exhibit "G", "H" and "I" creditor mailing packages. Drexler lists approximately \$1,000,000 arms' length unsecured claims, Folmur approximately \$400,000, and Down Under approximately \$47,000.

34. As further discussed in the First Report, based on the Proposal Trustee's review of Folmur and Drexler's book and records, Drexler could be indebted to the Canada Revenue Agency for HST and unremitted source deductions in the respective approximate amounts of \$133,567 and \$21,845, and for Folmur, those approximate amounts are \$193,151 and \$50,485.

## VI. ASSET OVERVIEW

### a. Drexler

#### i. *Real estate interests*

35. Drexler's most valuable assets are the Catherine Property, the HQ Property, and the property municipally known as 5278 Wellington County Road 27, Rockwood, Ontario (PIN #71180-0204 (LT)) (the "**Duplex Property**" and, together with the Catherine Property and the HQ Property, the "**Properties**").
36. The HQ Property and the Duplex Property are portions of farmlands owned by the Drexler family dating back to the 1950s. The HQ Property includes a yard and buildings. The Duplex Property is adjacent to the HQ Property and is a duplex building development where the old farmhouse used to be. The Catherine Property was acquired in 1987, and recently developed to include a house. The Companies believe the further development potential of the Properties is substantial.
37. As more fully appears from the Exhibit "F" parcel registers, Drexler holds an unencumbered fee simple interest in the HQ Property and the Duplex Property, and, but for the RBC Charges, would hold an unencumbered fee simple interest in the Catherine Property.

38. The Proposal Trustee obtained professional appraisals from a licensed commercial real estate appraiser for each of the Properties. Those appraisals are included as **Confidential Exhibit “1”** to this affidavit. For the reasons discussed below, the Companies request an order sealing Confidential Exhibit “1” from the public record.

*ii. Other assets*

39. Drexler’s other notable assets include:

- a. inventories, including construction materials, with a book value of \$806,416 as at March 31, 2021.
- b. capital assets, including (i) machinery and other equipment (including backhoes, excavators, rollers, bulldozers, and other heavy construction equipment) (the “**Drexler M&E**”) with a book value of \$1,936,220, and (ii) vehicles (including dump trucks, pickup trucks and passenger vehicles) with a book value of \$650,800, the whole net of accumulated amortization and as at March 31, 2021.
- c. as at March 31, 2020, related company loans due and payable, as follows:
  - i. from 970743 Ontario Inc., in the amount of \$117,189,
  - ii. from IAD Investments Inc. in the amount of \$316,906,
  - iii. from Drexcon III Ltd. in the amount of \$97,052, and
  - iv. from Milldrex Investments Inc., in the amount of \$5,333.
- d. accounts receivable in the aggregate amount of \$2,826,440 as at March 31, 2021.

40. RBC recently obtained appraisals for the Drexler M&E. Those appraisals were provided to the Companies and are included as **Confidential Exhibit “2”** to this affidavit. For the

reasons discussed below, the Companies request an order sealing Confidential Exhibit “2” from the public record.

**b. Folmur**

41. Folmur’s notable assets include:

- a. client accounts receivable in the aggregate amount of \$1,523,947 as at March 31, 2021.
- b. capital assets, including (i) machinery and other equipment (including backhoes, excavators, rollers, bulldozers, and other heavy construction equipment) (the “**Folmur M&E**”) with a book value of \$373,367, and (ii) vehicles (including one dump trucks and several pickup trucks) with a book value of \$180,707, the whole net of accumulated amortization and as at March 31, 2021.
- c. inventories mostly including construction supplies with a book value of \$222,793 as at March 31, 2021.
- d. a loan due and payable from Drexler in the amount of approximately \$3.8 million.

42. The appraisal obtained by RBC (Confidential Exhibit “2”) also applies to the Folmur M&E.

**c. Down Under**

43. Down Under’s notable assets include:

- a. client accounts receivable in the aggregate amount of \$22,516 as at March 31, 2021, and
- b. capital assets, including equipment with a book value of \$81,848 net of accumulated amortization as at March 31, 2021.

**VII. CASHFLOW AND DIP TERM SHEET**

44. The Companies filed 15-week cashflow forecasts for the period from March 21 to July 3, 2021 (the “**Cashflow Forecasts**”), which are attached hereto together as **Exhibit “M”**. Those show that the Companies expect to require, over that period, approximately \$1,000,000, being \$600,000 for Drexler and \$400,000 for Folmur, to cover the amounts by which projected expenses will exceed revenues. The principal reasons for this are:
- a. the nature of larger scale construction work of the type performed by the Companies is that a substantial investment is typically required at the outset of a job for labour and materials, with monetization and revenues being achieved on completion or later in the project.
  - b. related to item a., the timing of the expected receipt of the Companies’ accounts receivable is in many cases after expenditures are going to be required.
  - c. the Companies are incurring professional costs in the NOI Proceedings, including for legal counsel, the Proposal Trustee and counsel to the Proposal Trustee, which are additional expenses, albeit temporary.
45. To fund the required amount, the Companies negotiated a DIP term sheet with the DIP Lender, which contains the materials terms that would form the basis of the DIP Facility were it approved by the court on this motion. A copy of the DIP term sheet is attached as **Exhibit “N”**.

46. The material terms of the DIP term sheet include:
- a. Loan amount: up to \$1,500,000.
  - b. Interest: 6.99% per annum, calculated and payable monthly
  - c. Term: 1 year. Right to repay in full at any time upon 45 days' notice.
  - d. Fees: \$15,000 brokerage fee and \$1,200 administration fee, plus lender's legal fees.
  - e. Security: DIP Charge as sought on this motion.
  - f. Conditions: the only condition of materiality is this court's granting the relief sought on this motion.
47. As seen above, pursuant to the Cashflows, the Companies' additional funding requirements over the next 15 weeks is \$1,000,000, but the current projections suggest that much of that funding will be required after the first extension period in the NOI Proceedings, which will be June 1, 2021. In discussions with RBC, the Companies have agreed that the order sought on this first motion would limit the maximum borrowing amount under the DIP Loan Facility to (i) \$750,000, (ii) a further \$250,000 with the written consent of the Proposal Trustee in consultation with RBC, and (iii) any further amounts with the written consent of RBC or further court order. The DIP term sheet allowing for a loan amount up to \$1,500,000 ensures its continued usability should the Companies require additional DIP financing in the course of the restructuring.
48. I am informed by the Proposal Trustee and counsel for the Companies that the terms of the DIP term sheet compare favourably to DIP financing terms approved by the courts in restructurings involving similar situations to that of the Companies.

**VIII. INTENDED RESTRUCTURING APPROACH AND COMPANIES' ACTIVITIES SINCE THE START OF THE NOI PROCEEDINGS TOWARDS THE SAME**

49. The Companies intend to preserve their business as going concerns, which will benefit their clients, suppliers, employees, equity holders, and creditors. Towards that goal, the filing of NOIs was required to (i) stabilize operations, (ii) avoid the appointment of a receiver by RBC or other enforcement steps, and (iii) allow the necessary breathing room to define viable restructuring options. Accordingly, on March 18, 2021, the Proposal Trustee filed the Companies' NOIs as set out above.
50. Other than a possible sale of the Redundant Equipment, as discussed below, no liquidation of assets is currently contemplated. At present, the Companies' restructuring plans are to: (i) locate, with the assistance of the Proposal Trustee and counsel for the Companies, alternative financing to take out the RBC loans, and (ii) thereafter making a proposal to the balance of the Companies' creditors. Efforts to seek refinancing commenced prior to the NOI Proceedings and are ongoing.
51. I am confident that viable refinancing options can be located, considering, among other things, that the Properties are largely unencumbered and hold substantial equity, as more fully appears from the above discussion and the appraisals attached as Confidential Exhibits "1".
52. Although not a core component of the restructuring plans, the Companies have also considered whether all of their equipment is being used or productively used, with a view to possibly selling the Redundant Equipment, a list of which is attached as

**Confidential Exhibit “3”** consisting in checkmarks marking the Redundant Equipment on a copy of the Confidential Exhibit “2” appraisal for the Drexler/Folmur M&E.

53. Otherwise, since the filing of the NOIs, the Companies have worked with the Proposal Trustee with transparency, diligence and good faith, including towards the Cash Flow Forecasts, discussions with stakeholders, and defining restructuring options.

## **IX. RELIEF SOUGHT**

### **a. Consolidation**

54. The Companies are largely integrated, including at the management and shareholder level, and have the same major creditor, RBC, which holds intersecting claims against all the Companies. I understand that each entity had to commence a separate proceeding, but the restructuring is principally in respect of the RBC debt, at least in the initial stages. Administrative consolidation is intended to streamline costs, including with respect to court attendances, creditor reporting and general file administration. It would facilitate the handling of this restructuring as a unified case, which it factually is.

### **b. Extension of time**

55. As discussed above, the Companies have, among other things, defined their cashflow needs, identified all known creditors and assets, and determined the preferred restructuring path. The Companies have been working in good faith and with due diligence with the Proposal Trustee, and keeping transparent communications with all stakeholders, including RBC, throughout.

56. The extension of time is principally to continue seeking take-out financing for RBC, after which the Companies intend to make a proposal to their remaining creditors. I believe that following the one-time restructuring expenses, a viable proposal to creditors can be made to allow the Companies to remain going concerns, to the benefit of all their stakeholders including clients, suppliers, employees, shareholders and creditors.

**c. DIP Financing and Charge**

57. As set out in detail above, the Companies require financing to allow continued operations and a restructuring, considering the unavailability of the RBC credit facilities in the circumstances. The DIP term sheet with the DIP Lender is “market” and I believe its terms are fair and reasonable. Further, the orders sought limit the DIP loan amounts to the current best estimate of the true financing needs of the Companies over the next 15-week period, while allowing flexibility should these needs prove to have been underestimated.

58. On the subject of the DIP financing charge, the order sought would constitute the charge against the HQ Property and the Catherine Property, with a rank prior to any Encumbrance on those properties save and except any Encumbrance in favour of RBC and any Encumbrance that primes such RBC’s Encumbrance. This collateralization and priority scheme was discussed among and is acceptable to the Companies, the DIP Lender and RBC.

59. The orders sought also allow the parties to draft, execute and register all necessary and attendant documentations to effect the DIP charge, including by way of mortgage, etc.

**d. Administration Charge**

60. The Companies' restructuring is complex and entirely dependent on the involvement of the Proposal Trustee and professional assistance from legal counsel, including for court appearances. While it is intended that the Companies pay the restructuring professionals' fees on a current basis during the NOI Proceedings, the Administration Charge is intended to operate as a backstop in case there are any unforeseen problems. It is therefore limited to a maximum of \$100,000, and is to rank in priority to all Encumbrances on either or both of the HQ or Catherine Properties, save and except (i) any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC's Encumbrance, and (ii) the DIP Lender's Charge. Such amount, collateral and rank for the Administration Charge strikes a balance between the interests of the Companies, the professionals, and RBC.

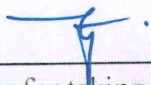
**e. Sale of Redundant Equipment**

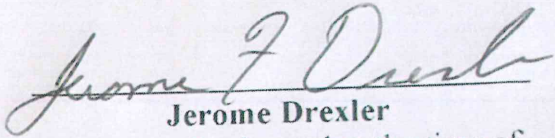
61. As noted above, the Companies have identified that some of their equipment is not being used and could be sold. The Companies therefore seek authorization to sell the Redundant Equipment, provided that each sale is for no less than the appraised amount for that piece of equipment as set out in Confidential Exhibit "2", either through Canam-Appraiz Inc. or privately. I am advised by counsel that the draft order sought provides for a mechanism allowing the resolution of any priority issues, notwithstanding that RBC is anticipated to possibly be the only creditor with security on most of the Redundant Equipment by virtue of the RBC GSAs.

f. Sealing orders

62. Confidential Exhibits "1", "2" and "3, being appraisals, contain information that would "pollute" and affect the integrity of any future sale or liquidation process with respect to those assets if the information were accessible to bidders and the market generally. The Companies therefore seek orders sealing those exhibits from the public record pending the earlier or court approval of a proposal in respect of all the Companies or further court order.

SWORN BEFORE ME via ~~Zoom~~ <sup>FaceTime</sup> at the City of Toronto, in the Province of Ontario, this 12<sup>th</sup> day of April, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

  
\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

  
\_\_\_\_\_  
**Jerome Drexler**  
(present at Rockwood at the time of swearing)

JOËL TURGEON

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, A  
CORPORATION INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

Estate No. 35-2721716

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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**AFFIDAVIT OF JEROME DREXLER  
(sworn April 12, 2021)**

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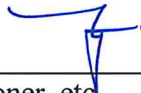
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**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for the moving parties and debtor companies,  
Drexler Construction Limited, Folmur Construction  
(2004) Limited, and Down Under Pipe and Cable  
Locating Limited

This is **Exhibit "B"** to the affidavit of Jerome Drexler sworn before me via Zoom this 12<sup>th</sup> day of July, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOËL TURGEON



well as those other parties present, as indicated in the counsel slip, no other parties being present although duly served as appears from the affidavit of service, filed:

### **NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion, the First Report and the Supplementary Report is abridged and validated so that the motion is properly returnable today, and that further service thereof is dispensed with.

### **PROCEDURAL CONSOLIDATION**

2. **THIS COURT ORDERS** that, without prejudice to the right of any party to seek or oppose substantive consolidation in respect of any or all of the following proceedings:

- a. the present proceeding,
- b. the NOI proceeding of Folmur, estate and court file no. 35-2721875, and
- c. the NOI proceeding of Down Under, estate and court file no. 35-2721896,

(collectively, the “**NOI Proceedings**”)

the NOI Proceedings are hereby procedurally consolidated, and the Proposal Trustee is authorized and directed, save to the extent the Proposal Trustee deems it unnecessary or undesirable, as the case may be, to administer the NOI Proceedings on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities under the *Bankruptcy and Insolvency Act* (the “**BIA**”), including, without limitation, the following:

- d. sending notices to creditors of one or more of the Companies pursuant to one consolidated notice,
- e. calling and conducting any meetings of creditors of the Companies pursuant to one combined advertisement and one meeting,
- f. issuing consolidated reports in respect of the estates of the Companies,
- g. preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the estates of the Companies on a consolidated basis, and
- h. bringing motions to this Honourable Court on a consolidated basis.

3. **THIS COURT ORDERS** that the single court file number 35-2721716 (the “**Consolidated Court File**”) and the following title of proceeding be assigned to the NOI Proceedings:

“

**IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL PROCEEDINGS OF  
DREXLER CONSTRUCTION LIMITED, FOLMUR  
CONSTRUCTION (2004) LIMITED, AND DOWN  
UNDER PIPE AND CABLE LOCATING LIMITED,  
CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT***

”

4. **THIS COURT ORDERS** that the Companies file a copy of this order in the court file for each of the NOI Proceedings but that any other document required to be filed in any of the NOI Proceedings shall hereafter only be required to be filed in the Consolidated

Court File. For avoidance of doubt, any motion, application or action in respect of the Companies or any of them shall be brought and filed in the Consolidated Court File and if so brought and filed it shall be deemed brought and filed in each of the NOI Proceedings, as appropriate, without prejudice to any rules of civil procedure or otherwise that are applicable. For further avoidance of doubt, this motion and this order are deemed made and granted in each of the NOI Proceedings.

5. **THIS COURT ORDERS** that the procedural consolidation of the NOI Proceedings does not:

- a. affect the separate legal status and structures of any of the Companies,
- b. cause any of the Companies to be liable for any claim for which it otherwise would not be liable, or
- c. affect the Proposal Trustee's or a creditor's right to seek to disallow any claim, including on the basis that such claim is a duplicative claim.

#### **EXTENSION OF TIME TO FILE A PROPOSAL**

6. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the period within which a proposal may be filed on behalf of any or all of the Companies is extended to and including Tuesday, June 1, 2021.

#### **DIP FINANCING AND CHARGE**

7. **THIS COURT ORDERS** that the Companies are and each of them is hereby authorized and empowered to obtain and borrow under a credit facility from Corwin

Mortgage Capital Inc. (the “**DIP Lender**”) in order to finance the Companies’ operations, capital expenditures and restructuring, which shall be on the terms and subject to the conditions set forth in the amended term sheet (the “**Term Sheet**”) attached as Appendix “A” to the Supplementary Report, filed.

8. **THIS COURT ORDERS** that the Companies be and hereby are authorized to borrow, under the aforementioned credit facility, (i) up to \$750,000, (ii) a further \$250,000 with the written consent of the Proposal Trustee in consultation with Royal Bank of Canada (“**RBC**”), and (iii) any further amounts with the written consent of RBC or further court order.

9. **THIS COURT ORDERS** that the Companies are authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as may be reasonably required pursuant to the terms of the Term Sheet, and the Companies are authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed in accordance with their terms, subject to paragraph 21 of this order but notwithstanding any other provision of this order.

10. **THIS COURT ORDERS** that the DIP Lender is granted a charge (the “**DIP Lender’s Charge**”) on the Companies’ interest in and to the real estate properties municipally known as 5274 Wellington Road 27, Rockwood, Ontario (the “**Wellington Property**”) and 183 Catherine Street, Rockwood, Ontario (the “**Catherine Property**”,

and, together with the Wellington Property, the “**Properties**”). The DIP Lender’s Charge shall not secure an obligation that begun to exist before this order is made. The DIP Lender’s Charge shall have the priority set out in paragraph 13 hereof.

11. **THIS COURT ORDERS** that, notwithstanding any other provision of this order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents, and
- b. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee-in-bankruptcy, interim receiver, receiver or receiver and/or manager of the Companies or any of them or the Properties.

12. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Companies or any of them under the *Companies’ Creditors Arrangement Act* (Canada), or any proposal filed by the Companies or any of them under the BIA, with respect to any advances made under the Term Sheet or the Definitive Documents.

13. **THIS COURT ORDERS** that the DIP Lender’s Charge shall rank in priority to all security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise encumbering either or both of the Properties (each, an “**Encumbrance**”) in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing being each a “**Person**”), save and except

any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC's Encumbrance.

14. **THIS COURT ORDERS** that the filing, registration or perfection of the DIP Lender's Charge shall not be required, and that the DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

15. **THIS COURT ORDERS** that the Companies or any of them shall not grant any Encumbrance that ranks in priority to, or *pari passu* with the DIP Lender's Charge, save with the prior written consent of the Proposal Trustee and DIP Lender, or further court order.

16. **THIS COURT ORDERS** that the Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein, (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications, (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA, (iv) the provisions of any federal or provincial statutes, or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement

(each, an “**Agreement**”) which binds the Companies, and notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the DIP Lender’s Charge nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Companies or any of them of any Agreement to which it is a party,
- b. the DIP Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies or any of them entering into the Term Sheet the creation of the DIP Lender’s Charge, or the execution, delivery or performance of the Definitive Documents, and
- c. the payments made by the Companies or any of them pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the DIP Lender’s Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

17. **THIS COURT ORDERS** that the DIP Lender’s Charge, to the extent it would apply over leases of real property in Canada, shall only be a charge in the interest of the Companies (or any of them) in such real property leases.

### **ADMINISTRATION CHARGE**

18. **THIS COURT ORDERS** that (i) counsel for the Companies, (ii) the Proposal Trustee, and (iii) counsel to the Proposal Trustee be and hereby are granted a charge (the “**Administration Charge**”) on the Companies’ interest in the Properties in connection with any unpaid fees and disbursements up to a maximum amount of \$100,000.

19. **THIS COURT ORDERS** that the Administration Charge shall rank in priority to all Encumbrances in favour of any Person save and except (i) any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC’s Encumbrance, and (ii) the DIP Lender’s Charge.

### **SALE OF REDUNDANT EQUIPMENT**

20. **THIS COURT ORDERS** that the Companies be and hereby are authorized to sell the equipment marked in Confidential Exhibit “3” to the Drexler April Affidavit (the “**Redundant Equipment**”) and such further equipment as RBC may agree in writing may be sold, provided that the sale price for each such piece of equipment is no less than the appraised amount for that piece of equipment as set out in Confidential Exhibit “2” to the Drexler April Affidavit, or if not appraised then in an amount that RBC and any other secured creditor with an interest in the equipment may approve, by:

- a. retaining Canam-Appraiz Inc. (“**Canam**”) to sell one or more pieces of the Redundant Equipment, or
- b. by private sale of one or more pieces of the Redundant Equipment.

21. **THIS COURT ORDERS** that with respect to the proceeds of any sale of Redundant Equipment:

- a. if the item sold is subject only to the secured claim of RBC as the first-ranking secured creditor generally, for which the Proposal Trustee has already obtained an independent legal opinion confirming its validity and enforceability, then the proceeds of sale less Canam's costs of disposition as approved by RBC for that item shall be paid to RBC immediately and without further court order in repayment of the Companies' obligations to RBC, up to the amount of the same.
- b. if the item sold is subject to two or more possible secured claims as determined by the Proposal Trustee, then (i) the Proposal Trustee shall obtain an independent legal opinion on the validity, enforceability, and rank of each claim and communicate such opinion to each secured claimant, and (ii) if the affected secured creditors agree on the opinion obtained by the Proposal Trustee, the proceeds of sale less Canam's costs of disposition as approved by the affected secured creditors for that item shall be immediately paid in accordance with that opinion and without further court order in repayment of the Companies' obligations to the applicable secured creditor(s) up to the amount of the same, but if there is no such agreement, then the Companies or the Proposal Trustee shall make a motion to the court for advice and direction on the payment of the net proceeds.

**APPROVAL OF PROPOSAL TRUSTEE'S FEES AND ACTIVITIES**

22. **THIS COURT ORDERS** that the First Report and the Supplementary Report and the activities described therein be and are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity, and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**SEALING**

23. **THIS COURT ORDERS** that Confidential Exhibits "1", "2" and "3" to the Drexler April Affidavit be and hereby are sealed pending the earlier of a court order approving a proposal to creditors in respect of all of the Companies under the BIA, or further court order.

**MISCELLANEOUS**

24. **THIS COURT ORDERS** that the Companies pay the reasonable accounts, fees and disbursements of the Proposal Trustee, counsel to Proposal Trustee and counsel to the Companies, in each case at their standard rates and charges and as they become due, as part of the costs of these proceedings and post-filing obligations. Counsel to the Companies is authorized to immediately apply such payments in satisfaction of their reasonable accounts, fees and disbursements. In the case of the Proposal Trustee and counsel to the Proposal Trustee, such payments shall constitute advances applicable on account of such reasonable accounts, fees and disbursements as may be approved by this court or through taxation under the BIA.

25. **THIS COURT 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 Companies, the Proposal Trustee and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Companies and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

*Kelly A. Gowen*

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF DREXLER CONSTRUCTION LIMITED, A  
CORPORATION INCORPORATED UNDER THE ONTARIO  
BUSINESS CORPORATIONS ACT**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in LONDON**

**ORDER  
(procedural consolidation, extension of time to file a  
proposal, debtor-in-possession financing approval  
and charge, administration charge, sale of  
redundant equipment, approval of activities, sealing)**

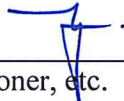
**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

**R. Brendan Bissell** (LSO# 40354V)  
Tel: (416) 597-6489  
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Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

**Joël Turgeon** (LSO #80984R)  
Tel: (416) 597-6486  
Email: [turgeon@gsnh.com](mailto:turgeon@gsnh.com)

Lawyers for Drexler Construction Ltd., Folmur  
Construction (2004) Ltd., and Down Under Pipe and  
Cable Locating Ltd.

This is **Exhibit "C"** to the affidavit of Jerome Drexler sworn before me via Zoom this 12<sup>th</sup> day of July, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc.

JOEL TURGEON

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION (2004) LIMITED, AND DOWN UNDER PIPE AND CABLE LOCATING LIMITED, CORPORATIONS INCORPORATED UNDER THE ONTARIO BUSINESS CORPORATIONS ACT

May 28/21 J. Turgeon for moving party  
J. Meiners - RBC  
H. Manis - Proposal Trustee in  
Upon reviewing materials filed, in accordance with ss. 50.4 and 65.13(7) of the BIA and s. 137(2) of the CTA, and upon being satisfied that subject co's have acted in good faith and are likely to make a viable proposal and no creditor is likely to be prejudiced, and supported by RBC, and supported by Proposal Trustee, order to go in accordance with draft signed by me.

*[Handwritten signature]*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in LONDON

ORDER  
(extension of time to file a proposal, vesting on sale, approval of proposal trustee's fees and activities, sealing)

GOLDMAN SLOAN NASH & HABER LLP  
480 University Avenue, Suite 1600  
Toronto (ON) M5G 1V2

R. Brendan Bissell (LSO# 40354V)  
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Lawyers for Drexler Construction (2004) Limited, Folmur Construction (2004) Limited and Down Under Pipe and Cable Locating Limited

#31#4

Estate No. 35-2721716



ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. )  
JUSTICE *M. A. GARSON* )  
FRIDAY, THE 28<sup>th</sup>  
DAY OF MAY, 2021

IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL PROCEEDINGS OF  
DREXLER CONSTRUCTION LIMITED, FOLMUR  
CONSTRUCTION (2004) LIMITED, AND DOWN  
UNDER PIPE AND CABLE LOCATING LIMITED,  
CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT*

ORDER

(extension of time to file a proposal, vesting on sale, approval of proposal  
trustee's fees and activities, sealing)

THIS MOTION made by Drexler Construction Limited, Folmur Construction (2004) Limited, and Down Under Pipe and Cable Locating Limited (together, the "Companies") for the orders herein was heard this day at 80 Dundas St., London, by teleconference due to COVID-19.

ON READING the affidavit of Jerome Drexler sworn May 22, 2021 (the "Drexler May Affidavit") and the second report dated May 25, 2021 (the "Second Report") of Albert Gelman Inc. in its capacity as proposal trustee (in such capacity, the "Proposal Trustee") to the notice of intention to make a proposal ("NOI") proceedings of the Companies, and upon hearing the submissions of counsel for the Companies and the Proposal Trustee as well as those other parties present, as indicated in the counsel slip, no

other parties being present although duly served as appears from the affidavit of service, filed:

#### **NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Second Report is abridged and validated so that the motion is properly returnable today, and that further service thereof is dispensed with.

#### **EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”), the period within which a proposal may be filed on behalf of any or all of the Companies is extended to and including Friday, July 16, 2021.

#### **VESTING ON SALE OF REDUNDANT EQUIPMENT**

3. **THIS COURT ORDERS** the following with respect to the sale of Redundant Equipment as defined in this court’s order dated April 16, 2021 (the “**April 16 Order**”) and such further equipment as Royal Bank of Canada (“**RBC**”) may agree in writing, for which the Companies were given authorization to sell by auction in the manner and subject to the terms and conditions provided in the April 16 Order:

- a. upon the delivery to a purchaser (the “**Purchaser**”) of any item, part or whole of the Redundant Equipment or such further equipment as RBC may agree in writing (collectively, “**Purchased Assets**”), of a bill of sale in respect of such Purchased Assets from Canam Appraisz Inc. as auctioneer

(the “**Bill of Sale**”), all the right, title and interest of the Companies (or any of them) in and to the applicable Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (“**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the April 16 Order, and (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 (collectively, “**Encumbrances**”), and, for greater certainty, this Court orders that upon such delivery of the Bill of Sale, all of the Encumbrances affecting or relating to the applicable Purchased Assets shall be expunged and discharged as against the applicable Purchased Assets;

- b. for the purposes of determining the nature and priority of Claims affecting or relating to Purchased Assets in respect of which a Bill of Sale has been delivered, the proceeds from the sale of those Purchased Assets (less the costs of disposition authorized by paragraph 21 of the April 16 Order) (collectively, the “**Net Proceeds**”) shall stand in the place and stead of those Purchased Assets, and that from and after the delivery of that Bill of Sale all Claims and Encumbrances with respect to those Purchased Assets shall

attach to the Net Proceeds from the sale of those Purchased Assets with the same priority as they had with respect to those Purchased Assets immediately prior to the sale, as if the said Purchased Assets had not been sold and remained in the possession or control of the Companies (or any of them);

- c. notwithstanding (i) the pendency of these proceedings, (ii) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Companies or any of them and any bankruptcy order issued pursuant to any such applications, and (iii) any assignment in bankruptcy made in respect of the Companies or any of them, the vesting of the applicable Purchased Assets in the applicable Purchaser pursuant to this order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies or any of them and shall not be void or voidable by creditors of the Companies or any of them, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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; and
- d. other than as provided herein, the April 16 Order is unchanged and remains in full force and effect in accordance with its terms.

**APPROVAL OF PROPOSAL TRUSTEE'S FEES AND ACTIVITIES**

4. **THIS COURT ORDERS** that the Second Report and the activities described therein be and are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity, and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and its independent legal counsel, Macdonald Sager Manis LLP, as set out in the Fee Affidavits (term defined in the Second Report), be and are hereby approved (the "Approved Fees").

6. **THIS COURT ORDERS** that the Companies are authorized to pay the Approved Fees from the Companies' available funds (and not, for greater certainty, from any of the Net Proceeds).

**SEALING**

7. **THIS COURT ORDERS** that Confidential Exhibit "1" to the Drexler May Affidavit be and hereby is sealed pending the earlier of a court order approving a proposal to creditors in respect of all of the Companies under the BIA, or further court order.

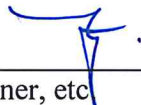
**MISCELLANEOUS**

8. **THIS COURT 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 Companies, the Proposal Trustee and their

respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Companies and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to be 'R. L. J.', is written over a horizontal line.

This is **Exhibit "D"** to the affidavit of Jerome Drexler sworn before me via Zoom this 12<sup>th</sup> day of July, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



A Commissioner, etc

JOEL TURGEON

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION  
(2004) LIMITED, AND DOWN UNDER PIPE AND CABLE  
LOCATING LIMITED, CORPORATIONS INCORPORATED  
UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT***

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**AFFIDAVIT OF JEROME DREXLER  
(sworn May 22, 2021)**

---

I, Jerome Drexler of Rockwood in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a director and officer of Drexler Construction Ltd. (“**Drexler**”), which is the parent company of Folmur Construction (2004) Ltd. (“**Folmur**”) and Down Under Pipe and Cable Locating Ltd. (“**Down Under**”, and together with Drexler and Folmur, the “**Companies**”). As such I have knowledge of the matters to which I refer. In preparing this affidavit, I consulted with legal, financial and other advisors of the Companies and other members of the Companies’ management. Where this affidavit is on information and belief, I have stated the source of that information and believe it to be true.

**I. OVERVIEW**

2. The affidavit is in support of the Companies’ motion for orders:
  - a. extending to Friday, July 16, 2021, the time for Albert Gelman Inc. in its capacity as trustee (in such capacity, the “**Proposal Trustee**”) to the notice of intention to make a proposal to creditors (“**NOI**”) proceeding of each of the Companies, to file, on behalf of the Companies (individually or collectively, as the case may be), a

proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”). The current extension expires on June 1, 2021. The sought extension is to allow the Companies to work further on the viable restructuring path identified below, towards a proposal.

- b. augmenting the orders of this court made on April 16, 2021 in this file (the “**April 16 Order**”) with respect to sales of Redundant Equipment (as defined in the April 16 Order), to provide for what I am advised is described as usual “vesting orders”, whereby upon delivery of a Bill of Sale to a Purchaser of Purchased Assets, the Purchaser obtains the Purchased Assets free of all Encumbrances, which are reported onto the proceeds (capitalized terms defined in the draft order). Otherwise, the April 16 Order remains unchanged, including as to which assets may be sold and for what price, and as respects the resolution of competing claims to the proceeds, as the case may be. This relief is to incentivize sales and make the auction sale process practicable and attractive, while maintaining proportionate administration costs.
  - c. approving the second report of the Proposal Trustee, to be served and filed separately (the “**Second Report**”), and the Proposal Trustee’s fees and activities described therein, to streamline the files’ administration.
  - d. sealing Confidential Exhibit “1” to this affidavit, being a copy of the Auction Agreement (defined below). This is to protect the integrity of the auction sale process in light of some of the valuation information contained in the full copy.
3. The Proposal Trustee supports and recommends the relief sought. Leading counsel for the Companies, Brendan Bissell, informs me that Royal Bank of Canada (“**RBC**”), the senior

ranking creditor of the Companies, has been consulted about the relief sought and does not oppose it, and that he is not aware of any opposition or potential opposition to any element of the relief sought.

## **II. BACKGROUND**

### **a. The Companies and their business**

4. I provided the full background in my affidavit sworn April 12, 2021 filed in this court file, of which I attach a copy without exhibits as **Exhibit “A”** for reference.
5. To summarize, the business was initially set up by myself and my 7 brothers, of which 4 remain involved as the sole shareholders of Drexler, which is itself the sole shareholder of Folmur and Down Under, making the latter fully-owned subsidiaries. All the Companies operate in the construction industry, offering a wide spectrum of services including excavating, hydro, and concrete. The Companies attract notable clients including municipalities throughout Ontario. For reference, Drexler made a gross profit of approximately \$4,483,355 in 2018 and \$5,113,471 in 2019, and employs between 50 and 110 non-unionized employees depending on the season. Folmur made a gross profit of approximately \$1,689,684 in 2018 and \$2,233,232 in 2019, and has 25 non-unionized employees. Down Under made a gross profit of approximately \$316,813 in 2018 and \$217,259 in 2019, and has 2 non-unionized employees.

### **b. Causes of insolvency, main creditors, restructuring approach**

6. The Companies are all indebted to RBC, each as borrower under a number of credit facilities and as guarantor of the other two Companies' obligations to RBC, for approximately \$2,087,000 based on RBC's demand letters and notices to enforce security dated March 8, 2021. RBC holds (i) collateral charges/mortgages over Drexler's Catherine

Property (as defined in my April affidavit (Exhibit “A”)) totalling \$435,000 and (ii) general security agreements from each of the Companies. The Proposal Trustee obtained a legal opinion from independent counsel, which, subject to standard assumptions and qualifications, concludes that such RBC security interests are valid and enforceable in accordance with their terms. Before filing the NOIs, the Companies were in discussions (through counsel) with RBC about a forbearance, but, despite significant efforts on both sides, a mutually agreeable arrangement was not possible.

7. The Companies’ other creditors and potential creditors are further discussed in my April affidavit (Exhibit “A”) and include *Personal Property Security Act* registrants (mostly in respect of equipment and motor vehicles) and related companies. With their NOIs, Drexler lists approximately \$1,000,000 arms’ length unsecured claims, Folmur approximately \$400,000, and Down Under approximately \$47,000. As to the Canada Revenue Agency (“CRA”), Drexler and Folmur have outstanding amounts on account of HST and source deductions based on a CRA proof of claim recently received by the Proposal Trustee, being a combined approximate \$215,000 for Drexler and \$200,000 for Folmur, subject to normal course repayments and reductions as I understand will be addressed in the Second Report.
8. At present, each of the Companies is insolvent primarily because of (i) being unable to repay the amounts owing to RBC, (ii) the COVID-19 crisis having had a general adverse impact on costs, timelines to complete projects, and viability of actual and potential jobs, and (iii) two unusual and isolated financial setbacks in 2020, being a loss of approximately \$324,000 on a job due to an estimator’s error, and a \$299,000 CRA interest charge.

9. However, the Companies' assets greatly exceed their liabilities, including based on the confidential valuations of the Properties, which are subject to a sealing order, and the book value of their other properties including substantial accounts receivable and capital assets, as more fully set out in my April affidavit (Exhibit "A"). This allows for a restructuring approach centered around locating, with the assistance of the Proposal Trustee, counsel to the Companies, the Financial Advisor and the Broker (terms defined below), a new source of financing to repay RBC (as well as the DIP loan, discussed below), making a viable proposal to creditors, and returning to solvency. This would benefit the Companies' stakeholders including their clients, suppliers, employees, equity holders, and creditors.
10. Each of the Companies therefore filed an NOI under the BIA on March 18, 2021 (collectively, the "**NOI Proceedings**"). The Proposal Trustee is the proposal trustee in each of the NOI Proceedings.
  - c. **Restructuring efforts since the April 16 Order and state of file**
11. On April 16, 2021, this court granted the April 16 Order, of which a copy is attached as **Exhibit "B"**, on an unopposed basis. The April 16 Order provides for the following main relief:
  - a. administratively consolidating the NOI Proceedings in this court file,
  - b. extending the time to file a proposal to June 1, 2021,
  - c. creating a \$1,500,000 debtor-in-possession (DIP) financing charge on the Properties (as defined in the April 16 Order), subordinate to RBC's position,
  - d. creating a \$100,000 administration charge on the same properties, subordinate to the DIP charge,
  - e. approving the sale of Redundant Equipment, and

- f. approving the Proposal Trustee's first report and supplemental report thereto, along with the activities described therein.
12. Other than possible sales of Redundant Equipment, as allowed in the April 16 Order, the Companies currently contemplate no liquidation of assets.
  13. Since the April 16 Order, the Companies have, among other things:
    - a. retained GreySuits Advisors Inc. (the "**Advisor**") to act as their external chief financial officer and advisor to, among other things, oversee the Companies' internal accounting processes, prepare short and long-term cash flow forecasting models, assist the Companies with obtaining financing and provide general financial advice.
    - b. finalized documentation with respect to the DIP financing facility with Corwin Mortgage Capital Inc., as approved in the April 16 Order.
    - c. retained a mortgage broker (the "**Broker**") to assist the Companies in locating alternative financing to repay RBC. Furthermore, the Companies and the Proposal Trustee continue to negotiate directly with one prospective lender with whom the Companies had commenced negotiations priorly.
    - d. as authorized in the April 16 Order, entered into an agreement with Canam Appraiz Inc. ("**Canam**") dated May 21, 2021 (the "**Auction Agreement**"), of which I attach a redacted copy as **Exhibit "C"** and a full copy as **Confidential Exhibit "1"**, for auctioning services in respect of the Redundant Equipment. The redacted copy blanks out the appraiser's valuation of the items to be sold on Schedule A to the Auction Agreement. A sealing order is sought for the full Auction Agreement, as set out further below.

- e. continued to work, including with the Proposal Trustee and counsel, with transparency and good faith, in providing information to and responding to inquiries from stakeholders (including RBC), attending meetings with the professionals to discuss the Companies' restructuring options and all attendant matters, preparing the revised cash flow forecasts of which I attach respective copies for each of the Companies as **Exhibit "D"**, **"E"** and **"F"** (the **"Revised Cashflow Forecasts"**), and providing all the information required by the Proposal Trustee to allow *inter alia* the monitoring of receipts and disbursements.
14. The next steps in the restructuring, such as through the extension period sought, are:
    - a. to continue efforts towards locating alternative financing to repay RBC, leveraging the involvement of the Proposal Trustee, the Companies' counsel, the Advisor, and the Broker, and
    - b. to assist Canam in conducting auctions under the Auction Agreement with respect to Redundant Equipment, provided the relief sought herein as to the augmentation of the April 16 Order in this regard is granted.
  15. I am advised by Bryan Gelman of the Proposal Trustee that one potential lender with which the Companies had contact prior to filing the NOIs is at an advanced stage of formulating a proposal on lending arrangements to refinance the amounts owing to RBC and to otherwise provide borrowing facilities to the Companies going forward. Mr. Gelman advises that he hopes to get other proposals from the Broker in order to attempt to ensure that any new lending arrangements are on competitive terms.

16. Looking forward, Drexler also has plans to invest in and develop the Vacant Development Land (as defined in the Second Report), once it obtains site plan approval from the municipality, so as to enhance the long-term value of that asset.
17. As more fully appears from the Revised Cashflow Forecasts, the Companies will have access to sufficient funds to operate throughout the sought extension, with any reasonable contingency being covered through draws available under the approved DIP facility.

### **III. RELIEF SOUGHT**

#### **a. Extension of time**

18. As discussed above, the Companies have been working in good faith and with due diligence towards a viable restructuring path. I continue to believe that following the one-time restructuring expense, a viable proposal to creditors can be made to allow the Companies to remain going concerns, to the benefit of all their stakeholders including clients, suppliers, employees, shareholders and creditors.

#### **b. Sale of Redundant Equipment provisions**

19. The orders sought on this topic do not alter the April 16 Order in the material respects that are the definition of what assets can be sold (i.e., the Redundant Equipment, as defined in the April 16 Order, for which a sale would yield more value than is being obtained from their possession), how and by whom those assets can be sold (i.e., by the Companies themselves or Canam, as provided in the April 16 Order), for what price they can be sold (i.e. the sealed appraised value, as provided in the April 16 Order), the mechanism provided for resolving any priority dispute on the proceeds, or the provided payment scheme for proceeds in accordance with priorities. Those aspects of the authorization to sell Redundant

Equipment were discussed and agreed among stakeholders, principally including RBC, and there is no need to alter them. In fact, the draft order contains language expressly preserving the April 16 Order save to the extent augmented through the relief sought.

20. The augmentations sought are to provide for what I am advised is described as “vesting orders”, whereby upon delivery of a Bill of Sale to a Purchaser of Purchased Assets, the Purchaser obtains the Purchased Assets free of all Encumbrances, which are reported onto the proceeds (capitalized terms defined in the draft order). As set out above, this relief is to incentivize sales and make the auction sale process practicable and attractive, while maintaining proportionate administration costs.
21. I am advised by Mr. Bissell that the orders sought for this head of relief are substantially in the form of the Commercial List model approval and vesting order.

**c. Sealing orders**

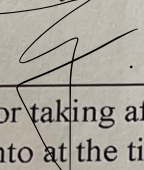
22. A sealing order is sought as to Confidential Exhibit “1” to this affidavit, being an unredacted copy of the Auction Agreement. This is because it contains background information about pricing and valuations which would “pollute” and affect the integrity of any sale process if the information were accessible to bidders and the market generally.

**d. Approval of Proposal Trustee’s Second Report, fees and activities**

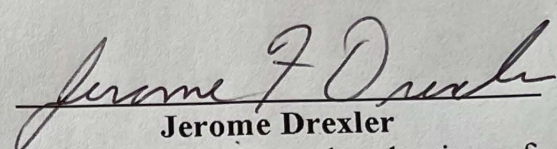
23. The activities and fees of the Proposal Trustee and its counsel were reported to the court and stakeholders including in the Second Report. I believe such activities are appropriate, commercially reasonable, and conducted in the best interest of the Companies and their

stakeholders. Material in this regard is the April 16 Order, where this court approved the Proposal Trustee's prior report as well as the activities described therein.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 22<sup>nd</sup> day of May, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

  
\_\_\_\_\_  
Commissioner for taking affidavits  
(present at Toronto at the time of swearing)

Joël Turgeon

  
\_\_\_\_\_  
**Jerome Drexler**  
(present at Rockwood at the time of swearing)

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, FOLMUR  
CONSTRUCTION (2004) LIMITED, AND DOWN UNDER PIPE AND CABLE  
LOCATING LIMITED, CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT***

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

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**AFFIDAVIT OF JEROME DREXLER**  
**(sworn May 22, 2021)**

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Lawyers for the moving parties and debtor companies,  
Drexler Construction Limited, Folmur Construction  
(2004) Limited, and Down Under Pipe and Cable  
Locating Limited

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL  
PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, FOLMUR  
CONSTRUCTION (2004) LIMITED, AND DOWN UNDER PIPE AND CABLE  
LOCATING LIMITED, CORPORATIONS INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT***

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

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**AFFIDAVIT OF JEROME DREXLER**  
**(sworn July 12, 2021)**

---

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(2004) Limited, and Down Under Pipe and Cable  
Locating Limited

**TAB 3**  
Draft Order



## **NOTICE AND SERVICE**

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Third Report is abridged and validated so that the motion is properly returnable today, and that further service thereof is dispensed with.

## **EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”), the period within which a proposal may be filed on behalf of any or all of the Companies is extended to and including Monday, August 30, 2021.

## **APPROVAL OF PROPOSAL TRUSTEE’S FEES AND ACTIVITIES**

3. **THIS COURT ORDERS** that the Third Report and the activities described therein be and are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity, and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and its independent legal counsel, Macdonald Sager Manis LLP, as set out in the Fee Affidavits (term defined in the Third Report), be and are hereby approved (the “**Approved Fees**”).

5. **THIS COURT ORDERS** that the Companies are authorized to pay the Approved Fees from the Companies' available funds (which for greater certainty does not include the net proceeds of sales of Redundant Equipment as described in the Third Report).

**MISCELLANEOUS**

6. **THIS COURT 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 Companies, the Proposal Trustee and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Companies and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL PROCEEDINGS OF DREXLER CONSTRUCTION  
LIMITED, FOLMUR CONSTRUCTION (2004) LIMITED, AND  
DOWN UNDER PIPE AND CABLE LOCATING LIMITED,  
CORPORATIONS INCORPORATED UNDER THE ONTARIO  
BUSINESS CORPORATIONS ACT**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced in LONDON**

**ORDER  
(extension of time to file a proposal, approval of  
proposal trustee's fees and activities)**

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Lawyers for Drexler Construction Ltd., Folmur  
Construction (2004) Ltd., and Down Under Pipe and  
Cable Locating Ltd.

**TAB 4**

Service list as of April 22, 2021

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL PROCEEDINGS OF DREXLER CONSTRUCTION  
LIMITED, A CORPORATION INCORPORATED UNDER THE  
ONTARIO *BUSINESS CORPORATIONS ACT***

**SERVICE LIST  
(as at April 12, 2021)**

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<p><b>ATTORNEY GENERAL OF CANADA</b></p> <p>Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto ON M5H 1P9</p> <p><b>Diane Winters</b> Tel: 647.256.7459 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p> <p><b>Rakhee Bhandari</b> Tel: 416.952.8563 Email: <a href="mailto:Rakhee.bhandari@justice.gc.ca">Rakhee.bhandari@justice.gc.ca</a></p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b></p> <p>Legal Services Branch 777 Bay Street, 11<sup>th</sup> Floor Toronto ON M5G 2C8</p> <p><b>Kevin O'Hara</b> Tel: 416.327.8463 Email: <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a></p>
<p><b>MASTERS INSURANCE (HAMILTON) LTD.</b></p> <p>McMaster Innovation Park 175 Longwood Road South, Suite 209A Hamilton ON L8P 0A1 Fax: 905 577 9154</p> <p><b>Doug Corby</b> Tel: 905 577 1180 Email: <a href="mailto:dcorby@mastersinsurance.com">dcorby@mastersinsurance.com</a></p>	<p><b>ZURICH CANADA</b></p> <p>100 King Street West, Suite 5500 P.O Box 290 Toronto ON M5X 1C9 Fax: 416 586 6821 / 1 800 319 3219</p> <p><b>Brent McAllister</b> Tel: 416 586 2880 Email: <a href="mailto:brent.mcallister@zurich.com">brent.mcallister@zurich.com</a></p>

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<p><b>WELLS FARGO EQUIPMENT FINANCE COMPANY</b></p> <p>1290 Central Parkway West, Suite 1100 Mississauga ON L5C 4R3</p> <p><b>Connie Roberts</b> Tel: 905-283-4444 Fax: 1-866-967-4047 Email : <a href="mailto:connie.roberts@myleasingsource.com">connie.roberts@myleasingsource.com</a></p>	<p><b>BANK OF MONTREAL</b></p> <p>5750 Explorer Drive Mississauga ON L4W 0A9</p> <p>PPSA Registrant</p>

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<p><b>CORWIN MORTGAGE CAPITAL INC.</b></p> <p>330 Wilson Avenue, Suite 300 Toronto ON M3H 1T2</p> <p><b>Kyle Fenwick</b> Tel: 416 543 1298 Email: <a href="mailto:kyle@corwincapital.ca">kyle@corwincapital.ca</a></p> <p>Debtor-in-possession lender</p>	

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IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED, FOLMUR CONSTRUCTION (2004) LIMITED, AND DOWN UNDER PIPE AND CABLE LOCATING LIMITED, CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*

Estate No. 35-2721716

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**MOTION RECORD**  
**(extension of time to file a proposal,  
approval of proposal trustee's fees and activities)**  
**(returnable July 16, 2021)**

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