

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

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**MOTION RECORD OF PIONEER BALLOON CANADA LIMITED**  
(Returnable Thursday, July 25, 2024, at 10:00am via Judicial Videoconference)

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July 16, 2024

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

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# TAB 1



Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**NOTICE OF MOTION**  
**(returnable Thursday, July 25, 2024 @ 10:00am via Judicial Videoconference)**

Pioneer Balloon Canada Limited (the “**Company**”) has filed a Notice of Intention to Make a Proposal (an “**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and KMPG Inc. was named as proposal trustee (the “**Proposal Trustee**”). The Company will make a motion to a judge presiding over the Ontario Superior Court of Justice (in Bankruptcy & Insolvency) (the “**Court**”) on July 25, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard, which motion shall be heard virtually by judicial videoconference to be set by the Court office and may be attended online by accessing the videoconference link to be posted on the Court’s *Caselines* portal for this matter. A direct link will be circulated by email to those members of the Service List with known email addresses prior to the hearing.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an approval and vesting order, substantially in the form attached hereto as Schedule “A” (the “**Draft AVO**”) including, *inter alia*:
  - (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;

- (b) approving the transaction (the “**Transaction**”) contemplated by the stalking horse asset purchase agreement dated June 20, 2024 (the “**Stalking Horse Agreement**”) between the Company, as vendor, and 1488108 B.C. Ltd., as purchaser (the “**Purchaser**”); and authorizing the Company to complete the Transaction;
  - (c) vesting in the Purchaser, on closing of the Transaction, all of Company’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement);
2. an Order, substantially in the form attached hereto as Schedule “B”, (the “**Ancillary Relief Order**”), *inter alia*:
- (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;
  - (b) approving the first report of the Proposal Trustee dated June 24, 2024 (the “**First Report**”) and the second report of the Proposal Trustee, to be filed with the Court (the “**Second Report**”; and, together with the First Report, the “**Reports**”), as well as the activities of the Trustee detailed therein;
  - (c) approving the fees and disbursements of the Proposal Trustee and of its counsel, Borden Ladner Gervais LLP (the “**Professional Fees**”); and
  - (d) authorizing and directing the Proposal Trustee, as recipient of the proceeds of the Transaction, to distribute the same to Royal Bank of Canada (“**RBC**”) up to the amount the Company’s secured indebtedness owing to RBC net of payment of the Court-approved Professional Fees and payment of or provision for any amounts that that are legal payable by the Company in priority to the secured indebtedness owing by the Company to RBC; and
3. such further and other relief as counsel may advise and this Court may permit.

## THE GROUNDS FOR THE MOTION ARE:

### **Background**

4. The Company is incorporated in the Province of Ontario and is headquartered and operates out of leased premises in Hamilton, Ontario and is in the business of the manufacture, sale and distribution balloons for all manner of occasions;
5. The Company is the subsidiary of Pioneer National Latex (the “**Parent**”), a US-based, global balloon manufacturer for over 100 years.
6. On September 22, 2023, the Parent entered into restructuring proceedings under the chapter 11 of title 11 (“**Chapter 11**”) of the United States Code (the “**US Proceedings**”), which resulted in a sale of the Parent’s US-based assets and operations but did not result in the sale of, among other things, the business or assets of the Company.
7. The Company will have no further ties to, or support from, affiliates in the US.
8. Apart from the end of its relationship with an operating Parent in the US, the Company is insolvent, with approximately \$2,300,000 in secured debt and approximately \$2.3 million in unsecured obligations, with approximately \$1.0 million owing to the Parent/and or its affiliates, as at the date of the NOI filing.
9. RBC is the Company’s senior secured lender and is owed more than \$2,300,000 and, on May 30, 2024, RBC issued a demand for repayment and Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA;

### **Filing of NOI**

10. On June 12, 2024, with the support of RBC, the Company filed the NOI under the BIA, naming KPMG Inc. as Proposal Trustee for purposes of stabilizing business and initiating a sale process, so as to realize value for its stakeholders and consider a potential proposal to its creditors.

**Court-Approves Stalking Horse Agreement and Sale Process**

11. In consultation with the Proposal Trustee and RBC, the Company pursued negotiations with [REDACTED] an industry leader – to act as a stalking horse bidder in a Court-approved sale process, which negotiations culminated in the Stalking Horse Agreement with the Purchaser, a subsidiary of [REDACTED].
12. On July 2, 2024, this Court approved the Stalking Horse Agreement and stalking horse sale process and procedures, with the Purchaser standing as staking horse bidder and the sale process and procedures to be administered by the Proposal Trustee (the “**Sale Process**”).

**Court-Approved Sale Process**

13. The Proposal Trustee, working with the Company, administered the Sale Process in accordance with its terms.
14. The offer represented by the Stalking Horse Agreement (the “**Stalking Horse Bid**”) was presented to the market, in an effort to solicit an offer that would be “Qualifying Offer” and trigger an auction, resulting in a better realization than the initial value of the Stalking Horse Bid.
15. A summary of the results is as follows:
  - (a) thirteen (13) potential strategic buyers were contacted;
  - (b) four (4) parties executed non-disclosure agreements, accessed the virtual dataroom and conducted due diligence, including site visits from international strategic buyers; and
  - (c) the Proposal Trustee followed up with all interested parties and coordinate answers to diligence questions and any follow-up inquiries.
16. At bid deadline, no Qualifying Offers were received, and accordingly, the Stalking Horse Bid was declared the “Successful Bid”.

17. The Sale Process was administered by Proposal Trustee diligently and in accordance with the Court Order approving the same. In connection therewith the Company has acted diligently and in good faith to bring the business to market.

**The Transaction**

18. As stated, the Stalking Horse Bid represents the only binding offer received as part of the Sale Process and the Company now seeks final Court approval of the Transaction and a vesting order.
19. The Transaction is summarized as follows:
- (a) the Purchase shall pay the aggregate purchase price of \$2,300,000 to the Proposal Trustee on Closing;
  - (b) the Purchaser will acquire substantially all of the assets of the Company, on an “as-is where-is” basis;
  - (c) the Purchaser shall take an assignment of the lease of the Company’s premises;
  - (d) the Purchaser intends to continue operations as a going-concern and to offer employment to the majority of the Company’s employees, substantially the same terms as their employment with the Company, conditional on closing;
  - (e) the Proposal Trustee is to receive the purchase price, in trust, on closing and shall apply such funds to satisfy any transactional costs and thereafter in accordance with the direction of the Court; and
  - (f) any “cure costs” in respect of assigned contracts shall be paid out of the Purchaser Price; and
  - (g) the Transaction is conditional on final Court approval and the granting of an approval and vesting order.

20. The Stalking Horse Agreement and proposed Transaction represent an excellent outcome for the Company's stakeholders, including near total recovery for the Company's seniors secured creditor (RBC) and a going-concern transaction that will see the business continue in Hamilton, Ontario and continued employment of the majority of the Company's existing employees.

#### **Approval of Reports**

21. The Proposal Trustee has undertaken those activities which are further detailed in the Reports.
22. The Reports fairly and accurately reflect the circumstances of the Company, the conduct of the Sale Process, and the activities undertaken by the Proposal Trustee.

#### **Approval of Professional Fees & Disbursements**

23. The professional fees and disbursements of the Proposal Trustee and its legal counsel, as set out in the Second Report and the fee affidavits appended thereto, are fair and reasonable.

#### **Support of Proposal Trustee, RBC and Other Grounds**

24. The Company has acted, and are acting, in good faith and with due diligence.
25. No one will be materially prejudiced by any of the relief sought herein and, in fact, the proposed relief will benefit the stakeholders of the Company.
26. The Proposal Trustee supports the relief being sought by the Company.
27. The senior secured lender, RBC, supports the relief sought herein.
28. The other grounds set out in the affidavit of Marynlynn Borondy, dated July 16, 2024 (the "**Borondy July Affidavit**").
29. The other grounds set out in the Second Report.

30. The Consolidated Practice Direction Concerning the Commercial List and the inherent and equitable jurisdiction of this Court.
31. Section 64.13 of the BIA,
32. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
33. Such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Borondy July Affidavit and the exhibits thereto;
- (b) the Second Report and the appendices thereto; and
- (c) such further and other material as counsel may advise and this Court may permit.

Date: July 16, 2024

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*Lawyers for Pioneer Balloon Canada  
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**TO: ATTACHED SERVICE LIST**

**TAB A**



**SCHEDULE “A”**

*DRAFT APPROVAL & VESTING ORDER*

*[see attached]*

Court File No. BK-24-03091796-0032  
 Bankruptcy Estate File No. 32-3091796

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

THE HONOURABLE	)	THURSDAY, THE 25 <sup>TH</sup> DAY
	)	
JUSTICE 	)	OF JULY, 2024

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
 TO MAKE A PROPOSAL OF  
 PIONEER BALLOON CANADA LIMITED

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Pioneer Balloon Canada Limited (the “**Company**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by the stalking horse asset purchase agreement (the “**Sale Agreement**”) between the Company and [1488108 B.C. Ltd. (the “**Purchaser**”) dated June 20, 2024 and appended to the second report of KPMG Inc., in its capacity as proposal trustee (the “**Proposal Trustee**”) dated July 16, 2024 (the “**Second Report**”), and vesting in the Purchaser the Company’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this via Judicial Videoconference in Hamilton, Ontario.

ON READING the motion record of the Company, including the affidavit of Marylynn Borondy dated July 16, 2024 and the exhibits thereto, and the Second Report and the appendices thereto, AND ON HEARING the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for the Royal Bank of Canada, and the other parties listed on the participant information form and no one else appearing although properly served as appears from the affidavit of Amanda Adamo, sworn July 16, 2024, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved; and, the Company and Proposal Trustee are 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 of the Purchased Assets to the Purchaser.
2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of the Company's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Valente dated July 2, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
4. THIS COURT ORDERS AND DIRECTS the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.
5. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Proposal Trustee is authorized and

permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Company's past and current employees, including any personal information of employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Company.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company and Proposal Trustee, and their 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 Company and Proposal Trustee (as an officer of this Court) as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

8. THIS COURT ORDERS that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing, provided that the Company shall have this order issued and entered through the Court office.

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

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**PROPOSAL TRUSTEE’S CERTIFICATE**

**RECITALS**

A. On June 12, 2024, Pioneer Balloon Canada Limited (the “**Company**”) filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, naming KPMG Inc. as proposal trustee (in such capacity, the “**Proposal Trustee**”).

B. On July 2, 2024, this Honourable Court (a) authorized the Company to enter into a stalking horse asset purchase agreement (the “**Sale Agreement**”), as vendor, with 1488108 B.C. Ltd., as purchaser (the “**Purchaser**”) and (b) approved a stalking horse sales process, administered by the Proposal Trustee.

C. On July 25, 2024, the Honourable Court approved, *inter alia*, approved the Sale Agreement which provided for the vesting in the Purchaser of the Company’s right, title and interest in and to the Purchased Assets (*as defined in the Sale Agreement*), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have

been satisfied or waived by the Company and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

This Certificate was delivered by the Proposal Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KPMG INC., solely in its capacity as Proposal Trustee of Pioneer Balloon Company Limited, and not in its personal or corporate capacities**

Per: \_\_\_\_\_  
 Name:  
 Title:

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PIONEER BALLOON CANADA LIMITED

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

Proceedings commenced in Hamilton

**ORDER  
(Approval & Vesting Order)**

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**TAB B**

**SCHEDULE “B”**

*DRAFT ANCILLARY RELIEF ORDER*

*[see attached]*

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

THE HONOURABLE	)	THURSDAY, THE 25 <sup>TH</sup> DAY
	)	
JUSTICE 	)	OF JULY, 2024

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**ORDER**  
**(Ancillary Relief)**

**THIS MOTION**, made by Pioneer Balloon Canada Limited (the “**Company**” or “**Pioneer**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”), for an order (this “**Order**”), among other things:

- (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;
- (b) approving the first report of KPMG Inc. (“**KPMG**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) dated June 24, 2024 (the “**First Report**”) and the second report of the Proposal Trustee dated July 16, 2024 (the “**Second Report**”; and, together with the First Report, the “**Reports**”), as well as the activities of the Trustee described therein; and
- (c) approving the fees and disbursements of the Proposal Trustee and its counsel, Borden Ladner Gervais LLP (“**BLG**”), for the periods ending July 5, 2024 and July 15,

2024, respectively, and the estimated fees and disbursements of the Proposal Trustee and BLG for completion of all remaining duties and administration of the within proceedings (the “**NOI Proceedings**”),

was heard by this Honourable Court (the “**Court**”) on this day by way of judicial video conference in Hamilton, Ontario.

**ON READING** the Motion Record of the Company, including the affidavit of Marylynn Borondy dated July 16, 2024 and the exhibits thereto (the “**Borondy July Affidavit**”), the First Report, the Second Report and the appendices thereto, including the affidavit of fees of the Proposal Trustee and its counsel included therein as Appendix “D” and Appendix “E”, respectively (the “**Fee Affidavits**”), **AND ON HEARING** the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for the Royal Bank of Canada (“**RBC**”), and the other parties listed on the participant information form and no one else appearing although properly served as appears from the affidavit of Amanda Adamo, sworn July 16, 2024, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPROVAL OF REPORTS**

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

#### **APPROVAL OF PROFESSIONAL FEES & DISBURSEMENTS**

3. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee and its counsel as set out in the Second Report and the Fee Affidavits appended thereto are hereby approved.

4. **THIS COURT ORDERS** that the anticipated further fees and disbursements of the Proposal Trustee and its counsel in connection with the completion by the Proposal Trustee of its remaining duties and administration of the NOI Proceedings, estimated not to exceed \$100,000 (the “**Estimate to Completion**”), as set out in the Second Report, be and are hereby approved, and that the Proposal Trustee its counsel shall not be required to pass their accounts in respect of any further activities in connection with the administration of the NOI Proceedings.

#### **DISTRIBUTION OF FUNDS TO RBC**

5. **THIS COURT ORDERS** that, upon the closing of the transaction (“**Transaction**”) contemplated by the stalking horse sale agreement between the Company, as seller, and 1488108 B.C. Ltd., as purchaser, dated June 20, 2024 (the “**Stalking Horse Agreement**”), approved by separate order of this Court and pursuant to which the Proposal Trustee is to receive payment of the purchase price on closing (the “**Proceeds**”), the Proposal Trustee be and is hereby authorized and directed to apply and distribute Proceeds as follows:

- (a) issue payment of the professional fees and disbursements approved in paragraph 3 hereof;
- (b) issue payment of or make provision for any amounts that are legal payable by the Company in priority to the secured indebtedness owing by the Company to RBC;
- (c) after paying or making provision for each of the foregoing, distribute all remaining Proceeds to RBC, provided that such distribution to RBC shall not exceed the amount of RBC’s secured claim against the Company; and
- (d) remit to the Company any balance after effecting the foregoing payments and distributions.

#### **DISCHARGE OF PROPOSAL TRUSTEE**

6. **THIS COURT ORDERS** that notwithstanding any provision of this Order and the cessation of the NOI Proceedings, nothing herein shall affect, vary derogate from, limit, or amend and the Proposal Trustee shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Proposal Trustee at law, or pursuant to the BIA, or the Order of this

Court dated July 2, 2024, or any other Order of this Court in these NOI Proceedings, all of which are expressly continued and confirmed following the discharge of the Proposal Trustee pursuant to the BIA, including any and all actions taken by the Proposal Trustee to the date of such discharge.

7. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Proposal Trustee, in any way arising from or related to its capacity or conduct as the Proposal Trustee, except with prior leave of this Court on no less than fifteen (15) days' prior written notice to the Proposal Trustee.

## **RELEASES**

8. **THIS COURT ORDERS** that effective as of the date on which the Proposal Trustee is Discharged pursuant to the BIA, in addition to the protections in favour of the Proposal Trustee in any order of this Court or pursuant to the BIA, KPMG and Royal Bank of Canada, their respective counsel, and each of their respective affiliates, officers, directors, partners, employees, and agents, as applicable (collectively, the "**Released Parties**") shall be released and forever discharged from any and all liability that the Released Parties now or may hereafter have by reason of any act, omission, transaction, dealing, or other occurrence in any way relating to, arising out of, or in respect of these NOI proceedings, the Stalking Horse Agreement, the stalking horse sale process, including in carrying out any incidental matters, whether known or unknown, matured or unmatured, foreseen or unforeseen, relating to matters that were raised, or could have been raised,

in the within proceedings (collectively, the “**Released Claims**”), save and except for any gross negligence or wilful misconduct.

**GENERAL**

9. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today’s date and is enforceable without the need for entry and filing, provided that the Company shall have this order issued and entered through the Court office.

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IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PIONEER BALLOON CANADA LIMITED

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

Proceedings commenced in Hamilton

**ORDER  
(Ancillary Relief)**

**LOOPSTRA NIXON LLP**

130 Adelaide St. West – Suite 2800  
Toronto, ON M5H 3P5

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*Lawyers for Pioneer Balloon Canada Limited*



**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3,  
AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED**

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

**Proceedings commenced at Hamilton**

**NOTICE OF MOTION  
(returnable July 25, 2024 @ 10:00am)**

**LOOPSTRA NIXON LLP**

130 Adelaide Street West – Suite 2800  
Toronto, ON M5H 3P5

**R. Graham Phoenix / Shahrzad Hamraz**

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*Lawyers for Pioneer Balloon Canada Limited*

# TAB 2

Court File No. 32-3091796  
Bankruptcy Estate File No. 32-3091796

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**AFFIDAVIT OF MARYLYNN BORONDY**  
(sworn July 16, 2024)

I, MARYLYNN BORONDY, of the City of Hamilton, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am the Managing Director of Pioneer Balloon Company Limited (“**Pioneer**” or the “**Company**”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by third parties. Where I have relied upon such information and advice, I verily believe same to be true.
2. This affidavit is sworn further to my affidavit of June 21, 2024, sworn in support of an order approving the sales process (my “**Original Affidavit**”). I repeat and rely on the contents of my Original Affidavit, a copy of which (without exhibits) is appended hereto and marked as **Exhibit “A”**.
3. This affidavit is sworn in support of a motion by the Company for:

- (a) an approval and vesting order (the “**AVO**”), among other things:
  - (i) approving the transaction contemplated in the stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) made by and between the Company, as vendor, and 1488108 B.C. LTD. as purchaser (the “**Purchaser**”) and vesting in 148Co all of the Company’s right, title and interest in and to all of the Purchased Assets (as defined in the Stalking Horse Agreement) (the “**Proposed Transaction**”);
- (b) an order (the “**Ancillary Relief Order**”), among other things:
  - (i) approving the first report of the KPMG Inc. in its capacity as “**Proposal Trustee**” dated June 24, 2024 (the “**First Report**”), the second report of the Proposal Trustee, to be filed with the Court (the “**Second Report**”; and, together with the First Report, the “**Reports**”), and the Proposal Trustee’s activities and conduct as described in the therein;
  - (ii) approving the accounts of the Proposal Trustee and its counsel as set out in the Second Report and the fee affidavits appended thereto; and
  - (iii) authorizing and directing the Proposal Trustee to distribute \$2,195,000 from the proceeds received on the closing of the Proposed Transaction, and any subsequent distribution to the Royal Bank of Canada (“**RBC**”) up to the amount of indebtedness of the Company; and
  - (iv) release the Proposal Trustee, RBC and their respective representatives upon the discharge of the Proposal Trustee under the BIA.

## BACKGROUND

4. Pioneer is an Ontario company located in Hamilton, Ontario, operating as a manufacturer and distributor of balloons and accessories. After its parent company, Pioneer National Latex entered into chapter 11 proceedings in the United States, Pioneer experienced significant liquidity issues. It is now insolvent.

5. As discussed in my Original Affidavit, the Company is and will be indebted to RBC in the approximate amount of \$2,300,000, with no ability to repay the same.

### *Filing of NOI*

6. As discussed in my Original Affidavit, in consultation with RBC and the Proposal Trustee, the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) on June 12, 2024, pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), naming KPMG Inc. as Proposal Trustee.

7. The purpose of filing these NOI proceedings was to provide short term stability of the Company and a forum in which to pursue and expedited sale of the business for the benefit of all stakeholders.

### *Approval of Stalking Horse Agreement & Sale Process*

8. On July 2, 2024, the Court issued an order in these proceedings (the “**Sales Process Order**”), *inter alia*:

- (a) granting the Company an extension of time to make a proposal under the NOI proceedings by 35 days up to and including August 16, 2024;

- (b) approving the Stalking Horse Agreement and the stalking horse sale process and procedures (the “**Sale Process**”); and
  - (c) granting a super-priority charge (the “**Administration Charge**”) against the Company’s assets, undertakings and properties in an amount not to exceed \$150,000 for fees of the Company’s legal counsel, the Proposal Trustee, and the Proposal Trustee’s legal counsel.
9. The Sales Process Order, together with the endorsement of Justice Valente are attached collectively as **Exhibit “B”** hereto.

## **THE SALE PROCESS**

10. In accordance with the Sale Process Order, the Sale Process was administered by the Proposal Trustee. However, I was personally involved in the same – consulting and working with the Proposal Trustee and helping to facilitate interested parties’ due diligence.

11. The Proposal Trustee implemented the Sale Process in accordance with the Sales Process Order. The Proposal Trustee’s activities in this regard are more particularly described in the Second Report.

12. In accordance with the Sales Process Order, the Proposal Trustee contacted potential interested parties with regard to the transaction opportunity. In total, thirteen (13) interested parties were contacted, with four (4) executing a non-disclosure agreement to obtain access to the virtual data room.

13. The Proposal Trustee and the Company responded to various inquiries and follow-up requests from these four active parties, as well as multiple site visits.

14. However, at the offer deadline, no party submitted a qualifying offer. As a result, in accordance with the Sale Process, the Purchaser, as stalking horse bidder, was declared the successful bidder, subject to approval by the Court. A copy of the Stalking Horse Agreement, previously authorized by the Court, is attached hereto and marked as **Exhibit “C”**.

#### **APPROVAL OF THE PROPOSED TRANSACTION**

15. The Purchaser’s bid was the only binding offer received as part of the Sales Process. As discussed further in the Second Report, it is the only viable alternative to a liquidation of the Company’s assets, and the Proposal Trustee supports the Proposed Transaction.

16. As discussed further in the Second Report, the Proposed Transaction is summarized as follows:

- (a) the Purchase shall pay the aggregate purchase price of \$2,300,000 to the Proposal Trustee, in trust, on closing;
- (b) the Purchaser will acquire substantially all of the assets of the Company, on an “as-is where-is” basis;
- (c) the Purchaser shall take an assignment of the lease of the Company’s premises;
- (d) the Purchaser intends to continue operations as a going-concern and to offer employment to the majority of the Company’s employees, substantially the same terms as their employment with the Company, conditional on closing;

- (e) the Proposal Trustee is to receive the purchase price, in trust, on closing and shall apply such funds to satisfy any transactional costs and thereafter in accordance with the direction of the Court; and
- (f) any “cure costs” in respect of assigned contracts shall be paid out of the Purchase Price; and
- (g) the Transaction is conditional on final Court approval and the granting of an approval and vesting order.

17. The Proposed Transaction represents the best possible result for all stakeholders as, among other things, it provides a significant realization for the benefit of the RBC (as senior secured creditor) and it provides for a going-concern sale and the potential employment of the majority of the current employees of the Company.

#### **APPROVAL OF REPORTS**

18. The First Report and Second Report of the Proposal Trustee fairly and accurately reflect the circumstances of the Company, the Company’s dealings with the Proposal Trustee and the circumstances surrounding the filing of the NOI.

19. The Proposal Trustee has requested that the Company seek approval of the First Report and Second Report on this motion, which I understand from counsel is consistent with the practice in insolvency proceedings.

20. Accordingly, the Company requests the approval of the First Report and Second Report, and the activities of the Proposal Trustee set out herein.



## APPROVAL OF PROFESSIONAL FEES

21. The Sale Process Order requires that the fees and disbursements of the Proposal Trustee and its counsel (the “**Professional Fees**”) be approved by the Court. The Proposal Trustee has requested that the Company seek approval of the Professional Fees, which I understand from counsel is consistent with the practice in insolvency proceedings.

22. The Professional Fees, including the accruals for completion of the Proposal Trustee’s work (and that of it’s counsel) are fair and reasonable; and, ought to be approved by the Court.

## DISTRIBUTION TO RBC

23. I understand that independent counsel to the Proposal Trustee has performed a security review on RBC’s security and has confirmed that, subject to the typical assumptions and qualifications, the RBC security documents are, as applicable, valid and enforceable. This is entirely consistent with my historical understanding of the Company’s financing with RBC.

24. The Proposal Trustee, upon closing of the Proposed Transaction (assumed it is approved by the Court) proposes to:

- (a) maintain a reserve of \$55,000 (the “**Holdback**”) to address any post-filing amounts for payroll and professional fees to be paid after the date of closing of the Proposed Transaction;
- (b) make an interim distribution to RBC of \$2,195,000 (representing all funds received from the Proposed Transaction less the Holdback); and,

- (c) after addressing all post-filing payments, distribute the balance of the Holdback (if any) to RBC, provided that the aggregate of all distributions to RBC shall not exceed the secured indebtedness owing by the Company to RBC.

25. The Company agrees with the forgoing and I understand that RBC has been advised of the intention to retain the Holdback and proposed plan to distribute the proceeds and supports the same.

26. Accordingly, the Company is requesting the Court issue an order to authorize and direct the Company and the Proposal Trustee to maintain and administer the Holdback, and effect the distributions to RBC, as above.

## **CONCLUSION**


27. As discussed further in the Second Report, the Company will – with the continued support of RBC – have sufficient access to cash flow to complete the Proposed Transaction before the expiry of the NOI stay of proceedings. The Company has acted diligently and in good faith and will continue to do so through the conclusion of the Proposed Transaction (if approved) and of these proceedings.

28. The Proposed Transaction is the only viable alternative to a liquidation of the Company's assets, and is in the best interest of the stakeholders. All of the relief sought is supported by the senior secured creditor, RBC, and the Proposal Trustee. The Company is not aware of any creditor or stakeholder who opposes such relief or would be materially prejudiced in the event that such relief is granted.

- 9 -

29. I swear this affidavit in support of the Company's motion for the AVO and Ancillary Relief Order as set out above and for no other or improper purpose.

**SWORN BEFORE ME** via videoconference this 16 day of July, 2024. The affiant was located in the City of Hamilton, in the Province of Ontario and the commissioner was located in the City of Toronto, in the Province of Ontario.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
MARYLYNN BORONDY

**TAB A**

This is Exhibit "A" referred to  
in the affidavit of MaryLynn Borondy  
subscribed and sworn to before  
me, this 16 day of July 2024.

A handwritten signature in black ink, appearing to read 'L. H. King', is written over a horizontal line.

*A commissioner for taking affidavits.*

Court File No. 32-3091796  
Bankruptcy Estate File No. 32-3091796

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**AFFIDAVIT OF MARYLYNN BORONDY**  
(sworn June 21, 2024)

I, MARYLYNN BORONDY, of the City of Hamilton, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am the Managing Director of Pioneer Balloon Company Limited (“**Pioneer**” or the “**Company**”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by third parties. Where I have relied upon such information and advice, I verily believe same to be true.
2. On June 12, 2024, the Company filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). KPMG Inc. (“**KPMG**”) was named proposal trustee (the “**Proposal Trustee**”) in the proposal proceedings (the “**Proposal Proceedings**”). Attached hereto and marked as **Exhibit “A”** is a copy of the certificate of filing from the Superintendent of Bankruptcy.

3. This affidavit is sworn in support of a motion by the Company for an order, among other things:

- (a) extending the time for filing a proposal with the official receiver in each of the Proposal Proceedings by 35 days up to and including August 16, 2024;
- (b) approving the stalking horse sale process (the “**Sale Process**”), including the stalking horse asset purchase agreement between Pioneer and 1488108 B.C. LTD. dated June 20, 2024 (the “**Stalking Horse Agreement**”) ;
- (c) granting a super priority charge (the “**Administration Charge**”) against the Company’s assets, undertakings and properties in an amount not to exceed \$150,000 in favour of the Company’s legal counsel, the Proposal Trustee and the Proposal Trustee’s legal counsel;

## **THE BUSINESS ENTERPRISE**

### *Overview*

4. Pioneer is an Ontario company located in Hamilton, Ontario, operating as a manufacturer and distributor of balloons and accessories.

5. Pioneer’s US-based parent company recently entered into restructuring proceedings under the chapter 11 of title 11 (“**Chapter 11**”) of the United States Code (the “**US Proceedings**”). Pioneer was not an applicant in the US Proceedings. The US Proceedings resulted in an approved sale of the US assets but did not result in any disposition of the Canadian business. Presently, not only has Pioneer lost the support of related US operations but Pioneer is also insolvent, being

indebted to Royal Bank of Canada (“**RBC**”) in the approximate amount of \$2,300,000, on a secured basis, pursuant to the RBC Credit Agreement (defined below).

6. In consultation with the Proposal Trustee and RBC, Pioneer commenced the Proposal Proceedings to stabilize its business and seek approval of the Sale Process that will result in a transparent and Court-supervised sale of Pioneer’s business, administered by the Proposal Trustee, to maximize realizations for its creditors, while continuing the operations of the business and the retention of jobs in Canada.

7. To facilitate the above, Pioneer seeks the approval of the Stalking Horse Agreement and the Sale Process, as well as an extension to the time to file a proposal under the BIA.

### ***Background***

8. The Company is incorporated pursuant to the laws of the Province of Ontario, and is headquartered in Hamilton, Ontario. It is a subsidiary of Pioneer National Latex (the “**Parent**”), a US-based, global balloon manufacturer for over 100 years. Attached hereto and marked as **Exhibit “B”** is a copy of the corporate profile of the Company.

9. I have been the Managing Director of the Company (including its predecessors) for 15 years, and have been employed at the Company for 38 years. As such, I am intimately involved with all aspects of Canadian operations.

10. Pioneer is a manufacturer and distributor of balloons and accessories. It operates out of a mixed-use office, warehouse and manufacturing centre in an 86,000 square foot leased facility at 333 Kenora Avenue in Hamilton, Ontario servicing Canada and the global market.



## CREDITORS

### Secured Creditor

11. RBC is the senior secured lender to Pioneer. Pursuant to a letter agreement dated February 9, 2022, as amended on March 31, 2023 (the “**RBC Credit Agreement**”), RBC established certain credit facilities in favour of the Company, including, among others, a revolving line of credit of up to \$2,200,000 (the “**Line of Credit**”). A copy of the RBC Credit Agreement is attached hereto and marked as **Exhibit “C”**.

12. In connection with the RBC Credit Agreement, the Company re-executed a general security agreement in favour of RBC, dated June 11, 2024. A copy of the general security agreement is attached hereto and marked as **Exhibit “D”**.

13. Additionally, certain other parties<sup>1</sup> have registered security interests against Pioneer. Based on my discussions with legal counsel, I understand that the security held by RBC ranks first in priority over all of the Company’s personal property, other than in respect of validly registered purchase-money security interest (“**PMSI**”) leases in respect of leased and financed equipment and to any priority claims that may exist in law. A copy of the Ontario *Personal Property Security Act* search report certificate in respect of the Company is attached hereto and marked as **Exhibit “E”**

<sup>1</sup> Such parties being the secured parties identified in the *Personal Property Security Act* search report certificate at Exhibit “E”.

### Unsecured Creditors

14. As at June 12, 2024, Pioneer is indebted to its unsecured trade creditors in the approximate aggregate amount of \$1,200,000. Attached hereto and marked as **Exhibit “F”** is a copy of the list of creditors of the Company filed in their Proposal Proceedings.

### Government Remittances

15. As at the date hereof, Pioneer is current with all government remittances for source deductions.

16. As concerns harmonized sales tax, as at the date hereof, the Company is in default of its payment obligations for April, May and June 2024, totalling \$42,267.97.

### **EMPLOYEES**

17. Pioneer has approximately 125 full-time employees, and occasionally employs seasonal part-time employees. All employees are non-union.

18. The Company administers a deferred profit-sharing plan (“**DPSP**”), but that has been paused. As of today, the Company is behind one month in the employee contribution to the DPSP, in the approximate amount of \$4,753.60.

### **FINANCIAL CHALLENGES**

19. Throughout its years of operation, Pioneer relied heavily on the Parent for operational and business support. Restructuring efforts in the US Proceedings failed to find a purchaser that would continue a relationship with any of the Parent’s international subsidiaries. Without the Parent’s financial support, Pioneer will be unable to continue operations.

20. Moreover, as a result of reduced sales and corresponding adjustment to the borrowing base calculation under the RBC Credit Agreement, Pioneer is offside of the borrowing base covenants. As a result, Pioneer is overdrawn on the Line of Credit by more than \$1,000,000 with no means to issue payments to RBC to bring the Line of Credit into compliance with the covenants. Pioneer has advised RBC it cannot correct this deficiency.

## **DEMAND**

21. As result of the foregoing breach of the borrowing base requirements, on May 30, 2024, RBC made formal demand for repayment in respect of the revolving line of credit, credit cards, and capital improvements loan (the “**Demand**”) and served a Notice of Intention to Enforce Security (the “**NITES**”) pursuant to section 244(1) of the *BIA*. A copy of RBC’s Demand and NITES, delivered on the Company, are attached and marked as **Exhibit “G”** hereto.

22. The Company is unable to issue repayment in response to the Demand and, following discussions with RBC, the Proposal Trustee and counsel, believes that the Proposal Proceedings would be a preferred means by which to preserve and realize value for all stakeholders.

## **PROPOSAL PROCEEDINGS**

23. On June 12, 2024, Pioneer commenced these proceedings under the *BIA* for the purpose of, among other things, creating stability for the Company to regularize business, negotiating and concluding an agreement with a potential stalking horse bidder and to permit the Proposal Trustee to conduct the Sale Process to identify a superior transaction to the proposed Stalking Horse Agreement.

## PROPOSED STALKING HORSE PROCESS

24. In consultation with the Proposal Trustee, and subject to the approval of this Court, Pioneer has developed the Sale Process to be administered by the Proposal Trustee and be based around the proposed Stalking Horse Agreement. A copy of the proposed Stalking Horse Agreement is attached hereto and marked as **Exhibit “H”**. A copy of the proposed Sale Process, including the bidding procedures to be used therein, is appended hereto as **Exhibit “I”**.

25. The proposed stalking horse bidder is 1488108 B.C. LTD. (the “**Stalking Horse Bidder**”), a company affiliated with a party that had previously bid on the assets of the Parent in the US Proceedings. Such bid was unsuccessful, but they remained interested in purchasing the Canadian arm of the business.

### *The Stalking Horse Agreement*

26. The Stalking Horse Agreement contemplates the acquisition of all assets and undertakings of Pioneer by the Stalking Horse Bidder. I believe it will promote higher and more favourable offers in the Sale Process.

27. The salient points of the Stalking Horse Agreement are as follows:

- (a) acquisition of all assets of the Company on an “as is, where is” basis;
- (b) a purchase price of \$2,300,000;
- (c) a deposit of \$230,000.
- (d) contemplates potential offers of employment to the majority of existing employees;

- (e) represents the stalking horse offer in what is to be a competitive, transparent Sale Process (*as outlined below*);
- (f) a break fee of \$75,000 and a cost reimbursement of \$25,000 (collectively, the “**Break Fee & Cost Reimbursement**”) if the Stalking Horse Agreement is not selected as the Successful Bid (as defined in the Sale Process); and
- (g) the offer is conditional on final Court approval and the granting of an approval and vesting order.

### ***Sale Process***

28. The Sale Process contemplates:

- (i) identification of potentially interested parties (each an “**Interested Party**”) by the Company and the Proposal Trustee;
- (ii) a teaser mailout to each Interested Party regarding the opportunity;
- (iii) a 23-day marketing and due diligence period, during which time each Interested Party that has executed a confidentiality and non-disclosure agreement can access a virtual data room;
- (iv) a bid deadline of 5PM (ET) on July 5, 2024 (the “**Bid Deadline**”) that requires Interested Parties to submit “qualifying” binding offers to the Proposal Trustee, being offers that, *inter alia*:
  - (A) are submitted on a template agreement of purchase and sale, blacklined to the Stalking Horse Agreement;

- (B) for a purchase price equal to the Stalking Horse Bid, plus the Break Fee & Cost Reimbursement and a \$100,000 minimum overbid;
- (C) are accompanied by a deposit equal to no less than 10% of the purchase price;
- (D) are not conditional on financing; and
- (E) are accompanied by evidence, satisfactory to the Proposal Trustee, of the offeror's financial capacity to complete the proposed transaction.

29. Importantly, because of the Company's liquidity issues, with the support of RBC, the Proposal Trustee commenced the above process immediately after filing the NOI by commencing solicitation of Interested Parties. The Company was also speaking to the Stalking Horse Bidder. The initial notice to Interested Parties explained that the Company anticipated returning to Court to approve a sale process and a possible stalking horse bid in connection with the Bid Deadline.

30. The following is a summary of the salient milestones and projected timelines of the Sale Process:

Milestone	Date
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below) and access to VDR	Solicitation of interest started on June 13, 2024 with the Proposal Trustee, but all interested parties will be provided an update as to this approved stalking horse sale process.

<b>Milestone</b>	<b>Date</b>
Binding Offer Deadline (as defined below)	By no later than 5:00 p.m. (Eastern Time) on July 10, 2024
Auction, if needed	By no later July 12, 2024
Selection of Successful Bid	By no later than July 12, 2024
Approval Motion (as defined below)	By no later than July 26, 2024 or the earliest date available thereafter
Closing of Successful Bid	As soon as possible but no later than July 31, 2024

### **ADMINISTRATION CHARGE**

31. In order to protect the fees and expenses of Pioneer's legal counsel, and the Proposal Trustee and counsel for the Proposal Trustee, the Company seeks the Administration Charge ranking in priority to all claims and encumbrances. Such amount is reasonable in the circumstances. The continued services of the professionals are critical to the progress and success of the Proposal Proceedings and the Sale Process. Without the Administration Charge, the foregoing professionals are unlikely to continue in their capacities in support of the Proposal Proceedings.

**EXTENSION OF TIME**

32. Pioneer asks to extend the deadline to file a proposal to August 16, 2024. Further time is needed to carry out the terms of the proposed Sale Process, which will increase the possibility that the Company may realize on the value of its assets for the benefits of all stakeholders.

33. Without the extension, the Company will not be in a position to carry out the Sale Process. No creditor will be materially prejudiced if the extension is granted. Such extension is supported by RBC, as senior secured creditor, and the Proposal Trustee.

**CONCLUSION**

34. The relief sought on the within motion will provide stability to Pioneer's business and enable the Company to pursue the Sale Process for the benefit of all stakeholders. All of the relief sought is supported by the senior secured creditor, RBC, and the Proposal Trustee. The Company is not aware of any creditor or stakeholder who opposes such relief or would be materially prejudiced in the event that such relief is granted.

35. I swear this affidavit in support of the Company's motion as set out above and for no other or improper purpose.



**SWORN BEFORE ME** via videoconference  
this 21 day of June, 2024. The affiant was  
located in the City of Hamilton, in the  
Province of Ontario and the commissioner was  
located in the City of Toronto, in the Province  
of Ontario.



Commissioner for Taking Affidavits  
(or as may be)

Shahrzad Hamraz



MARYLYNN BORONDY

**TAB B**

This is Exhibit       "B       referred to  
in the affidavit of MaryLynn Borondy  
subscribed and sworn to before  
me, this   16   day of July 2024.

A handwritten signature in black ink, appearing to read "L. H. King", is written over a horizontal line.

*A commissioner for taking affidavits.*

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Court File No.: BK-24-03091796-32  
 Bankruptcy Estate File No. 32-3091796

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

THE HONOURABLE	)	TUESDAY, THE 2 <sup>ND</sup> DAY
	)	
JUSTICE VALENTE	)	OF JULY, 2024



IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
 TO MAKE A PROPOSAL OF  
 PIONEER BALLOON CANADA LIMITED

**ORDER**

**(Stay Extension, Stalking Horse Sale Process Approval; Administration Charge)**

**THIS MOTION**, made by Pioneer Balloon Canada Limited pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “BIA”), for an order (this “**Order**”), among other things:

- (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record or, in the alternative, dispensing with the same;
- (b) extending the time for the Company to file a proposal under section 50.4(9) of the BIA by 35 days to and including August 16, 2024;
- (c) approving the stalking horse asset purchase agreement dated June 20, 2024 (the “**Stalking Horse Agreement**”), between the Company and 1488108 B.C. LTD. as purchaser (the “**Stalking Horse Bidder**”), as appended as Exhibit “H” to the affidavit of Marylynn Borondy sworn June 21 2004 (the “**Borondy Affidavit**”);

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(d) approving the stalking horse sale process as described in the Borondy Affidavit and the First Report of the Proposal Trustee, to be filed with the Court (the “**First Report**”); and, as set out in the sale process and procedures appended as Appendix “A” hereto (the “**Sale Process**”); and

(e) granting a super-priority charge over the assets of the Company as security for the professional fees and disbursements of counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administration Charge**”),

was heard by this Honourable Court (the “**Court**”) on this day by way of judicial video conference in Hamilton, Ontario.

**ON READING** the Motion Record of the Company, including the Borondy Affidavit and the exhibits thereto, the First Report and the appendices thereto, and on hearing the submissions of counsel for the Company, counsel for the Proposal Trustee, counsel for the Royal Bank of Canada (“**RBC**”), and the other parties listed on the participant information form and no one else appearing although properly served as appears from the affidavit of Amanda Adamo, sworn June 21, 2024, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **EXTENSION OF TIME**

2. **THIS COURT ORDERS** that the time for the filing of a proposal by the Company is hereby extended in accordance with section 50.4(9) of the BIA up to and including August 16, 2024.

## **APPROVAL OF STALKING HORSE AGREEMENT & SALE PROCESS**

### ***Stalking Horse Agreement***

3. **THIS COURT ORDERS** that Stalking Horse Agreement hereby approved, and the Company and Proposal Trustee (as applicable) are hereby authorized to execute such documents and do such things as are necessary or advisable in connect with the Stalking Horse Agreement.

### ***Sale Process & Procedures***

4. **THIS COURT ORDERS** that the Sale Process is hereby approved.

5. **THIS COURT ORDERS** that the Company and the Proposal Trustee are authorized and directed to perform their obligations under, and take such steps as they consider necessary or desirable in carrying out, the Sale Process; and, that any step taken by the Company or the Proposal Trustee in connection with the Sale Process prior to the date of this Order is approved and ratified.

6. **THIS COURT ORDERS** that the Proposal Trustee shall have no personal or corporate liability in connection with the Sale Process, including, without limitation:

- (a) by advertising the Sale Process;
- (b) by exposing the assets, properties and undertakings of the Company to any and all parties, including, but not limited to, those parties who have made their interests known to the Proposal Trustee and/or the Company;
- (c) by responding to any and all requests or inquiries regarding due diligence conducted in respect of the Company and its assets, properties and undertakings;
- (d) through the disclosure of any and all information Company and its assets, properties and undertakings arising from, incidental to or in connection with the Sale Process;
- (e) pursuant to any and all offers received by the Proposal Trustee in accordance with the Sale Process; and

(f) pursuant to any agreements entered into by any of the Proposal Trustee acting for the Company in respect of the sale of any its assets, properties and undertakings.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Company and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers of the assets, properties and undertakings of the Company and their respective advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales (each, a “Sale”). Each prospective purchaser to whom such information is provided shall limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale or Investment, it shall return all such information to the Company or the Proposal Trustee, or in the alternative destroy all such information. The purchaser of any of the assets, properties and undertakings of the Company shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Company or the Proposal Trustee, or ensure that all other personal information is destroyed.

#### **ADMINISTRATIVE CHARGE**

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements (the “**Professional Fees**”), in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company on a weekly basis and, in addition, the Company is authorized to pay to the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company, such retainers are agreed to among such parties to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

9. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Proposal Trustee and its legal counsel are referred to a judge of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Company's counsel shall be entitled to the benefit of and are granted a charge (the "**Administration Charge**") over and against the assets, undertakings and properties of the Company (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$150,000, as security for, as applicable, the Professional Fees, both before and after the making of this Order in respect of these proceedings; and that the Administration Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

12. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable, and the rights and remedies of the chargees entitled to the benefit of the same (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proposal proceedings and the declarations of insolvency made herein;
- (b) any application(s) for bankruptcy, interim receivership or receivership order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments or deemed assignments for the general benefit of creditors made pursuant to the BIA;
- (d) any application made pursuant to the *Companies Creditors' Arrangement Act* or any order made pursuant to such application;
- (e) the provisions of any federal or provincial statutes; or



- (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Company and notwithstanding any provision to the contrary in any Agreement.
13. Notwithstanding any provision to the contrary in any Agreement:
- (a) the creation of the Administration Charge shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge;
- (c) the payments made by the Company 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, including but not limited to the BIA.
14. **THIS COURT ORDERS** that any Charge created by this Order over one or more leases of real property in Canada shall only be a Charge in the Company’s interest in such real property leases.

#### **SERVICE & NOTICE**

15. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 14 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website (defined in the Guide) shall be established in accordance with the Guide with the following URL: [kpmg.com/ca/pioneerballoon](http://kpmg.com/ca/pioneerballoon).

16. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Company and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by ordinary prepaid mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

17. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Company's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

18. **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from subsequently expressly acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Company or the Property.

20. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order,


to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee is at liberty and is authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

22. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charge and priorities set forth in paragraph 11 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

23. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

24. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing.



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ISSUED AND ENTERED ELECTRONICALLY BY:

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Local Registrar  
45 Main St E  
Hamilton, ON L8N 2B7

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SCHEDULE "A"

A handwritten signature in black ink, appearing to be 'MJ' or similar, written in a cursive style.

**BIDDING PROCEDURES & SALE PROCESS**

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## Schedule A

Bidding Procedures for  
the Sale Process

## INTRODUCTION

1. On June 12, 2024 (the “**Filing Date**”), Pioneer Balloon Canada Limited (the “**Vendor**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”, and the proceedings, the “**NOI Proceedings**”).
2. KPMG Inc., a licensed insolvency trustee, was appointed as the Trustee acting *in re* the proposal of the Vendor (the “**Trustee**”) under the NOI Proceedings.
3. In connection with the NOI Proceedings, the Vendor will apply to the Ontario Superior Court of Justice, Commercial List (the “**Court**”), for an order (the “**Sale Process Order**”), among other things, authorizing the Trustee, with the assistance of the Vendor’s management team, to undertake a sale process (“**Sale Process**”) for the sale of the Vendor’s (A) property, assets and undertaking or shares in the capital of one or more of the Debtors (collectively, the “**Property**”), including liquidation offers for the Debtors’ inventory and equipment, and/or (B) business operations (the “**Business**”). The Sale Process will be conducted by the Trustee in the manner set forth herein and in accordance with the Sale Process Order.
4. Among other things, the Sale Process Order will also: (a) approve the procedures set out in this Schedule (the “**Bidding Procedures**”) for the solicitation of offers or liquidation proposals (each, a “**Bid**”) for the acquisition of the Property and the Business or some portion thereof; and (b) approve the form of stalking horse agreement (as same may be amended from time to time pursuant to its terms and the Sale Process Order, the “**Stalking Horse Agreement**”) to be entered into between Pioneer Balloon Canada Limited, as Vendor, and 1488108 B.C. Ltd. (the “**Stalking Horse Bidder**”), as purchaser, for the purposes of serving as the stalking horse bid in the Sale Process (the “**Stalking Horse Bid**”). For the avoidance of doubt, the implementation of the transactions contemplated by the Stalking Horse Agreement are conditional upon the Stalking Horse Bid being selected as a Successful Bid (as defined below) in accordance with the Bidding Procedures and Court approval of the Stalking Horse Agreement and the transactions contemplated therein on a subsequent motion to be brought by the Vendor following the completion of the Sale Process.

## Bidding Procedures

*Opportunity*

5. The Sale Process is intended to solicit interest in and opportunities for a sale of all or part of the Vendor’s Property and Business (the “**Opportunity**”). The Opportunity may include a sale of all, substantially all or one or more components of the Vendor’s Property and Business as a going concern or otherwise.
6. Any sale of any of the Property and the Business will be on an “*as is, where is*” basis and without surviving representations or warranties of any kind, nature, or description by the

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Trustee, the Vendor or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Vendor in and to the Property to be acquired will be sold free and clear of, *inter alia*, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders and definitive documents.

7. The Stalking Horse Agreement constitutes a Binding Offer (as defined below) by the Stalking Horse Bidder (which constitutes a Binding Offer Bidder (as defined below)) for all purposes and at all times under this Sale Process and will serve as the Stalking Horse Bid for purposes of this Sale Process and the Bidding Procedures and have the right to participate in the Auction (as defined below), if any. A copy of the Stalking Horse Agreement will be made available to all Qualified Bidders (as defined below) and a form of such purchase agreement, to be uploaded to the VDR (as defined below), may be used as the basis for any Binding Offer made in the Sale Process.
8. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Vendor, the Property and the Business, the manner in which bidders may participate in the Sale Process, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder (as defined below) and the requisite approvals to be sought from the Court in connection therewith.
9. Subject to paragraph 27 below, the Trustee, in consultation with the Vendor, may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Qualified Bidders, Binding Offer Bidders or the Successful Bidder(s) (as each are defined below) provided that such modification, amendment, variation or supplement is expressly limited to changes that do not alter, amend or prejudice the rights of such bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and are necessary or useful in order to give effect to the substance of the Sale Process, the Bidding Procedures or the Sale Process Order. Notwithstanding the foregoing, the dates or time limits indicated in the table contained below may be extended by the Trustee, as the Trustee deems necessary or appropriate, or by order of the Court.
10. The Trustee will post on the Trustee's website and serve on the service list maintained in the NOI Proceedings, as soon as practicable, any such modification, amendment, variation or supplement to these Bidding Procedures and inform the bidders impacted by such modifications.
11. The Sale Process will be conducted by the Trustee in the manner set forth herein and in accordance with the Sale Process Order. In the event of a dispute as to the interpretation or application of the Sale Process Order or these Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute. For the avoidance of doubt, all bidders shall be deemed to have consented to the jurisdiction of the Court in connection with any disputes relating to the Sale Process, including the qualification of bids, the construction and enforcement of the Sale Process, and closing of a Successful Bid, as applicable.

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12. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, the Auction and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

13. A summary of the key dates pursuant to the Sale Process is as follows:

<b>Milestone</b>	<b>Date</b>
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below) and access to VDR	By no later than June 13, 2024 <sup>1</sup>
Binding Offer Deadline (as defined below)	By no later than 5:00 p.m. (Eastern Time) on July 10, 2024
Auction, if needed	By no later July 12, 2024
Selection of Successful Bid	By no later than July 12, 2024
Approval Motion (as defined below)	By no later than July 26, 2024 or the earliest date available thereafter
Closing of Successful Bid	As soon as possible but no later than July 31, 2024

#### **Solicitation of Interest: Notice of the Sale Process**

14. As soon as reasonably practicable after the Filing Date,

- a. the Trustee, in consultation with the Vendor, will prepare a list of potential bidders, including (i) parties that have approached the Debtors or the Trustee indicating an interest in the Opportunity, (ii) strategic and financial parties who the Trustee, in consultation with the Vendor, believe may be interested in purchasing all or part of

<sup>1</sup> The Company and the Proposal Trustee commenced soliciting interest immediately following the filing of the NOI but advised all parties who expressed an interest that a subsequent motion for approval of the sale process and possible stalking horse bid was pending.

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the Business or the Property, and (iii) parties that showed an interest in the Vendor and/or its Property prior to the date of the Sale Process Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the “**Known Potential Bidders**”); and

- b. the Trustee, with the assistance of the Vendor, will prepare (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the contemplated process under the Sale Process and inviting recipients of the Teaser Letter to express their interest; and (ii) a non-disclosure agreement in form and substance satisfactory to the Trustee and Vendor and their respective counsel, which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an “**NDA**”).
15. As soon as reasonably practicable, but, in any event, by no later than five (5) business days after the granting of the Sale Process Order, the Trustee, with the assistance of the Vendor, will provide the Known Potential Bidders with a copy of the Bidding Procedures approved by the Court.
  16. The Trustee will cause the Teaser Letter and NDA to be sent to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

#### **Virtual Data Room**

17. A confidential virtual data room or rooms (collectively the “**VDR**”) in relation to the Opportunity will be made available by the Trustee to Potential Bidders (as defined below) that have executed the NDA. The VDR will be made available as soon as practicable. The Trustee, in consultation with the Vendor, may establish separate VDRs (including “**clean rooms**”), if the Vendor reasonably determines that doing so would further the Vendor’s and any Potential Bidder’s compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Trustee may also, in consultation with the Vendor, limit the access of any Potential Bidder to any confidential information in the VDR where the Trustee, in consultation with the Vendor, reasonably determines that such access could negatively impact the Sale Process, the ability to maintain the confidentiality of the information, the Business, the Property or their value.

#### **Qualified Bidders**

18. Any party who wishes to participate in the Sale Process (a “**Potential Bidder**”) must provide to the Trustee and counsel to the Vendor, at the addresses specified in **Appendix “B”** hereto (including by email transmission), an NDA executed by it, acceptable to the Trustee, in consultation with the Vendor, and written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder.
19. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a “**Qualified Bidder**” if the Trustee, in its reasonable judgment, and in consultation

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with the Vendor, determines such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or liquidation transaction pursuant to the Sale Process. All Qualified Bidders will be granted access to the VDR. For the avoidance of doubt, the Stalking Horse Bidder is, and will be deemed to be, a Qualified Bidder. The Trustee will provide to each Qualified Bidder a copy of the Stalking Horse Agreement and any material amendment thereto.

20. The Vendor, the Trustee and their respective advisors make no representation or warranty as to the information contained in the VDR, Teaser Letter or otherwise made available pursuant to the Sale Process.
21. At any time during the Sale Process, the Trustee may, in its reasonable judgment, and in consultation with the Vendor, eliminate a Qualified Bidder from the Sale Process, in which case such bidder will be eliminated from the Sale Process and will no longer be a "Qualified Bidder" for the purposes of the Sale Process.
22. Potential Bidders must rely solely on their own independent review, diligence, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the Sale Process and any transaction they enter into with one or more of the entities comprising the Vendor.

#### **Due Diligence**

23. The Trustee and the Vendor, shall, subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence materials and information relating to the Property and Business as the Trustee, in consultation with the Vendor, may deem appropriate. Due diligence access may include management presentations, access to the VDR, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Trustee, in its reasonable judgment, and in consultation with the Vendor, may agree. Any access or interactions with the Vendor's management and personnel shall be coordinated through, and involve a representative of, the Trustee.
24. The Trustee will designate one or more representatives of the Trustee to be solely responsible for coordinating and responding to all requests for information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Neither the Trustee, nor the Vendor through the Trustee, will be obligated to furnish any information relating to the Property or Business to any person other than to Qualified Bidders. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Trustee, in consultation with the Vendor, determines such information to represent proprietary or sensitive competitive information.

#### **Formal Binding Offers**

25. Any Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer to (A) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof, must submit a binding offer (a "**Binding Offer**") as a marked version compared to the Stalking Horse Agreement, a copy of

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which will be posted in the VDR (the “**Binding Offer Bidder**”), in each case, to the Trustee, no later 5 p.m. EST on July 10, 2024 (the “**Binding Offer Deadline**”).

26. A Binding Offer will be considered if it:

- (a) provides for net cash proceeds on closing no less than the aggregate of: (A) the amount of cash payable under the Stalking Horse Agreement, plus (B) the amount of cash payable to cover the Break Fee of \$75,000, as defined in the Stalking Horse Agreement, plus (C) the amount of legal costs of the Stalking Horse Bidder up to a maximum of \$25,000, plus (D) a minimum overbid amount of \$50,000 (the amounts set forth in this paragraph 26(a), the “**Minimum Purchase Price**”);
- (b) is submitted on or before the Binding Offer Deadline by a Qualified Bidder;
- (c) is made by way of binding, definitive transaction document(s) that is/are executed by the Binding Offer Bidder;
- (d) identifies any executory contracts and leases of the Vendor that the Binding Offer Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
- (e) is not subject to any financing condition, diligence condition or internal or board approval;
- (f) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
- (g) contains or identifies the key terms and provisions to be included in any Approval Order;
- (h) contains the Binding Offer Bidder’s proposed treatment of employees of the applicable Vendor entities (for example, anticipated employment offers and treatment of post-employment benefits);
- (i) includes acknowledgments and representations of the Binding Offer Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;

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- (j) includes evidence satisfactory to the Trustee of funds available to pay the Minimum Purchase Price on closing;
- (k) provides for any anticipated corporate, licensing, securityholder, legal or other regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (l) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- (m) includes:
  - (i) the specific purchase price in Canadian dollars and a description of any non-cash consideration;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a specific indication of the sources of capital for the Binding Offer Bidder and the structure and financing of the transaction; and
  - (iv) a description of those liabilities and obligations (including operating liabilities) which the Binding Offer Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- (n) includes payment of a deposit in the amount of not less than ten percent (10%) of the cash purchase price payable on closing (the “**Deposit**”) by wire transfer to the Proposal Trustee;
- (o) is accompanied by an acknowledgement that if the Binding Offer Bidder is selected as a Successful Bidder, that the Deposit will be non-refundable subject to approval of such Successful Bid by the Court and the terms described in paragraph 27 below;
- (p) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on the date that is ten (10) days from the date of the issuance of the Approval Order approving such bid, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than July 31, 2024 (the “**Outside Date**”); and
- (q) includes such other information as reasonably requested or identified as being necessary or required by the Trustee, in consultation with the Vendor.

27. By submitting an offer for consideration at a Binding Offer, it is deemed that such Binding Offer: (i) may be accepted by the Vendor by countersigning the Binding Offer, and (ii) is

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irrevocable and capable of acceptance until the earlier of (A) two (2) business days after the date of closing of the applicable Successful Bid; and (B) the Outside Date (as defined below).

28. The Trustee, in its reasonable judgment, and in consultation with the Vendor, may waive compliance with any one or more of the requirements specified above and consider such non-compliant Binding Offer. For the avoidance of doubt, the completion of any Binding Offer shall be subject to the approval of the Court.
29. In the circumstance that a Binding Offer, does not provide for net cash proceeds on closing that are at least equal to the Minimum Purchase Price, the Trustee may elect that such Binding Offer nevertheless be considered as a potential Successful Bid and be entitled to participate in the Auction.

#### **Selection of Successful Bid**

30. The Trustee, in consultation with the Vendor, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered.
31. The Trustee and the Vendor, will (i) review and evaluate each relevant Binding Offer; and (ii) identify the highest and otherwise best Binding Offer (the “**Successful Bid**”, and the Binding Offer Bidder making such Successful Bid, the “**Successful Bidder**”). The Trustee, in consultation with the Vendor, may consider any commercial factor in evaluating Binding Offers, including speed, certainty, value and preservation of employment.
32. In the event that no Binding Offer is selected (other than the Stalking Horse Bid), the Vendor will promptly seek Court approval of the Stalking Horse Agreement and the transactions contemplated therein. In the event there is at least one Binding Offer in addition to the Stalking Horse Bid, a Successful Bid will be identified through an auction (“**Auction**”) in accordance with the procedure set out below.
33. The Trustee may negotiate with Binding Offer Bidders in any manner it considers appropriate in its business judgment with a view to maximizing the value of the Property, including at the Auction. In the event an Auction is required, the Auction will be conducted in accordance with the procedures set forth in this paragraph:
  - (a) The Auction will commence at a time to be designated by the Trustee and may, in the discretion of the Trustee, be held virtually via videoconference, teleconference or such other reasonable means as the Trustee deems appropriate. The Trustee will consult with the parties permitted to attend the Auction to arrange for the Auction to be so held. Subject to the terms hereof, the Trustee, in consultation with the Vendor, may postpone the Auction.
  - (b) The identity of each Binding Offer Bidder participating in the Auction will be disclosed, on a confidential basis, to other Binding Offer Bidders participating in the Auction.

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- (c) Except as otherwise permitted in the Trustee's discretion, only the Vendor, the Trustee and the Binding Offer Bidders, and, in each case, their respective professionals and representatives, will be permitted to attend the Auction. Only Binding Offer Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction.
- (d) Binding Offer Bidders will participate in the Auction through a duly authorized representative.
- (e) Except as otherwise set forth herein, the Trustee may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are:
  - (i) not inconsistent with the Initial Order, the Sale Process, the Bidding Procedures, the BIA, or any order of the Court issued in connection with the NOI Proceedings;
  - (ii) disclosed to each Binding Offer Bidder; and
  - (iii) designed, by the Trustee, in its reasonable judgment, and in consultation with the Vendor, to result in the highest and otherwise best offer.
- (f) The Trustee may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Binding Offer Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- (g) Each Binding Offer Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the Vendor or any other person, without the consent of the Trustee, regarding the Sale Process, that has not been disclosed to all other Binding Offer Bidders. For greater certainty, communications between the Stalking Horse Bidder and either the Vendor or the Trustee with respect to and in preparation of the Stalking Horse Agreement, the Sale Process and the Bidding Procedures, prior to the issuance of the Sale Process Order and the commencement of the Sale Process will not represent collusion nor communications prohibited by this paragraph.
- (h) Prior to the Auction, the Trustee will identify the highest and best of the Binding Offers received and such Binding Offers will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than \$50,000.00 cash in excess of the Opening Bid. Each Binding Offer Bidder will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Trustee, in consultation with the Vendor, to facilitate bidding by the participants in the Aggregated Bid.
- (i) All Binding Offer Bidders will have the right, at any time, to request that the Trustee announce, subject to any potential new bids, the then-current highest and best bid

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and, to the extent requested by any Binding Offer Bidder, use reasonable efforts to clarify any and all questions such Binding Offer Bidder may have regarding the Trustee's announcement of the then-current highest and best bid.

- (j) Each participating Binding Offer Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Binding Offer Bidder. The Trustee and the Vendor shall determine which Binding Offer Bidders have submitted the highest and otherwise best Binding Offer of the Auction, which shall be a Successful Bid. At such time and upon the conclusion of the bidding, the Auction will be closed, and the Binding Offer Bidder with the highest and otherwise best Binding Offer of the Auction will be a Successful Bidder.
  - (k) Upon selection of a Successful Bidder(s), if any, the Successful Bidder(s), if any, shall deliver to the Trustee and the Vendor, an amended and executed transaction document that reflects their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the motion material for the hearing to consider the Approval Motion.
  - (l) Any bids submitted after the conclusion of the Auction will not be considered.
  - (m) The Trustee, in consultation with the Vendor, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
34. A Successful Bid, if any, will be selected by no later than 5:00 p.m. (Eastern Time) on July 12, 2024 (or such later date immediately thereafter if the Auction is conducted and not completed in one day). If the applicable Successful Bid is terminated for any reason prior to the Outside Date, the Vendor and the Trustee may elect to, or by further order of the Court, seek to complete the transactions contemplated by the Stalking Horse Bid and will promptly seek to close the transaction contemplated by such Stalking Horse Bid, which will be deemed to be a Successful Bid. The Vendor will be deemed to have accepted such Stalking Horse Bid only when the Vendor and the Trustee have made such election.

#### *Approval of Successful Bid*

35. The Vendor will apply to the Court (the "**Approval Motion**") for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order(s) to the extent that such relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets and/or shares in the name of the applicable Successful Bidder(s) (collectively, the "**Approval Order(s)**"). The Approval Motion will be held on a date to be scheduled by the Vendor and confirmed by the Court upon application by the Vendor. With the consent of the Trustee, the Approval Motion may be adjourned or rescheduled by the Vendor without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list maintained in the NOI Proceedings prior to the Approval Motion. The Vendor will consult with the Trustee and the applicable

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Successful Bidder regarding the motion material to be filed by the Vendor for the Approval Motion.

36. All Binding Offers (other than the Successful Bid(s)) will be deemed rejected on and as of the date of the closing of the applicable Successful Bid(s)), with no further or continuing obligation of the Vendor or the Trustee to any unsuccessful Binding Offer Bidders, including the Stalking Horse Bidder.

### ***Deposits***

37. The Deposit(s):

- (a) will, upon receipt from the Binding Offer Bidder(s), be retained by the Trustee and deposited in a non-interest-bearing trust account;
- (b) received from the Successful Bidder(s) will:
  - (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of the Approval Order(s), upon closing of the approved transaction; and
  - (ii) otherwise be held and refunded in accordance with the terms of the definitive documentation in respect of the applicable Successful Bid, provided that all such documentation will provide that the Deposit will be retained by the Vendor and forfeited by the Successful Bidder, if its Successful Bid fails to close by the Outside Date and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of its Successful Bid; and
- (c) received from the Binding Offer Bidder(s) that are not a Successful Bidder will be fully refunded to the Binding Offer Bidder(s) that paid the Deposit(s), as applicable, as soon as practical following the closing of the applicable Successful Bid.

### ***“As is, Where is”***

38. Any sale (or sales), including in the case of liquidation, of the Property or the Business or portions thereof will be on an “**as is, where is**” basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to NOI proceedings. Any such representations and warranties provided for in the definitive documents will not survive closing.

### ***Confidentiality***

39. For greater certainty, other than as required in connection with any Auction or Approval Motion and subject to paragraph 27, neither the Vendor nor the Trustee will disclose: (i) the identity of any Potential Bidder or Qualified Bidder (other than the Stalking Horse Bidder); or (ii) the terms of any bid, or Binding Offer (other than the Stalking Horse Agreement), to any other bidder or any of its affiliates. Potential Bidders, Qualified Bidders (including the

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Stalking Horse Bidder) and each of their respective affiliates shall not communicate with, or contact, directly or indirectly, any other Potential Bidder, Known Potential Bidder, Qualified Bidder or their respective affiliates, without the express written consent of the Trustee, and such communications or discussions are to take place under the supervision of the Trustee.

#### **Further Orders**

40. At any time during the Sale Process, the Vendor or the Trustee may apply to the Court for advice and directions with respect to any aspect of this Sale Process including, but not limited to, the continuation of or termination of the Sale Process or with respect to the discharge of its powers and duties hereunder.

#### **Additional Terms**

41. In addition to any other requirement of the Sale Process:
- (a) Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the Vendor and/or the Trustee is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the BIA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.
  - (b) Prior to seeking Court approval for any transaction or bid contemplated by this Sale Process, the Trustee will provide a report to the Court on the Sale Process, parts of which may be filed under seal, including in respect of any and all bids received.
42. This Sale Process does not, and will not be interpreted to, create any contractual or legal relationship between the Vendor and any other party, other than as specifically set forth in the NDA or any other definitive agreement executed.
43. Notwithstanding anything to the contrary herein, the Trustee shall have no liability whatsoever to any person or entity, including without limitation any Potential Bidder, Qualified Bidder, Binding Offer Bidder, Successful Bidder, or any other creditor or stakeholder, or any Applicant, as a result of implementation or otherwise in connection with this Sale Process, except to the extent that any such liabilities result from the gross negligence or wilful misconduct of the Trustee, as determined by the Court, and all such persons or entities shall have no claim against the Trustee in respect of the Sale Process for any reason whatsoever.

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**APPENDIX "B"****The Trustee:****KPMG INC.**

333 Bay Street, Suite 4600  
Toronto, ON M5H 2S5

Attention: Pritesh Patel  
Email: [pritchpatel@kpmg.ca](mailto:pritchpatel@kpmg.ca)

with copies to counsel to the Trustee:

**Borden Ladner Gervais LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide St. W  
Toronto, ON, Canada  
M5H 4E3

Attention: Alex MacFarlane  
Email: [AMacfarlane@blg.com](mailto:AMacfarlane@blg.com)

**The Debtors****Vendor****c/o Loopstra Nixon LLP**

130 Adelaide Street West – Suite 2800  
Toronto, ON M5H 3PG

Attention: Graham Phoenix  
Email: [gphoenix@LN.law](mailto:gphoenix@LN.law)

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IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PIONEER BALLOON CANADA LIMITED

Court File No. BK-24-03091796-32  
Bankruptcy Estate File No. 32-3091796

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

Proceedings commenced in Hamilton

**ORDER**  
(Stay Extension, Stalking Horse Sale Process Approval)

**LOOPSTRA NIXON LLP**  
135 Queens Plate Drive – Suite 600  
Toronto, ON M9W 6V7

**R. Graham Phoenix**  
Tel: (416) 746-4710  
Fax: (416) 746-8319  
Email: [gphoenix@LN.law](mailto:gphoenix@LN.law)

**Shahrzad Hamraz**  
Email: [shamraz@LN.law](mailto:shamraz@LN.law)

*Lawyers for Pioneer Balloon Canada Limited*



## ENDORSEMENT SHEET FOR CIVIL MOTIONS AND APPLICATIONS

ACTION COMMENCED AT: 45 Main Street E

SHORT TITLE OF PROCEEDINGS: Pioneer Balloon Canada Limited  
COURT FILE NO.: BK 24-03091796-0032

BEFORE: Justice M. Valente

HEARD ON: July 2, 2024

**COUNSEL:**TO BE COMPLETED BY PARTYTO BE COMPLETED BY PARTY*Gr. Phoenix*

for the plaintiff/applicant

*N. Hollard*

for defendant/respondent

*T. Masterson*

for RBC

*Proposal Trustee*

MOVING PARTY ☒ Plaintiff/Applicant ☐ Defendant/Respondent ☐ Other

**RELIEF REQUESTED:**☐ ORDER SIGNED☐ ON CONSENT☒ UNOPPOSED☐ NO ONE APPEARED☐ ADJOURNED TO**ENDORSEMENT:**

*Having read the affidavit of Marylynn Borondy and the First Report of the Proposal Trustee together with the supporting documents and heard the submissions of counsel, including the support of the Proposal Trustee and RBC, as the primary secured creditor, I am satisfied that the proposed Order should issue. Order signed this day.*

*Otherwise this matter is adjourned to July 26, 2024 for this Court to consider the sale approval motion of the Applicant.*

Date: July 2, 2024

Justice M. Valente

**TAB C**

This is Exhibit   C'   referred to in  
the affidavit of MaryLynn Borondy  
subscribed and sworn to before  
me, this  16  day of July 2024.

A handwritten signature in black ink, appearing to read "K. H. H.", is written over a horizontal line.

*A commissioner for taking affidavits.*

## STALKING HORSE ASSET PURCHASE AGREEMENT

This Agreement is made as of June 20<sup>th</sup>, 2024 (the “**Effective Date**”)

### AMONG:

**PIONEER BALLOON CANADA LIMITED.**, a corporation incorporated pursuant to the laws of the Province of Ontario (the “**Vendor**”)

- and -

**1488108 B.C. LTD.**, a corporation incorporated pursuant to the laws of the Province of British Columbia (the “**Purchaser**”)

### RECITALS:

A. On June 12, 2024, the Vendor initiated proceedings (the “**NOI Proceedings**”) under the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3 (the “**BIA**”) by filing Notices of Intention to Make a Proposal under section 50.4(6) of the BIA. KPMG Inc. was appointed as the proposal trustee in the NOI Proceedings (in such capacity, the “**Proposal Trustee**”).

B. In connection with the NOI Proceedings, the Vendor intends to seek the approval of the Court to implement a sale process (the “**Sale Process**”) pursuant to which this Agreement will serve as the Stalking Horse Bid (as defined herein) to acquire the Purchased Assets (as defined herein).

C. In the event that this Agreement is selected as the Successful Bid (as defined herein) in the Sale Process, the Purchaser will acquire the Purchased Assets subject to, and in accordance with, the terms and conditions set forth in this Agreement and obtaining Court approval of the Transaction (as defined herein).

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby acknowledge and agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

Unless something in the subject matter or context is inconsistent therewith, the terms defined herein shall have the following meanings:

“**Affiliate**” has the meaning given to the term “affiliate” in the *Business Corporations Act*, R.S.O. 1990, c.B-16.

“**Agreement**” means this asset purchase agreement, as may be amended and restated from time to time in accordance with the terms hereof, with the consent of the Proposal Trustee, and “**Article**”, “**Exhibit**”, “**Schedule**”, and “**Section**” mean and refer to the specified article, section, exhibit, schedule, and subsection of this Agreement.

“**Applicable Law**” means, in respect of any Person, property, transaction or event, any: (i) domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order; (ii) judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, instruments or awards of any Governmental Authority; and (iii) policies, practices, standards, guidelines and protocols

having the force of law, that applies in whole or in part to such Person, property, transaction or event.

**“Approval and Vesting Order”** means an order by the Court, in form and substance satisfactory to the Purchaser, acting reasonably, among other things, approving and authorizing this Agreement and the Transaction.

**“Assigned Contracts”** means the Contracts listed in Schedule “A”, as the same may be modified by the Purchaser prior to the Bidding Offer Deadline in accordance with the terms hereof (and including as such Assigned Contracts may be amended, restated, supplemented or otherwise modified from time to time).

**“Assignment and Assumption Agreements”** means the assignment and assumption agreements for the Assigned Contracts, in a form reasonably satisfactory to the Vendor and the Purchaser.

**“Assignment Order”** means an order of the Court assigning to the Purchaser the rights and obligations of the Vendor under the Assigned Contracts for which a consent, approval or waiver necessary for the assignment of such Assigned Contract has not been obtained, and which will include, if necessary, a mechanism for the resolution of any disputed Cure Costs.

**“Assumed Liabilities”** means: (a) Liabilities specifically and expressly designated by the Purchaser as assumed Liabilities in Schedule “B”, as the same may be modified by the Purchaser prior to the Bidding Offer Deadline in accordance with the terms hereof; and (b) all Liabilities which relate to the Business under any Assigned Contracts, solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing.

**“BIA”** has the meaning set out in the recitals hereto.

**“Bidding Offer Deadline”** has the meaning set out in the Sale Process.

**“Books and Records”** means all of the books and records relating to the Purchased Assets, including, without limitation, all personnel files/records relating to all Transferred Employees and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, projections and all other documents, plans, files, records, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media, excluding any of the foregoing as applicable to any Excluded Asset;

**“Break Fee”** has the meaning set out in Section 5.1(b)(i).

**“Business”** means the business conducted by the Vendor, being a balloon manufacturer and distributor.

**“Business Day”** means a day on which banks are open for business in Toronto, Ontario, but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**“Cash Purchase Price”** has the meaning set out in Section 4.3(b).

**“Claims”** means any civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, audit, chose in or cause of action, suit, default,

assessment, litigation, prosecution, third party action, arbitral proceeding or proceeding, complaint or allegation, by or before any Person.

**“Closing”** means the closing and consummation of the Transaction.

**“Closing Date”** means the date that is ten (10) days after the date upon which the conditions set forth in Article 8 have been satisfied or waived, other than any conditions set forth in Article 8 that by their terms are to be satisfied or waived at the Closing (or such other earlier or later date as may be agreed by the Vendor and the Purchaser in writing).

**“Closing Time”** means 12:01 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

**“Contracts”** means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) to which any Vendor is a party, or by which such entity is bound or in which such entity has, or will at Closing have, any rights or by which any of its property or assets are or may be affected.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“Cure Costs”** means, in respect of the Assigned Contracts, all amounts, costs, fees and expenses: (i) required to be paid to remedy all of the Vendor’s monetary defaults in relation to the Assigned Contracts, other than those arising by reason only of the Vendor’s bankruptcy, insolvency or failure to perform a non-monetary obligation; (ii) necessary to secure a counterparty’s or any other necessary Person’s consent to the assignment of the Assigned Contracts; or (iii) as may be required pursuant to the Approval and Vesting Order or the Assignment Order, as applicable, and which for greater certainty, may be an amount agreed to by the Purchaser and the counterparty to an Assigned Contract, but specifically excluding the Assumed Liabilities.

**“Deposit”** has the meaning set out in Section 4.3(a).

**“Discharge”** means, in relation to any Encumbrance against any Person or upon any asset, undertaking or property, the full, final, irrevocable, complete and permanent waiver, release, discharge, cancellation, termination and extinguishment of such Encumbrance against such Person or upon such asset, undertaking or property and all proceeds thereof.

**“Excluded Asset”** has the meaning set out in Section 2.4 and includes the Excluded Assets specifically and expressly designated by the Purchaser as Excluded Assets in **Schedule “C”**.

**“Excluded Liabilities”** has the meaning set out in Section 2.5.

**“Excluded Contracts”** means all Contracts that are not Assigned Contracts.

**“Effective Date”** has the meaning set out in the preamble hereto.

**“Employee”** means any individual who is employed by a Vendor immediately prior to the Closing Date.

**“Encumbrance”** means any security interest, lien, Claim, charge, right of retention, deemed trust, judgement, writ of seizure, writ of execution, notice of seizure, notice of execution, notice of sale, hypothec, reservation of ownership, pledge, encumbrance, mortgage or right of a third party (including any contractual rights such as purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual right) or encumbrance of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming



any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

**“Excise Tax Act”** means the *Excise Tax Act*, R.S.C, 1985, c. E-15.

**“General Conveyance”** means a general conveyance evidencing the conveyance to the Purchaser of the Vendor’s interest in and to the Purchased Assets, in form and substance satisfactory to the Parties, acting reasonably.

**“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

**“GST”** means all goods and services tax imposed under Part IX of the *Excise Tax Act*.

**“Income Tax Act”** means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

**“Intellectual Property”** means any or all of the following items, wherever located: all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, copyrights and copyright rights, brand names, trade dress, business and product names, domain names, corporate names, logos, slogans, trade secrets, inventions, processes, recipes, formulae, industrial models, designs, specifications, data, technology, methodologies, computer programs (including all source code), confidential and proprietary information, whether or not subject to statutory registration, all related technical information, manufacturing, engineering and technical drawings, know how, all pending applications for and registrations of patents, trademarks, service marks and copyrights, including all obligations of third parties relating to the protection of the foregoing, the goodwill associated with the foregoing, and the right to sue for past payment, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored.

**“Inventory”** means all inventories of stock-in-trade and merchandise, including raw materials, supplies, work-in-process, finished goods related to the Business (including those in possession of suppliers, customers and other third parties).

**“Lease”** means the lease agreement dated as of September 1, 2021, between the Vendor, as tenant, Marshall Truck Properties Inc., as landlord, relating to the premises located at 326 Kenora Avenue, Hamilton, Ontario.

**“Liability”** means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

**“Licences and Permits”** means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority Related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets.

**“NOI Proceedings”** has the meaning set out in the recitals hereto.

**“Outside Date”** means 11:59 pm (Toronto time) on July 31, 2024, or such later date and time as the Vendor and the Purchaser may agree to in writing.

**“Parties”** means the Vendor and the Purchaser, and **“Party”** means any one of them.

**“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

**“Personal Property”** means all of the Vendor’s machinery, equipment, furniture, including, without limitation, desks, chairs, tables, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles, cabinets, televisions, all computer hardware, including servers, computers and peripherals, printers and miscellaneous office furnishings and supplies, if any, laptops, cell phones and all other tangible personal property used in the Business, including all property subject to the Assigned Contracts

**“Premises”** means the premises leased by the Vendor pursuant to the Lease.

**“Proposal Trustee”** has the meaning set out in the recitals hereto.

**“Proposal Trustee’s Certificate”** has the meaning set out in Section 8.1(d).

**“Purchased Assets”** has the meaning set out in Section 2.1.

**“Purchase Price”** has the meaning set out in Section 4.1.

**“Purchaser”** means 1488108 B.C. LTD.

**“Receivables”** means the right, title and interest of the respective Vendor to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to any of the Vendor, Related to the Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;

**“Related to the Business”** means, directly or indirectly, used in, arising from, or relating in any manner to the Business or the Purchased Assets;

**“Sale Process”** has the meaning set out in the recitals hereto.

**“Sale Process Order”** means an issued order of the Court in the NOI Proceedings approving a Sale Process in respect of the Vendor’s assets, property and undertaking, including the Purchased Assets.

**“Stalking Horse Bid”** has the meaning set out in Section 5.1(a).

**“Successful Bid”** has the meaning set out in the Sale Process.

**“Taxes”** means, with respect to any Person, all national, federal, provincial, local or other taxes, including income taxes, capital gains taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, workers’

compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

“**Transaction**” the transaction contemplated by this Agreement whereby the Purchaser will acquire the Purchased Assets.

“**Transfer Taxes**” means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including GST.

“**Vendor**” mean Pioneer Balloon Canada Limited.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.3 General Construction**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

## **1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings and the term “third party” means any other Person other than the Vendor or the Purchaser, or any Affiliates thereof.

## **1.5 Currency**

All references in this Agreement to dollars, monetary amounts, or to \$, are expressed in Canadian currency unless otherwise specifically indicated.

## **1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

## **1.7 Schedules & Amendments to Schedules**

The following exhibits and schedules are attached hereto and incorporated in and form part of this Agreement:

### **SCHEDULES**

Schedule A - Assigned Contracts

## Schedule B - Specific Assumed Liabilities

The Parties acknowledge that as of the Effective Date, the Schedules are not complete. The Purchaser shall be entitled to revise the Schedules after the Effective Date, provided that such Schedules must be complete and final on or before the Bidding Offer Deadline. Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Exhibits and Schedules and the interpretation provisions set out in this Agreement will apply to the Exhibits and Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Exhibits and Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

## ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS

### 2.1 Purchase and Sale of Purchased Assets

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendor shall sell, assign, transfer and convey to the Purchaser pursuant to the Approval and Vesting Order and the Assignment Order, if applicable, and the Purchaser shall purchase and assume from the Vendor, all of the Vendor's right, title and interest in and to the following tangible and intangible assets (collectively, the "**Purchased Assets**"):

- (a) the Assigned Contracts identified and enumerated in Schedule "A" hereto;
- (b) the Personal Property;
- (c) the Receivables;
- (d) the Inventory;
- (e) the Intellectual Property;
- (f) the Books and Records;
- (g) the Licenses and Permits;
- (h) all rights and interests under or pursuant to all warranties, representations and guarantees, express implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or otherwise Related to the Business,
- (i) all goodwill and other intangible assets associated with the Business, including abut not limited to all telephone and fax numbers, all email addresses and servers, and all social media accounts and platforms used in or otherwise Related to the Business; and
- (j) all other property, assets and undertaking of the Vendor used in or relating to the Business of whatsoever nature or kind, including without limitation all property, assets and undertaking of the Vendor,

other than Excluded Assets.

## **2.2 Transfer of Purchased Assets and Assumption of Liabilities**

Subject to the terms and conditions of this Agreement, possession, risk, legal and beneficial ownership of the Purchased Assets shall transfer from the Vendor to the Purchaser on the Closing Date, and the Purchaser agrees to assume, discharge, perform and fulfill all of the Assumed Liabilities from and after the Closing Date. For certainty, the Purchaser is not assuming any Liabilities of the Vendor other than the Assumed Liabilities and shall have no liability to any Person therefor.

## **2.3 Assigned Contracts**

- (a) From and after the date hereof until the Bidding Offer Deadline, the Purchaser shall be entitled to make additions, deletions and modifications to the Contracts classified as “Assigned Contracts”, in its sole discretion. For greater certainty: (i) any Assigned Contract subsequently designated by the Purchaser as an Excluded Contract after the date of this Agreement shall be deemed to no longer be an Assigned Contract, and shall be an Excluded Contract; and (ii) any Contract subsequently designated by the Purchaser as an Assigned Contract after the date of this Agreement shall be deemed an Assigned Contract for the purposes of this Agreement.
- (b) Each of the Parties shall use reasonable commercial efforts to obtain, as may be required by the terms of such Assigned Contracts, all consents and approvals required to assign the Assigned Contracts to the Purchaser.
- (c) To the extent that any Assigned Contract is not assignable without the consent or approval of the counterparty or any other Person, and such consent or approval has not been obtained prior to the Bidding Offer Deadline, and this Agreement represents the Successful Bid: (i) the Vendor’s interest in, to and under such Assigned Contract may be conveyed to the Purchaser pursuant to the Assignment Order; (ii) the Vendor will use commercially reasonable efforts to obtain an Assignment Order in respect of such Assigned Contract on or prior to the Closing Date; and (iii) if an Assignment Order is obtained in respect of such Assigned Contract, the Purchaser shall accept the assignment of such Assigned Contract on such terms.
- (d) To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall be responsible for and shall pay all such Cure Costs, which shall be paid either directly to the applicable counterparty or to the Proposal Trustee, as may be agreed to by the parties, which Cure Costs shall be in addition to the Purchase Price. Unless the Parties otherwise agree, to the extent that any Cure Cost is payable with respect to any Assigned Contract, where such Assigned Contract is assigned pursuant to an Assignment Order, the Purchaser shall pay such Cure Costs in accordance with the Assignment Order, and where such Assigned Contract is not assigned pursuant to an Assignment Order, the Purchaser shall pay such Cure Costs in the manner set out in the consent of the applicable counterparty or as otherwise may be agreed to by the Purchaser and such counterparty.
- (e) The Vendor shall be entitled to disclaim or seek to disclaim any Excluded Contracts.
- (f) It shall be the sole obligation of the Purchaser, at the Purchaser’s sole cost and expense, to provide any and all financial assurances, deposits or security, including without limitation any Cure Costs that may be required by Governmental Authorities or any third parties to permit the transfer of the Purchased Assets, including the Assigned Contracts, to the Purchaser.

## 2.4 Excluded Assets

Any assets not identified as Purchased Assets hereto shall be deemed excluded assets (“**Excluded Assets**”) and shall not pass to the Purchaser and for certainty, all Excluded Assets set forth in Schedule C shall be removed from the Premises at the Vendor’s cost.

Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets from the Transaction at any time prior to Closing by delivering to the Vendor and the Proposal Trustee written notice of the same, whereupon such asset(s) shall become Excluded Assets and shall be deemed to no longer form part of the Purchased Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

## 2.5 Excluded Liabilities

Save and except for the Assumed Liabilities explicitly set out herein, if any, the Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Vendor (collectively, the “**Excluded Liabilities**”), which Excluded Liabilities include, but are not limited to, the following:

- (a) all Liabilities and Claims arising or accruing from the use of, or in any way related to, the Excluded Assets;
- (b) all Liabilities and Claims arising or accruing from the use of the Purchased Assets prior to the Closing; and
- (c) all Liabilities that arise out of or result from the employment or engagement by the Vendor of any of the Employees (unless otherwise imposed by Applicable Laws) and/or the termination or severance of such engagement or employment.

# ARTICLE 3 EMPLOYEE MATTERS

## 3.1 Employment Offers

The Purchaser intends to offer new employment to the majority of the Employees, conditional upon Closing. Which Employees shall be offer such new employment shall be determined by the Purchaser, in its sole discretion. Any such offer shall be made at least two (2) Business Days prior to Closing, on terms and conditions substantially similar and no less favourable than the terms and conditions on which such Employees are employed immediately prior to Closing.

## 3.2 Employment Terminations

Notwithstanding the foregoing, the Vendor shall terminate, in writing, the employment of all Employees immediately prior to the Closing Time and shall provide proof of such written termination to the Purchaser as a deliverable at Closing.

# ARTICLE 4 PURCHASE PRICE

## 4.1 Purchase Price

The purchase price payable by the Purchaser for the Purchased Assets shall be (i) \$2,300,000, minus (ii) the Cure Costs, if any, plus (iii) the Assumed Liabilities (the “**Purchase Price**”). The Purchase Price shall

be satisfied in accordance with Section 4.3. For certainty, the Purchaser may increase the Purchase Price at any time up until the Bidding Offer Deadline upon notice to the Vendor in accordance with the Sale Process. At the Closing Time, the Purchaser further agrees that if it is assuming the Lease, it shall pay Marshall Truck Properties Inc. a deposit of \$53,000<sup>1</sup> in connection with the Assumed Liabilities.

#### 4.2 Allocation of Purchase Price

The Purchaser and the Vendor agree that the Purchase Price and the Assumed Liabilities shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as agreed between the Vendor and the Purchaser on Closing, acting reasonably.

#### 4.3 Satisfaction of Purchase Price

The Purchaser shall pay and satisfy the Purchase Price in accordance with the following:

- (a) Deposit. Concurrently with execution and delivery of this Agreement, the Purchaser shall deliver to the Proposal Trustee a deposit in the amount of \$230,000, in immediately available funds, to be dealt with in accordance with the terms hereof and credited against the Purchase Price at Closing (the “**Deposit**”).
- (b) Cash Purchase Price. At the Closing Time, the Purchaser shall pay to the Proposal Trustee the balance of the Purchase Price, being \$2,070,000, less an amount equal to the Cure Costs, in immediately available funds (the “**Cash Purchase Price**”).
- (c) Cure Costs. At the Closing Time, the Purchaser shall pay the Cure Costs as directed by the parties to the Assigned Contracts entitled to such Cure Costs.
- (d) Assumed Liabilities. An amount equal to the value of the Assumed Liabilities, which the Purchaser shall assume on the Closing Date, shall be satisfied by the Purchaser performing the Assumed Liabilities as and when they become due.

#### 4.4 Transfer Taxes

The Parties agree that:

- (a) The Purchase Price does not include Transfer Taxes and the Purchaser shall be liable for and shall pay any and all Transfer Taxes pertaining to the Purchaser’s acquisition of the Purchased Assets.
- (b) Except where the Vendor is required under Applicable Law to collect or pay such Transfer Taxes, the Purchaser shall pay such Transfer Taxes directly to the appropriate Governmental Authority or other entity within the required time period and shall file all necessary documentation with respect to such Transfer Taxes when due. The Vendor will do and cause to be done such things as are reasonably requested to enable the Purchaser to comply with such obligation in a timely manner. If the Vendor is required under Applicable Law to pay any such Transfer Taxes which are not paid by the Purchaser at Closing, the Purchaser shall promptly reimburse the Vendor the full amount of such Transfer Taxes upon delivery to the Purchaser of copies of receipts showing payment of such Transfer Taxes.
- (c) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute an election under Section 167 of the *Excise Tax Act* to cause the sale of the Purchased Assets to take place on an HST-free basis under Part IX of the *Excise Tax Act* and the Purchaser shall

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<sup>1</sup> Exact amount required for the deposit to be confirmed and equal to one month of rent.

file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.

- (d) At the Closing, if so requested by the Purchaser, the Vendor and the Purchaser shall, if applicable, jointly execute:
  - (i) an election under Section 22 of the *Income Tax Act* in respect of the Receivables and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date; and
  - (ii) an election to under subsection 20(24) of the *Income Tax Act*, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendor in respect of undertakings which arise from the operation of the business to which the Purchased Assets relate and to which paragraph 12(1)(a) of the *Income Tax Act* applies.
- (e) The Purchaser shall indemnify the Vendor for, from and against any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) that the Vendor may pay or for which the Vendor may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes.

## ARTICLE 5 SALE PROCESS, DEPOSIT REPAYMENT

### 5.1 Sale Process and Deposit Repayment

- (a) The Vendor shall conduct the Sale Process in accordance with the terms of the issued Sale Process Order. The Vendor shall bring a motion for the Sale Process Order to be heard no later than July 5, 2024, subject to the Court’s availability or such other date as the Parties may agree to in writing. The Sale Process Order shall recognize the within offer by the Purchaser and the Purchase Price: (i) as a baseline or “stalking horse bid” in respect of the Purchased Assets (the “**Stalking Horse Bid**”); and (ii) as a deemed “Qualified Bid”, with an attendant right on the part of the Purchaser to participate as a bidder in any Auction (as defined in the Sale Process). The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a superior bid can be obtained for the Purchased Assets, and that the within Stalking Horse Bid may or may not be the Successful Bid for the Purchased Assets.
- (b) In consideration for the Purchaser’s expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to
  - (i) a break-fee in the amount of \$75,000,
  - (ii) plus an amount required to reimburse for the Purchaser for its legal fees and costs up to \$25,000,
 (the “**Break Fee**”)

which shall only be payable in the in the event that the Stalking Horse Bid is not the Successful Bid. If payable, the Break Fee shall be paid to the Purchaser as soon as practicable following the closing of the transaction contemplated by the Successful Bid.



- (c) In the event that the Stalking Horse Bid is not the Successful Bid, in addition to the Break Fee, the Purchaser shall be entitled to repayment in full of the Deposit, which shall be released to the Purchaser as soon as practicable following the Court granting the Approval and Vesting Order in respect of the Successful Bid.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and Warranties of the Vendor

The Vendor hereby represent and warrant as of the date hereof and as of the Closing Time as follows, and acknowledge that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. The Vendor is a corporation incorporated and existing under the *Business Corporations Act* (Ontario), is in good standing under such act and has the power and authority to enter into, deliver and perform its obligations under this Agreement and to own or lease and to operate and use the Purchased Assets and to carry on the Business as now conducted by the Vendor.
- (b) Corporate Authorization. The execution, delivery and, subject to obtaining the Approval and Vesting Order in respect of the matters to be approved therein, performance by the Vendor of this Agreement has been authorized by all necessary corporate action on the part of the Vendor.
- (c) Residency. The Vendor is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable.

### 6.2 Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to and in favour of the Vendor as of the date hereof and as of the Closing Time, and acknowledges that the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Incorporation and Status. The Purchaser is a corporation incorporated and existing under the laws of the Province of British Columbia, is in good standing under such act and has the power and authority to enter into, deliver and perform its obligations under this Agreement.
- (b) Corporate Authorization. The execution, delivery and performance by the Purchaser of this Agreement has been authorized by all necessary corporate action on the part of the Purchaser.
- (c) No Conflict. The execution, delivery and performance by the Purchaser of this Agreement do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of the organizational documents of the Purchaser.
- (d) Execution and Binding Obligation. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms subject only to the Approval and Vesting Order.

- (e) Proceedings. There are no proceedings pending, or to the knowledge of the Purchaser, threatened, against the Purchaser before any Governmental Authority, which prohibit or seek to enjoin delay, restrict or prohibit the Closing of the Transaction, as contemplated by this Agreement, or which would reasonably be expected to delay, restrict or prevent the Purchaser from fulfilling any of its obligations set forth in this Agreement.
- (f) Residency. The Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act*.

### 6.3 As is, Where is

- (a) The Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances and permitted Encumbrances), the Assumed Liabilities and all related operations of the Vendor, and, based solely thereon, has determined to proceed with the Transaction contemplated by this Agreement. The representations and warranties of the Vendor shall merge on Closing and shall thereafter be of no further force and effect. The Purchaser acknowledges, agrees and confirms that, at the Closing Time, the Purchased Assets shall be sold and delivered to the Purchaser on an “*as is, where is*” basis, subject only to the representations and warranties contained herein. Other than those representations and warranties contained herein, no representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition or quality or in respect of any other matter or thing whatsoever.
- (b) The Purchaser has received a copy of any Assigned Contracts and is familiar with the terms, agreements, covenants, obligations and conditions therein. The Purchaser shall be solely responsible for negotiating with and attempting to obtain the agreement of any landlord to amend any lease contemplated to be an Assigned Contract, including the Lease, as may be required by the Purchaser to allow the Purchaser to use the respective Premises for any purpose. For greater certainty, such amendments are not a Closing delivery or a condition of Closing. For further certainty, the foregoing does not modify the condition to Closing that the Assigned Contracts be assigned to the Purchaser.
- (c) The Purchaser acknowledges that the applicable Assigned Contract (that is, a lease) may be subject to permitted Encumbrances and the applicable Vendor shall not be responsible for rectifying any permitted Encumbrances prior to the Closing Date, other than as contemplated by this Agreement.
- (d) The remedies expressly set forth in this Agreement are the Purchaser’s sole and exclusive remedies relating to this Agreement, the Transaction contemplated hereby, the Purchased Assets, the Assumed Liabilities and all related operations of the Vendor or any of them.
- (e) The Purchaser acknowledges and agrees that the enforceability of this Agreement against the Vendor is subject to entry of the Approval and Vesting Order.

## **ARTICLE 7 CLOSING ARRANGEMENTS**

### **7.1 Closing**

Closing shall take place on the Closing Date effective as of the Closing Time electronically (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

### **7.2 Vendor's Closing Deliveries**

At or before the Closing Time, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (a) a true copy of the Approval and Vesting Order, as issued and entered by the Court;
- (b) a true copy of the Assignment Order, if applicable, as issued and entered by the Court, or copies of all signed consents required in connection with the Assigned Contracts;
- (c) the tax elections contemplated by Section 4.4, as applicable;
- (d) the Assignment and Assumption Agreements for the Assigned Contracts, duly executed by the applicable Vendor;
- (e) the General Conveyance, duly executed by the Vendor;
- (f) a specific assignment of any Intellectual Property, including trademarks, as the Purchaser may require;
- (g) proof of the written termination by the Vendor of the employment of all of the Employees prior to the Closing Time;
- (h) all usernames,
- (i) passwords, passcodes and other login information related to any internet domain names, websites, telephone and facsimile numbers, email addresses and servers, and social media accounts used by the Vendor, along with copies of any contract, agreement or understanding related thereto;
- (j) a certificate of an officer of each Vendor dated as of the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendor has performed in all material respects the covenants to be performed by them prior to the Closing Time; and
- (k) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

### **7.3 Purchaser's Closing Deliveries**

At or before the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or to the Proposal Trustee, as applicable), the following:

- (a) payment of the Cash Purchase Price in immediately available funds;
- (b) as applicable, payment of all Transfer Taxes payable on Closing to the Vendor or the Proposal Trustee, as applicable (or evidence of payment by the Purchaser thereof to the relevant Governmental Authorities) in accordance with Section 4.4; OR, the tax elections contemplated by Section 4.4, as applicable;
- (c) the payment of all Cure Costs to be paid by the Purchaser pursuant to Section 2.3 to the Vendor or the Proposal Trustee, or evidence that such Cure Costs have been or will be paid directly to the applicable counterparty;
- (d) the General Conveyance, duly executed by the Purchaser;
- (e) the Assignment and Assumption Agreements for the Assigned Contracts, duly executed by the Purchaser;
- (f) a certificate of an officer of the Purchaser dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all material respects the covenants to be performed by it prior to the Closing Time; and
- (g) such other agreements, documents and instruments as may be reasonably required by the Vendor to complete the Transaction, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

## ARTICLE 8 CONDITIONS OF CLOSING

### 8.1 Conditions Precedent in favour of the Parties

The obligation of the Parties to complete the Transaction is subject to the following joint conditions being satisfied, fulfilled or performed on or prior to the Closing Date:

- (a) Approval and Vesting Order. The Court shall have issued and entered the Approval and Vesting Order, which Approval and Vesting Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably.
- (b) No Order. No Applicable Law and no judgment, injunction, order or decree shall have been issued by a Governmental Authority or otherwise in effect that restrains or prohibits the completion of the Transaction; and
- (c) No Restraint. No motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (d) Proposal Trustee's Certificate. The Proposal Trustee shall have provided an executed certificate of the Proposal Trustee substantially in the form attached to the Approval and Vesting Order (the “**Proposal Trustee's Certificate**”) confirming that all other conditions to Closing have either been satisfied or waived by both the Purchaser and the Vendor.

The foregoing conditions are for the mutual benefit of the Parties. If any condition set out in Section 8.1 is not satisfied, performed or mutually waived on or prior to the Outside Date, any Party may elect on written notice to the other Parties to terminate this Agreement.

## **8.2 Conditions Precedent in favour of the Purchaser**

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Successful Bid. This Agreement shall have been designated as the Successful Bid in accordance with the terms of the Sale Process.
- (b) Assignment Order/Assignment of Assigned Contracts. The Court shall have issued and entered the Assignment Order, which Assignment Order shall not have been stayed, set aside, or vacated and no application, motion or other proceeding shall have been commenced seeking the same, in each case which has not been fully dismissed, withdrawn or otherwise resolved in a manner satisfactory to the Parties, each acting reasonably; OR, the Purchaser shall be otherwise satisfied, in its sole discretion, with the assignment of the Assigned Contracts and the status of any required consent.
- (c) Vendor's Deliverables. The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 7.2.
- (d) No Breach of Representations and Warranties. Except as such representations and warranties may be affected by the occurrence of events or transactions specifically contemplated by this Agreement, each of the representations and warranties contained in Section 6.1 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date; or (ii) if made as of a date specified therein, as of such date.
- (e) No Breach of Covenants. The Vendor shall have performed, in all material respects, all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing Date.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 8.2 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set forth in this Section 8.2 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendor, with a copy to the Proposal Trustee, to terminate this Agreement.

## **8.3 Conditions Precedent in favour of the Vendor**

The obligation of the Vendor to complete the Transaction is subject to the following conditions being satisfied, fulfilled, or performed on or prior to the Closing Date:

- (a) Purchaser's Deliverables. The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents and payments contemplated in Section 7.3.
- (b) No Breach of Representations and Warranties. Each of the representations and warranties contained in Section 6.2 shall be true and correct in all material respects: (i) as of the Closing Date as if made on and as of such date, or (ii) if made as of a date specified therein, as of such date.

- (c) No Breach of Covenants. The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 8.3 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in this Section 8.3 is not satisfied or performed on or prior to the Outside Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

#### **8.4 Proposal Trustee's Certificate**

The Parties acknowledge and agree that the Proposal Trustee shall be entitled to deliver to the Purchaser, and file with the Court, the executed Proposal Trustee's Certificate without independent investigation, upon receiving written confirmation from the Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Proposal Trustee shall have no Liability to the Parties in connection therewith. The Parties further acknowledge and agree that upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived, the Proposal Trustee may deliver the executed Proposal Trustee's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Proposal Trustee's written confirmation that all such funds have been received, the Proposal Trustee's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

### **ARTICLE 9 TERMINATION**

#### **9.1 Grounds for Termination**

This Agreement may be terminated on or prior to the Closing Date:

- (a) by the mutual written agreement of the Vendor (with the consent of the Proposal Trustee) and the Purchaser;
- (b) by the Purchaser upon written notice to the Vendor if there has been a material breach by the Vendor of any material representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser and, if the breach is curable, such breach has not been cured within five (5) Business Days following the date upon which the Purchaser notified the Vendor of such breach;
- (c) by the Vendor (with the consent of the Proposal Trustee) upon written notice to the Purchaser if there has been a material breach by the Purchaser of any material representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor and, if the breach is curable, such breach has not been cured within five (5) Business Days following the date upon which the Vendor notified the Purchaser of such breach; or
- (d) by the Vendor (with the consent of the Proposal Trustee) or the Purchaser upon written notice to the other Parties if the Closing has not occurred on or prior to the Outside Date; provided that the failure to close by such deadline is not caused by a breach of this Agreement by the Party proposing to terminate the Agreement.

## 9.2 Effect of Termination.

If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder; except for the provisions of: (a) this Section 9.2; and (b) Section 5.1 with respect to the Purchaser's entitlement to the Break Fee and Deposit Repayment. Notwithstanding the foregoing, if the Transaction is terminated solely as a result of the Vendor's failure to perform any of its obligations under this Agreement, then the Deposit shall be repaid to the Purchaser in full, without deduction or setoff. If the Transaction is terminated solely as a result of the Purchaser's failure to perform any of its obligations under this Agreement, the Deposit and any other payments made by the Purchaser will be forfeited to the Vendor on account of its liquidated damages, and the Purchased Assets may be resold by the Vendor.

## 10.1 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

- (a) in the case of the Purchaser, as follows:

c/o Clark Wilson LLP  
885 W Georgia St #900, Vancouver, BC V6C 3H1  
Attention: A. M. Will  
Email: [gdlv326@aol.com](mailto:gdlv326@aol.com)

with a copy to Purchaser's Counsel:

WeirFoulds LLP  
66 Wellington St W Suite 4100  
Toronto, ON M5K 1B7

Attention: Philip Cho  
Email: [pcho@weirfoulds.com](mailto:pcho@weirfoulds.com)

- (b) in the case of the Vendor as follows:

**Pioneer Balloon Canada Limited**  
333 Kenora Ave.  
Hamilton, ON L8E 2W3

Attention: MaryLynn Borondy  
Email: [marylynnb@pioneerballoon.com](mailto:marylynnb@pioneerballoon.com)

with a copy to:

**Loopstra Nixon LLP**  
130 Adelaide Street West – Suite 2800  
Toronto, Ontario M5H 3P5

Attention: Graham Phoenix  
Email: [gphoenix@LN.law](mailto:gphoenix@LN.law)

- (c) in each case, with a further copy to the Proposal Trustee as follows:

**KPMG Inc.**

333 Bay Street, #4600  
Toronto, Ontario M5H 2S5

Attention: Pritesh Patel

Email: [pritchpatel@kpmg.ca](mailto:pritchpatel@kpmg.ca)

with a copy to the Proposal Trustee's counsel:

**Borden Ladner Gervais LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide St. W  
Toronto, ON, Canada  
M5H 4E3

Attention: Alex MacFarlane

Email: [AMacfarlane@blg.com](mailto:AMacfarlane@blg.com)

Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given on the date stipulated above for electronic delivery.

Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

## **10.2 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Parties.

## **10.3 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing, provided that the representations, warranties and covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

## **10.4 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.



### **10.5 Entire Agreement**

This Agreement and the Exhibits and Schedules attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Vendor and the Purchaser.

### **10.6 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

### **10.7 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court, and any appellate courts of the Province of Ontario therefrom.

### **10.8 Assignment**

- (a) This Agreement may be assigned by the Purchaser prior to the issuance of the Approval and Vesting Order, in whole or in part, without the prior written consent of the Vendor or the Proposal Trustee, provided that: (i) such assignee is a related party or subsidiary of the Purchaser; (ii) the Purchaser provides prior notice of such assignment to the Vendor and the Proposal Trustee; and (iii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder.
- (b) This Agreement may not be assigned by the Vendor without the consent of the Purchaser.

### **10.9 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

### **10.10 Counterparts**

This Agreement may be executed and delivered electronically in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

### **10.11 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

### **10.12 Proposal Trustee's Capacity**

In addition to all of the protections granted to the Proposal Trustee under the BIA or any order of the Court in this NOI Proceeding, the Vendor and the Purchaser acknowledge and agree that the Proposal Trustee,

acting in its capacity as Proposal Trustee of the Vendor and not in its personal capacity, is not a signatory to this Agreement and will have no Liability, in its personal capacity or otherwise, in connection with this Agreement or the Transaction contemplated herein whatsoever as Proposal Trustee.

***[Signature Page Follows]***

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the day and year first above written.

For the Vendor:

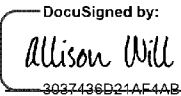
**PIONEER BALLOON CANADA LIMITED.,**

By: Marilynn Borondy  
Name: MARILYN BORONDY  
Title: Authorizing Signing Authority

I have authority to bind the Corporation.

For the Purchaser:

1488108 B.C. LTD.

By:  3037436D21AF4AB...  
Name: A. M. Will  
Title: Authorized Signing Authority

I have authority to bind the Corporation.


**SCHEDULE "A"**  
**ASSIGNED CONTRACTS**

1. The Lease

2. 


**[To be completed / confirmed prior to the Bidding Offer Deadline]**

**SCHEDULE "B"**  
**SPECIFIC ASSUMED LIABILITIES**

1. All obligations and liabilities under the Lease and other Assigned Contracts, but excluding Cure Costs.
2. All obligations and liabilities to any Employees hired by the Purchaser in respect of, arising from or connected to the period from and after Closing, if any.
3. 

**[To be completed / confirmed prior to the Bidding Offer Deadline]**

**SCHEDULE "C"**  
**SPECIFIC EXCLUDED ASSETS**

1. All latex waste and other assets identified as waste located at the Premises.
2. 

**[To be completed / confirmed 2 Business Days prior to Closing.]**

**THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS  
AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED**

Court File No. 32-3091796  
Bankruptcy Estate File No. 32-3091796

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

**Proceedings commenced at Hamilton**

**AFFIDAVIT OF MARYLYNN BORONDY**  
**(sworn July 16, 2024)**

**LOOPSTRA NIXON LLP**

130 Adelaide Street West – Suite 2800  
Toronto, ON M5H 3P5

**R. Graham Phoenix / Shahrzad Hamraz**

Tel: (416) 748 4776 / (416) 748 5116

Fax: (416) 746 8319

Email: gphoenix@LN.law / shamraz@LN.law

*Lawyers for Pioneer Balloon Canada Limited.*




TAB 3

Revised: January 21, 2014

Court File No. ~~\_\_\_\_\_~~ BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**~~COMMERCIAL LIST~~**

(IN BANKRUPTCY & INSOLVENCY)

THE HONOURABLE \_\_\_\_\_ )  
 )  
 JUSTICE ~~\_\_\_\_\_~~ THE HONOURABLE ) ~~DAY OF MONTH, 20YR~~ THURSDAY, THE  
25<sup>TH</sup> DAY  
 )  
 )  
JUSTICE  ) OF JULY, 2024

~~BETWEEN:~~

**~~PLAINTIFF~~**

**Plaintiff**

~~—and—~~

**~~DEFENDANT~~**

**Defendant**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as~~ Pioneer Balloon  
Canada Limited (the ~~Court appointed receiver (the "Receiver") of the undertaking, property and~~

assets of [DEBTOR] (the "Debtor") "Company" for an order approving the sale transaction (the "Transaction") contemplated by ~~an~~ the stalking horse asset purchase agreement ~~of purchase and sale~~ (the "Sale Agreement") between the Receiver Company and ~~[NAME OF PURCHASER]~~ 1488108 B.C. Ltd. (the "Purchaser") dated ~~[DATE]~~ June 20, 2024 and appended to the ~~Report of the Receiver~~ second report of KPMG Inc., in its capacity as proposal trustee (the "Proposal Trustee") dated ~~[DATE]~~ July 16, 2024 (the "Second Report"), and vesting in the Purchaser the ~~Debtor's~~ Company's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this ~~day at 330 University Avenue, Toronto~~ via Judicial Videoconference in Hamilton, Ontario.

ON READING the motion record of the Company, including the affidavit of Marylynn Borondy dated July 16, 2024 and the exhibits thereto, and the Second Report and ~~on hearing the appendices thereto, AND ON HEARING~~ the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], Company, counsel for the Proposal Trustee, counsel for the Royal Bank of Canada, and the other parties listed on the participant information form and no one else appearing ~~for any other person on the service list~~, although properly served as appears from the affidavit of ~~[NAME]~~ Amanda Adamo, sworn ~~[DATE]~~ July 16, 2024, filed<sup>1</sup>:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> ~~and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is; and, the Company and Proposal Trustee are~~ 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 of the Purchased Assets to the Purchaser.

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a ~~Receiver's~~Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Receiver's~~Proposal Trustee's Certificate"), all of the ~~Debtor's~~Company's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "~~Claims~~"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Valente dated ~~[DATE]~~July 2, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; ~~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)~~ and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~<sup>6</sup>, the Land Registrar is hereby directed to enter the

<sup>4</sup> ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

<sup>6</sup> ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

~~4.3.~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver's~~Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

~~5.4.~~ THIS COURT ORDERS AND DIRECTS the ~~Receiver~~Proposal Trustee to file with the Court a copy of the ~~Receiver's~~Proposal Trustee's Certificate, forthwith after delivery thereof.

~~6.5.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the ~~Receiver~~Proposal Trustee is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the ~~Debtor's~~Company's past and current employees, including any personal information of ~~those employees listed on Schedule "●" to the Sale Agreement.~~ The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Company.

~~7.6.~~ THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Company;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Company and shall not be void or voidable by creditors of the ~~Debtor~~Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

~~9.7.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Company and ~~its~~Proposal Trustee, and their 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 ~~Receiver, Company and Proposal Trustee~~ (as an officer of this Court,) as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver~~Proposal Trustee and its agents in carrying out the terms of this Order.

8. THIS COURT ORDERS that this Order is effective as of 12:01 a.m. from today's date and is enforceable without the need for entry and filing, provided that the Company shall have this order issued and entered through the Court office.

Revised: January 21, 2014

Schedule A – Form of ~~Receiver's~~Proposal Trustee's CertificateCourt File No.                      BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**~~COMMERCIAL LIST~~**~~B E T W E E N:~~**~~PLAINTIFF~~**~~Plaintiff~~~~—and—~~**~~DEFENDANT~~**~~Defendant~~**~~RECEIVER'S~~**(IN BANKRUPTCY & INSOLVENCY)IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C., 1985, C. B-3, AS AMENDEDAND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
PIONEER BALLOON CANADA LIMITED**PROPOSAL TRUSTEE'S CERTIFICATE****RECITALS**

~~A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~

~~B. Pursuant to an Order of the Court dated [DATE], the Court approved the~~ A. On June 12, 2024, Pioneer Balloon Canada Limited (the “Company”) filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, naming KPMG Inc. as proposal trustee (in such capacity, the “Proposal Trustee”).

~~B. On July 2, 2024, this Honourable Court (a) authorized the Company to enter into a stalking horse asset purchase agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “Sale Agreement”) between the Receiver [Debtor] and [NAME OF PURCHASER] (the “”), as vendor, with 1488108 B.C. Ltd., as purchaser (the “Purchaser”) and~~ (b) approved a stalking horse sales process, administered by the Proposal Trustee.

C. On July 25, 2024, the Honourable Court approved, *inter alia*, approved the Sale Agreement which provided for the vesting in the Purchaser of the ~~Debtor’s~~ Company’s right, title and interest in and to the Purchased Assets, ~~(as defined in the Sale Agreement)~~, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~ Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Company and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~ PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the ~~Receiver~~ Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the ~~Receiver~~ Proposal Trustee.



- 2 -

4. — This Certificate was delivered by the ~~Receiver~~ Proposal Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

~~{NAME OF RECEIVER},~~ KPMG INC., solely  
 in its capacity as ~~Receiver~~ Proposal Trustee of  
~~the undertaking, property and assets of~~  
~~{DEBTOR},~~ Pioneer Balloon Company  
Limited, and not in its personal ~~capacity~~ or  
corporate capacities

Per: \_\_\_\_\_

Name:

Title:

**Schedule B—Purchased Assets**

---

~~Schedule C — Claims to be deleted and expunged from title to Real Property~~

~~**Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants**~~  
~~**related to the Real Property**~~  
~~**(unaffected by the Vesting Order)**~~

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PIONEER BALLOON CANADA LIMITED

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

Proceedings commenced in Hamilton

**ORDER**  
**(Approval & Vesting Order)**

**LOOPSTRA NIXON LLP**130 Adelaide St. West – Suite 2800Toronto, ON M5H 3P**R. Graham Phoenix**Tel: (416) 746-4710Fax: (416) 746-8319Email: [gphoenix@LN.law](mailto:gphoenix@LN.law)**Shahrzad Hamraz**Email: [shamraz@LN.law](mailto:shamraz@LN.law)*Lawyers for Pioneer Balloon Canada Limited*

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PIONEER BALLOON CANADA LIMITED

Court File No. BK-24-03091796-0032  
Bankruptcy Estate File No. 32-3091796

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

Proceedings commenced at **HAMILTON**

**MOTION RECORD OF PIONEER  
BALLOON CANADA LIMITED**  
(Returnable Thursday, July 25, 2024 @  
10:00am via Judicial videoconference)

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