

COURT FILE NUMBER **1901-08251**

COURT **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

PLAINTIFF **NATIONS FUND I, LLC**

DEFENDANT **BEARSTONE ENVIRONMENTAL SOLUTIONS INC.**

APPLICANT **KPMG INC., IN ITS CAPACITY AS COURT APPOINTED
RECEIVER AND MANAGER OF BEARSTONE
ENVIRONMENTAL SOLUTIONS INC.**

DOCUMENT **SECOND REPORT TO THE COURT SUBMITTED BY
KPMG INC., IN ITS CAPACITY AS COURT APPOINTED
RECEIVER AND MANAGER OF BEARSTONE
ENVIRONMENTAL SOLUTIONS INC.**

DATE **JANUARY 13, 2020**

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CONTACT INFORMATION OF PARTY
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Table of Contents

	<u>Page</u>
1. INTRODUCTION AND PURPOSE OF REPORT	1
2. ACTIVITIES OF THE RECEIVER SINCE THE FIRST REPORT	4
3. BANKRUPTCY ASSIGNMENT	9
4. STATEMENT OF RECEIPTS AND DISBURSEMENTS	10
5. DISTRIBUTIONS TO SECURED CREDITORS AND DISCHARGE	14
6. RECEIVER'S RECOMMENDATIONS	15

Listing of Appendices

Appendix "A" – Approval and Vesting Order

1. INTRODUCTION AND PURPOSE OF REPORT

Introduction

1. Bearstone Environmental Solutions Inc. (“**Bearstone**” or the “**Company**”) provided environmental oilfield services to the oil and gas industry throughout Western Canada. The Company’s primary assets include vacuum, water trucks and related equipment. The Company had three locations; operational facilities in Grande Prairie and Medicine Hat and a head office in Calgary.
2. Bearstone’s senior secured lender is Nations Fund I, LLC (“**Nations**” or the “**Lender**”). Nations has advanced funds of approximately \$5.13 million (plus interest and fees) to Bearstone. These amounts were borrowed by Bearstone pursuant to certain loan and security agreements.
3. On June 10, 2019, Nations issued a demand for payment and notice of intention to enforce security (the “**Demand Notice**”) pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”).
4. Shortly after the Demand Notice, Nations commenced an application to have KPMG Inc. (“**KPMG**”) appointed as receiver and manager of Bearstone (in such capacity, the “**Receiver**”) pursuant to section 243(1) of the BIA, section 13(2) of the *Judicature Act*, RSA 2000, c J-2, section 99(a) of the *Business Corporations Act*, RSA 200, c B-9 and section 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 to, *inter alia*, take possession of and exercise control over the assets, undertakings and properties of the Company and any and all proceeds, receipts and disbursements arising therefrom (the “**Property**”).
5. Prior to being appointed as Receiver of Bearstone, KPMG prepared the First Report of the Proposed Receiver dated July 17, 2019, the First Confidential Supplemental Report of the Proposed Receiver dated July 17, 2019, the Second Report of the Proposed Receiver dated July 29, 2019 and the Second Confidential Supplemental Report of the Proposed Receiver on July 29, 2019 (collectively, the “**Proposed Receiver’s Pre-Filing Reports**”). The Proposed Receiver’s Pre-Filing Reports were filed in connection with the application brought by Nations, and provided, *inter alia*:
 - a) Background information on the Company;
 - b) An overview of the Silverpoint Transaction; and
 - c) The Proposed Receiver’s analysis of the same.
6. On August 6, 2019 (the “**Receivership Date**”), the Court of Queen’s Bench of Alberta (the “**Court**”) granted an order appointing KPMG as the Receiver over all the Property of Bearstone (the “**Receivership Order**”).

7. On August 6, 2019, the Court also granted an order (the “**Sale Approval and Vesting Order**”), which approved:
 - a) The transaction contemplated between Bearstone, Nations, Silverpoint Energy Services Inc. (“**Silverpoint**”), and New West Energy Services Inc. (“**New West**”), resulting in the transfer of substantially all of the Company’s assets located at the Medicine Hat location to Silverpoint (the “**Silverpoint Transaction**”), and the adoption of the related asset purchase and sale agreement (the “**Amended Silverpoint APA**”) by the Receiver, details of which are provided in the Proposed Receiver’s Pre-Filing Reports; and
 - b) The vesting of the right, title and interest in and to the Purchased Assets with the Purchaser (as defined in the Amended Silverpoint APA).
8. On October 2, 2019 the Receiver filed its first report (the “**First Report**”) which described, among other things, the Company’s primary assets and liabilities, the Receiver’s activities to date, and the Company’s interim receipts and disbursements from August 6, 2019 to September 25, 2019.
9. In conjunction with the filing of the First Report, the Receiver filed a confidential supplemental report to the First Report (the “**First Supplemental Confidential Report**”) dated October 2, 2019 that further detailed the sales and marketing process (the “**Sales Process**”) undertaken by the Receiver to solicit offers from parties interested in acquiring the GP Equipment.
10. On October 8, 2019, the Receiver filed a second supplemental report to the First Report (the “**Second Supplemental Report**”) at this Honourable Court’s request to provide a preliminary estimate of the likely deficiency faced by Nations.

Purpose of the Report

11. This is the Receiver’s second report to the Court (the “**Second Report**”) which has been prepared to provide the Court with:
 - a) An update on the actions of the Receiver since the First Report;
 - b) Updates on the asset realization process;
 - c) The Receiver’s interim statement of receipts and disbursements from August 6, 2019 to discharge;

- d) The Receiver's fees and disbursements for the period of September 21, 2019 to December 31, 2019 and the Receiver's counsel from September 1, 2019 to December 31, 2019 and an estimate of future professional fees to discharge;
 - e) Details of a proposed holdback in respect of funds to allow the Receiver to conclude the estate;
 - f) The Receiver's reasons in support of the application to place Bearstone into bankruptcy; and
 - g) The Receiver's recommendations.
12. Defined terms not defined herein have the same meaning as defined in the First Report, the First Confidential Supplemental Report and the Second Supplemental Report.

Terms of Reference

13. All materials filed with the court and all orders granted by the Court in connection with the receivership will be made available to creditors and other interested parties in electronic format on the Receiver's website <http://home.kpmg/ca/bearstone>.
14. In preparing this Report, the Receiver has been provided with, and has relied upon, unaudited and other financial information, books and records (collectively, the "Information") prepared by the Company and/or its representatives, and discussions with the Company's management and/or representatives.
15. The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants Handbook, and accordingly the Receiver expresses no opinion or other form of assurance in respect of the Information.
16. Capitalized terms not otherwise defined herein are as defined in the First Report or Proposed Receiver's Pre-Filing Reports.
17. The information contained in this Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Receiver.
18. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

2. ACTIVITIES OF THE RECEIVER SINCE THE FIRST REPORT

Grande Prairie Assets

19. The First Report and the First Supplemental Confidential Report describe the details of the Sales Process and the results thereof.
20. On October 7, 2019, the Court granted an approval and vesting order for the approval of the sale transaction (the “**RB Sale**”) that was entered into with Ritchie Bros. Auctioneers (Canada) Ltd. (“**RB**”). A copy of the approval and vesting order is attached as **Appendix “A”**.
21. Subsequently, the RB Sale duly closed on October 10, 2019. At that time a deposit of \$281,600 on the net minimum guarantee amount (the “**NMG**”) was received from RB. RB held the auction as planned on November 19, 2019 and provided the Receiver with details of the auction results on or about November 20, 2019.
22. The auction proceeds totalled \$1,359,250, which was less than the NMG in the RB Sale and accordingly, only the balance of the NMG amount, \$1,126,400 was due and payable to the Receiver.
23. On or about December 13, 2019, the Receiver received from RB an amount of \$1,126,400 in full and final satisfaction of the terms of the RB Sale.

Insurance

24. Insurance coverage was cancelled upon completion of the auction of equipment on November 19, 2019.

Accounts Receivable

25. The table below summarizes the accounts receivable realizations to date by the Receiver:

Accounts receivable summary	
For the Period August 6, 2019 to December 20, 2019	
	Amount (CAD\$)
Balance as at August 6, 2019	1,544,454
Amounts billed during the period	263,475
Total accounts receivable	1,807,929
Amounts deemed uncollectible due to accounts payable offsets	(201,348)
Net collectible amounts	1,606,582
Accounts receivable collected	(1,590,433)
Estimated future collections	16,149

26. As of the Receivership Date, the Company had an accounts receivable balance of approximately \$1,544,454, comprised of approximately 35 customers.
27. Silverpoint has assisted the Receiver in preparing and issuing invoices for work that was completed but had yet to be invoiced as at the Receivership Date. An additional \$263,475 has been invoiced from August 6, 2019 to December 20, 2019.
28. Silverpoint has also assisted the Receiver in collecting outstanding accounts receivable, given the relationship between Silverpoint's management and the account receivable debtors and Silverpoint intends to continue to service many of Bearstone's former clients.
29. The Receiver issued demand letters in respect of certain overdue accounts on August 20, 2019, September 17, 2019 and January 6, 2020.
30. Approximately \$211,415 of the accounts receivable balance is uncollectable, due to offsetting accounts payable balances from customers which will remain unpaid under the receivership. The net collectible accounts receivable balance is \$1,606,582, of which the Receiver has been able to collect \$1,590,433, representing collection of approximately 99% of collectable amounts.
31. The Receiver, with the assistance of Silverpoint, will continue to pursue outstanding receivables to the extent that they are recoverable.

Receivership Administrative Matters

32. The Receiver has carried out the following routine administrative tasks:
- a) Prepared and filed various statutory returns, which included GST returns;
 - b) Reported to and liaised with Nations and other creditors and stakeholders on various matters;
 - c) Attended to processing of monthly disbursements;
 - d) Closed trade accounts and paid final invoices; and
 - e) Prepared the required information in support of the Receiver's application for its discharge.

Outstanding Lien Issue

33. Prior to the RB Sale, Bradvin Trailer Sales Ltd. ("**Bradvin**") was holding two pieces of the Company's equipment (the "**Withheld Equipment**") and was asserting a lien in relation to the Withheld Equipment (the "**Lien**"). One of the pieces of the Withheld Equipment was also subject to a garage keepers' lien registered by Bradvin against Bearstone in the Alberta Personal Property Registry.
34. In September 2019, the Receiver and Bradvin entered into discussions to attempt to determine the validity and enforceability of the Lien. Due to (among other things) the timing of the RB Sale, the Receiver and Bradvin did not reach a resolution in relation to the Lien in advance of the RB Sale. To ensure that the Withheld Equipment could form part of the RB Sale, Bradvin agreed to allow the Receiver to collect the Withheld Equipment and include it in the RB Sale on the condition that proceeds of sale from the auction in the amount of \$9,668 (the "**Lien Funds**") would be held by the Receiver in trust pending further Order of this Honourable Court or an agreement between the Receiver and Bradvin. Such funds are currently being held by the Receiver.
35. In September 2019, the Receiver understands that of the Lien Funds being withheld, approximately \$8,500 relates to an alleged claim by Bradvin for amounts owing in storage fees (the "**Storage Lien**") and approximately \$1,000 relates to an alleged claim by Bradvin for amounts owing in relation to the repair or maintenance of one piece of the Withheld Equipment (the "**Work Lien**").
36. The Receiver or Counsel to the Receiver made initial requests for documentation in support of the Lien on September 5, 2019, September 10, 2019.

37. On September 11, 2019, Bradvin provided invoices relating to the alleged Storage Lien. Upon reviewing the storage invoices, it was the preliminary view of the Receiver that the amounts claimed for storage fees were not amounts that fell within the scope of the *Garage Keepers' Lien Act* (Alberta) and did not support a common law possessory lien as a result of, among other things, an absence of evidence to support the existence of an agreement between Bradvin and Bearstone whereby Bearstone agreed to pay Bradvin for the storage fees evidenced by the storage invoices. Furthermore, given that no documentation was provided in support of the alleged Work Lien, it was the preliminary view of the Receiver that the amounts claimed for work performed were not amounts that fell within the scope of the *Garage Keepers' Lien Act* (Alberta).
38. Counsel to the Receiver advised Bradvin of the foregoing position by letter dated September 25, 2019 and also requested relevant documentation that would support the amounts claim under the Work Lien.
39. The Receiver did not receive any additional information or documentation in support of the Storage Lien and/or Work Lien in response to the September 26, 2019 correspondence sent by counsel to the Receiver.
40. On January 8, 2020, counsel to the Receiver sent a follow up email to Bradvin requesting any additional documentation in support of the Lien on or before January 10, 2020.
41. At approximately 5:00 pm on January 10, 2020, counsel to the Receiver sent a further follow up communication to Bradvin advising that as a result of the lack of documentation in support of the Lien, the Receiver is unable to determine that the Lien is valid and will be bringing an application returnable on January 23, 2020 to, among other things, seek a declaration that the Lien is not valid and the Receiver is permitted to release the Lien Funds as part of the distributions made to the secured creditors of the Company.
42. On the evening of January 10, 2020, counsel to the Receiver received several emails from Bradvin indicating, among other things, that the Company had requested an estimate on repairs for the Withheld Equipment but that the repairs were never commenced as the Company was trying to arrange for payment of those repairs. Bradvin further advised that the Company understood that storage would be charged as a result of Bradvin being in possession of the vehicles.
43. The Receiver has not been provided with evidence to support an arrangement between Bradvin and the Company for the payment of storage fees. The Receiver followed up with a representative of the

Company who advised that he was not aware of any agreement with Bradvin to charge storage for the Withheld Equipment.

44. As at the date of this Second Report:

- a) The Receiver has not received any documentation in support of the Work Lien and it does not appear as though any work was actually performed on the Withheld Equipment; and
- b) The Receiver has not received any documentation in support of Bradvin's assertion that there was an agreement between Bradvin and the Company in relation to storage fees being charged in relation to the Withheld Equipment.

45. As a result of the foregoing, the Receiver is seeking a declaration that:

- a) The Receiver is permitted to include the Lien Funds as part of any distributions made to Nations; and
- b) The Lien is not valid.

3. BANKRUPTCY ASSIGNMENT

46. As detailed in the First Report, it was originally estimated that Bearstone had amounts outstanding in respect of GST liabilities to the CRA of approximately \$46,450 for the period up to the end April 2019.
47. The Receiver has undertaken further investigation and has estimated the amount outstanding to the CRA in respect of outstanding GST liabilities up to the Receivership Date is likely to be approximately \$110,000.
48. In addition, the Receiver's investigations identified an amount of approximately \$22,000 due to British Columbia for provincial sales taxes ("PST") owing.
49. Accordingly, the Receiver intends to assign the Company into bankruptcy as the estate (including Nations who is incurring the costs of the receivership) will stand to benefit by approximately \$132,000, which would otherwise be remitted to the CRA and British Columbia for sales taxes.
50. The Receiver believes it is proper and in the best interests of the estate to assign Bearstone into bankruptcy, and that the Receiver is permitted to do so, for the following reasons:
 - a) Paragraph 3(s) of the Receivership Order authorizes the Receiver, upon application to the Court on notice to all interested parties, to assign the Company into bankruptcy or obtain a bankruptcy order against Bearstone, where the Court is of the opinion on making of such an application that it is proper and in the best interest of the estate;
 - b) Paragraph 29 of the Order provides that nothing in the Order shall prevent the Receiver from acting as trustee in the bankruptcy of the Company;
 - c) Bearstone is currently in receivership and is considered an insolvent person within the meaning of the BIA. Bearstone has failed to meet its obligations generally as they became due, in that Bearstone has failed to meet its obligations to Nations and others, which obligations exceed \$1,000. Bearstone has significant unsecured creditors; and
 - d) Nations has requested and are supportive of the Receiver's intention to assign the Company into bankruptcy in order to convert the CRA claims into unsecured claims.
51. Nations has agreed to allow funds from the receivership estate to be used to fund the bankruptcy professional fees and expenses. Such costs will be capped at \$30,000 plus GST.
52. KPMG is the Court-appointed receiver and manager of Bearstone. In this role, KPMG has been in consultation with various creditors of Bearstone and has familiarity with the remaining assets, undertakings and issues. Therefore, KPMG is well positioned to effectively assume the role as the licensed insolvency trustee for the estate. KPMG is not aware of any conflict with the role and is willing to act in such a capacity.

4. STATEMENT OF RECEIPTS AND DISBURSEMENTS

53. Below is the Receiver's interim receipts and disbursements for the period August 6, 2019 to January 8, 2020 (the "SRD"):

Interim Statement of Receipts and Disbursements	
August 6, 2019 to January 8, 2019	
	Amount (CAD \$)
Cash Receipts	
Accounts receivable collections	1,411,119
Sales proceeds	1,417,500
Opening cash balance	92,015
GST collections	70,556
Interest	1,216
Petty cash	129
Total cash receipts	2,992,536
Cash disbursements	
Distributions to secured creditors	(1,576,000)
Receiver's fees	(282,051)
Payroll, wages and contractors	(134,877)
Receiver's Counsel fees	(69,799)
Rent	(45,120)
GST paid	(28,337)
Repairs and maintenance	(26,572)
Insurance	(14,655)
Credit card payment	(11,289)
Appraisal fees	(7,000)
Advertising	(2,159)
Mail forwarding	(494)
Computer services	(482)
Software fees	(400)
Cleaning fees	(285)
Bank fees	(197)
Total cash disbursements	(2,199,717)
Excess receipts over disbursements	792,820

54. Below is the Receiver's estimated receipts and disbursements for the Period August 6, 2019 to discharge:

Final Statement of Receipts and Disbursements	
August 6, 2019 to discharge	
	Amount (CAD \$)
Cash Receipts	
Accounts receivable collections	1,411,119
Sales proceeds	1,417,500
Collection of misbanked accounts receivable funds	179,314
Opening cash balance	92,015
GST collections	79,522
Interest	1,216
Petty cash	129
Total cash receipts	3,180,816
Cash disbursements	
Distributions to Nations	(2,044,235)
Receiver's fees	(378,481)
Holdback for unexpected costs	(150,000)
Payroll, wages and contractors	(134,877)
GST/ PST assessment balances holdback	(132,000)
Receiver's Counsel fees	(123,369)
Rent	(45,120)
GST paid	(35,471)
Repairs and maintenance	(34,302)
Bankruptcy trustee fees	(30,000)
Distribution to secured lessor	(26,000)
Insurance	(14,655)
Credit card payment	(11,289)
Bankruptcy trustee legal counsel fees	(10,000)
Appraisal fees	(7,000)
Advertising	(2,159)
Mail forwarding	(494)
Computer services	(482)
Software fees	(400)
Cleaning fees	(285)
Bank fees	(197)
Total cash disbursements	(3,180,816)
Excess receipts over disbursements	-

55. Receipts relate primarily to collections of outstanding accounts receivable, the sale of equipment as approved by the Court and opening cash balances on the accounts.
56. The Receiver's disbursements during the receivership period have primarily related to the preservation of the equipment located in Grande Prairie, and the asset realization strategy related to same, which includes, *inter alia*, costs such as premises rent, insurance, and repairs to the equipment, among other items. It also includes disbursements related to the repairs and maintenance of the GP Equipment.

Disbursements also include the professional fees incurred during the receivership period and approved by the Court on October 8, 2019.

57. As at the date of this report, the Receiver has distributed \$1.55 million to Nations. The receiver plans a further distribution of approximately \$494,000 to Nations subsequent to the approval of the Second Report, at which point Nations will have received distributions of approximately \$2.04 million.
58. As indicated in the Final Statement of Receipts and Disbursements, the Receiver will maintain a holdback for GST and provincial PST assessments totalling \$132,000, and a holdback for any unresolved lien claims and/or potential future costs of \$150,000. Should the Receiver not require all of these holdback funds, the Receiver will issue a further distribution to Nations of up to \$282,000, which would increase the final distribution to Nations to a maximum of approximately \$2.33 million.

Distributions to Nations		
As at December 31, 2019		
	Amount (CAD\$)	
	Low	High
Total interim distributions to date	1,550,000	1,550,000
Subsequent distribution after court approval	494,000	494,000
Final distribution after resolution of remaining claims	-	282,235
Total Distributions to Nations	2,044,000	2,326,235

59. The Receiver’s Second Supplemental Report detailed likely recoveries to Nations from \$1.92 million to \$2.36 million; accordingly the final recoveries to Nations of between \$2.0 million and \$2.3 million is in line with that previously estimated.
60. The Receiver and the Receiver’s Counsel have billed but unpaid fees in the amount of \$96,429 and \$38,571, respectively, for the period of September 21st, 2019 to December 31st, 2019 (the “**Unpaid Receivership Professional Fees**”). Furthermore, the Receiver’s Counsel has estimated further fees in the amount of \$15,000 from January 1, 2020 onwards in order to complete the Receivership and the Bankruptcy (the “**Completion Professional Fees**”), should Bearstone be assigned into Bankruptcy. The Receiver and Receiver’s Counsel have agreed to limit the aggregate total of the Unpaid Receivership Professional Fees to a maximum of \$150,000 (not including GST). A summary of the previously paid professional fees and the Unpaid Receivership Professional Fees is set out below:

Receiver's Fees	
As at December 31, 2019	
July 1 - August 5, 2019*	54,854
August 6 - September 20, 2019*	227,197
September 21 - December 31, 2019	96,429
Future receiver fees (estimated)	-
Total Receiver's Fees	378,481
Receiver's Counsel Fees	
As at December 31, 2019	
June 10 - July 31, 2019*	53,747
August 1 - August 31, 2019*	16,052
September 1 - September 30, 2019	25,916
October 1 - October 31, 2019	9,200
November 1 - November 30, 2019	2,926
December 1 - December 31, 2019	528
Future receiver's counsel fees (estimated)	15,000
Total Receiver's Counsel Fees	123,369
Total professional fees	501,850
*Fees approved and paid by Order of the Court on October 8, 2019	

61. As set out in the Second Supplemental Report, the Receiver estimated that the total amount of the professional fees would range from approximately \$484,000 to \$509,000 (excluding GST); accordingly, the current estimate of approximately \$502,000 (excluding GST) in professional fees is consistent with previously forecasted estimates.
62. The Receiver is seeking approval of the Unpaid Receivership Professional Fees. Copies of the invoices described therein, including detailed time analysis, will be made available to this Honourable Court, if requested.
63. The Receiver is of the view that, in light of the nature, extent and value of the assets, the Unpaid Receivership Professional Fees are fair and reasonable.

5. DISTRIBUTIONS TO SECURED CREDITORS AND DISCHARGE

64. The Company's secured creditors are currently understood as follows:
- a) Nations is the primary secured creditor of Bearstone and has security over certain equipment of the Company as well as a general security agreement over the assets of the Company; and
 - b) Certain other lenders have security over the GP Other Lenders' Equipment.
65. As noted previously, CRA has a claim for GST arrears of approximately \$110,000 and the British Columbia Ministry of Finance has a claim for PST arrears of approximately \$22,000.
66. The Receiver continues to collect outstanding accounts receivable and realize on other miscellaneous assets. As a result of the large deficiency owing to Nations, the Receiver is seeking the Court's permission to make ongoing distributions to Nations ("**Interim Distributions**"), subject only to holdbacks for:
- a) Amounts owing that may rank in priority to Nations' amounts outstanding;
 - b) Amounts owing to Other Lenders in respect of their security; and
 - c) Professional fees and other disbursements required to complete the administration of the receivership.
67. Once all the holdbacks and claims have been settled, paid, or otherwise dealt with the Receiver intends to distribute any and all remaining residual funds to Nations.
68. Upon the final distribution of available funds to Nations, the administration of the estate of the Company will be complete. The Receiver is not aware of it being required for any further purpose and is therefore seeking its discharge.

6. RECEIVER'S RECOMMENDATIONS

69. The Receiver submits this Second Report, respectfully requesting that this Honourable Court:
- a) Approve the Second Report and the activities of the Receiver as set out therein;
 - b) Approve the inclusion of the Lien Funds as part of any distributions made to Nations;
 - c) Make a declaration that the alleged Lien is invalid;
 - d) Approve the Unpaid Receivership Professional Fees for the Receiver for the period of September 21, 2019 to December 31, 2019 and the Receiver's Counsel for the period September 1, 2019 to December 31, 2019;
 - e) Approve the Completion Professional Fees;
 - f) Approve the proposed Interim and final Distributions;
 - g) Approve the application of the Receiver seeking an assignment of Bearstone into bankruptcy; and
 - h) Approve the Receiver's discharge.

This Report is respectfully submitted this 13th day of January, 2020

KPMG Inc.

**In its capacity as Court-Appointed Receiver of
Bearstone Environmental Solutions Inc.
and not in its personal or corporate capacity**



Per: Neil Honess
Senior Vice President

APPENDIX "A"

Approval and Vesting Order

COURT FILE NUMBER 1901-08251

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONS FUND I, LLC

DEFENDANT BEARSTONE ENVIRONMENTAL SOLUTIONS INC.

DOCUMENT ORDER APPROVING AUCTION AGREEMENT



ADDRESS FOR SERVICE AND CONTRACT INFORMATION OF PARTY FILING THIS DOCUMENT:

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Attention: Jeffrey L. Oliver / Danielle Marechal

October 7, 2019

Calgary, Alberta

The Honourable Madam Justice C. Dario

I hereby certify this to be a true copy of
 the original Order
 Dated this 8 day of Oct / 2019

 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED

LOCATION WHERE ORDER WAS PRONOUNCED:

NAME OF JUDGE WHO MADE THIS ORDER:

UPON THE APPLICATION by **KPMG Inc.** in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Bearstone Environmental Solutions Inc. (the “**Debtor**”) for an order, among other things: (i) approving an auction services agreement dated October 2, 2019 (the “**Auction Agreement**”), between **Ritchie Bros. Auctioneers (Canada) Ltd.** (the “**Auctioneer**”) and the Receiver, a redacted copy of which is attached to the First Report of the Receiver dated October 2, 2019 (the “**First Report**”) as Appendix “G”; (ii) authorizing the Auctioneer to conduct an auction in accordance with the terms of the Auction Agreement (the “**Auction**”); and (iii) vesting in each purchaser at such Auction (each a “**Purchaser**”), the Debtor’s right, title and interest in and to the property purchased by such Purchaser at the Auction (and in

each case, the “**Purchased Assets**”), free and clear of any claims and encumbrances; **AND UPON HAVING READ** the Receivership Order granted by the Honourable Madam Justice B. Romaine on August 6, 2019 (the “**Receivership Order**”), the First Report, the Confidential Supplement to the First Report dated October 2, 2019, and the Affidavit of Service of Richard Comstock, sworn October 7, 2019; **AND UPON HEARING** from counsel for the Receiver and such other counsel as are present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF THE AUCTION AGREEMENT

2. The execution by the Receiver of the Auction Agreement is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auction.
3. Upon:
 - (a) the Auctioneer completing a sale to a Purchaser at the Auction of one or more Purchased Assets;
 - (b) receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auction (the “**Purchase Price**”); and
 - (c) delivery by the Auctioneer to such Purchaser of a bill of sale or similar evidence of purchase and sale of the Purchased Assets (each, a “**Purchaser’s Bill of Sale**”),

(each an “**Auction Transaction**” and collectively, the “**Auction Transactions**”)

all of the Debtors’ right, title and interest in and to the Purchased Assets purchased by such Purchaser at the Auction and described in such Purchaser’s Bill of Sale shall vest absolutely in the name of such Purchaser (or its nominee), free and clear of and from any and all

security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, pledges, liens, 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:

- (d) any encumbrances or charges created by the Receivership Order; and
- (e) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;

and, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

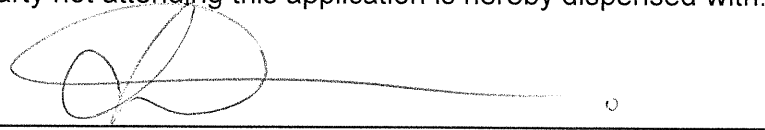
4. From and after the closing of each of the Auction Transactions (including the payment of the Purchase Price by the Purchaser to the Auctioneer), the Receiver or the Auctioneer are authorized to discharge from the Personal Property Registry any claim registered against any of the Purchased Assets being purchased by the Purchaser, to the extent the security interest is registered against the interest of the Debtors.
5. Upon completion of the Auction Transactions to the satisfaction of the Receiver, the Receiver shall file a certificate substantially in the form attached hereto as **Schedule “A”** certifying that the Auction Transactions have closed.
6. For the purposes of determining the nature and priority of Claims, net proceeds from the sale of the Purchased Assets at the Auction (to be held in a trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after delivery of the Purchaser’s Bill of Sale, all Claims and encumbrances shall attach to the net proceeds from the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to their sale at the Auction, 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.

7. Each Purchaser (and its nominee, if any) shall, by virtue of the completion of the Auction Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor or any affiliate of the Debtor.
8. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee, if any).
9. The Purchaser (or its nominee, if any) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
10. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtor, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the Debtor; and
 - (d) the provisions of any federal or provincial statute:the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable

federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MISCELLANEOUS MATTERS

11. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
12. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
13. Service of this Order on any party not attending this application is hereby dispensed with.



Justice of the Court of Queen's Bench of Alberta

Schedule "A"
Form of Receiver's Certificate

COURT FILE NUMBER	1901 - 08251	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	NATIONS FUND I, LLC	
DEFENDANT	BEARSTONE ENVIRONMENTAL SOLUTIONS INC.	

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

CASSELS BROCK & BLACKWELL LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, AB T2P 5C5

Telephone: 403 351-2921
Facsimile: 403-648-1151

Attention: Jeffrey L. Oliver / Danielle Marechal

RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice B. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated August 6, 2019, KPMG Inc. was appointed as the receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties of Bearstone Environmental Solutions Inc.

- B. Pursuant to an Order of the Court dated October 6, 2019, the Court approved the auction services agreement made as of October 2, 2019 (the "**Auction Agreement**") between the Receiver and Ritchie Bros. Auctioneers (Canada) Ltd., pursuant to which one or more auction transactions may be completed (the "**Auction Transactions**")

THE RECEIVER CERTIFIES the following:

1. The Auction Transactions have been completed to the satisfaction of the Receiver.
2. This Certificate was delivered by the Receiver at [**•Time**] on [**•Date**].

**KPMG Inc., in its capacity as
Receiver of the assets,
undertakings, and property of
Bearstone Environmental Solutions
Inc., and not in its personal capacity.**

Per; _____

Name:

Title: