

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF THE:

Companies' Creditors Arrangement Act. R.S.C.
1985, c. C-36, as Amended

AND IN THE MATTER OF:

A Proposed Plan of Compromise or
Arrangement of McDiarmid Lumber Ltd.,
Superior Truss Co. Ltd. and WW Doors Inc.
(the "Applicants")

APPLICATION UNDER:

The Companies' Creditors Arrangement Act.
R.S.C. 1985 c. C-36, as Amended

AFFIDAVIT OF RICHARD HUTCHINGS - VOLUME 1
AFFIRMED THE 21ST DAY OF MAY, 2013
Hearing Date: Thursday, May 23, 2013, at 10:00 AM

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AFFIDAVIT OF RICHARD HUTCHINGS

I, Richard Hutchings, of the City of Winnipeg, in the Province of
Manitoba, Businessman, HEREBY AFFIRM AND SAY THAT:

1. I am an employee of Canadian Corporate Restructuring Inc.
("CCR"), the Chief Restructuring Officer ("CRO") of McDiarmid Lumber Ltd.
("McDiarmid").

2. CCR was appointed as CRO of McDiarmid pursuant to an Engagement Agreement effective February 5, 2013 (the "CRO Engagement Agreement"), a copy of which is attached as Exhibit "A".

3. I am the senior consultant designated by CCR to be responsible for carrying out CCR's services under the CRO Engagement Agreement. Since February 5, 2013, I have led the day to day management of McDiarmid and its wholly-owned subsidiaries, Superior Truss Co. Ltd. ("TrussCo") and WW Doors Inc. ("WW Doors"), which are included in a description of the business segments described below. As such, I have personal knowledge of the matters hereinafter deposed to unless same is stated to be based upon information and belief, in which case I verily believe same to be true.

RELIEF SOUGHT

4. This affidavit is affirmed in support of an application by the Applicants for relief under the *Companies' Creditors Arrangement Act* ("CCAA").

OVERVIEW

5. McDiarmid is a privately-owned corporation and its corporate head office is located in Winnipeg, Manitoba. McDiarmid is in the business of selling home improvement products and services, building materials, and lumber supplies to residential and commercial customers throughout Western Canada and Northwestern Ontario. From its beginning as a single lumber yard in Winnipeg Manitoba, McDiarmid expanded to encompass retail and contractor sales out of five home centres, a substantial distribution centre, and numerous ready-to-move home and agricultural

sales and fabrication facilities in Manitoba, Saskatchewan, and Northwestern Ontario. McDiarmid, TrussCo, and WW Doors now employ approximately 400 people.

6. McDiarmid is indebted on a secured basis to the Canadian Imperial Bank of Commerce ("CIBC") and to Superior Builders Limited ("Superior"). Notably, CIBC's security ranks senior in priority to Superior's.

7. To provide context as to the relationships between the parties, it is important to note that Superior is an affiliate of the Applicants, as Superior is controlled by Thomas Matthews ("Tom"), who is McDiarmid's chairman and one of its directors. Additionally, Tom, through his holding company, 4834772 Manitoba Ltd., has control over the majority of McDiarmid's shares. TrussCo and WW Doors are economically dependent on McDiarmid and guarantors of its indebtedness to CIBC.

8. The business and financial performance of the Applicants have declined dramatically under former management in recent years. I have been advised by Tom that he became increasingly concerned about the decline and, as a result, in October of 2012 Tom caused 4834772 Manitoba Ltd. to take certain steps to exercise its rights granted in connection with a pledge of shares of McDiarmid. Tom has advised me that his holding company took those steps in order to take control of the Applicants, with the ultimate goal of determining whether a turnaround or going concern sale of the business was possible. Tom has also advised me that his efforts to take control of the Applicants were delayed significantly by certain actions of the former president and former sole director of the Applicants, Vincent Ryz ("Vince"), who is his son-in-law. There is on-going litigation in

that regard (the "Shareholder Dispute") which will be explained in more detail in an affidavit affirmed by James Matthews, one of Tom's sons and the other director of McDiarmid.

9. In order to gain a deeper understanding of why the Applicants' business and financial performance were suffering and whether the business could be successfully turned around or sold as a going concern, Tom, through Superior, engaged PricewaterhouseCoopers Inc. ("PwC") on October 22, 2012, and sought to have PwC analyze the finances and operations of the Applicants and make recommendations with respect to a potential restructuring or sale.

10. Because of the Shareholder Dispute, PwC was unable to conduct that analysis on Superior's behalf.

11. In or about mid-November of 2012 CIBC transferred administration of its loan facilities with McDiarmid to its Special Loans Department due to the ongoing deterioration of its financial situation. In or about early December, 2012 with Vince's consent, PwC began to conduct an independent business review of the Applicants on behalf of CIBC.

12. PwC concluded by early January of 2013 that an orderly sale of the Applicants' business would yield the greatest value for the Applicants' creditors. In particular, PwC concluded that a going concern sale of some or all of McDiarmid's business units was a feasible option, would likely yield a greater recovery than would a liquidation, and had the potential to provide an opportunity for many of McDiarmid's employees to continue working in the business as employees of the purchaser(s).

13. By that point, however, the Applicants faced an immediate liquidity crisis, and as a result Superior began providing the Applicants with additional financing (the "Rescue Financing"). The Rescue Financing was intended to allow (and in fact has allowed) the Applicants to continue operating so that a going concern sale of the business could be negotiated.

14. The Rescue Financing was provided pursuant to a Forbearance Agreement with CIBC that was executed on February 7, 2013 (as amended, the "Forbearance Agreement"). A true copy of the Forbearance Agreement, the amendments thereto and renewals thereof are attached as Exhibit "B".

15. With the consent of CIBC and Superior, PricewaterhouseCoopers Corporate Finance Inc. ("PwC Corporate Finance") was engaged by McDiarmid on February 4, 2013, to initiate a sale process on behalf of the Applicants (the "Sale Process"). Pursuant to the Sale Process, the Applicants received several offers for certain of their assets, including non-binding offers from McMunn & Yates Building Supplies Ltd. ("M & Y") to purchase substantially all of the Applicants' assets except for those used in McDiarmid's "ready to move" business, the Applicants' accounts receivable, and certain store locations. McDiarmid pursued M & Y's offer on the basis that it would provide the greatest recovery to McDiarmid's creditors and continued employment for many of the Applicants' employees.

16. On May 17, 2013, the McDiarmid, TrussCo and M & Y entered into an Asset Purchase Agreement (the "APA"), a copy of which is attached as Confidential Exhibit "C". In light of certain commercially sensitive

information set out in the APA, I have been advised by counsel for the Applicants that it is the subject of a request for a temporary sealing order.

17. The closing of the transactions contemplated by the APA are conditional upon, among other things, the granting by this Honourable Court of an approval and vesting order. The Applicants are not requesting that order be made on May 23, 2013, but rather that a return date (preferably June 3, 2013) be set for the hearing of the Applicants' motion so as to allow for more notice to be given to all interested parties.

18. As further described below, it is clear that the Applicants are insolvent:

- (a) based on the results of the Sale Process recently conducted by PwC Corporate Finance, which state that the aggregate value of the Applicants' property is not sufficient to enable payment of all of their liabilities;
- (b) the Applicants are unable to meet their obligations as they generally come due without continued financial accommodations from CIBC and Superior; and
- (c) the Applicants are in default of their contractual obligations to CIBC and Superior under their loan and security agreements, and CIBC and Superior are not prepared to continue to make such accommodations indefinitely.

19. As of May 20, 2013, the total amount owing by McDiarmid to CIBC was approximately \$17.5 million plus accrued interest and recoverable costs. As of that same date, the total amount owing by

McDiarmid to Superior was approximately \$31.1 million, and the total amount owing by McDiarmid to trade suppliers and other unsecured creditors was approximately \$9.8 million.

20. Both of the secured lenders support this application in order to provide the Applicants with the necessary breathing room and forum to facilitate a going concern sale of their assets for the benefit of the Applicants' creditors, employees, and other stakeholders.

21. Based on the outcome of the Sale Process, it appears that CIBC is in a fully-secured position such that if the sale to M & Y is completed, the amounts owing to CIBC will be repaid in full. Given Superior's subordinate position, it is unlikely that Superior will recover any of the debt it is owed by the Applicants if the Applicants are simply liquidated. A going concern sale will provide maximum recovery for the Applicants' creditors and will ensure that the business will continue operating for the benefit of many of the Applicants' employees and other stakeholders.

22. In order to complete the sale to M & Y, McDiarmid requires a stay of proceedings pursuant to the CCAA in order to stabilize its business.

23. The Applicants are currently defendants or respondents in a number of legal proceedings before this Honourable Court, many arising from their financial difficulties. Those proceedings are taking up a material amount of the Applicants' extremely limited financial resources, as well as my time and the time of my senior management team. The granting of the Initial Order requested by the Applicants is intended to provide the Applicants

with the necessary breathing room to maintain their operations pending a going concern sale of their assets.

THE APPLICANTS' BUSINESS

24. The Applicants have six major business segments, consisting of the following:

- (a) **McDiarmid Lumber Retail:** Sells home improvement products through retail stores. McDiarmid currently operates five locations in Winnipeg, two in Northwestern Ontario, and one in Saskatchewan. It previously operated two other locations in Manitoba, which were closed as they were not profitable. McDiarmid Lumber Retail is the longest operating and most significant segment of the Applicants' business;
- (b) **McDiarmid Design Centre:** McDiarmid formerly operated two Design Centres (and currently only one) being specialty show-rooms for various home products, including kitchen, bath, flooring, lighting, windows, doors, siding, and shingles;
- (c) **Superior Truss:** Manufactures and distributes roof and floor trusses and pre-engineered wood products for the residential and commercial building sectors. The manufacturing plant is located in Oak Bluff, Manitoba and is leased from Superior;
- (d) **Contractor Sales Division:** Provides diverse products and services (e.g. blueprints, trusses, building materials, engineered

floor products, finishing materials, shingles, insulation, and drywall) to contractor customers;

- (e) McDiarmid Homes: Builds and sells custom-built modular or ready-to-move homes, which are fully-finished on the interior and exterior; and:
- (f) McDiarmid Farm & Commercial Buildings: Constructs and sells buildings for farm and commercial use (e.g. warehouses, machinery and farm shops, cattle shelters).

25. McDiarmid also operates two leased Distribution Centres located in Oak Bluff and Headingly, Manitoba which distribute products and supplies to its various business segments. The Oak Bluff Distribution Centre is owned by Superior and leased to McDiarmid. Until recently, McDiarmid also operated a third leased Distribution Centre located in Elie, Manitoba. Because of problems with the lack of a rail spur and so as to reduce operating costs, McDiarmid closed the Elie Distribution Centre in late 2012.

26. WW Doors does not sell to the public, but rather acts as an importer and distributor of US windows and doors, selling primarily to McDiarmid's business units described above.

27. Attached as Exhibit "D" is a schedule setting out the various locations from which McDiarmid currently operates and the services provided at each location.

CASH MANAGEMENT

28. The Applicants' bank accounts are all with CIBC. McDiarmid, TrussCo and WW Doors each have two bank accounts (one each for Canadian dollars and U.S. dollars), for a total of six accounts. Receipts and payments are made by respective currency as required from these accounts, with transfers and conversions made between the two currencies if needed. These accounts are currently administered under Centralized Cash Control Services Agreements with CIBC.

CAPITAL STRUCTURE – CIBC SENIOR SECURED CREDIT FACILITIES

29. CIBC has been McDiarmid's banker since 2008. The terms and conditions of those banking arrangements were confirmed annually by letter from CIBC and accepted by McDiarmid, the most recent of such letters is dated October 25, 2012, a copy of which is attached as Exhibit "E" and since amended by the Forbearance Agreement and subsequent Amendment and Extension Agreements thereto ("CIBC Credit Facilities"). Pursuant to the CIBC Credit Facilities, CIBC currently provides McDiarmid with the following:

- (a) a demand revolving facility up to the amount of \$16 million subject to margining requirements of which approximately \$15.9 million was outstanding as of May 20, 2013;
- (b) a demand instalment loan, the purpose of which was to capitalize a portion of the capital expenditures made by McDiarmid in fiscal years 2008 - 2010 and of which approximately \$1.58 million was outstanding as of May 20, 2013; and

- (c) foreign exchange and interest rate hedging contracts in the maximum principal amount of USD \$2.0 million has since been wound up and cancelled.

As noted above, as of May 20, 2013, the total amount of indebtedness owed to CIBC by McDiarmid was approximately \$17.48 million plus accrued interest and recoverable costs.

30. Each component of the CIBC Credit Facilities is expressly repayable immediately on demand by CIBC and can be terminated in whole or in part by CIBC at any time.

31. As security for McDiarmid's indebtedness and obligations under the CIBC Credit Facilities, McDiarmid delivered and obtained in favour of CIBC, among other things, the following security and guarantees:

- (a) General Security Agreement respecting all present and after-acquired real property, undertaking and personal property of McDiarmid including receivables, inventory, equipment and machinery, registered in each of Manitoba, Saskatchewan, Alberta, British Columbia and Ontario, a copy of which is attached as Exhibit "F";
- (b) Assignment of McDiarmid's inventories under Section 427 of the *Bank Act*;
- (c) Guarantee from Superior respecting \$5.0 million of the liabilities of McDiarmid to CIBC (the "Superior Guarantee"), secured by a \$5.0 million collateral mortgage providing a first charge on two

of Superior's properties in Manitoba and Saskatchewan and a cash collateral pledge of \$3,786,751.77;

- (d) Guarantee from TrussCo secured by a General Security Agreement respecting all present and after-acquired undertaking and personal property of TrussCo including receivables, inventory, equipment and machinery, registered in each of Manitoba, Saskatchewan, Alberta, British Columbia and Ontario;
- (e) Guarantee from WW Doors, secured by a General Security Agreement respecting all present and after-acquired undertakings and personal property of WW Doors including receivables, inventory, equipment and machinery, registered in Manitoba;
- (f) Assignments and Postponements of Claim from Superior and Tom with respect to all amounts from time to time owing by McDiarmid; and
- (g) Waivers and consents from the landlord of any property on which assets of McDiarmid, TrussCo and/or WW Doors are located, whether a related party landlord or an arm's length third party landlord, subject to certain exceptions.

32. It is my understanding that CIBC has first ranking security interest in all of the assets and undertaking of the Applicants, and further understand that PwC as proposed Monitor has engaged counsel to conduct an independent review of same.

CAPITAL STRUCTURE – SUPERIOR SECOND LIEN LOANS

33. McDiarmid is indebted to Superior pursuant to a number of secured loans. By December 31, 2007, Superior had loaned \$17.8 million to McDiarmid, evidenced by a promissory note. A copy of the promissory note is attached hereto as Exhibit "G". In 2011, Superior made additional secured advances to McDiarmid at McDiarmid's request in the aggregate principal amount of \$10.0 million. A summary of those advances is attached as Exhibit "H". The loans described to in this paragraph are collectively referred to in this Affidavit as the "Original Superior Loans".

34. The Original Superior Loans (and all other of McDiarmid's indebtedness to Superior) are secured by a security interest granted pursuant to a general security agreement (the "Superior GSA"), a copy of which is attached as Exhibit "I". The security interest granted pursuant to the Superior GSA was perfected by registration of a financing statement registered in the Personal Property Registry of Manitoba on December 2, 2008.

35. To date, McDiarmid has not repaid any of the principal or accrued interest owing to Superior pursuant to the Original Superior Loans.

36. To ensure that McDiarmid would have sufficient liquidity to continue operating its business until it could complete an orderly sale of its business as contemplated by the Forbearance Agreement, Superior and McDiarmid entered into a term sheet dated February 7, 2013 (as amended, the "Rescue Loan Agreement") pursuant to which Superior has advanced the Rescue Financing via an escrow account with CIBC. Copies of the

Rescue Loan Agreement and the three amendments thereto are attached as Exhibit "J".

37. The Rescue Financing is secured by the general security agreement executed by McDiarmid, and by guarantees and general security agreements executed by TrussCo and WW Doors, in each case in favour of Superior (collectively, the "Rescue Financing Security Documents"). The Rescue Financing Security Documents grant Superior security in all present and future real and personal property of McDiarmid, TrussCo and WW Doors, subordinate to CIBC's security interest. A copy of the Rescue Financing Security Documents is attached as Exhibit "K".

38. The results of on-line searches of the Personal Property Registry in Manitoba, Saskatchewan, and Ontario in respect of McDiarmid evidencing such (and all other) registrations are attached as Exhibit "L".

39. I have been advised by the Applicants' legal counsel that it intends to serve all parties with secured interests registered in the Personal Property Registries in Manitoba, Saskatchewan and Ontario with this affidavit and all other materials to be filed by the Applicants in connection with this application.

40. The security granted by the Applicants in favour of Superior is subordinate to CIBC's security.

41. To date, the Applicants have received \$3.3 million in Rescue Financing Funding, with Superior having just deposited another \$1.0 million into the escrow account described in more detail in paragraph 60 hereof.

42. To summarize, as of May 20, 2013, McDiarmid was indebted to Superior as follows:

- (a) Principal Amount of Original Superior Loans - \$27.8 million;
- (b) Rescue Financing – currently \$3.3 million, to increase to \$4.3 million once CIBC draws the \$1.0 million from the escrow account (collectively, the “Superior Indebtedness”).

43. In addition to the Superior Indebtedness, the Applicants have significant contingent liabilities to Superior arising from the Superior Guarantee.

44. The Applicants also lease a number of their retail and distribution premises from Superior or, in some cases, from corporations owned or controlled by Superior (the “Real Property Leases”). The Applicants are behind in their lease payments in the amount of \$172,368.00 as of May 1, 2013.

45. Taking into account the amounts outstanding under the Original Superior Loans and the Rescue Financing, along with the potential liability under the Superior Guarantee, Superior has direct and contingent liabilities associated with the Applicants of approximately \$37.1 million. This figure does not take in account McDiarmid’s obligations to Superior as a tenant under the Real Property Leases.

CAPITAL STRUCTURE – UNSECURED CREDITORS

46. In addition to their secured indebtedness and liabilities to CIBC and Superior, the Applicants’ books and records reflect outstanding unsecured liabilities to trade suppliers and other unsecured creditors in the

aggregate amount of \$9.8 million as of May 20, 2013. The amount of those obligations have not changed materially in the time since Tom took over control of the Applicants as McDiarmid has been paying cash on delivery for most product supplied.

47. The Applicants are currently facing numerous legal proceedings, or threats of legal proceedings, from unpaid trade suppliers, customers, and former employees. A search of the Manitoba Court of Queen's Bench Registry reveals that McDiarmid is a defendant or respondent in fourteen matters from January 2008 to present, many of which are still ongoing. For example:

Manitoba Litigation:

- a) QB File No. CI13-01-82491 - AFA Forest Products Inc. v. McDiarmid Lumber Ltd.

This claim relates to unpaid accounts with one of McDiarmid's principal trade suppliers. The unpaid accounts allegedly amount to approximately \$555,500.00. The pleadings stage has not closed as of yet.

- b) QB File No. CI13-01-82627 - 3409377 Manitoba Ltd. v. McDiarmid Lumber Ltd.

This claim relates to commercial rental arrears with respect to a property leased by McDiarmid in Elie, Manitoba. Rental arrears, not including interest and costs, amounts to \$196,295.89 as of April 1, 2013. In addition, the plaintiff claims damages in the amount of \$6,000,000.00 on account of rent

that will not be paid over the course of the unexpired lease term. The pleadings stage has been closed, no discovery has taken place.

- c) QB File No. CI10-01-65678 - Notre Dame Electric Ltd. v. McDiarmid Lumber Ltd.

This claim relates to alleged construction deficiencies with respect to a building supplied by McDiarmid. General damages are alleged to be approximately \$100,000.00. The discovery process has been completed.

- d) QB File No. CI11-01-74544 - Dwyer v. McDiarmid Lumber Ltd.

This claim relates to a wrongful dismissal action against McDiarmid. The plaintiff has claimed general damages of approximately \$450,000.00. The pleadings stage has closed and documentary discovery has been exchanged but no dates for examinations for discovery have been set as of yet.

Saskatchewan Litigation:

- e) QB File No. 981 of 2012 - Bender v. McDiarmid Lumber Ltd.

This claim relates to alleged construction deficiencies with respect to a ready-to-home purchased by the plaintiff from McDiarmid. The pleadings stage has closed and a mandatory mediation occurred on April 23, 2013.

Alberta Litigation:

f) QB File No. 1114 00327 - Krankowsky v. McDiarmid Lumber Ltd.

This claim relates to alleged construction deficiencies with respect to a ready-to-home purchased by the plaintiff from McDiarmid. The pleadings stage has closed and documents have been exchanged. Examinations for discovery were recently adjourned and are to be rescheduled.

CAPITAL STRUCTURE – SHAREHOLDERS

48. As of October 30, 2012, the following shares were recorded as being issued and outstanding in the capital stock of the McDiarmid:

SHAREHOLDER	NO. AND CLASS OF SHARES
Ryz Family Holdings Ltd.	50 voting common
Ryz Family Holdings Ltd.	100 Class "B" voting preference
Ryz Family Holdings Ltd.	2,000,000 Class "D" voting preference
The Ryz Family Trust	50 voting common

49. As previously noted in paragraph 8 hereof and as set out in detail in the affidavit of James Matthews affirmed concurrently, I understand that 4834772 Manitoba Ltd. has asserted the exclusive right as a secured creditor to vote the 50 voting common shares, 100 Class "B" voting preference shares, and 1,000,000 of the Class "D" voting preference shares held by Ryz Family Holdings Ltd. ("Ryz Holdings").

50. I have been advised by the Applicants' legal counsel that it intends to serve all registered shareholders of McDiarmid with this affidavit and all other materials filed by the Applicants in connection with these proceedings.

DETERIORATION OF OPERATIONAL AND FINANCIAL PERFORMANCE

51. McDiarmid's consolidated financial statements for years of 2009 – 2012 (the "Financial Statements") and its year to date performance in 2013 demonstrate a consistent and significant decline in revenue and increasing losses, summarized as follows:

YEAR	2009	2010	2011	2012	4 mo 2013
REVENUE (000's)	\$166,403	\$150,381	\$124,255	\$127,291	24,255
NET INCOME (LOSS) BEFORE TAX (000's)	\$4,854	\$(5,410)	(\$6,758)	(\$4,752)	(7,575)
# of Employees	700	625	550	480	400

Copies of the Financial Statements are attached and marked as Exhibit "M".

52. Based on draft financial statements, it appears that the Applicants have experienced a year to date operating loss in 2013 of \$7.5 million.

53. I have been advised by Tom that Vince was the president and sole director of McDiarmid from 2009 through January 31, 2013, and that

the Applicants were managed and controlled by Vince during that period. As noted in James Matthews' affidavit, Vince resigned as president and director of McDiarmid on January 31, 2013, soon after CIBC issued demands for payment and advised that it intended to apply for the appointment of a receiver over the property and assets of the Applicants unless an agreement could be reached between CIBC, the Applicants, and Superior that would provide the Applicants with sufficient subordinated financing to satisfy their immediate liquidity needs.

54. While CCR was not appointed CRO of McDiarmid until February 5, 2013, it is apparent to me that the decline in the Applicants' operational and financial performance can be attributed to:

- (a) a significant decline in annual revenue. I note that the annual revenue in 2009 was approximately \$166 million, whereas the annual revenue in 2012 had declined to \$127 million;
- (b) Gross Margin available to pay overheads also declined by \$14.4 million per year over the same period, but overhead costs during that same time period were reduced by only \$5 million per year. These high overhead costs can in part be attributed to the rapid expansion of the Applicants which coincided with the global economic recession;
- (c) a lack of effective management and guidance over McDiarmid's distribution facilities including entering into an onerous long-term lease for the Elie distribution facility.

55. Based on CCR's experience as CRO of McDiarmid, my review of the Applicants' books and records, my discussions with senior management of the Applicants, and my own experience in the building products and home building industries, I verily believe that the above factors contributed materially to the Applicants' operational and financial difficulties. A copy of my CV which summarizes my relevant experience in that regard is attached as Exhibit "N".

56. Currently, the directors and officers of the Applicants are not insured against obligations and liabilities they may incur while acting in their capacity as directors and officers. The Applicants intend to indemnify their directors and officers during the CCAA proceeding and seek a charge on their property as security for this indemnity, such charge to be granted by way of the Initial Order.

DEFAULT BY MCDIARMID AND FORBEARANCE BY CIBC

57. As appears from McDiarmid's records, counsel for CIBC notified McDiarmid on November 27, 2012, that it was in default of its covenant under the CIBC Facility to maintain a minimum tangible net worth of \$29.2 million. As failure to comply with the covenant is an event of default pursuant to the terms of the CIBC Loan Agreement, McDiarmid's account with CIBC was placed with CIBC Special Loans Division. Consequently, on December 7, 2012, Superior sent McDiarmid a Notice of Intention to Enforce Security under Section 244 of the *Bankruptcy and Insolvency Act*, and later (on January 24, 2013) CIBC made formal demand and issued its own Section 244 Notices to each of the Applicants. Attached

as Exhibit "O" are copies of the November 27, 2012, and January 24, 2013, letters from CIBC's counsel together with all the Section 244 Notices.

58. On February 5, 2013, following the resignation of Vince and the appointment of CCR as CRO, the Applicants, CIBC and Superior (together with other parties related to Superior and McDiarmid) entered into the Forbearance Agreement pursuant to which CIBC agreed not to enforce its right to realize on the assets of the Applicants subject to the terms and conditions set out therein, one of which was to allow PwC to monitor the Applicants' operations.

59. CCR signed the Forbearance Agreement on behalf of each of the Applicants. PwC was then engaged to assist McDiarmid and CCR in developing and conducting an expedited sale strategy to sell the business as a going concern.

SUPERIOR RESCUE FINANCING

60. It was a condition of the Forbearance Agreement that Superior provide the Rescue Financing to McDiarmid. The Forbearance Agreement requires McDiarmid to provide CIBC and Superior with cash flow reports and cash flow forecasts prepared by PwC on a weekly basis (the "Weekly Reports"). Advances of Rescue Financing are made according to McDiarmid's projected cash requirements that exceed the CIBC Borrowing Base as reflected in the Weekly Reports. The advances are deposited by Superior in an escrow account in advance and are held by CIBC pursuant to an escrow agreement entered into between McDiarmid, Superior and CIBC on February 7, 2013 (as amended, the "Escrow Agreement"). A copy

of the Escrow Agreement and amendments thereto is attached as Exhibit "P".

61. To date, Superior has deposited approximately \$4.3 million in the Escrow Account. \$3.3 million has already been advanced to McDiarmid on behalf of Superior in accordance with the Escrow Agreement and the Rescue Loan Agreement and there remains a balance of \$1 million which will be advanced to McDiarmid as necessary commencing the week of May 20, 2013.

62. The cash flow forecast appended to the pre-filing report of PwC indicates that, subject to the assumptions set out therein, McDiarmid should not require any additional loans in excess of those supported by the CIBC Borrowing Base and the balance of funds in the Escrow Account during the stay period. Consequently, the Applicants do not expect that they will require interim financing.

63. CIBC's agreement to continue to forbear from enforcing its rights and remedies against the Applicants and their assets is conditional upon, amongst other things, adequate funding from Superior of any cash requirements in excess of the CIBC Borrowing Base in accordance with the Rescue Loan Agreement.

SALE PROCESS AND M & Y OFFER

64. As noted earlier, in January of 2013 PwC concluded that a going concern sale of some or all of the Applicants' business units was a feasible and attractive option to address the Applicants' difficulties as it would likely yield a greater recovery than would a liquidation. The PwC Report also noted that a going concern sale of McDiarmid's business would

provide an opportunity for many of McDiarmid's employees to continue working in the business as employees of the purchaser.

65. Pursuant to the Forbearance Agreement, McDiarmid retained PwC Corporate Finance to initiate the Sale Process for all of McDiarmid's business units except McDiarmid Homes. CCR's duties as CRO included management of the sale process.

66. McDiarmid received several offers in response to the Sale Process. In consultation with PwC, CIBC and Superior, CCR analyzed the bids and determined that the bid made by M & Y offered the greatest value to the Applicants, its creditors and its stakeholders.

67. M & Y offered to purchase most of McDiarmid's inventory, equipment and other fixed assets and to take assignment of McDiarmid's leases at several locations in Manitoba and one location in Ontario. Importantly, M & Y intends to hire many of McDiarmid's employees on substantially the same terms as govern their current employment relationship with McDiarmid.

68. As above noted M & Y, McDiarmid and TrussCo entered into the APA on May 17, 2013, and the parties hope to close the sale by June 7, 2013, once and if they obtain the prior approval of this Honourable Court.

INITIAL ORDER

69. An Initial Order made pursuant to the CCAA will provide the Applicants an opportunity to complete the sale of their business as a going concern to M & Y, which in my opinion will provide the greatest recovery value to the Applicants' creditors. A going concern sale of the business

under the CCAA will also provide continued employment for many of the Applicants' employees and will provide certainty to the Applicants' customers, suppliers, and other stakeholders who stand to have a keen interest in the continuing operation of the business.

70. The Applicants seek a stay of proceedings under the CCAA to allow time to complete the sale to M & Y, subject to the approval of the Court. A stay of proceedings will ensure that no creditor is in a position to commence and/or continue any proceeding that could negatively affect the Applicants before a going concern sale of their business can be completed.

MONITOR

71. PwC has agreed to act as Monitor pursuant to an Initial Order issued by this Honourable Court. PwC has agreed to act in such capacity provided that an Administrative Charge over McDiarmid's assets be granted in its favour to ensure payment of the professional fees that will be incurred in connection with these proceedings.

CONCLUSION

72. Notwithstanding the various accommodations and rescue financing provided by its secured lenders, the Applicants are in a financial crisis. An Initial Order under the CCAA is essential to allow them to continue their restructuring efforts for the benefit of the stakeholders, and to ensure the continued support of the secured lenders through that process.

73. Despite that crisis, it is clear that there is value to be preserved for creditors through a going concern sale. If the Applicants were liquidated, it is unlikely that much, if any, of the indebtedness owing to Superior will be

recovered. There is also risk that the Superior Guarantee could be called on by CIBC and that Superior could lose an important tenant in many of its properties. In addition to greater recoveries for its creditors, a going concern sale of the Applicants' business will provide benefits to the Applicants' other stakeholders. Many of the Applicants' existing employees will be offered employment with the proposed purchaser. The Applicants' suppliers, landlords, and customers will also benefit from the continued operation of the Applicants' business under new ownership.

74. I make this affidavit *bona fide*.

Affirmed before me at the City of Winnipeg, this 21 day of May, 2013.


A Notary Public in and for the
Province of Manitoba


Richard Hutchings