



**FORCE FILED**

District of British Columbia  
Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNGROUP DEVELOPMENT CORP.

**NOTICE OF APPLICATION**

**Name of applicant:** CannGroup Development Corp. (“**CannGroup**” or the “**Applicant**”)

To: The Service List, a copy of which is attached hereto as Schedule “A”

TAKE NOTICE that an application will be made by the applicant to the presiding judge **by MS Teams** at the courthouse at the Vernon Law Courts, 3001 – 27<sup>th</sup> Street, Vernon, BC V1T4W5 on November 18, 2024 at 9:45 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take one hour.

- This matter is within the jurisdiction of an associate judge
- This matter is not within the jurisdiction of an associate judge.

**Part 1 ORDERS SOUGHT**

1. An order substantially in the form attached hereto as Schedule “B”, among other things:
  - (a) approving the purchase and sale of the Lands (as defined below) pursuant to the contract of purchase and sale dated November 5, 2024 (the “**Purchase Agreement**”) between CannGroup, as vendor, and Brandt Rock Investments Corporation, as purchaser (the “**Purchaser**”), and vesting such property in the Purchaser; and
  - (b) authorizing and directing the Applicant to distribute from the net proceeds of sale of the Lands the amount owing to Builder’s Capital Mortgage Corp. (“**Builder’s Capital**”) and secured under its mortgage of the Lands.

2. An order substantially in the form attached hereto as Schedule “C”, among other things:
  - (a) granting a charge on the assets, property and undertakings of the Applicant in the aggregate amount of \$150,000 (the “**Administration Charge**”) as security for the collective fees and disbursements of: (i) Crowe MacKay & Company Ltd. (the “**Proposal Trustee**”), (ii) counsel for the Proposal Trustee, and (iii) counsel for the Applicant (collectively, the “**Administration Charge Beneficiaries**”), that shall rank in priority to all other security interests and claims of other persons other than any secured claims that may arise pursuant to subsection 14.06(7) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);
  - (b) extending the time for filing a proposal pursuant to subsection 50.4(9) of the BIA to January 7, 2025 (the “**Extension**”); and
  - (c) transferring these proceedings to the Vancouver division.
3. The Applicant may also seek such further and other relief as counsel may advise and this Honourable Court may allow.

## Part 2 FACTUAL BASIS

### A. OVERVIEW

1. The Applicant is a British Columbia corporation with a registered office in Vernon, British Columbia. It is a licensed cannabis producer and distribution company that, when it was operating, specialized in premium cannabis products.
2. On October 25, 2024 (the “**Filing Date**”), CannGroup filed a Notice of Intention to Make a Proposal (the “**NOI**”, and the proceedings commenced pursuant to the NOI, the “**NOI Proceedings**”) and appointed the Proposal Trustee.<sup>1</sup>
3. CannGroup filed the NOI due to severe and unresolvable liquidity issues. The company had operated at a loss for several years, influenced by negative investor sentiment, limited

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<sup>1</sup> Affidavit #1 of Marlin Tobias (“**Tobias #1**”), at para. 4, Ex. “A”.



access to capital, market competition, and regulatory burdens. Despite efforts to secure third-party investments or sell its operations, CannGroup ceased carrying on business around October 18, 2024, and sold its remaining inventory, retaining only its lands and some accounts receivable.<sup>2</sup>

4. By November 5, 2024, CannGroup had agreed to sell the lands to a purchaser in order to repay some secured creditors. It initiated the NOI proceedings to facilitate this sale.

## **B. CANNGROUP**

5. CannGroup started in 2017 with a goal of cultivating bulk cannabis. It purchased a horse barn on 36-acres of land in December 15, 2017 and retrofitted it into a state of the art, multi-level cannabis production facility (the “**Facility**”), thereafter pivoting its operations to be a full service cannabis growth and extraction company.
6. CannGroup’s current officers and directors are as follows:<sup>3</sup>
  - (a) Marlin Kirby Tobias (director, chief executive officer and president);
  - (b) Nicole Chetwynd (director and chief financial officer);
  - (c) Carleen Mary Roth (director and officer); and
  - (d) Dennis Benedict Roth (director).
7. CannGroup has had no employees since April 22, 2024. All personnel who currently provide services to CannGroup, including the directors and officers, are independent contractors.<sup>4</sup>

## **C. ASSETS**

8. As of the Filing Date, CannGroup’s only assets are comprised of cash in the amount of \$305.59, the Facility, and amounts payable to it from the sale of inventory. CannGroup also holds a site-specific cannabis-production license and an excise license which will

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<sup>2</sup> Tobias #1, at paras. 5-6.

<sup>3</sup> Tobias #1, at para. 10.

<sup>4</sup> Tobias #1, at para. 11.

expire in July 2027 and November 15, 2024, respectively, and, in any event, do not have any value.<sup>5</sup>

*The Facility*

9. The Facility is located on certain lands owned by CannGroup located at 56 Hadow Road, Enderby, British Columbia, and legally described as follows:<sup>6</sup>

PID: 012-818-526

THE SOUTH EAST 1/4 OF SECTION 22 TOWNSHIP 19 RANGE 9 WEST OF THE 6TH MERIDIAN KAMLOOPS DIVISION YALE DISTRICT EXCEPT PLANS B4968, KAP45121 AND KAP53741

(the “**Lands**”).

10. CannGroup acquired the Lands in or about December 15, 2017. The purchase price for the Lands at that time was \$700,000.
11. The Facility encompasses 24,000 square feet of indoor production-licensed area, including three flowering rooms (4,800 square feet), three labs for hydro-carbon processing (3,200 square feet), and additional rooms for vegging, mothering, and cloning. It also features eight greenhouses on 30 acres of Agricultural Land Reserves (“**ALR**”). The Facility can produce approximately 1.5 million grams of dried flowers indoors annually, 1.2 million grams of flowers outdoors annually, and 200 kilograms of CBD isolate per month.
12. The 2024 BC assessment values the property at \$3.52 million, with \$767,200 allocated to the land and \$2.753 million attributed to the building.<sup>7</sup>

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<sup>5</sup> Tobias #1, at para. 12.

<sup>6</sup> Tobias #1, at para. 13 & 15, Ex. “C”.

<sup>7</sup> Tobias #1, at para. 55, Ex. “R”; First Report of the Proposal Trustee made November 14, 2024 (the “**First Report**”), at para. 12.



13. CannGroup obtained two appraisals of the Lands, which are summarized as follows:<sup>8</sup>
- (a) An appraisal by Global Capital Partners Fund LLC dated June 2022 valued the Facility at \$5.3 million exclusive of industrial equipment at its highest and best use of the Facility. It was noted that the Facility was unique as it was an industrial use facility specifically designed to function as a CBD and THC distillate.
  - (b) An appraisal by Metro Appraisal Corporation dated February 2023 valued the Facility at \$2.36 million excluding all equipment. It was noted that the Lands are located within the ALR, which restricts its use to agricultural purposes. Rezoning or subdivision would require approval from the Land Reserve Commission; however, given the provincial government's support for the ALR, it is unlikely that the Lands will be released from agricultural zoning in the foreseeable future. Therefore, the most viable use remains agricultural.
14. As set out in further detail below, the Purchase Agreement contemplates the purchase and sale of the Lands, including the Facility and various equipment stored thereon, for \$3,700,000.00.

*The Inventory*

15. CannGroup does not currently possess or own any cannabis or cannabis products.<sup>9</sup>
16. On or about September 18, 2024, CannGroup entered into an agreement with 1235009 B.C. Ltd., doing business as FN Canna (“**FN Canna**”) pursuant to which CannGroup sold its remaining cannabis inventory (the “**Inventory**”) to FN Canna in exchange for a portion of the sale proceeds to be paid once FN Canna sold the Inventory.<sup>10</sup>

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<sup>8</sup> First Report, at para. 52.

<sup>9</sup> Tobias #1, at para. 23.

<sup>10</sup> Tobias #1, at para. 20.

17. The Inventory has an aggregate fair market value of approximately \$152,402, and a book value of \$81,099.30. CannGroup expects to receive the sale proceeds from FN Canna within the next three to six months, but is negotiating to obtain the proceeds sooner.<sup>11</sup>
18. CannGroup has destroyed or sold all other inventory.

*The Licenses*

19. CannGroup holds a license issued by Health Canada on July 26, 2019 permitting it to, among other things, possess, cultivate, produce, and sell cannabis inside and outside of the Facility.<sup>12</sup>
20. CannGroup also holds an excise license under the *Excise Act*, which is set to expire on November 15, 2024. CannGroup does not intend to renew the Excise License as all of its inventory has been de-excised and CannGroup has destroyed all remaining excise stamps.<sup>13</sup>

**D. LIABILITIES**

21. As of October 24, 2024, the principal outstanding indebtedness of CannGroup, on a consolidated basis of all creditors with claims of \$250 or more, was approximately \$6,811,724.86.<sup>14</sup>
22. Each of the following parties have registrations in their favour against the Lands or against CannGroup in the B.C. Personal Property Registry (“PPR”).<sup>15</sup>

<b>Date of Registration</b>	<b>Secured Creditor</b>	<b>Nature of Registration</b>	<b>Amount of Indebtedness</b>	<b>Date of Calculation</b>
January 17, 2020	Meridian Onecap Credit Corp.	2020 Bobcat S650 (PPR)	N/A (Paid)	N/A

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<sup>11</sup> Tobias #1, at para. 21.

<sup>12</sup> Tobias #1, at para. 24, Ex. “D”.

<sup>13</sup> Tobias #1, at paras. 25-26, Ex. “E”.

<sup>14</sup> Tobias #1, at para. 27, Ex. “F”.

<sup>15</sup> Tobias #1, at para. 30; First Report, at para. 34.

June 15, 2020	Diamond Concentrates Inc.	All laboratory equipment leased (PPR)	N/A (Paid)	N/A
April 27, 2021/ April 28, 2021	Builder's Capital	All present and after-acquired personal property (PPR) and Mortgage and Assignment of Rents	\$1,583,835.36	November 8, 2024
April 19, 2022	Salt Capital Inc.	All present and after-acquired personal property (PPR)	N/A (Paid)	N/A
November 16, 2022	Stoke Canada Finance Corp.	Receivables	N/A (Paid)	N/A
July 22, 2022	Allan Chabon	Judgment and Certificate of Pending Litigation	N/A (Paid)	N/A
January 3, 2023/ January 30, 2023	Marlin Tobias and Carleen Roth, as joint tenants	All present and after-acquired personal property and Ford F-350 and a Crystallized Floating Charge (Shareholder Loan)	\$858,583.61	October 24, 2022
March 9, 2023	Collin Roth	All present and after-acquired personal property and a Crystallized Floating Charge (Shareholder Loan)	\$150,400.00	October 24, 2022
September 12, 2023	The Crown in Right of British Columbia	Crown Lien and all present and after-acquired	\$48,141.26	October 24, 2022



		personal property (Employer Health Tax Act)		
March 28, 2024	His Majesty the King in Right of Canada	Judgment (GST)	\$291,978.56	October 24, 2024
March 28, 2024	His Majesty the King in Right of Canada	Judgment (Source Deductions)	\$279,402.89	October 24, 2024
July 5, 2024	His Majesty the King in Right of Canada	Judgment (Excise Tax)	\$1,352,188.14	October 24, 2024

23. As of October 24, 2024, CannGroup was indebted to His Majesty the King in Right of Canada in the amount of \$1,352,188.14 for outstanding excise taxes, and \$279,402.89 for outstanding source deductions and \$291,978.56 for GST after interest relief was obtained.
24. As of November 8, 2024, CannGroup was indebted to Builder's Capital in the amount of \$1,583,835.36.
25. The Proposal Trustee is not aware of any parties who may hold a preferred claim pursuant to section 136 of the BIA.<sup>16</sup>
26. As of October 24, 2024, CannGroup was indebted to the Provincial Government in the amount of \$48,141.26 for outstanding Employer Health Tax payments.<sup>17</sup>
27. As of the Filing Date, CannGroup was indebted to 73 parties with unsecured claims totalling approximately \$4,073,341.96. The unsecured debt primarily consists of amounts due and owing to various trade vendors of CannGroup arising in the normal course of business.<sup>18</sup>

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<sup>16</sup> First Report, at para. 38.

<sup>17</sup> Tobias #1, at para. 39, Ex. "M".

<sup>18</sup> First Report, at para. 39.

## E. CAUSES OF INSOLVENCY

28. CannGroup faced significant financial difficulties due to a series of setbacks. After SNDL Inc. reneged on a long-term purchase agreement in 2018, CannGroup began to experience financial instability despite receiving a settlement and refinancing from Builder's Capital.<sup>19</sup>
29. CannGroup's financial instability was the result of, among other things, pivoting its operations from growing flowers to producing extracts, significant market price reductions for cannabis products, difficulty accessing investment capital, substantial regulatory compliance burdens and fees, increased market competition from the legalization of recreational cannabis, and significant excise tax burdens imposed on the sale of cannabis products pursuant to the *Excise Act*, 2001, SC 2002, c 22.<sup>20</sup>

## F. PRE-FILING SALES PROCESS

30. Efforts to find equity partners or buyers from 2021 to 2023 were unsuccessful, with multiple potential deals falling through. As explained in detail in the first affidavit of Marlin Tobias made November 12, 2024, during this time, CannGroup engaged with over 20 targeted companies and individuals with a view to sell the Lands or all or part of CannGroup as a going concern business.<sup>21</sup>
31. Starting in 2024, CannGroup launched an extensive email campaign that reached over 10,000 contacts. Then, in July 2024, CannGroup engaged a third-party agent (the "**Realtor**") to market the Lands, which promoted the solicitation of offers and interest from the broader market over the course of four months.<sup>22</sup>
32. The Realtor identified the following key challenges in the Marketing Summary with respect to showings and site demand:<sup>23</sup>

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<sup>19</sup> Tobias #1, at para. 40.

<sup>20</sup> Tobias #1, at para. 41.

<sup>21</sup> Tobias #1, at para. 42.

<sup>22</sup> Tobias #1, at paras. 43-47.

<sup>23</sup> Tobias #1, at paras. 52, Ex. "P".



- (a) The ALR site restrictions prevented most preferred uses of the buildings and its operations outside of cannabis and indoor extraction/cultivation.
- (b) Due to the site restrictions, financing and available capital is not readily available to most groups that could benefit from the purpose-built use.
- (c) The location of the property, which is near direct transportation routes, is considered rural and underserved for most larger distribution channels.
- (d) There is currently a stigma associated with cannabis and related industries, and most groups that inquired indicated that they will “wait for additional market volatility to settle”.

*Results of the Sales Process*

- 33. The only party to submit a formal offer to purchase the Lands was the Purchaser for a purchase price of \$3,700,000 (the “**Purchase Price**”) on an “as is, where is” basis.<sup>24</sup>
- 34. The Transaction is subject to court-approval and requires:
  - (a) a deposit in the amount of \$500,000 payable to CannGroup within two business days’ notice of the date scheduled for court-approval; and
  - (b) a completion date of December 16, 2024.
- 35. The Proposal Trustee is of the opinion that the Transaction is reasonable based on the following:<sup>25</sup>
  - (a) CannGroup underwent an extensive sales and investment solicitation process from April 2021 to October 2024, with little to no results;
  - (b) the Purchase Agreement is fully executed;
  - (c) CannGroup is capable of completing the Transaction within the timeline to complete;
  - (d) the Purchaser appears to operate in the same or a similar industry and possesses extensive knowledge of CannGroup and the Facility. This familiarity provides some comfort that the sale is likely to be completed;

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<sup>24</sup> Tobias #1, at para. 53, Ex. “Q”.

<sup>25</sup> First Report, at para. 55.



- (e) finding a purchaser outside of the cannabis industry may pose challenges in view of the restrictions on the property with the ALR designation and the specialized nature of the Facility;
- (f) the Purchase Price exceeds the most recent appraisal from February 2023 and the 2024 BC Assessment value; and,
- (g) conducting another solicitation process is not expected to yield any offers that would be superior to the offer received from the Purchaser, nor does CannGroup have the necessary funds to do so.

#### **G. DISTRIBUTION ORDER**

- 36. CannGroup seeks to distribute from the net proceeds of sale of the Lands the amount owing to Builder's Capital and secured under its mortgage of the Lands.
- 37. Builder's Capital is the senior secured creditor of CannGroup. It holds a first ranking mortgage against the Lands and a first ranking registration in the PPR against all of CannGroup's present and after acquired personal property.
- 38. As of November 12, 2024, Builder's Capital was owed \$1,583,835.36, and interest continues to accrue at the rate of 14% per annum.<sup>26</sup>
- 39. A distribution of the net proceeds of sale of the Lands to Builder's Capital for the amount owing under its mortgage is in the interest of all stakeholders because it will stop the accrual of interest. Additionally, funds will remain available for distribution to other creditors if the Distribution Order is granted.

#### **H. ADMINISTRATION CHARGE**

- 40. CannGroup is seeking a first ranking Administration Charge on all the assets, property and undertakings of CannGroup in the maximum amount of \$150,000 to secure the fees and disbursements of CannGroup's legal counsel, the Proposal Trustee, and its own independent legal counsel, incurred in connection with the services rendered to CannGroup both before and after the filing of the NOI.

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<sup>26</sup> Tobias #1, at para. 33.

41. CannGroup has paid retainers to the Proposal Trustee and CannGroup's legal counsel, Fasken Martineau DuMoulin LLP, in the amounts of \$35,000 and approximately \$25,000, respectively.<sup>27</sup>
42. The cashflow forecast for CannGroup includes estimates as to the professional fees to be incurred by CannGroup through to the completion of the Transaction and the Proposal Proceedings.<sup>28</sup> Those fees exceed the amounts of the retainers by a significant amount. Accordingly, CannGroup is seeking to secure the fees of the professionals against its assets (being primarily the Lands) such that they can be paid from the proceeds of sale once the Transaction completes.
43. The Proposal Trustee and CannGroup, and their respective counsel, worked together to determine the quantum of the Administration Charge, and are of the view that the Administration Charge is reasonable and appropriate to ensure the continued support of the respective professionals in CannGroup's efforts to restructure.<sup>29</sup>

#### **I. EXTENSION OF THE STAY OF PROCEEDINGS**

44. The initial stay period in the NOI Proceedings is from October 25, 2024 to November 23, 2024 (the "**Initial Stay Period**").
45. CannGroup seeks an extension of the Initial Stay Period by an additional 45 days to January 7, 2025 to allow CannGroup to, among other things, complete the Transaction, receive sale proceeds from FN Canna from the sale of the Inventory, and formulate and seek court approval of a distribution plan for the net proceeds arising from the Transaction.
46. The Applicant has acted in good faith and with due diligence both prior to the commencement of, and during these proceedings. The Proposal Trustee and the Applicant are of the view that no creditor would be materially prejudiced if the extension is granted.<sup>30</sup>

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<sup>27</sup> Tobias #1, at para. 61; First Report.

<sup>28</sup> First Report, Appendix "F".

<sup>29</sup> First Report; Tobias #1, at para. 61-62.

<sup>30</sup> Tobias #1, at paras. 59 & 65; First Report.



47. The Proposal Trustee supports the Applicant's application for the extension.

### **Part 3 LEGAL BASIS**

1. The Applicant pleads and relies on:
  - (a) the BIA, Part III Division I;
  - (b) *Bankruptcy and Insolvency Rules*, C.R.C., c. 368, Rules 11 – 13;
  - (c) *Supreme Court Civil Rules*, B.C. Reg. 168/2009, as amended;
  - (d) the inherent jurisdiction of this Honourable Court; and
  - (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.

#### **Approval and Vesting Order**

2. Section 65.13 of the BIA prohibits a debtor company from selling or otherwise disposing of assets outside of the ordinary course of business unless authorized to do so by the court.
3. Pursuant to Section 65.13(4) of the BIA, in deciding whether to grant authorization, the court is to consider, among other things:
  - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the trustee approved the process leading to the proposed sale or disposition;
  - (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
  - (d) the extent to which the creditors were consulted;
  - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
  - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
4. In deciding whether to approve a transaction resulting from a sales processes conducted prior to insolvency proceedings, courts will consider the "specific details of the sales process as conducted" and the following *Soundair* principles:
  - (a) whether the party conducting the sale process has made a sufficient effort to obtain the best price and has not acted improvidently;



- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

*Royal Bank v Soundair Corp.* 1991 CanLI 2727 (ONCA);  
*Feronia Inc. (Re)*, 2020 BCSC 1372, at paras 51 – 57,  
citing *Sanjel Corporation (Re)*, 2016 ABQB 257.  
*Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66,  
at para 23.

5. An assessment of the factors set out in section 65.13(4) of the BIA and the *Soundair* principles favour the approval of the Transaction. In particular:

- (a) **The process leading to the Purchase Agreement has been favourably reviewed by the Proposal Trustee and was reasonable in the circumstances.** CannGroup implemented a comprehensive sales process which was undertaken since 2021. It engaged with over 20 targeted companies and individuals with a view to selling the Lands or all or part of CannGroup as a going concern business. Starting in 2024, CannGroup launched an extensive email campaign that reached over 10,000 contacts. In addition, CannGroup engaged a third-party agent to market the Lands, which promoted the solicitation of offers and interest from the broader market over the course of four months. The sale of the Lands was brought to the attention of thousands of people, but only one viable offer was received. The marketing process was reasonable given the urgency created by CannGroup's financial distress. The Proposal Trustee has reviewed the history of CannGroup's sale process and indicated that it supports the Transaction as being in the best interests of CannGroup's stakeholders..
- (b) **The Transaction is the best option in the circumstances.** The Transaction is the only viable option available to CannGroup. Should the Transaction not be approved, CannGroup does not have the liquidity necessary to seek alternative transactions, or conduct a sales and investment solicitation process in this proceeding. Despite its best efforts, CannGroup has not been able to obtain any investment funding to keep it operational.

- (c) **The consideration payable by the Purchaser is reasonable and fair and reflects the value of the Lands.** The purchase price of \$3,700,000 is fair and reasonable in the circumstances. In conducting a robust sales process, CannGroup made best efforts to obtain the best price possible for the Lands and has not acted improvidently. The consideration exceeds the assessed value of the Lands and represents the market value. The offer from the Purchaser is also the only offer presented for the Lands this year.
- (d) **The Proposal Trustee supports the Transaction.** The Proposal Trustee supports the Purchase Agreement and is of the view that the Transaction represents the best option compared to the potential bankruptcy and liquidation of CannGroup.
- (e) **Creditors were given notice.** Notice of this application has been provided to all creditors likely to be affected by the Transaction.

### **Distribution Order**

- 6. Section 183 of the BIA invests this court with the power to exercise its inherent jurisdiction to control its own process.
- 7. Distribution Order is appropriate for the following reasons:
  - (a) Builder's Capital is the senior secured creditor of CannGroup. It holds a first ranking mortgage against the Lands and a first ranking registration in the PPR against all of CannGroup's present and after acquired personal property;
  - (b) a distribution to Builder's Capital for the amount owing under its mortgage is in the interest of all stakeholders because it will stop the interest that continues to accrue at the rate of 14% per annum;
  - (c) additional funds from the proceeds of sale of the Lands will remain available for distribution to other creditors; and
  - (d) the Proposal Trustee supports the Distribution Order.

### **Administration Charge**

- 8. Section 64.2(1) of the BIA provides the court with the authority to grant a charge in favour of financial, legal or other professionals involved in proposal proceedings under the BIA.



9. Section 64.2(2) allows the court to order that the security or charge rank in priority over the claim of any secured creditor of the person.
10. Administration and financial advisor charges have been approved in proposal proceedings where the participation of financial, legal and other professionals is necessary to ensure a successful proceeding under the BIA. Courts have considered the complexity of the applicant's business in assessing the reasonableness of the quantum of the charge sought.

*Danier Leather Inc. Re*, 2016 ONSC 1044, at paras. 57-58,  
citing *Colossus Minerals Inc. Re*, 2014 ONSC 514 at paras. 11-15

11. The participation of the Proposal Trustee, legal counsel for the Proposal Trustee and counsel for the Applicant is necessary to ensure a successful proposal under these Proposal Proceedings.
12. The quantum of the Administration Charge was determined in consultation with the Proposal Trustee and its counsel, and is fair and reasonable in light of the complexity of the Applicant's business and the issues anticipated to arise in the context of these Proposal Proceedings.

### **Extension of Time**

13. The Applicant seeks the Extension to file a proposal in these proceedings to January 7, 2025.
14. Subsection 50.4(9) of the BIA provides that this court may grant an insolvent person an extension of time to file a proposal for a period not exceeding 45 days if satisfied that:
  - (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
  - (b) the insolvent person would likely be able to make a viable proposal if the extension applied for were granted; and
  - (c) no creditor would be materially prejudiced if the extension applied for were granted.



15. The Applicant has acted in good faith and with due diligence both prior to the commencement of, and during these proceedings. It is working with the Proposal Trustee to close the Transaction with a view of making distributions to creditors in a timely fashion.
16. The Proposal Trustee and the Applicant are of the view that no creditor would be materially prejudiced if the extension is granted

**Transfer of Proceedings**

17. Section 187(7) of the BIA provides that a court may order the transfer of proceedings where the affairs of the company can be more economically administered in another bankruptcy division.

Sarra, Houlden & Morawetz,  
*2023-2024 Annotated Bankruptcy and Insolvency Act*, p. 1031 (Thomson Reuters)

18. CannGroup's counsel, the Proposal Trustee and counsel for the Proposal Trustee are all located in Vancouver, B.C. To save on travel expenses and time, it is in the best interests of CannGroup and its stakeholders to have the NOI Proceedings transferred to Vancouver.
19. The Proposal Trustee supports a transfer of the NOI Proceedings to Vancouver.

**Part 4 MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Marlin Tobias, sworn November 13, 2024.
2. The First Report of the Proposal Trustee, made November 14, 2024.
3. Such further and other materials as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that

- (i) you intend to refer to at the hearing of this application, and
- (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 14-Nov-2024

  
 \_\_\_\_\_  
 Signature of Heidi Esslinger  
 Lawyer for the Applicant

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

with the following variations and additional terms:

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.....

.....

Date: .....

Signature of  Judge  Associate Judge

The Solicitors for the applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: [kjackson@fasken.com](mailto:kjackson@fasken.com) (Reference: KXJ/339917.00001)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above



**SCHEDULE "A"**

**SERVICE LIST**

District of British Columbia  
Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNGROUP DEVELOPMENT CORP.

**SERVICE LIST**

As at November 13, 2024

<p>Fasken Martineau DuMoulin LLP</p> <p>Address: Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: <b>Kibben Jackson</b> <b>Heidi Esslinger</b> <b>Suzanne Volkow</b></p> <p>Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a> <a href="mailto:hesslinger@fasken.com">hesslinger@fasken.com</a> <a href="mailto:svolkow@fasken.com">svolkow@fasken.com</a> <a href="mailto:jbeaulieu@fasken.com">jbeaulieu@fasken.com</a> <a href="mailto:richeung@fasken.com">richeung@fasken.com</a></p> <p><i>Counsel for Canngroup Development Corp.</i></p>	<p>Canngroup Development Corp.</p> <p>Attention: <b>Marlin Kirby Tobias</b> <b>Nicole Chetwynd</b> <b>Carleen Mary Roth</b></p> <p>Email: <a href="mailto:marlin@canngroupcorp.com">marlin@canngroupcorp.com</a> <a href="mailto:nicole@canngroupcorp.com">nicole@canngroupcorp.com</a> <a href="mailto:carleen@canngroupcorp.com">carleen@canngroupcorp.com</a></p> <p><i>Canngroup Development Corp.</i></p>
<p>Crowe Mackay &amp; Company Ltd.</p> <p>Address: Crowe Mackay &amp; Company Ltd. 1100 – 1177 West Hastings St Vancouver, BC V6E 4T5</p> <p>Attention: <b>Derek Lai</b> <b>Tetsu Takagaki</b></p> <p>Email: <a href="mailto:derek.lai@corwemackay.ca">derek.lai@corwemackay.ca</a> <a href="mailto:tetsu.takagaki@crowemackay.ca">tetsu.takagaki@crowemackay.ca</a></p> <p><i>Counsel for the Proposal Trustee</i></p>	<p>Cox Taylor Lawyers</p> <p>Address: Cox Taylor Lawyers 3rd Floor, 26 Bastion Square Victoria, BC V8W 1H9</p> <p>Attention: <b>Rajiv Ghandi</b></p> <p>Email: <a href="mailto:gandhi@coxtaylor.ca">gandhi@coxtaylor.ca</a></p> <p><i>Counsel for the Builders Capital Mortgage Corp.</i></p>

<p>Ellis Business Lawyers Address: Ellis Business Lawyers 400 - 1681 Chestnut Street Vancouver, BC V6J 4M6</p> <p>Attention: Meldon Ellis Email: <a href="mailto:meldon@ellislawyers.com">meldon@ellislawyers.com</a></p> <p><i>Counsel for Allan Chabon</i></p>	<p>Winright Connors Address: Winright Connors 621 – 550 West Broadway Vancouver, BC V5Z 0E9</p> <p>Attention: Vincent M.E. Connors</p> <p><i>Counsel for Collin Roth</i></p>
<p>The Crown in Right by British Columbia Deputy Attorney General Ministry of Attorney General PO Box 9290 Stn Prov Govt Victoria BC V8W 9J7</p> <p>Ministry of Finance, RMO, Collections Section PO BOX 9445 STN Prov Govt Victoria BC V8W 9V5</p> <p>Email: <a href="mailto:Aaron.Welch@gov.bc.ca">Aaron.Welch@gov.bc.ca</a>; <a href="mailto:AGLSBRevTaxInsolvency@gov.bc.ca">AGLSBRevTaxInsolvency@gov.bc.ca</a></p>	<p>Federal Crown British Columbia Regional Office Department of Justice Canada 900 - 840 Howe Street Vancouver, British Columbia V6Z 2S9</p> <p>Email: <a href="mailto:AGC_PGC_VANCOUVER@JUSTICE.GC.CA">AGC_PGC_VANCOUVER@JUSTICE.GC.CA</a></p>
<p>Canada Revenue Agency</p> <p>Revenue Collections c/o 9755 King George Boulevard Surrey, BC V3T 5E1</p>	



**SCHEDULE "B"**

**SALE APPROVAL ORDER**

District of British Columbia  
Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNGROUP DEVELOPMENT CORP.

**ORDER MADE AFTER APPLICATION**

BEFORE )  
) THE HONOURABLE JUSTICE [●] )  
) 18/NOV/2024 )  
) )  
) )

ON THE APPLICATION OF CannGroup Development Corp. (the “**Applicant**”) coming on for hearing at Vernon, British Columbia on the 18<sup>th</sup> day of November, 2024, AND ON HEARING Heidi Esslinger, counsel for the Applicant, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served; AND UPON READING the material filed, including Affidavit #1 of Marlin Tobias made November 13, 2024 and the First Report of Crowe Mackay Company Ltd. (the “**Proposal Trustee**”), in its capacity as proposal trustee of the Applicant, the Proposal Trustee dated November 14, 2024 (the “**First Report**”).

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged and this application is returnable today and the need for any further service thereof is hereby dispensed with.

**SALE APPROVAL**

2. The sale transaction (the “**Transaction**”) contemplated by the Contract of Purchase and Sale dated November 5, 2024 (the “**Sale Agreement**”) between the Applicant, as vendor,



and Brandt Rock Investments Corporation, as purchaser, a copy of which is attached as Appendix C to the First Report, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Applicant is hereby authorized and approved, and the Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the lands described in the Sale Agreement and identified in Schedule "B" hereto (the "**Lands**")

3. Upon payment of the purchase price under the Sale Agreement, all of the Applicant's right, title and interest in and to the Lands shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated November 18, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.
  
4. Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this Order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Applicant, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
  - (a) enter the Purchaser as the owner of the Lands, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits,

privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule “D”.
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Lands shall stand in the place and stead of the Lands, and from and after the payment of the purchase price by the Purchaser, all Claims shall attach to the net proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
6. Subject to the terms of the Sale Agreement, vacant possession of the Lands shall be delivered by the Applicant to the Purchaser at 12:00 noon on December 17, 2024, or such earlier date as the Applicant and the Purchaser may agree (the “**Closing Date**”), subject to the Permitted Encumbrances.
7. The Applicant, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
8. Notwithstanding:
  - (a) these proceedings;



- (b) any applications for a bankruptcy order in respect of the Applicant now or hereafter made pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the “BIA”) and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of the Applicant,

the vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **DISTRIBUTION ORDER**

- 9. Notwithstanding anything to the contrary herein, the Applicant is hereby authorized to distribute the net proceeds of sale received from the Transaction to Builder’s Capital Mortgage Corp. (the “**Senior Secured Lender**”) or such other person(s) as the Senior Secured Lender may direct (the “**Distribution**”) up to the amount owing to the Senior Secured Lender and secured by its mortgage registered against the Lands under Charge No. CA8952190.
- 10. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this order and to assist the Applicant and the Proposal Trustee, and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Proposal Trustee, as an officer of this court, as may be necessary or desirable to give effect to this order, to assist the Applicant and the Proposal Trustee and their respective agents in carrying out the terms of this order.

11. The Applicant, the Purchaser, the Proposal Trustee or any other party affected by this Order have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
12. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Heidi Esslinger  
Lawyer for the Applicant

BY THE COURT

---

REGISTRAR

**Schedule A – List of Counsel**

Counsel	Party



Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNING  
DEVELOPMENT CORP.

---

**ORDER MADE AFTER APPLICATION  
(SALE APPROVAL)**

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**FASKEN MARTINEAU DUMOULIN LLP**  
Barristers and Solicitors  
550 Burrard Street, Suite 2900  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Heidi Esslinger  
E-mail: [hesslinger@fasken.com](mailto:hesslinger@fasken.com)  
Matter No: 339917.00001

**SCHEDULE "C"**

**ADMIN CHARGE, EXTENSION AND TRANSFER ORDER**

District of British Columbia  
Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNGROUP DEVELOPMENT CORP.

**ORDER MADE AFTER APPLICATION**

BEFORE )  
          ) THE HONOURABLE JUSTICE [●] )  
          ) ) 18/NOV/2024  
          ) )  
          ) )

ON THE APPLICATION OF CannGroup Development Corp. (the “**Applicant**”) coming on for hearing at Vernon, British Columbia on the 18<sup>th</sup> day of November, 2024, AND ON HEARING Heidi Esslinger, counsel for the Applicant, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served; AND UPON READING the material filed, including Affidavit #1 of Marlin Tobias made November 13, 2024 and the First Report of Crowe Mackay Company Ltd. (the “**Proposal Trustee**”), in its capacity as proposal trustee of the Applicant, dated November 14, 2024 (the “**First Report**”).

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application for this order and the supporting materials is hereby abridged and this application is returnable today and the need for any further service thereof is hereby dispensed with.

Administration Charge

2. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Administration**”).



**Charge**”) on the assets, property and undertakings of the Applicant (the **“Property”**), which charge shall not exceed the aggregate amount of \$150,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Proposal Trustee, counsel for the Proposal Trustee, and counsel for the Applicant, both before and after the making of this order, that are related to these proceedings, the Applicant’s proposal and the fulfillment of the Proposal Trustee’s duties in these proceedings and under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the **“BIA”**). The Administration Charge shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and other claims of secured creditors, statutory or otherwise (collectively, **“Encumbrances”**), in favour of any person, other than any secured claims which may arise pursuant to subsection 14.06(7) of the BIA.

3. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title and interest filed, registered, recorded or perfected subsequent to Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
4. Except as otherwise expressly provided for herein, or as may be approved by this court, the Applicant shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, the Administration Charge, unless the Applicant also obtains the prior written consent of the Proposal Trustee and the other beneficiaries of the Administration Charge.
5. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries thereof shall not otherwise be limited or impaired in any way by:
  - (a) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order(s) made pursuant to such applications;
  - (b) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

- (c) the filing by the Applicant for relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt and the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") to which the Applicant is a party, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the Administration Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party; and the beneficiaries of the Administration Charge shall not have any liability to any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
    - (ii) the payments made by the Applicant pursuant to this order and the granting of the Administration Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.
6. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administration Charge amongst the various assets comprising the Property.

Extension of time to file a Proposal

7. The time for filing the Applicant's proposal under Part III of the BIA be and is hereby extended to 11:59 on January 7, 2025.



Transfer of Proceedings

8. These proceedings shall be transferred from the Vernon registry to the Vancouver registry for all purposes.
9. Leave is hereby granted to enter this Order at the Vancouver registry of the British Columbia Supreme Court.

Miscellaneous

10. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this order and to assist the Applicant and the Proposal Trustee, and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Proposal Trustee, as an officer of this court, as may be necessary or desirable to give effect to this order, to assist the Applicant and the Proposal Trustee and their respective agents in carrying out the terms of this order.
11. The Applicant, the Proposal Trustee or any other party affected by this Order have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
12. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of Heidi Esslinger  
Lawyer for the Applicant

BY THE COURT

---

REGISTRAR



**Schedule A – List of Counsel**

Counsel	Party

Division No.: 04-Vernon  
Court No.: VER-S-B-58732  
Estate No.: 11-3145114  
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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF CANNING  
DEVELOPMENT CORP.

---

**ORDER MADE AFTER APPLICATION  
(ADMINISTRATION CHARGE ET. AL.)**

---

**FASKEN MARTINEAU DU MOULIN LLP**  
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