

Court Files/Estate Nos. 35-2721716;  
35-2721875

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

**IN THE MATTER OF THE PROPOSAL PROCEEDINGS OF  
DREXLER CONSTRUCTION LIMITED and FOLMUR  
CONSTRUCTION (2004) LIMITED, CORPORATIONS  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

**RESPONDING MOTION RECORD OF THE TRUSTEE**

**(SIXTH REPORT OF ALBERT GELMAN INC.  
IN ITS CAPACITY AS PROPOSAL TRUSTEE  
DATED DECEMBER 8, 2022)**

December 8, 2022

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Albert Gelman Inc.

TO: THE SERVICE LIST

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

**IN THE MATTER OF THE PROPOSAL PROCEEDINGS OF  
DREXLER CONSTRUCTION LIMITED and FOLMUR  
CONSTRUCTION (2004) LIMITED, CORPORATIONS  
INCORPORATED UNDER THE ONTARIO *BUSINESS  
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**RESPONDING MOTION RECORD OF THE TRUSTEE  
(SIXTH REPORT OF ALBERT GELMAN INC. IN ITS  
CAPACITY AS PROPOSAL TRUSTEE DATED  
DECEMBER 8, 2022)**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

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

(Dated December 8, 2022)

**I. INTRODUCTION AND BACKGROUND**

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

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

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

4. Down Under's NOI proceedings were subsequently withdrawn in accordance the Court Order issued by the Honorable Justice M.D. McArthur dated September 10, 2021 (the "**September 10 Order**"). The September 10 Order is attached hereto as **Appendix "G"**.

5. This Sixth Report has been prepared in response to the Companies' Motion scheduled to be heard on December 16, 2022 (the "**December 16 Motion**") seeking an Order for, among other things, the following relief:

- a. authorizing the Companies to enter into an amended financing facility with Mitsubishi HC Capital Canada, Inc. (“**Mitsubishi**”) substantially on the terms contemplated in a proposed amended agreement (the “**Amended Mitsubishi Facility**”) amending the existing Mitsubishi financing facility dated April 29, 2022 (the “**Original Mitsubishi Facility**”). The Amended Mitsubishi Facility and Original Mitsubishi Facility are both attached to the Davis Affidavit (defined below) as Exhibits “A” and “D”, respectively.

The Original Mitsubishi Facility was predicated upon a term sheet with Mitsubishi dated March 24, 2022 (the “**Term Sheet**”). The Term Sheet was approved by the Court on April 29, 2022 and is attached the Davis Affidavit as Exhibits “B”.

6. Included in the Companies motion materials is the affidavit of Rodney Davis, the Companies Chief Financial Officer, sworn December 7, 2022 (the “**Davis Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed this affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

7. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies in their Motion returnable December 16, 2022.

## II. PURPOSE OF THIS REPORT

8. The purpose of this Sixth Report is to:

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

## III. SCOPE AND TERMS OF REFERENCE

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

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

11. This Sixth Report has been prepared for the use of this Court and the Companies’ stakeholders as general information relating to the Companies and to assist the Court in making a determination of whether

to approve the relief sought. Accordingly, the reader is cautioned that this Sixth Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Sixth Report contrary to the provisions of this paragraph.

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

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

#### **IV. MITSUBISHI FACILITY**

14. On April 29, 2022 the Court approved the Term Sheet which contemplated an upper limit borrowing amount of \$2.5 million. The Amended Mitsubishi Facility contemplates an upper borrowing limit of \$2.5 million so there is no contemplated change in the total borrowing amount.

15. The outstanding balance of the Original Mitsubishi Facility was \$1,664,754 million as of December 7, 2022. For the reasons outlined in the Davis Affidavit the total allowable amount available under Original Mitsubishi Facility is currently limited to \$1.7 million.

16. The Companies borrowing limit is calculated based upon the value of both its accounts receivable and machinery and equipment. The Original Mitsubishi Facility provides that the Companies can borrow up to a maximum of \$250,000 against the value of their accounts receivable. The Amended Mitsubishi Facility contemplates allowing the Companies to borrow a further \$250,000 (total of \$500,000) against the value of their accounts receivable. However, in return for increasing the available credit vis-a-vis the Companies accounts receivable by \$250,000 the Amended Mitsubishi Facility provides that Mitsubishi will receive a collateral charge in the corresponding amount of \$250,000 against the real properties owned by Drexler at 5270 and 5274 Wellington Road in Rockwood, Ontario as additional security (the “**Additional Collateral Security**”).

17. It is the Proposal Trustee’s opinion that neither the Amended Mitsubishi Facility nor the Additional Collateral Security will materially prejudice any creditor or other stakeholder of either of the Companies. Further, the Amended Mitsubishi Facility is necessary in order to provide the Companies with the working capital they require to fund new construction projects and continue as a going concern which is to the benefit of all of the Companies stakeholders.

#### **V. PROPOSAL TRUSTEE’S RECOMMENDATION**

18. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order authorizing the Companies to enter into the Amended Mitsubishi Facility.

All of which is respectfully submitted this 8th day of December 2022

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

Per:



\_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 08 - Waterloo  
Court No. 35-2721716  
Estate No. 35-2721716

In the Matter of the Notice of Intention to make a proposal of:

**Drexler Construction Limited**

Insolvent Person

**ALBERT GELMAN INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

March 18, 2021

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 18, 2021, 17:45

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902

**Canada**<sup>+</sup>



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 08 - Waterloo  
Court No. 35-2721875  
Estate No. 35-2721875

In the Matter of the Notice of Intention to make a proposal of:

**Folmur Construction (2004) Ltd.**

Insolvent Person

**ALBERT GELMAN INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

March 18, 2021

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 19, 2021, 11:25

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902

**Canada**

APPENDIX "B"

Estate / Court File Nos: 35-2721716  
35-2721875  
35-2721896

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(IN BANKRUPTCY AND INSOLVENCY)

**In the Matter of the Notice of Intention to Make a Proposal of  
Drexler Construction Limited of the township of Rockwood  
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of  
Folmur Construction (2004) Ltd. of the township of Rockwood  
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of  
Down Under Pipe and Cable Locating Ltd. of the township of Rockwood  
in the Province of Ontario**

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

(Dated April 12, 2021)

**I. INTRODUCTION**

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed by Drexler Construction Limited ("**Drexler**"), Folmur Construction (2004) Ltd. ("**Folmur**") and Down Under Pipe and Cable Locating Ltd. ("**Down Under**"; and together with Drexler and Folmur, the "**Companies**") on March 19, 2021 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Companies.

2. The Companies are making a motion to the Court, to be heard jointly, returnable April 16, 2021 (the "**April 16 Motion**") seeking various relief. This First Report has been prepared largely in response to and in support of the Companies' April 16 Motion.

3. On its April 16 Motion, the Companies are seeking, amongst other things, an Order:

- a. administratively consolidating the Companies' proposal proceedings under one title of proceeding;

- b. extending the time for each of the Companies to file a proposal to June 1, 2021 (the “**Stay Extension**”);
- c. approving the DIP Facility and DIP Charge (both terms defined below);
- d. granting a priority charge over the Drexler Premises and Vacant Development Land (both terms defined below) in the amount of \$100,000 to secure the fees and disbursements of counsel to the Companies, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administrative Charge**”);
- e. authorizing the Companies to sell certain redundant equipment; and
- f. sealing the Real Property Appraisal and M&E Appraisal (both terms defined below) pending the earlier of a court order approving a proposal to creditors in respect of all of the Companies under the BIA, or further Order of the Court.

4. The Companies’ have filed with their April 16 Motion the affidavit of Jerome Drexler sworn April 12, 2021 (the “**Drexler Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed the Drexler Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

5. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies at their April 16 Motion.

## II. PURPOSE OF THIS REPORT

6. The purpose of this First Report is to:

- a. provide the Court with relevant information pertaining to the Companies which is not otherwise described in the Drexler Affidavit;
- b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Companies subsequent to the filing of the NOI’s;
- c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Companies.

## III. SCOPE AND TERMS OF REFERENCE

7. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited financial information, the Companies’ books and records, discussions with Mr. Anthony Alfred Drexler, a shareholder, officer and director of each of the Companies, discussions with Mr. Peter Farmer, the Companies internal accountant, discussions with representatives RLB LLP, the Companies’ external accountant and discussions with the Companies’ legal counsel, Goldman Sloan Nash Haber LLP.

8. While the Proposal Trustee has reviewed various documents provided by Mr. Anthony Alfred Drexler, Mr. Farmer and others, such review does not constitute an audit or verification of such information for

accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”) or otherwise. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

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

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

#### **IV. BACKGROUND INFORMATION**

##### **Reason for NOI Filing**

11. RBC is the senior secured lender to Drexler. RBC had provided Drexler with a revolving credit facility which had an outstanding balance of approximately \$2.1 million as at March 8, 2021. Both Fomlur and Down Under guaranteed the RBC debt and provided RBC with, among other things, a general security agreement, as security for the guarantee. RBC declared Drexler in default on its loan obligation to RBC in or around March 8, 2021. As a result of the default RBC issued its Notice of Intention to Enforce a Security (the “**NITES**”) in accordance with section 244 of the BIA to Drexler, which are attached as Exhibit’s “D” and “E” to the Drexler Affidavit. The 10-day period set out in the NITES was set to expire on March 18, 2021. In order to stay RBC from enforcement action each of the Companies filed a NOI on March 18, 2021.

12. Further background information with respect to each of the Companies is set out below.

##### **Drexler Construction Limited**

13. According to a corporate profile search obtained by the Proposal Trustee on March 17, 2021, Martin Drexler, Kevin Drexler, Jerome Drexler and Anthony Alfred Drexler are each directors of Drexler. Jerome Drexler and Anthony Alfred Drexler are officers of Drexler. Attached hereto as **Appendix “B”** is a copy of the corporate profile search.

14. Drexler is involved in construction and, specifically, excavation, sewer/water works, concrete works and utility installation projects throughout southwestern Ontario. Its clients principally include, among others, residential and commercial builders as well as municipalities. Drexler employs between 50 and 110 employees depending on the season, with more employees employed during the spring, summer and fall months and less so in the winter months. Drexler’s employees are not unionized. Drexler’s head office and yard is located at 5274 Wellington County Rd 27, Rockwood, Ontario (the “**Drexler Premise**”), a property

which is owned by Drexler. Drexler's gross revenues during its fiscal years ended March 31, 2019 and 2020 were approximately \$27 million and \$20 million, respectively.

15. Further background information about Drexler is contained in the Drexler Affidavit. The Drexler Affidavit also includes details about the causes of the Drexler's financial difficulties.

16. The material assets of Drexler consist of the following:

- a. its accounts receivable, including holdbacks receivable, in the aggregate amount of \$2,826,440 as at March 31, 2021;
- b. inventory with a book value of \$806,416 as at March 31, 2021. The inventory consists of residual building materials on hand from the prior construction season which Drexler intends to use on its projects for this coming construction season;
- c. machinery and equipment with a book value, net of accumulated amortization, of \$1,936,220 as a March 31, 2021 (the "**Drexler M&E**"). The Drexler M&E consists of backhoes, blades, loaders, excavators, rollers, graders/tractors, mawlers and other heavy construction equipment;
- d. vehicles with a book value, net of accumulated amortization, of \$650,800 as a March 31, 2021. The vehicles consist of dump trucks, pickup trucks, vans, trailers and other vehicles used by management;
- e. the real property as follow:
  - i. commercial / industrial real property municipally known as 5274 Wellington County Rd 27, Rockwood, Ontario (PIN: 71180-0203 (LT)) (defined above as the "Drexler Premises");
  - ii. vacant development land located at 183 Catherine Street, Rockwood, Ontario (PIN: 71180-0052(LT)) (the "**Vacant Development Land**"); and,
  - iii. residential duplex municipally known as 5278 Wellington County Road 27, Rockwood, Ontario (PIN: 71180-0204 (LT)) (the "**Duplex Property**").

(collectively, the "**Real Property**")

- f. loans due from related companies as follows:
  - i. 970743 Ontario Inc. in the amount of \$117,188;
  - ii. IAD Investments Inc. in the amount of \$316,906;
  - iii. Drexcon III LTD in the amount of \$97,052; and,

- iv. Milldrex Investments Inc. in the amount of \$5,333.

Management has advised the Proposal Trustee that each of the above inter-company loans are collectible.

17. In addition to the above noted assets Drexler's intangible assets include its customer lists, contracts and overall goodwill.

18. The Proposal Trustee engaged TL Smith Appraisals (the "**TL Smith**"), a licensed commercial real estate appraiser, to conduct an appraisal of the Real Property which has an effective dated of March 24, 2021 (the "**Real Property Appraisal**"). For the reasons set out below the Companies are requesting that the Real Property Appraisal be sealed by the Court. The Real Property Appraisal is attached to the Drexler Affidavit as Confidential Exhibit "1".

19. RBC obtained a liquidation appraisal of the Drexler M&E and Folmur M&E (defined below) from Canam-Appraiz Inc. ("**Canam**") with an effective date of March 25, 2021 (the "**M&E Appraisal**"). The M&E Appraisal is attached to the Drexler Affidavit as Confidential Exhibit "2". The Proposal Trustee has not obtained its own appraisal of the machinery and equipment as the Proposal Trustee is comfortable with method used by Canam and, therefore, obtaining a second appraisal would only result in additional unnecessary costs to the Companies. The Proposal Trustee asks that the M&E Appraisal also be sealed for substantially the same reasons as the Real Property Appraisal.

20. In order to reduce its debt load, the Companies will be marketing for sale several pieces of redundant machinery and equipment and are requesting approval to sell several specific pieces of equipment. The Companies plan to either retain Canam to sell such equipment, or to seek to sell pieces of equipment by private sale so long as the sale price is equal to or better than the value contained in the M&E Appraisal. The Proposal Trustee supports the retainer of Canam, as it is a reputable liquidation company. The Proposal Trustee similarly supports approval of private sales of equipment at prices identified by Canam in the M&E Appraisal, as those would represent appropriate value.

21. The Companies propose to use any proceeds of sale to reduce the amounts owing to RBC. The Proposal Trustee supports this approach as one that furthers the substantive restructuring rather than selling capital assets to fund operational needs.

#### **Folmur Construction (2004) Ltd.**

22. According to a corporate profile search obtained by the Proposal Trustee on March 18, 2021, Martin Drexler, Kevin Drexler, Jerome Drexler and Anthony Drexler are each directors of Folmur. Kevin Drexler and Anthony Alfred Drexler are officers of Folmur. Attached hereto as **Appendix "C"** is a copy of the corporate profile search.

23. Folmur is principally involved in the construction sector installing electrical works for new residential and commercial construction developments throughout southwestern Ontario. Folmur employs

approximately 25 employees. Folmur's employees are not unionized. Folmur's head office and yard is located at 7000 Wellington Rd 124, Guelph, Ontario (the "**Folmur Premise**"), which it leases from an unrelated party pursuant to a commercial lease agreement dated April 1, 2019. Folmur's gross revenues during its fiscal years ended March 31, 2019 and 2020 were approximately \$6 million in both years.

24. Further background information about Folmur is contained in the Drexler Affidavit. The Drexler Affidavit also includes details about the causes of the Folmur's financial difficulties.

25. The material assets of Folmur consist of the following:

- a. its accounts receivable, including holdbacks receivable, in the aggregate amount of \$1,523,947 as at March 31, 2021;
- b. inventory with a book value of \$222,793 as at March 31, 2021. The inventory consists of construction materials to be used on current jobs for this years construction season;
- c. machinery and equipment with a book value, net of accumulated amortization, of \$373,367 as a March 31, 2021 (the "**Folmur M&E**"). The machinery and equipment consists of excavators, backhoes and other miscellaneous construction equipment;
- d. vehicles with a book value, net of accumulated amortization, of \$180,707 as a March 31, 2021. The vehicles consist of pickup trucks and trailers;
- e. loan receivable due from Drexler in the amount of approximately \$3.8 million;

26. In addition to the above noted assets Folmur's intangible assets include its customer lists, contracts and overall goodwill.

#### **Down Under Pipe and Cable Locating Ltd.**

27. According to a corporate profile search obtained by the Proposal Trustee on March 18, 2021, Martin Drexler, Kevin Drexler, Jerome Drexler and Anthony Alfred Drexler are each directors of Down Under. Jerome Drexler and Anthony Alfred Drexler are officers of Down Under. Attached hereto as **Appendix "D"** is a copy of the corporate profile search.

28. Down Under is involved in the construction sector as a locator of gas lines, electrical lines and water lines. Its principal clients are the town of Orangeville and the township of Mapleton. Down Under employees 2 employees who are both not unionized. Down Under's head office and yard is located at the Duplex Property. Down Under's gross revenues during its fiscal years ended March 31, 2019 and 2020 were approximately \$400,000 in both years.

29. Further background information about Down Under is contained in the Drexler Affidavit.

30. The material assets of Down Under consist of the following:

- a. its accounts receivable in the aggregate amount of \$22,516 as at March 31, 2021; and

- b. machinery and equipment with a book value, net of accumulated amortization, of \$81,848 as a March 31, 2021. The machinery and equipment consists of locating equipment.

## V. SECURED CREDITORS

### Drexler Construction Limited

31. Pursuant to a PPSA search conducted by the Proposal Trustee on March 17, 2021 (with a file currency date of March 16, 2021), the following creditors have registered financing statements against 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

32. A copy of the PPSA search is attached as Exhibit “J” to the Drexler Affidavit.

### Royal Bank of Canada

33. As was noted above, Drexler’s senior secured creditor is RBC who provided Drexler with a term loan, a revolving line of credit and credit card facilities. The Proposal Trustee has been advised by RBC that amount owing to RBC in respect of the revolving line of credit was approximately \$2.1 million as of March 8, 2021 plus accruing interest (the “**RBC Debt**”). Drexler provided a general security agreement in favour of RBC as security for the RBC Debt. Both Folmur and Down Under guaranteed the RBC Debt and, as security for the guarantee, provided general security agreements in favour of RBC.

34. The Proposal Trustee’s has engaged Macdonald Sager Manis LLP (“**MSM**”) to provide an independent legal opinion in respect of the validity and enforceability of RBC’s security in respect of Drexler, Folmur and Down Under (the “**RBC Security Opinion**”). Subject to the standard assumptions and qualifications contained in the opinion, MSM is of the opinion that RBC’s security is valid and enforceable in accordance with its terms against the personal property of Drexler, Folmur and Down Under in Ontario. A copy of the RBC Security Opinion is attached hereto as **Appendix “E”**. RBC’s security is registered first-in-time against each of the Companies.

### Other Secured Creditors

35. As set out in the chart above, there are several creditors, other than RBC, who have registered financing statements. These registrations relate to either a specific vehicle or specific piece of equipment and, if it was determined that each of the financing statements were registered and perfected properly, they likely represent purchase-money security interests (“PMSI”) in the specifically identified assets. However, at this time, the Proposal Trustee has not engaged MSM to review each of these registrations to confirm whether a valid PMSI was registered.

#### **Folmur Construction (2004) Ltd.**

36. Pursuant to a PPSA search conducted by the Proposal Trustee on April 1, 2021 (with a file currency date of March 31, 2021), the following creditors have registered financing statements against 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

37. A copy of the PPSA search is attached as Exhibit “K” to the Drexler Affidavit.

#### Royal Bank of Canada

38. As noted above, Folmur guaranteed the RBC Debt of Drexler and, as security for the guarantee, provided a general security agreement in favour of RBC. According to the RBC Security Opinion, RBC’s security is valid and enforceable in accordance with its terms against the personal property of Folmur.

#### Other Secured Creditors

39. As set out in the chart above, there are several creditors, other than RBC, who have registered financing statements. These registrations relate to either a specific vehicle or specific piece of equipment and, if it was determined that each of the financing statements were registered and perfected properly, they likely represent a PMSI in the specifically identified assets. However, at this time, the Proposal Trustee has not engaged MSM to review each of these registrations to confirm whether a valid PMSI was registered.

#### **Down Under Pipe and Cable Locating Ltd.**

40. Pursuant to a PPSA search conducted by the Proposal Trustee on March 17, 2021 (with a file currency date of March 16, 2021), the following creditors have registered financing statements against Folmur:

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

41. A copy of the PPSA search is attached as Exhibit "L" to the Drexler Affidavit.

#### Royal Bank of Canada

42. As noted above, Down Under guaranteed the RBC Debt of Drexler and, as security for the guarantee, provided a general security agreement in favour of RBC. According to the RBC Security Opinion, RBC's security is valid and enforceable in accordance with its terms against the personal property of Down Under.

## **VI. UNSECURED CREDITORS**

### **Drexler Construction Limited**

43. Drexler listed approximately \$1 million of arm's length unsecured claims in its NOI. The material non-arm's length unsecured creditors include Folmur for approximately \$3.7 million in respect of an inter-company loan and 2602763 Ontario Limited ("**260Co**"), a company owned and operated by Peter Drexler, for approximately \$100,000. Peter Drexler is a former officer and director of Drexler who has since retired.

44. Based on the Proposal Trustee's review of Drexler's book and records, Drexler is indebted to the CRA as follows:

- a. arrears HST in the amount of \$133,567 for reporting periods up to February 28, 2021. The March 2021 HST return is not due to be filed until the end of April 2021; and,
- b. the Proposal Trustee is reviewing the books and records provided by Drexler with respect to unpaid source deduction and will report to the Court and/or creditors at a later date with respect to the amounts owing;

### **Folmur Construction (2004) Ltd.**

45. Folmur listed approximately \$400,000 of arm's length unsecured claims in its NOI. The only material non-arm's length unsecured creditor is 260Co for approximately \$335,000

46. The Proposal Trustee is reviewing the books and records of Fulmor and will report to the Court and/or creditors at a later date with respect to the amounts owing in respect of HST and unpaid source deductions.

### **Down Under Pipe and Cable Locating Ltd.**

47. Down Under listed only one unsecured creditor in its NOI being 260Co for approximately \$47,000.

48. The Proposal Trustee is reviewing the books and records of Down Under and will report to the Court and/or creditors at a later date with respect to the amounts owing in respect of HST and unpaid source deductions.

49. As of the date of this First Report, the Trustee has not received a proof of claim from the CRA in respect of amounts owing by the Companies to the CRA.

## VII. ACTIVITIES OF THE COMPANIES

50. Since the date of the filing of the NOI, the Companies have undertaken, among other things, the following activities:

- a. advised various stakeholders, including management, relevant employees, and important suppliers of these restructuring proceedings;
- b. negotiated with Corwin Mortgage Capital Inc. ("**CMCI**") to obtain debtor-in-possession financing (defined below as the "DIP Facility") during these restructuring proceedings to cover the anticipated short-term shortfall of working capital as set out in its Cash Flow Forecasts (defined below);
- c. continue to canvas the market to obtain longer term financing to payout the RBC;
- d. begun the process to market certain specific redundant pieces of machinery and equipment, the proceeds of which will be used to paydown the RBC Debt;
- e. had informal discussions with various secured and unsecured creditors in respect of the restructuring proceedings;
- f. attended meetings with the Proposal Trustee to discuss its objectives and options in respect of these restructuring proceedings;
- g. prepared its Cash Flow Forecasts (defined below) with the assistance of the Proposal Trustee; and
- h. provided the Proposal Trustee, on an ongoing basis, with financial and other information in order to allow the Proposal Trustee to monitor its cash receipts and disbursements.

51. The Companies are requesting an extension of time to file their proposals so that they may, among other things, continue to canvas the market to find additional longer-term financing in order to payout in full the RBC Debt and the claims of unsecured creditors in the Proposal. As further discussed below, the Proposal Trustee supports the Companies' request for the Stay Extension.

## VIII. ACTIVITIES OF THE PROPOSAL TRUSTEE

52. Since the date of the filing of the NOI the Proposal Trustee has undertaken, among other things, the following activities:

- a. on March 23, 2021, the Proposal Trustee mailed to every known creditor a copy of the NOI as required under subsection 50.4(6) of the BIA. A copy of the affidavits of mailing are collectively attached hereto as **Appendix "F"**;

- b. assisted the Companies in their efforts to obtain the DIP Facility;
- c. assisted the Companies in their efforts to obtain longer-term financing by contacting several commercial brokers with an expertise in industrial, commercial and residential development land;
- d. corresponded with RBC's legal counsel;
- e. engaged MSM as its independent legal counsel;
- f. engaged MSM to provide an independent legal opinion with respect to the validity and enforceability of the security of RBC over the Companies;
- g. engaged TL Smith, to prepare the Real Property Appraisal. The Proposal Trustee has provided a copy of the Real Property Appraisal to RBC on a confidential basis as discussed in more details below;
- h. assisted the Companies with the preparation of the Cash Flow Forecast (defined below);
- i. implemented procedures with the Companies' management and employees in order to allow the Proposal Trustee to consistently monitor the receipts and disbursements of the Companies and compare same to the Cash Flow Forecast for variances;
- j. communicated extensively with management of the Companies, the Companies' internal accountant and the Companies' legal counsel to discuss, among other things, the following;
  - i. the business, financial affairs and future prospects of the Companies;
  - ii. the options available to the Companies in relation to the NOI proceedings; and,
  - iii. the DIP Facility.
- k. communicated with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings; and,
- l. established a Case Webpage to post the Court materials related to these restructuring proceedings, located at [www.albertgelman.com/corporate-solutions/other-engagements/#d](http://www.albertgelman.com/corporate-solutions/other-engagements/#d).

## IX. CASH FLOW FORECASTS

53. On March 26, 2021 the Companies each filed with the Proposal Trustee a statement of projected cash flows prepared on a weekly basis for the period of March 21 to July 3, 2021 ("**Cash Flow Forecasts**"), along with management's report on the reasonableness of the Cash Flow Forecast, in accordance with subsection 50.4(2) of the BIA. Attached hereto as **Appendix "G"** are copies of the Cash Flow Forecast along with management's and the Proposal Trustee's report thereon.

54. Drexler and Folmur are utilizing the DIP Facility (defined below) in or to fund their short-term working capital requirements. In the seasonal construction industry in Canada it is common for companies involved

in large construction projects to require financing/funding in the spring in order to fund the material and labour costs required to complete these projects throughout the warmer months. The receivables related to these projects would usually not be collected until the later part of the construction season.

55. In the Proposal Trustee's opinion, the Cash Flow Forecasts demonstrate that the Companies can, subject to obtaining the DIP Facility, continue to operate during the forecast period without material prejudice to any of the Companies' creditors. The accuracy of the Cash Flow Forecasts are subject to the assumptions contained within the forecast and set out in the forecast notes.

## **X. SEALING ORDER**

56. The Companies are requesting that the Court grant an order sealing the Real Property Appraisal and the M&E Appraisal on a confidential basis until such time as the proposal proceedings are concluded.

57. In the Proposal Trustee's opinion these appraisals contain sensitive commercial information about the value of the Real Property and the Companies' equipment, the release of which could negatively affect a potential sale process, which may or may not become necessary prior to each of the Companies filing a Proposal.

## **XI. DEBTOR-IN-POSSESSION FINANCING**

58. In order to fund the immediate working capital requirements of the Companies during these restructuring proceedings the Companies require additional funding. Pursuant to the Drexler Affidavit, CMCI has proposed to provide the Companies with a debtor-in-possession facility (the "**DIP Facility**"). The proposed DIP Facility is conditional on this Honourable Court permitting Drexler to register a mortgage on title to both the Drexler Premises and Vacant Development Land in favour of CMCI as described in further detail below (the "**DIP Charge**").

59. The terms of the proposed DIP Facility are set out in a mortgage financing commitment letter dated April 6, 2021 which is attached as Exhibit "N" to the Drexler Affidavit. The material terms of the proposed DIP Facility are outlined below:

- a. permits the Debtor to borrow the aggregate sum of up to a maximum of \$1.5 million in tranches of \$250,000 each;
- b. shall bear interest at a rate of 6.99% percent per annum compounded annually;
- c. includes a lending fee of \$15,000, representing 1% of the maximum available credit;
- d. shall be repayable within one year;
- e. requires that Drexler provide a first place mortgage over the Drexler Premises in favour of CMCI;

- f. requires that Drexler provide a second place mortgage over the Vacant Development Land in favour of CMCI, ranking behind RBC; and,
- g. is subject to the Court approving the DIP Facility and DIP Charge.

60. In the Trustee's opinion, the proposed terms of the DIP Facility are reasonable and appropriate in the circumstances.

61. It is proposed under the DIP Facility that monies are to be advanced to Drexler. The monies required by Folmur to fund their working capital shortfall will be transferred from Drexler to Folmur as a repayment of the intercompany loan owing by Drexler to Folmur. Although this contemplates the repayment of an unsecured debt ranking behind RBC, this transfer does not affect the ability of Drexler, on a liquidation basis, to repay all of its secured and unsecured creditors in full given the appraised value of the Real Property, the appraised value of the machinery and equipment and the current value of Drexler's accounts receivable. As a result, it appears that this will not prejudice any creditor of Drexler.

62. The Proposal Trustee has, in particular, considered the quantum of the DIP Facility. The size of the Companies' revenue, depending on the year, is in the order of magnitude of \$22 to \$33 million per year, which suggests that a possible loan of \$1.5 million is appropriate for that level of activity. The nature of the construction business also supports a loan, because typically there are up-front costs to starting a project, which yields revenue as the project is completed but thereby creates a cash flow deficiency in the interim. Finally, while the Companies and the Proposal Trustee have attempted to project the timing of receipts and expenditures, even a slight variation of later receipts or earlier expenditures, or perhaps even unanticipated expenditures through a new contract that is awarded, may result in the need for working capital through borrowing.

63. The Proposal Trustee has participated in discussions between the Companies and RBC regarding the amounts of borrowing that may be appropriate during the first extension period to June 1, 2021 and understands that a consensual arrangement has been reached in which the Companies will be authorized to borrow \$750,000, will have access to a further \$250,000 with the written consent of the Proposal Trustee in consultation with RBC, and may have access to further amounts above \$1 million on either written consent of RBC or further order of the Court. The Proposal Trustee supports this arrangement as one that will allow the Companies with an amount of possible borrowing that will meet anticipated and possibly unanticipated borrowing needs during the first extension period. The Proposal Trustee in particular notes that the greatest period of borrowing is projected to be in early June, which is after the first extension period, but which could accelerate under a variety of scenarios that would not be material changes in the Companies' financial position.

64. Based on the Proposal Trustee's review of Drexler's assets, as well as its secured and unsecured liabilities, the granting of the DIP Charge in support of the DIP Facility will not affect:

- a. the security position of RBC; or,

b. the ability for unsecured creditors to receive a distribution of their respective claims in full; in the event that Drexler's restructuring proceedings are unsuccessful.

65. The Companies are requesting that this Court make an Order that the DIP Charge, in the form of two mortgages registered on title to the Drexler Property and Vacant Development Land, shall be in priority to the secured claims of all secured creditors of the Companies with respect to these two real properties but subordinated only to the security of RBC or priority payables ranking ahead of it in respect of the Vacant Development Land.

## **XII. ADMINISTRATIVE CHARGE**

66. The Companies are seeking an Order of the Court charging the Drexler Property and Vacant Development Land, jointly and severally, in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, but subordinate to the interests of RBC and the DIP Lender, pursuant to section 64.2(1) of the BIA in an amount not to exceed \$100,000 to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee's legal counsel and legal counsel for the Companies (defined above as the Administrative Charge). It is anticipated that the Companies will remit payment to these professionals on a current basis, such that the Administration Charge is only intended to provide a fall-back in the event of any significant difficulty, or to allow for some deferral of fees if funds are not available without putting the restructuring professionals at risk.

67. Administrative charges are common in proceedings such as this and are necessary to secure the fees and disbursements of the professionals involved to enable companies to successfully complete restructuring proceedings.

68. The Proposal Trustee recommends that the Court grant an order approving the Administrative Charge being sought by the Companies.

## **XIII. REQUEST FOR EXTENSION**

69. The Companies are seeking the Stay Extension pursuant to subsection 50.4(9) of the BIA.

70. The Proposal Trustee supports the Stay Extension as it is of the opinion that:

- a. the Companies have acted, and are acting, in good faith and with due diligence;
- b. the Companies would likely be able to make a viable Proposal if the extension being applied for were granted; and,
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

71. The Proposal Trustee is also of the opinion that a Proposal developed by the Companies would likely result in a more orderly and efficient process to distribute funds to the Companies' secured and unsecured creditors than a shut down of the Companies and forced liquidation of the Companies' assets.

**XIV. PROPOSAL TRUSTEE'S RECOMMENDATION**

72. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the administrative consolidation of the Companies' proposal proceedings under one title of proceeding;
- b. the Stay Extension;
- c. The DIP Facility and DIP Charge;
- d. the Administrative Charge;
- e. sale by the Companies of redundant equipment;
- f. the actions and activities of the Proposal Trustee as described in this First Report; and,
- g. the sealing of the Real Property Appraisal and M&E Appraisal.

All of which is respectfully submitted this 12th day of April 2021

**ALBERT GELMAN INC., solely in its  
capacity as Trustee of re the Notice of  
Intention to Make a Proposal of Drexler  
Construction Limited, Folmur Construction  
(2004) Ltd. and Down Under Pipe and Cable Locating Ltd.  
and not its Personal or any other Capacity**

Per:

\_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*

APPENDIX "C"

Estate / Court File Nos: 35-2721716  
35-2721875  
35-2721896

**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) Ltd. and Down Under Pipe and Cable  
Locating Ltd. Corporations Incorporated under the Ontario *Business Corporations Act***

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

(Dated May 25, 2021)

**I. INTRODUCTION**

1. This second report ("**Second Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with Notices of Intention to Make a Proposal ("**NOI**") filed by Drexler Construction Limited ("**Drexler**"), Folmur Construction (2004) Ltd. ("**Folmur**") and Down Under Pipe and Cable Locating Ltd. ("**Down Under**"; and together with Drexler and Folmur, the "**Companies**") on March 18, 2021 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Companies.

2. On April 16, 2021 on a motion made by the Companies the Honourable Justice Gorman granted an order (the "**April 16 Order**") approving, among other things, an administrative consolidation of the Companies proposal proceedings, an extension of the stay of proceedings afforded under the NOI to June 1, 2021 (the "**First Stay Extension**"), the DIP Facility and DIP Charge (both terms defined in the First Report), an administrative charge and the sale of certain Redundant Equipment. A copy of the April 16 Order and related Endorsements are attached hereto as **Appendix "B"**.

3. The Trustee prepared a report in respect of the April 16, 2021 motion dated April 12, 2021 (the "**First Report**"). Attached hereto as **Appendix "C"** is a copy of the First Report, without appendices. The Trustee also prepared a report supplementing its First Report dated April 14, 2021 (the "**Supplementary First Report**"). The purpose of the Supplementary First Report was to provide the Court with information pertaining the revised terms of the DIP Facility vis-à-vis how it was to be advanced to the Companies. Attached hereto as **Appendix "D"** is a copy of the Supplementary First Report, without appendices

4. The Companies are making a motion to the Court returnable May 28, 2021 (the "**May 28 Motion**") seeking various relief. This Second Report has been prepared in response to and in support of the Companies' May 28 Motion.

5. On its May 28 Motion, the Companies are seeking, amongst other things, an Order:
  - a. further extending the time for each of the Companies to file a proposal to July 16, 2021 (the “**Second Stay Extension**”); and,
  - b. sealing the unredacted version of the Auction Agreement (defined below) in respect of the Redundant Equipment;
  - c. augmenting the April 16 Order with respect to the auction sales of the Redundant Equipment to provide for vesting-upon-sale orders; and,
  - d. approving the activities and fees of the Proposal Trustee and its counsel.
6. The Companies’ have filed with their May 28 Motion the affidavit of Jerome Drexler sworn May 22, 2021 (the “**Drexler May Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed the Drexler May Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.
7. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies at their May 28 Motion.

## II. PURPOSE OF THIS REPORT

8. The purpose of this First Report is to:
  - a. provide the Court with relevant information pertaining to the Companies and the relief being sought which is not otherwise described in the Drexler May Affidavit;
  - b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Companies subsequent to the date of the First Report; and,
  - c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Companies.

## III. SCOPE AND TERMS OF REFERENCE

9. In preparing this Second Report, the Proposal Trustee has relied upon certain unaudited financial information, the Companies’ books and records, discussions with Mr. Anthony Alfred Drexler, a shareholder, officer and director of each of the Companies, discussions with Mr. Peter Farmer, the Companies internal accountant, discussions with representatives RLB LLP, the Companies’ external accountant and discussions with the Companies’ legal counsel, Goldman Sloan Nash Haber LLP.
10. While the Proposal Trustee has reviewed various documents provided by Mr. Anthony Alfred Drexler, Mr. Farmer and others, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”) or otherwise. Accordingly, the Proposal Trustee

expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

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

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

13. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report.

#### IV. ACTIVITIES OF THE COMPANIES

14. Since the date of the filing of the First Report the Companies have undertaken, among other things, the following activities:

- a. retained GreySuits Advisors Inc. to act as its 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 long-term financing and provide general financial advice;
- b. closed the transaction with Corwin Mortgage Capital Inc. ("**CMCI**") to obtain debtor-in-possession financing (defined in the First Report as the "DIP Facility"). As of the date of this report the Companies have not made any draws on the DIP Facility;
- c. retained a mortgage broker (the "**Broker**") to assist the Companies in obtaining long-term financing. There is one prospective lender who was excluded (the "**Excluded Lender**") from the list of lenders which the Broker could actively solicit due to the fact that the Companies were previously negotiating with the Excluded Lender prior to filing the NOI's and thus prior to retaining the Broker. As described in more detail below, the Companies and the Proposal Trustee are negotiating directly with the Excluded Lender;
- d. entered into an agreement the Canam Apprais Inc. ("**Canam**") dated May 21, 2021 (the "**Auction Agreement**") to auction the Redundant Equipment which process is described in more detail below;
- e. continue to have informal discussions with various secured and unsecured creditors in respect of the restructuring proceedings;
- f. continue to attend meetings with the Proposal Trustee to discuss the Companies' objectives and options in respect of these restructuring proceedings;

- g. prepared its Revised Cash Flow Forecasts (defined below) with the assistance of the Proposal Trustee; and
- h. provided the Proposal Trustee, on an ongoing basis, with financial and other information in order to allow the Proposal Trustee to monitor its cash receipts and disbursements.

15. The Companies are requesting an extension of time to file their proposals so that they may, among other things, continue to canvass the market to find additional long-term financing options so as to, *inter alia*, repay the RBC Debt, repay the DIP Facility and provide additional working capital to the Companies. As further discussed below, the Proposal Trustee supports the Companies' request for the Second Stay Extension.

## **V. ACTIVITIES OF THE PROPOSAL TRUSTEE**

16. Since the date of the First Report the Proposal Trustee has undertaken, among other things, the following activities:

- a. assisted the Companies with retaining the Broker;
- b. engaged in discussion with the Excluded Lender;
- c. assisted the Companies in retaining GreySuits Advisors Inc. to act as an external CFO and advisor;
- d. corresponded with RBC's legal counsel to provide updated information in respect of these restructuring proceedings and other matters as requested by RBC's legal counsel;
- e. assisted the Companies with the preparation of the Revised Cash Flow Forecasts (defined below);
- f. monitored on a regular basis the Companies' cash receipts and disbursements and compared same to the original weekly cash flow projections prepared by the Companies' for material variances;
- g. continued to communicate extensively with management of the Companies, the Companies' internal accountant and the Companies' legal counsel to discuss, among other things, the following:
  - i. the business, financial affairs and future prospects of the Companies;
  - ii. the options available to the Companies in relation to the NOI proceedings; and,
  - iii. long-term financing options for the Companies';
- h. communicated with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings; and,

- i. maintained a Case Webpage with electronic copies of the Court materials related to these restructuring proceedings, located at [www.albertgelman.com/corporate-solutions/other-engagements/#d](http://www.albertgelman.com/corporate-solutions/other-engagements/#d).

## **VI. LONG-TERM FINANCING**

17. As noted above and in the First Report, the Companies are seeking long-term financing to, among other things, repay the RBC Debt, repay the DIP Facility and provide additional working capital to the Companies. Further, it is the intention of Drexler to use a portion of the long-term to fund the development of the Vacant Development Land, once Drexler obtains site plan approval from the municipality.

18. The Companies, together with the Proposal Trustee, have been in discussions with the Broker who is actively soliciting lenders to obtain the long-term secured financing. The Companies have worked diligently during these restructuring proceedings to prepare and provide the updated financial and other information requested by the Broker which information is necessary to present to potential lenders.

19. As of the date of the Second Report the Companies are continuing to provide the requested financial information to various lender and expect to receive several lending proposals shortly. Further, discussions with the Excluded Lender have continued to progress such that the Proposal Trustee expects to receive a lending proposal shortly from the Excluded Lender. The Proposal Trustee will report further to the Court at a later date in this regard.

## **VII. SALE OF REDUNDANT ASSETS**

20. In accordance with paragraphs 20 and 21 of the April 16 Order Drexler has entered into the Auction Agreement with Canam to sell the Redundant Equipment. The auction is expected to take place within 45 days of the date of the Auction Agreement and the auction proceeds will be distributed to the Companies' legal counsel within 10 business days following the completion of the auction in order to ensure that the funds are distributed in accordance with the terms of the April 16, 2021 Order. In order to ensure that the appraised values of the Redundant Equipment are obtained in the auction Canam has provided a net minimum guarantee to Drexler for the appraised values of the Redundant Equipment, less commission of 15% and expenses of \$25,000 plus HST.

21. Due to the fact that Schedule "A" to the Auction Agreement contains the appraised values of the Redundant Equipment the Companies are requesting that the unredacted version of the Auction Agreement be sealed pending further Order of the Court. A redacted version of the Auction Agreement is included as Exhibit "C" to the Drexler May Affidavit. An unredacted version of the Auction Agreement is attached to the Drexler May Affidavit as Confidential Exhibit "1". It is the Trustee's Opinion that that the unredacted Auction Agreement contains information which is commercially sensitive and should not be made available to the general public until the conclusion of efforts to sell the Redundant Equipment.

22. The Companies are seeking that the April 16 Order be augmented such that it would now include 'vesting-upon-sale' provisions with respect to the sale of the Redundant Equipment sold at auction by Canam. This relief, if granted, would provide that each piece of Redundant Equipment sold would vest free and clear of any and all encumbrances in its respective purchaser upon Canam issuing a bill of sale to that purchaser. Otherwise, the April 16 Order would remain in force in accordance with its terms including without limitation as to the assets that had been approved for sale (i.e., Redundant Equipment and those other assets of which RBC authorizes the sale) and the minimum sale prices (i.e., based on sealed appraisals). In the Proposal Trustee's opinion this relief would allow the auction process to operate in a more efficient manner, would not prejudice any party to these restructuring proceeding, would reduce administrative costs and is commercially reasonable in the circumstances. It is a common mechanism in restructurings or receiverships involving auction-type sales. The Proposal Trustee supports the Companies' request for this relief.

### VIII. REVISED CASH FLOW FORECASTS

23. On May 22, 2021 the Companies each filed with the Proposal Trustee a revised statement of projected cash flows prepared on a weekly basis for the period of May 17 to August 29, 2021 ("**Revised Cash Flow Forecasts**"), along with management's report on the reasonableness of the Cash Flow Forecast, in accordance with subsection 50.4(2) of the BIA. Attached hereto as **Appendix "E"** are copies of the Revised Cash Flow Forecasts along with management's and the Proposal Trustee's report thereon. The Proposal Trustee's comments in respect of the Revised Cash Flow Forecasts are as follows:

- a. in the original Cash Flow Forecasts (included with the First Report) it was anticipated that by May 22, 2021 Drexler would be required to utilize approximately \$150,000 of the DIP Facility. As of the date of this Second Report, neither Drexler nor Folmur have utilized the DIP Facility as many of their suppliers continue to supply on credit terms, as opposed to requiring cash on delivery;
- b. as set out in the Revised Cash Flow Forecasts it is anticipated that Drexler will utilize approximately \$500,000 of the DIP Facility by mid to late June 2021. This amount of DIP Facility utilization is below the threshold amount as set out in paragraph 8 of the April 16 Order and, therefore, does not require any additional approvals from either the Proposal Trustee or RBC; and,
- c. the original Cash Flow Forecast for Drexler projected that a receivable of \$759,318 owing from 2670362 Ontario Inc. ("**267Co.**"), a Company owned and operated by Kevin Drexler, would be collected, in full, during the week ended May 8, 2021. As of the date of this Second Report approximately \$111,000 has been collected from 267Co. The Revised Cash Flow Forecast for

Drexler indicates that this receivable will now be collected, in full, during the week ended July 18, 2021. The Proposal Trustee has been advised by Kevin Drexler that 267Co. owns real property and that the receivable relates to Drexler having serviced the land. 267Co intends on developing the land, however, at the current time, 267Co. is waiting for approval from the local municipality before it can begin to sell units. Once 267Co. is able to sell condo units it will have sufficient funds to repay the amount owing to Drexler.

24. In the Proposal Trustee's opinion, the Revised Cash Flow Forecasts demonstrate that the Companies can, with the utilization of the DIP Facility, continue to operate in the ordinary course during the forecast period without material prejudice to any of the Companies' creditors.

#### **IX. CANADA REVENUE AGENCY**

25. In its First Report the Proposal Trustee advised that it would provide an update to the Court with respect to amounts owing by each of the Companies to the Canada Revenue Agency ("**CRA**").

##### **Drexler Construction Limited**

26. According to a proof of claim which was filed by the CRA with the Proposal Trustee dated March 29, 2021 (the "**CRA Drexler Claim**") the arrears of HST owing by Drexler up to and including the period ended January 31, 2021 was \$213,121. The Trustee estimates that once the CRA processes Drexler's February 2021 and stub-period March 2021 HST returns the pre-NOI HST arrears will decrease by \$85,858 to \$127,163.

27. According to the CRA Drexler Claim, the pre-NOI amount owing by Drexler to the CRA with respect to unpaid source deduction is \$1,724.

##### **Folmur Construction (2004) Ltd.**

28. According to a proof of claim which was filed by the CRA with the Proposal Trustee dated March 29, 2021 (the "**CRA Folmur Claim**") the arrears HST owing by Folmur up to and including the period ended August 31, 2020 was \$145,061. The Trustee estimates that once the CRA processes Folmur's remaining returns up to the NOI date, the pre-NOI HST arrears will increase by \$134,113 to \$279,174.

29. According to the CRA Folmur Claim, the pre-NOI amount owing by Folmur to the CRA with respect to unpaid source deduction is \$59,591.

##### **Down Under Pipe and Cable Locating Ltd.**

30. The Trustee has not yet received a proof of claim from the CRA in respect of Down Under. However, based on the books and records of Down Under it appears that the amounts owing to the CRA in respect of HST and source deduction are nil.

## X. REQUEST FOR EXTENSION

31. The Companies are seeking the Second Stay Extension pursuant to subsection 50.4(9) of the BIA.
32. The Proposal Trustee supports the Second Stay Extension as it is of the opinion that:
- a. the Companies have acted, and are acting, in good faith and with due diligence;
  - b. the Companies would likely be able to make a viable Proposal if the extension being applied for were granted; and,
  - c. no creditor would be materially prejudiced if the extension being applied for were granted.
33. The Proposal Trustee is also of the opinion that a Proposal developed by the Companies would likely result in a more orderly and efficient process to distribute funds to the Companies' secured and unsecured creditors than a shut down of the Companies and forced liquidation of the Companies' assets.

## XI. ACCOUNTS OF THE PROPOSAL TRUSTEE AND ITS COUNSEL

34. In accordance with paragraph 24 of the April 16 Order the fees and disbursements of the Proposal Trustee and its counsel may be approved by the Court and referred to a judge for such purpose.
35. Attached hereto as **Appendix "F"** is the Affidavit of Bryan Gelman regarding the Proposal Trustee's fees to May 17, 2021 accompanied by the supporting time dockets (the "**Proposal Trustee Fee Affidavit**").
36. The Proposal Trustee is of the opinion that its fees, as set out in the Proposal Trustee Fee Affidavit, are fair and reasonable, justified in the circumstances, and accurately reflect the work done by the Proposal Trustee in connection with these NOI proceedings.
37. Attached hereto as **Appendix "G"** is the Affidavit of Howard Manis regarding the fees and disbursements of Macdonald Sager Manis LLP ("**MSM**"), counsel to the Proposal Trustee, to May 22, 2021 accompanied by the supporting time dockets (the "**Legal Counsel Fee Affidavit**").
38. It is the Proposal Trustee's opinion that the fees and disbursements of MSM, as set out in the Legal Counsel Fee Affidavit are fair and reasonable, justified in the circumstances, and accurately reflect the work done on behalf of the Proposal Trustee (as instructed and authorized by the Proposal Trustee) by MSM in connection with these NOI proceedings.
39. The Proposal Trustee therefore requests and recommends the approval the fees and disbursements set out in both the Proposal Trustee Fee Affidavit and the Legal Counsel Fee Affidavit (collectively, the "**Fee Affidavits**").

## XII. PROPOSAL TRUSTEE'S RECOMMENDATION

40. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the actions and activities of the Proposal Trustee as described in this Second Report;
- b. the Second Stay Extension;
- c. sealing of the unredacted version of the Auction Agreement;
- d. the augmentation of the April 16 Order with respect to the auction sales of the Redundant Equipment to provide for vesting-upon-sale orders; and,
- e. the fees and disbursements of the Proposal Trustee and its legal counsel as set out in the Fee Affidavits.

All of which is respectfully submitted this 25<sup>th</sup> day of May 2021

**ALBERT GELMAN INC., solely in its  
capacity as Trustee of *re* the Notice of  
Intention to Make a Proposal of Drexler  
Construction Limited, Folmur Construction  
(2004) Ltd. and Down Under Pipe and Cable Locating Ltd.  
and not its Personal or any other Capacity**

Per:

\_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*

**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) Ltd. and Down Under Pipe and Cable  
Locating Ltd. Corporations Incorporated under the Ontario *Business Corporations Act***

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

(Dated July 13, 2021)

**I. INTRODUCTION**

1. This third report ("**Third Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with Notices of Intention to Make a Proposal ("**NOI**") filed by Drexler Construction Limited ("**Drexler**"), Folmur Construction (2004) Ltd. ("**Folmur**") and Down Under Pipe and Cable Locating Ltd. ("**Down Under**"; and together with Drexler and Folmur, the "**Companies**") on March 18, 2021 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each of the Companies.
2. On April 16, 2021, on a motion made by the Companies, the Honourable Justice Gorman granted an order (the "**April 16 Order**") approving, among other things, an administrative consolidation of the Companies proposal proceedings, an extension of the stay of proceedings afforded under the NOI to June 1, 2021 (the "**First Stay Extension**"), the DIP Facility and DIP Charge (both terms defined in the First Report), an administrative charge and the sale of certain Redundant Equipment. A copy of the April 16 Order and related Endorsements are attached hereto as **Appendix "B"**.
3. The Trustee prepared a report dated April 12, 2021 in relation to the April 16, 2021 motion (the "**First Report**"). Attached hereto as **Appendix "C"** is a copy of the First Report, without appendices. The Trustee also prepared a report supplementing its First Report dated April 14, 2021 (the "**Supplementary First Report**"). The purpose of the Supplementary First Report was to provide the Court with information pertaining the revised terms of the DIP Facility. Attached hereto as **Appendix "D"** is a copy of the Supplementary First Report, without appendices.
4. On May 28, 2021, the Honourable Justice M. A. Garson granted an order (the "**May 28 Order**") approving, among other things, an extension of the stay of proceedings afforded under the NOI to July 16, 2021 (the "**Second Stay Extension**"), a change to the April 16 Order with respect to the sale of Drexler's

Redundant Equipment, and the activities and fees of the Proposal Trustee and its legal counsel. A copy of the May 28 Order and related Endorsement are attached hereto as **Appendix “E”**.

5. The Trustee’s report dated May 25, 2021 filed in relation to the May 28, 2021 motion (the “**Second Report**”) is attached hereto as **Appendix “F”**, without appendices.

6. This Third Report has been prepared in response to the Companies’ July 16 Motion (the “**July 16 Motion**”) seeking an Order:

- a. further extending the time for each of the Companies to file a proposal to August 30, 2021 (the “**Third Stay Extension**”); and,
- b. approving this Third Report and the activities and fees of the Proposal Trustee and its legal counsel.

7. Included in their motion materials is the affidavit of Jerome Drexler sworn July 12, 2021 (the “**Drexler July Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed the Drexler July Affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

8. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies at their July 16 Motion.

## **II. PURPOSE OF THIS REPORT**

9. The purpose of this Third Report is to:

- a. provide the Court with relevant information pertaining to the Companies and the relief being sought which is not otherwise described in the Drexler July Affidavit;
- b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Companies subsequent to the date of the Second Report; and,
- c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Companies.

## **III. SCOPE AND TERMS OF REFERENCE**

10. In preparing this Third Report, the Proposal Trustee has relied upon certain unaudited financial information, the Companies’ books and records, discussions with Mr. Anthony Alfred Drexler, a shareholder, officer and director of each of the Companies, discussions with representatives of GreySuits Advisors Inc., the Companies external CFO (the “**CFO**”), discussions with representatives RLB LLP (“**Accountant**”), the Companies’ external accountant and discussions with the Companies’ legal counsel, Goldman Sloan Nash Haber LLP.

11. While the Proposal Trustee has reviewed various documents provided by management and others, such review does not constitute an audit or verification of such information for accuracy, completeness or

compliance with Generally Accepted Accounting Principles (“GAAP”) or International Financial Reporting Standards (“IFRS”) or otherwise. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

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

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

14. Terms not otherwise defined herein shall have the meanings ascribed to them in either the First Report or the Second Report.

#### **IV. ACTIVITIES OF THE COMPANIES**

15. Since the date of the filing of the Second Report the Companies have undertaken, among other things, the following activities:

- a. terminated the internal accountant/controller whose function is now fulfilled by the CFO;
- b. continued to work with their Accountant to prepare the necessary financial statements, for the year ended March 31, 2021, and other financial information to distribute to prospective lenders through the Broker and, by the Proposal Trustee, to the Excluded Lender;
- c. continue to have informal discussions with various secured and unsecured creditors in respect of the restructuring proceedings;
- d. continue to attend meetings with the Proposal Trustee to discuss the Companies’ objectives and options in respect of these restructuring proceedings; and,
- e. provided the Proposal Trustee, on an ongoing basis, with financial and other information in order to allow the Proposal Trustee to monitor the Companies’ cash receipts and disbursements.

16. The Companies are requesting an extension of time to file their proposals so that they may, among other things, continue to canvass the market, with the assistance of the Broker, to find additional long-term financing options so as to, *inter alia*, repay the RBC Debt and provide additional working capital to the Companies. As further discussed below, the Proposal Trustee supports the Companies’ request for the Third Stay Extension.

#### **V. ACTIVITIES OF THE PROPOSAL TRUSTEE**

17. Since the date of the Second Report the Proposal Trustee has undertaken, among other things, the following activities:

- a. continued to work with both the Broker and Excluded Lender to assist the Companies with their objective of securing long-term financing;
- b. corresponded with RBC's legal counsel to provide updated information in respect of these restructuring proceedings and other matters as requested by RBC's legal counsel;
- c. monitored on a regular basis the Companies' cash receipts and disbursements and compared same to the Revised Cash Flow Forecasts prepared by the Companies' for material variances;
- d. continued to communicate extensively with management of the Companies, their CFO and Accountant, as well as the Companies' legal counsel to discuss, among other things, the following:
  - i. the business, financial affairs and future prospects of the Companies;
  - ii. the options available to the Companies in relation to the NOI proceedings; and,
  - iii. long-term financing options for the Companies';
- e. communicated with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings; and,
- f. maintained a Case Webpage with electronic copies of the Court materials related to these restructuring proceedings, located at [www.albertgelman.com/corporate-solutions/other-engagements/#d](http://www.albertgelman.com/corporate-solutions/other-engagements/#d).

## **VI. LONG-TERM FINANCING**

18. The Companies are seeking long-term financing to repay the RBC Debt, to provide additional working capital to the Companies and to provide capital to fund the development of the Vacant Development Land (once Drexler obtains site plan approval from the municipality, which we understand is in process).

19. The Companies, together with the Proposal Trustee, continue to engage in discussions with the Broker who is actively soliciting lenders to obtain the long-term secured financing. The Companies have worked diligently during these restructuring proceedings to prepare and provide the updated financial and other information requested by the Broker which information is necessary to present to potential lenders.

20. The Proposal Trustee anticipates that the Companies will provide the Broker and Excluded Lender with final versions of financial statements and other financial information on or before July 23, 2021, at which point the Companies expect to receive financing term sheets. The Proposal Trustee will report further to the creditors and/or the Court at a later date in this regard.

## **VII. SALE OF REDUNDANT ASSETS**

21. In accordance with paragraphs 20 and 21 of the April 16 Order (and as augmented by paragraph 3 of the May 28 Order) on May 21, 2021 Drexler entered into the Auction Agreement with Canam to sell the Redundant Equipment.

22. The auction was scheduled for June 28, 2021.

23. Prior to the auction date, Drexler's management advised the Proposal Trustee that they would be adding and removing certain pieces of equipment to/from the auction (which was provided for at paragraph 2(d) of the Auction Agreement) as some substantial items were now needed on current jobs and it would no longer make economic sense for Drexler to rent this equipment to complete these jobs. This caused no issue of compliance with the April 16 and May 28 Orders as the terms are permissive rather than prescriptive as to the Companies' authorization to sell Redundant Equipment outside the ordinary course of business. As a result of the addition/removal of certain equipment from the auction Canam reduced its net minimum guarantee ("**NMG**") from \$560,000 to \$496,000.

24. The Proposal Trustee advised representatives of RBC of the changes to the NMG. Following a discussion between the parties it was agreed that Drexler would pay up to \$64,000 (the difference in the original and revised NMG) directly to RBC in the event that the auction proceeds were less than the original NMG of \$560,000.

25. On July 7, 2021 Canam reported the outcome of the auction to Drexler and the Proposal Trustee. The net proceeds from the auction, after deducting Canam's commission and expenses, was \$453,743.80, which amount was below the NMG. However, in accordance with the Auction Agreement, Canam delivered a bank draft in the amount of \$496,050.00 to Drexler's legal counsel.

26. In accordance with the April 16 Order \$1,724 was paid to CRA in respect of Drexler's outstanding source deduction claim and the balance of \$494,267, plus an additional \$64,000 representing the difference between the original and revised NMG, for a total of \$558,276 will be paid to RBC in due course.

## **VIII. REVISED CASH FLOW FORECASTS**

27. On May 22, 2021 the Companies each filed with the Proposal Trustee a revised statement of projected cash flows prepared on a weekly basis for the period of May 17 to August 29, 2021 (defined in the Second Report as the "Revised Cash Flow Forecasts"). As noted above, the Proposal Trustee has been monitoring the Companies' cash receipts and disbursements on a regular basis and comparing actual results to those which were forecasted. The Trustee's comments with respect to its monitoring activities for the week beginning May 17, 2021 (the start date of the Revised Cash Flow Forecasts) to the week ending July 4, 2021 are set out below.

### **Drexler**

28. The Revised Cash Flow Forecasts projected that Drexler's cash on hand would be \$263,090 as at July 4, 2021, after having utilized \$500,000 of the DIP Loan. As at July 4, 2021 Drexler's actual cash on hand

was \$738,797 without Drexler having utilized any of the DIP Loan. This is a positive variance of approximately \$1 million. Management have advised the Proposal Trustee that this positive variance is largely due to the fact that Drexler's vendors are continuing to extend Drexler creditor during these restructuring proceedings due to their prior long-standing working relationships with Drexler.

### Folmur

29. The Revised Cash Flow Forecasts projected that Folmur's cash on hand would be \$562,754 as at July 4, 2021. As at July 4, 2021 Folmur's actual cash on hand was \$777,536. This is a positive variance of approximately \$200,000. Folmur's actual cash receipts and disbursements have been relatively consistent with those projected in the Revised Cash Flow Forecasts.

### Down Under

30. Folmur's actual cash receipts and disbursements have been relatively consistent with those projected in the Revised Cash Flow Forecasts.

31. After reviewing the actual cash flow results and comparing them with the projected amounts it is the Proposal Trustee's opinion that the Companies can continue to operate in the ordinary course during the forecast period without any material prejudice to any of the Companies' creditors.

## **IX. REQUEST FOR EXTENSION**

32. The Companies are seeking the Third Stay Extension pursuant to subsection 50.4(9) of the BIA. The Proposal Trustee supports the Third Stay Extension as it is of the opinion that:

- a. the Companies have acted, and are acting, in good faith and with due diligence;
- b. the Companies would likely be able to make a viable Proposal if the extension being applied for were granted; and,
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

## **X. ACCOUNTS OF THE PROPOSAL TRUSTEE AND ITS COUNSEL**

33. In accordance with paragraph 24 of the April 16 Order the fees and disbursements of the Proposal Trustee and its counsel may be approved by the Court and referred to a judge for such purpose.

34. Attached hereto as **Appendix "G"** is the Affidavit of Bryan Gelman regarding the Proposal Trustee's fees to July 9, 2021 accompanied by the supporting time dockets (the "**Second Proposal Trustee Fee Affidavit**").

35. The Proposal Trustee is of the opinion that its fees, as set out in the Second Proposal Trustee Fee Affidavit, are fair and reasonable, justified in the circumstances, and accurately reflect the work done by the Proposal Trustee in connection with these NOI proceedings.

36. Attached hereto as **Appendix “H”** is the Affidavit of Howard Manis regarding the fees and disbursements of Macdonald Sager Manis LLP (“**MSM**”), counsel to the Proposal Trustee, to July 9, 2021 accompanied by the supporting time dockets (the “**Second Legal Counsel Fee Affidavit**”).

37. It is the Proposal Trustee’s opinion that the fees and disbursements of MSM, as set out in the Second Legal Counsel Fee Affidavit are fair and reasonable, justified in the circumstances, and accurately reflect the work done on behalf of the Proposal Trustee (as instructed and authorized by the Proposal Trustee) by MSM in connection with these NOI proceedings.

38. The Proposal Trustee therefore requests and recommends the approval the fees and disbursements set out in both the Second Proposal Trustee Fee Affidavit and the Second Legal Counsel Fee Affidavit (collectively, the “**Fee Affidavits**”).

## **XI. PROPOSAL TRUSTEE’S RECOMMENDATION**

39. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the Third Stay Extension;
- b. the actions and activities of the Proposal Trustee as described in this Third Report; and,
- c. the fees and disbursements of the Proposal Trustee and its legal counsel as set out in the Fee Affidavits.

All of which is respectfully submitted this 13<sup>th</sup> day of July 2021

**ALBERT GELMAN INC., solely in its  
capacity as Trustee of *re* the Notice of  
Intention to Make a Proposal of Drexler  
Construction Limited, Folmur Construction  
(2004) Ltd. and Down Under Pipe and Cable Locating Ltd.  
and not its Personal or any other Capacity**

Per: \_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*

Estate / Court File Nos: 35-2721716  
35-2721875  
35-2721896

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**In the Matter of the Proposal Proceedings of  
Drexler Construction Limited, Folmur Construction (2004) Ltd. and Down Under Pipe and Cable  
Locating Ltd. Corporations Incorporated under the Ontario *Business Corporations Act***

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

(Dated September 1, 2021)

**I. INTRODUCTION AND BACKGROUND**

1. This fourth report ("**Fourth Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with Notices of Intention to Make a Proposal ("**NOI**") filed by Drexler Construction Limited ("**Drexler**"), Folmur Construction (2004) Ltd. ("**Folmur**") and Down Under Pipe and Cable Locating Ltd. ("**Down Under**"; and together with Drexler and Folmur, the "**Companies**") on March 18, 2021 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy ("**OSB**") for each of the Companies.

2. On April 16, 2021, on a motion made by the Companies, the Honourable Justice Gorman granted an order (the "**April 16 Order**") approving, among other things, an administrative consolidation of the Companies proposal proceedings, an extension of the stay of proceedings afforded under the NOI to June 1, 2021 (the "**First Stay Extension**"), the DIP Facility and DIP Charge (both terms defined in the First Report), an administrative charge and the sale of certain Redundant Equipment. A copy of the April 16 Order and related Endorsements are attached hereto as **Appendix "B"**. The Proposal Trustee prepared a report dated April 12, 2021 in relation to the April 16, 2021 motion (the "**First Report**"). Attached hereto as **Appendix "C"** is a copy of the First Report, without appendices. The Proposal Trustee also prepared a report supplementing its First Report dated April 14, 2021 (the "**Supplementary First Report**"). The purpose of the Supplementary First Report was to provide the Court with information pertaining the revised terms of the DIP Facility. Attached hereto as **Appendix "D"** is a copy of the Supplementary First Report, without appendices.

3. On May 28, 2021, the Honourable Justice M. A. Garson granted an order (the "**May 28 Order**") approving, among other things, an extension of the stay of proceedings afforded under the NOI to July 16, 2021 (the "**Second Stay Extension**"), a change to the April 16 Order with respect to the sale of Drexler's Redundant Equipment, and the activities and fees of the Proposal Trustee and its legal counsel. A copy of the May 28 Order and related Endorsement are attached hereto as **Appendix "E"**. The Proposal Trustee's

report dated May 25, 2021 filed in relation to the May 28, 2021 motion (the “**Second Report**”) is attached hereto as **Appendix “F”**, without appendices.

4. On July 16, 2021, the Honourable Justice M. A. Garson granted an order (the “**July 16 Order**”) approving, among other things, an extension of the stay of proceedings afforded under the NOI to August 30, 2021 (the “**Third Stay Extension**”) and the activities and fees of the Proposal Trustee and its legal counsel. A copy of the July 16 Order and related Endorsement are attached hereto as **Appendix “G”**. The Proposal Trustee’s report dated July 13, 2021 filed in relation to the July 16, 2021 motion (the “**Third Report**”) is attached hereto as **Appendix “H”**, without appendices.

5. On August 30, 2021 the Companies filed Proposals with the Proposal Trustee. The statutory first meeting of creditors for each of the three Companies are scheduled for September 20, 2021.

6. This Fourth Report has been prepared in response to the Companies’ Motion scheduled to be heard on September 10, 2021 (the “**September 10 Motion**”) seeking an Order for, among other things, the following relief:

- a. approving a debtor-in-possession (DIP) facility in the amount of \$1 million (“**Increased DIP Facility**”) with Corwin Mortgage Capital Inc. (“**Corwin**”), Corwin being the same lender who provided the original DIP facility approved by this Court on April 16, 2021, and approving the DIP Charge (defined below) in respect of the Increased DIP Facility;
- b. authorizing the Companies to enter into a long-term refinancing facility with Canadian Equipment Finance and Leasing Inc. (“**CEFL**”) on the terms contemplated in an equipment finance proposal dated August 25, 2021 from CEFL (the “**CEFL Facility**”);
- c. allowing Down Under to either withdraw its NOI filed on March 18, 2021 and its proposal filed on August 30, 2021 or, alternatively, allowing Down Under’s sole creditor, who is related to Down Under, to vote, if they so choose, in favour of Down Under’s proposal; and,
- d. approving this Fourth Report and the activities and fees of the Proposal Trustee and its legal counsel.

7. Included in the Companies motion materials is the affidavit of Jerome Drexler sworn September 1, 2021 (the “**Drexler September Affidavit**”), in support of the relief being sought. The Proposal Trustee has reviewed this affidavit and has no reason to doubt or otherwise challenge the facts attested to therein.

8. For the reasons explained herein, the Proposal Trustee supports the relief sought by the Companies in their September 10 Motion.

## II. PURPOSE OF THIS REPORT

9. The purpose of this Fourth Report is to:

- a. provide the Court with relevant information pertaining to the Companies and the relief being sought, which is not otherwise described in the Drexler September Affidavit;
- b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Companies subsequent to the date of the Third Report; and,
- c. provide the Court with the Proposal Trustee's recommendations in respect of the relief sought by the Companies.

### **III. SCOPE AND TERMS OF REFERENCE**

10. In preparing this Fourth Report, the Proposal Trustee has relied upon certain financial information, the Companies' books and records, discussions with Mr. Anthony Alfred Drexler and Mr. Jerome Drexler, both shareholders, officers and directors of each of the Companies, discussions with representatives of GreySuits Advisors Inc., the Companies' external CFO (the "CFO"), discussions with representatives of RLB LLP ("Accountant"), the Companies' external accountant and discussions with the Companies' legal counsel, Goldman Sloan Nash Haber LLP.

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

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

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

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

### **IV. ACTIVITIES OF THE COMPANIES**

15. Since the date of the filing of the Third Report the Companies have undertaken, among other things, the following activities:

- a. Folmur made payment to the Canada Revenue Agency ("CRA") in respect of their proof of claim for unremitted payroll source deductions in the amount of \$59,590.87;

- b. In accordance with the April 16 Order, Drexler paid RBC \$558,325.51, representing the net proceeds from the sale of the Redundant Equipment, which amount is net of Drexler's pre-NOI debt owing to the CRA of unremitted source deduction of \$1,724.49. Drexler remitted this amount directly to the CRA;
- c. The Companies have each issued their financial statements for the fiscal year ended March 31, 2021 along with other financial information which has been distributed to prospective lenders through the Broker and, by the Proposal Trustee, to the CEFL (defined in the Second Report and Third Report as the Excluded Lender);
- d. Drexler and Folmur have each executed a second commitment letter issued by Corwin in respect of the Increased DIP Facility which, if approved by the Court, will provide an additional \$1 million of available funds to Drexler and Folmur. The original DIP Facility with Corwin was for \$1.5 million. Therefore, if the Increased DIP Facility is approved by the Court, the two Corwin facilities will total \$2.5 million. The terms of the Increased DIP Facility are summarized in the Drexler September Affidavit at paragraphs 24 and 25. The Corwin commitment letter in respect of the Increased DIP Facility is included as Exhibit "J" to the Drexler September Affidavit. The proposed Increased DIP Facility is conditional on the Court permitting Corwin to register a mortgage on title to each of Drexler's three real properties (the "**DIP Charge**"). The DIP Charge shall rank behind Corwin's first mortgage in relation to the original DIP facility. In the Trustee's opinion the terms of the Increased DIP Facility and the DIP Charge are reasonable and appropriate in the circumstances;
- e. on August 25, 2021 obtained a finance proposal from CEFL (defined above as the CEFL Facility) to provide the Debtor with long-term refinancing of up to \$3.5 million dollars. The main terms of the CEFL Facility are set out in Drexler September Affidavit at paragraph 29. The CEFL Facility is included as Exhibit "H" to the Drexler September Affidavit.
- f. on August 30, 2021, the Companies paid out the secured indebtedness owing to RBC in full;
- g. continued to have informal discussions with various secured and unsecured creditors in respect of the restructuring proceedings;
- h. continue to attend meetings with the Proposal Trustee to discuss the Companies' objectives and options in respect of these restructuring proceedings;
- i. filed Proposals dated August 30, 2021, pursuant to the BIA, with the Proposal Trustee; and,
- j. provided the Proposal Trustee, on an ongoing basis, with financial and other information in order to allow the Proposal Trustee to monitor the Companies' cash receipts and disbursements.

## V. ACTIVITIES OF THE PROPOSAL TRUSTEE

16. Since the date of the Third Report, the Proposal Trustee has undertaken, among other things, the following activities:

- a. Assisted each of the Companies with the drafting of the Proposals, each dated August 30, 2021, as well as with preparation of statements of affairs for each Company which statements summarise each of Companies respective assets and liabilities;
- b. Assisted each of the Companies with preparing revised cash flow projection dated August 30, 2021 (defined below as the Further Revised Cash Flow Projections) which illustrates that each Company has the financial ability to fulfill the terms of their respective Proposals (assuming that the Court approves the Increased DIP Facility and authorizes Drexler to enter into the CEFL Facility);
- c. continued to work with both the Broker and CEFL to assist the Companies with their objective of securing long-term refinancing;
- d. assisted the Companies in arranging and securing the Increased DIP Facility to provide an additional short-term borrowing facility of \$1 million, to bridge the timing gap until the closing of the CEFL Facility;
- e. corresponded with RBC's legal counsel in respect of these restructuring proceedings;
- f. assisted the Companies and their counsel with respect to the payment of the Companies' indebtedness owing to RBC and other matters;
- g. monitored on a regular basis the Companies' cash receipts and disbursements and compared same to the Revised Cash Flow Forecasts (defined in the Second Report) prepared by the Companies for material adverse variances;
- h. continued to communicate extensively with management of the Companies, their CFO and Accountant, as well as the Companies' legal counsel to discuss, among other things, the following:
  - i. the business, financial affairs and future prospects of the Companies;
  - ii. the options available to the Companies in relation to the NOI proceedings; and,
  - iii. long-term financing options for the Companies';
- i. communicated with creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings;
- j. maintained a Case Webpage with electronic copies of the Court materials related to these restructuring proceedings, located at [www.albertgelman.com/corporate-solutions/other-engagements/#d](http://www.albertgelman.com/corporate-solutions/other-engagements/#d).

## VI. REFINANCING

17. As set out above and in the Drexler September Affidavit, the Companies repaid the RBC indebtedness in full on August 30, 2021, including providing additional cash collateral in the amount of \$105,000 to RBC to cover potential chargebacks and/or other potential expenses. RBC is no longer a creditor of any of the Companies.

18. In order to repay the RBC indebtedness the Companies utilized available operating cash flow as well as a significant portion of the original DIP facility. As of the date of this Fourth Report Corwin has advanced \$1,125,000 of the original DIP facility. Management has advised that Corwin will be advancing the balance of the original DIP facility funds to Drexler in September 2021. In accordance with paragraph 8 of the April 16 Order the necessary written consents of both the Proposal Trustee and RBC were provided.

19. From the outset of the NOI proceedings, the Companies have been looking to secure long-term refinancing to replace the RBC credit facilities and have been in discussions with several potential lenders in this regard.

20. As noted above, Drexler has obtained an equipment finance proposal dated August 25, 2021 from CEFL (defined above as the CEFL Facility). The CEFL Facility proposes to provide Drexler with long-term refinancing of up to \$3.5 million. As discussed in further detail below, Drexler requires these funds to repay the original DIP facility and Increased DIP Facility, if approved, and to provide additional necessary working capital. The Companies are requesting that this Court authorize the Companies to enter into a long-term refinancing facility with CEFL on the terms contemplated in the CEFL Facility.

## VII. FURTHER REVISED CASH FLOW PROJECTIONS

21. Drexler and Folmur have prepared a cash flow forecast for the 31-month period ending March 31, 2024 (the "**Further Revised Cash Flow Projections**"). Down Under prepared a cash flow forecast for a 3 month period of time. Copies of the cash flow projections for each of the Companies are attached hereto as **Appendix "I"**. Based on each of the Companies projected receipts and disbursements each of the Companies is projected to be cash flow positive during the projection period. However, in order for Drexler to remain cash flow positive in the short-term the Increased DIP Facility from Corwin of \$1 million is required. In the longer-term Drexler requires the CEFL Facility which is expected to close in October 2021. The CEFL Facility will be used to repay the original DIP facility and the Increased DIP Facility, if approved, (total of \$2.5 million) and provide additional working capital for Drexler.

22. Drexler's Further Revised Cash Flow Projection supports its ability to repay both the original DIP facility and the Increased DIP Facility as well as to keep the CEFL Facility in good standing during the projection period.

## VIII. PROPOSAL TO CREDITORS

23. The Companies have now filed their respective Proposals. Copies of each of the Proposals are including with the Drexler September Affidavit as Exhibits “B”, “C” and “D”.

24. In the case of Drexler and Folmur, they are both offering to pay the debts of their respective Ordinary Creditors, excluding related party creditors who have all opted not to participate in the Proposal, in full (net of the OSB levy). The Proposals are being funded by equal monthly payments over a period of 24 months.

25. In the case of Down Under, it has only one unsecured creditor, 2602763 Ontario Limited (“**260’ Inc.**”), who is owed \$47,058.40. 260’ Inc. is owned by Peter Drexler, who is the brother of each of the shareholders of Down Under. Attached hereto as **Appendix “J”** is a copy of Down Under’s Statement of Affairs sworn under oath on August 30, 2021 (“**SOA**”) which indicates Down Under’s indebtedness to 260’ Inc. In the Proposal Trustee’s opinion 260’ Inc. is related to Down Under, pursuant to the definitions set out in the BIA.

## IX. WITHDRAWAL OF DOWN UNDER’S NOI AND PROPOSAL, OR ALTERNATIVELY, ALLOWING RELATED PARTIES TO VOTE IN FAVOUR OF THE DOWN UNDER PROPOSAL

26. Down Under’s only creditor is 260’ Inc. It is the Proposal Trustee opinion that Down Under and 206’ Inc. are “related” within the meaning of the BIA.

27. Given that parties related to a debtor who makes a proposal can only vote against a proposal, Down Under has applied to the Court for an order allowing it to withdraw its NOI/Proposal or, alternatively, allowing 260’ Inc. to vote in favour of Down Under’s Proposal.

28. Included with the Drexler September Affidavit as Exhibit “K” is a letter from Peter Drexler, owner of 260’ Inc., advising that:

*“260’ Inc. would not oppose the withdrawal of the Proposal or the NOI, including among other things because I understand from my communications with you [Jerome Drexler] that the Company is more than likely solvent at this point, and because I believe that 260’ Inc. can reach a mutually acceptable arrangement with the Company for payment of its claim outside of the Proposal process.*

*At the same time, I believe the terms of the Proposal are fair and reasonable and, if allowed by the court, I would cause 260’ Inc. to vote in favour of the Proposal.”*

29. The Proposal Trustee believes that the NOI filed by Down Under was filed in order ‘stay’ RBC’s enforcement, pursuant to its guarantees provided to RBC. Given that RBC has been paid in full and is no longer a creditor of any of the Companies, Down Under is now able to meet its obligations generally as they become due.

30. Furthermore, based on the Down Under’s SOA, it has assets of \$211,503.80 and liabilities of \$47,058.40. Included in the assets is cash on hand of \$68,316 and accounts receivable of \$62,738.

31. The Proposal Trustee of the view that Down Under is solvent and no longer requires the Proposal process and, therefore, supports Down Under's motion to withdraw the NOI/Proposal. The Proposal Trustee also believes that a withdrawal of the NOI/Proposal process is preferred to allowing 260' Inc to vote in favour of the Proposal. A continuation of the Proposal process will lead to further professional fees which are, perhaps, not necessary.

32. If the Court is not satisfied that the NOI/Proposal process can be withdrawn, the Proposal Trustee also supports the alternative approach of allowing 260' Inc. to vote in favour of the Proposal. It is the Proposal Trustee's understanding that statutory rules relating to votes by related parties were established to protect arms' length creditors. However, given that 260' Inc. is Down Under's only creditor, the Proposal Trustee believes that there is no prejudice to any other party to allow 260' Inc. to vote in favour of Down Under's Proposal.

#### **X. ACCOUNTS OF THE PROPOSAL TRUSTEE AND ITS COUNSEL**

33. In accordance with paragraph 24 of the April 16 Order the fees and disbursements of the Proposal Trustee and its counsel may be approved by the Court and referred to a judge for such purpose.

34. Attached hereto as **Appendix "K"** is the Affidavit of Bryan Gelman regarding the Proposal Trustee's fees to August 30, 2021 accompanied by the supporting time dockets (the "**Proposal Trustee Fee Affidavit**"). The Proposal Trustee is of the opinion that its fees, as set out herein, are fair and reasonable, justified in the circumstances, and accurately reflect the work done by the Proposal Trustee in connection with these NOI proceedings.

35. Attached hereto as **Appendix "L"** is the Affidavit of Howard Manis regarding the fees and disbursements of Macdonald Sager Manis LLP ("**MSM**"), counsel to the Proposal Trustee, to August 31, 2021 accompanied by the supporting time dockets (the "**Legal Counsel Fee Affidavit**"). It is the Proposal Trustee's opinion that the fees and disbursements of MSM, set out in its affidavit are fair and reasonable, justified in the circumstances, and accurately reflect the work done on behalf of the Proposal Trustee (as instructed and authorized by the Proposal Trustee) by MSM in connection with these NOI proceedings.

36. The Proposal Trustee therefore requests and recommends the approval the fees and disbursements set out in both the Proposal Trustee Fee Affidavit and the Legal Counsel Fee Affidavit (collectively, the "**Fee Affidavits**").

#### **XI. PROPOSAL TRUSTEE'S RECOMMENDATION**

37. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order:

- a. approving the Increased DIP Facility and DIP Charge;

- b. authorizing the Companies to enter into a long-term refinancing facility with CEFL on the terms contemplated in the CEFL Facility;
- c. allowing Down Under to withdraw its NOI filed on March 18, 2021 and its proposal to creditors filed on August 30, 2021, or alternatively, allowing 260' Inc. to vote, if they so choose, in favour of Down Under's proposal; and,
- d. approving this Fourth Report and the activities and fees of the Proposal Trustee and its legal counsel.

All of which is respectfully submitted this 1st day of September 2021

**ALBERT GELMAN INC., solely in its  
capacity as Trustee of *re* the Notice of  
Intention to Make a Proposal of Drexler  
Construction Limited, Folmur Construction  
(2004) Ltd. and Down Under Pipe and Cable Locating Ltd.  
and not its Personal or any other Capacity**

Per:

\_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

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

(Dated April 25, 2022)

**I. INTRODUCTION AND BACKGROUND**

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

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

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

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

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

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

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

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

## **II. PURPOSE OF THIS REPORT**

8. The purpose of this Fifth Report is to:

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

## **III. SCOPE AND TERMS OF REFERENCE**

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

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

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

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

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

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

#### **IV. NEW FACILITIES**

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

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

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

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

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

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

## V. CASH FLOW PROJECTIONS

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

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

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

## VI. PROPOSAL TRUSTEE'S RECOMMENDATION

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

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

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

Per: \_\_\_\_\_  
Bryan Gelman, *CIRP, LIT*



APPENDIX "G"

Estate No. 35-2721716

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

THE HONOURABLE Mr.	)	FRIDAY, THE 10 <sup>th</sup>
	)	
JUSTICE M.D. McArthur	)	DAY OF SEPTEMBER, 2021

**IN THE MATTER OF THE PROPOSAL TO  
CREDITORS 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**

**(DIP increase, approval of long-term financing, approval of proposal trustee's fees and activities, withdrawal of one notice of intention and proposal)**

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

**ON READING** the affidavit of Jerome Drexler sworn September 1, 2021 (the "**Drexler September Affidavit**") and the fourth report dated September 1, 2021 (the "**Fourth Report**") of Albert Gelman Inc. in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") to the proposal to creditors proceedings of the Companies and Down Under, and upon hearing the submissions of counsel for the Companies and Down Under and counsel for the Proposal Trustee as well as those other

parties present, as indicated on the counsel slip, no other parties being present although duly served as more fully appears from the affidavit of service, filed:

## **I. NOTICE AND SERVICE**

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

## **II. INCREASED DIP FACILITY**

2. **THIS COURT ORDERS** that the Companies are and each of them is hereby authorized and empowered to obtain and borrow under an increased credit facility (the “**Increased DIP Facility**”) from Corwin Mortgage Capital Inc. (the “**DIP Lender**”) in order to finance the Companies’ operations, capital expenditures and restructuring, which Increased DIP Facility shall be on the terms and subject to the conditions set forth in the amended term sheet (the “**Amended Term Sheet**”) attached as Exhibit “J” to the Drexler September Affidavit.

3. **THIS COURT ORDERS** that the Companies are hereby authorized to borrow, under the Increased DIP Facility, up to \$1,000,000, which for avoidance of doubt shall be in addition to the Initial DIP Facility (term defined below).

4. **THIS COURT ORDERS** that the Companies are hereby 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

Amended 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 the Increased DIP Facility and pursuant to the Amended Term Sheet and the Definitive Documents as and when the same become due and are to be performed in accordance with their terms.

5. **THIS COURT ORDERS** that the DIP Lender's Charge, defined and created by order of this court made in this proceeding as of April 16, 2021 (the "**April 16 Order**"), shall hereby secure and be deemed to be in an amount equal to any Companies' outstanding obligations to the DIP Lender under the DIP facility approved in the April 16 Order (the "**Initial DIP Facility**"), the Increased DIP Facility, the Amended Term Sheet and the Definitive Documents, including any that begun to exist prior to this order but on or after the day of the April 16 Order, it being understood that within the DIP Lender's Charge, amounts due in respect of the Initial DIP Facility shall rank in priority to amounts due in respect of the Increased DIP Facility.

6. **THIS COURT ORDERS** that paragraphs 10 to 17 of the April 16 Order shall be deemed reproduced and applicable herein in respect of the Increased DIP Facility save:

- a. in the case of paragraph 13, the words "save and except any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC's Encumbrance" are removed.
- b. that in case of conflict or difference between such paragraphs and this section II. of the present order, the latter shall control.

### III. WITHDRAWAL OF NOTICE OF INTENTION AND PROPOSAL

7. **THIS COURT ORDERS** that upon the Proposal Trustee filing a certificate with the court (the “**Effective Time**”) substantially in the form of Schedule “A” to this order (the “**Down Under Completion Certificate**”) certifying that the Proposal Trustee has completed the administration, in accordance with the present order, in respect of the notice of intention to make a proposal to creditors and proposal to creditors filed by Down Under respectively on March 18, 2021 and August 30, 2021 (collectively, the “**Down Under NOI & Proposal**”):

- a. the Down Under NOI & Proposal shall be deemed withdrawn and shall thereupon cease to have any effects for the future, it being understood that no order in this section III. is retroactive to any prior date.
- b. the Proposal Trustee shall be discharged as Proposal Trustee with respect to the Down Under NOI & Proposal, and, for avoidance of doubt, the filing of the Down Under Completion Certificate shall not discharge the Proposal Trustee as Proposal Trustee with respect to the Companies.

8. **THIS COURT ORDERS** that the Proposal Trustee shall file with the Office of the Superintendent in Bankruptcy (the “**OSB**”) a copy of the executed Down Under Completion Certificate together with a copy of this order as soon as reasonably practicable after the Effective Time, and, upon receipt of the same, the OSB is hereby directed to record the same as other notices and documents are recorded in the ordinary course of the administration of an estate and to designate the Down Under NOI & Proposal as “Withdrawn pursuant to order of the court dated September 10, 2021”.

9. **THIS COURT ORDERS** that for avoidance of doubt:
- a. from the Effective Time, any stay of proceedings triggered under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) by the filing of the Down Under NOI & Proposal shall cease to apply for the future.
  - b. from the Effective Time, orders made in this proceeding shall cease to apply with respect to Down Under for the future, it being understood that such orders shall continue to have their full force and effect with respect to the Companies.
  - c. with respect to the Down Under NOI & Proposal, Down Under shall not be deemed bankrupt by reason only of there being no proposal approved by Down Under’s creditors, by reason only of there being no court approval of a proposal, or by reason only of the present order causing any other irregularity in respect of the proposal process under the BIA.
  - d. Down Under and its directors and officers shall not be deemed to have committed a fault, tort, reviewable conduct, or like behaviour by reason only of the filing of the Down Under NOI & Proposal or by reason only of having acted or done any thing in good faith in respect of the Down Under NOI & Proposal, save gross negligence or wilful misconduct.
10. **THIS COURT ORDERS** that upon the Proposal Trustee filing the Down Under Completion Certificate, and save further court order, Albert Gelman Inc. (“**AGI**”) shall be released and discharged from any and all liability that AGI now has or may hereafter have

by reason of, or in any way arising out of, AGI's acts or omissions while acting in its capacity as Proposal Trustee with respect to the Down Under NOI & Proposal, save gross negligence or wilful misconduct. Without limiting the generality of the foregoing, AGI shall, upon its filing the Down Under Completion Certificate, be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, with respect to the Down Under NOI & Proposal, save and except gross negligence or wilful misconduct.

#### **IV. APPROVAL OF CEFL FACILITY**

11. **THIS COURT ORDERS** that the Companies and Down Under are (and each of them is, as applicable) hereby authorized to enter into a long-term financing facility with Canadian Equipment Finance and Leasing Inc. ("**CEFL**") on the terms contemplated in an equipment finance proposal #2021154 dated August 25, 2021 from CEFL (the "**CEFL Facility**"), of which a copy is included as exhibit "H" to the Drexler September Affidavit.

12. **THIS COURT ORDERS** that the Companies and Down Under are (and each of them is, as applicable) hereby authorized and empowered to execute and deliver such contracts, agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents as may be reasonably required to close and implement the CEFL Facility.

#### **V. APPROVAL OF PROPOSAL TRUSTEE'S FEES AND ACTIVITIES**

13. **THIS COURT ORDERS** that the Fourth Report and the activities described therein – including, for avoidance of doubt, those in respect of the withdrawal of the Down

Under NOI & Proposal as ordered in section III. of this order – be and are hereby approved, provided, however, that only (i) the Proposal Trustee and (ii) Albert Gelman Inc. in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize in any way such approval.

14. **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 Fourth Report), be and are hereby approved.

15. **THIS COURT ORDERS** that the Companies are authorized to pay the approved fees from the Companies' funds.

16. **THIS COURT ORDERS** that the Proposal Trustee's fees and disbursements incurred after August 30, 2021 in relation to the Down Under NOI & Proposal shall be paid by Down Under in accordance with the agreements in place among Down Under and AGI, and shall not be required to be taxed under the BIA or reviewed or approved by the court or by the OSB.

17. **THIS COURT ORDERS** that this order is effective without the requirement for issuance and entering.



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**Schedule A – Form of Proposal Trustee’s Completion Certificate**

*[See next page]*

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

**IN THE MATTER OF THE PROPOSAL TO  
CREDITORS 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***

---

**PROPOSAL TRUSTEE'S CERTIFICATE OF COMPLETION**

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**WHEREAS:**

- a. on March 18, 2021, Down Under Pipe and Cable Locating Limited (“**Down Under**”) filed a notice of intention to make a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and on August 30, 2021, Down Under filed a proposal to creditors under the BIA (together, the “**Down Under NOI & Proposal**”).
- b. Albert Gelman Inc. acts as proposal trustee to the Down Under NOI & Proposal (in such capacity, the “**Proposal Trustee**”).
- c. on September 10, 2021, the Ontario Superior Court of Justice made an order (the “**September 10 Order**”) in this court file ordering *inter alia* (i) the withdrawal of the Down Under NOI & Proposal as of the Effective Time (as defined in the September 10 Order) and (ii) that upon the Proposal Trustee filing the present certificate certifying that the Proposal Trustee has completed the administration of

the Down Under NOI & Proposal proceeding, the Proposal Trustee shall be discharged as Proposal Trustee with respect to the Down Under NOI & Proposal.

**THE PROPOSAL TRUSTEE HEREBY CERTIFIES** that the Proposal Trustee has completed the administration of the Down Under NOI & Proposal.

DATED AT TORONTO, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

**ALBERT GELMAN INC.**, solely in its capacity as proposal trustee to the notice of intention to make a proposal and proposal to creditors of Down Under Pipe and Cable Locating Limited

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Per: Bryan Gelman, CIRP, LIT, managing director

**IN THE MATTER OF THE PROPOSAL TO CREDITORS  
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  
(DIP increase, approval of long-term financing,  
approval of proposal trustee's fees and activities,  
withdrawal of one notice of intention and proposal)**

**GOLDMAN SLOAN NASH & HABER LLP**  
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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.

## ENDORSEMENT

Drexler Construction Ltd. v Albert Gelman Inc.

File # BK-21-02721716-0035

Date – September 10, 2021

Debtor – J. Turgeon and B. Bissel present.

Trustee – M. Howard present.

This is an exceptional case and upon reviewing the provisions of the BIA as cited by counsel and given the other practical realities in this matter, and the submissions made, the order shall proceed on the amended basis and the final order has been completed and signed accordingly.

As per Justice McArthur,

Registrar – N. Sands

**IN THE MATTER OF THE PROPOSAL PROCEEDINGS OF DREXLER  
CONSTRUCTION LIMITED and FOLMUR CONSTRUCTION (2004) LIMITED,  
CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS  
CORPORATIONS ACT***

Court File Nos./Estate Nos. 35-2721716;  
35-2721875

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

**(LONDON)**

**RESPONDING MOTION RECORD OF THE TRUSTEE  
(SIXTH REPORT OF ALBERT GELMAN INC. IN ITS  
CAPACITY AS PROPOSAL TRUSTEE)**

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