

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

**MOTION RECORD OF THE APPLICANT
(Returnable October 30, 2009)**

DAVIES WARD PHILLIPS & VINEBERG LLP
1 First Canadian Place
Suite 4400
Toronto, ON M5X 1B1

Robin B. Schwill (LSUC #384521)

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Lawyers for the Applicant

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Applicant

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ONE

Court File No. 09-8363-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED

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OR ARRANGEMENT OF BARZEL INDUSTRIES
CANADA INC.

Applicant

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on October 30, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, if necessary, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on October 30, 2009 and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
2. an Order approving a purchase and sale agreement between the Applicant, as vendor, and the Successful Bidder (as defined below), as purchaser, (the "**Purchase Agreement**") and all of the transactions contemplated therein

including, without limitation, the sale of the Purchased Assets (as defined in the Purchase Agreement) to the Successful Bidder and vesting all of the Applicant's right, title and interest in and to the Purchased Assets in the Successful Bidder free and clear of all security interests, charges and other encumbrances;

3. an Order that the activities of the Monitor as outlined and described in the Third Report of the Monitor and the Fourth Report of the Monitor be approved; and

4. such further and other Orders as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Approval and Vesting Order

1. The Purchased Assets (as defined in the Purchase Agreement) were part of the assets of the Applicant subject to a comprehensive sales process run by Houlihan Lokey Howard & Zukin Capital, Inc. over a 3½ month period;

2. The Applicant will have conducted a final auction of the Purchased Assets pursuant to the terms of conditions of the bidding procedures approved by this Honourable Court by Order in these proceedings made on October 6, 2009 (the "**Bid Procedures Order**");

3. The purchaser of the Purchased Assets will be the Successful Bidder (as that term is defined in the bidding procedures approved by the Bid Procedures Order);

4. The purchase price contemplated by the Purchase Agreement will be fair and reasonable under the circumstances and will represent the best value obtainable for the Purchased Assets under the circumstances;

5. The Applicant will have made a sufficient effort to obtain the best price for the Purchased Assets and will not have acted improvidently;

6. The Applicant's first ranking secured creditors will suffer a significant shortfall on the repayment of their indebtedness and will be consenting to the relief being sought by the Applicant;

7. There will have been no unfairness in the working out of the sales process for the Purchased Assets;

Monitor's Activities

8. The Monitor has complied with all Orders of this Honourable Court and its activities to date have assisted this Honourable Court and the Applicant in implementing its restructuring initiative;

Miscellaneous

9. paragraphs 11(a) and 49 of the Initial Order;

10. the Bid Procedures Order;

11. Rules 3.02 and 37.02(1) of the *Rules of Civil Procedure*; and

12. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Fourth Report of the Monitor, to be filed separately; and
2. such further and other materials as counsel may advise and this Honourable Court may permit.

Date: October 23, 2009

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Lawyers for the Applicant

TO: ATTACHED SERVICE LIST

Court File No. 09-8363-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

SERVICE LIST

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Landlord re 170 University Avenue

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Canadian Counsel to the United Steelworkers

**ADDITIONAL PARTIES FOR
APPROVAL AND VESTING ORDER**

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Mississauga, ON L4W 5C7

NATIONAL LEASING GROUP INC.

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Winnipeg, MB R3T 0Y4

RENTWAY LTD.

7405 East Danbro Crescent
Mississauga, ON L5N 6P8

DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.

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Oakville, ON L6M 2W2

PENSKE TRUCK LEASING CANADA INC.

RT 10 Green Hills
P.O. Box 405
Reading, PA 19603

RICOH CANADA INC.

#100 – 1235 North Service Road West
Oakville, ON L6M 2W2

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A DIVISION OF CANADIAN ROAD LEASING COMPANY**

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Edmonton, AB T5J 5C7

GMAC LEASECO CORPORATION

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Toronto, ON M8X 2Y5

ROYNAT INC.

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Vancouver, BC V6C 2X8

LOCATION CHRISCOTT

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Lasalle, QC H8N 1A1

SECURITY CHIMNEYS INTERNATIONAL LTD.

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Laval, QC H7L 3T6

CBSC CAPITAL

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Montreal, QC H4R 2N1

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Oshawa, ON L1H 8P5

Kevin O'Hara

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CANADA REVENUE AGENCY

GST Interim Processing Centre (GST/HST)
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Ottawa, ON K1A 1J8

MINISTRY OF LABOUR – TORONTO

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14th Floor
Toronto, ON M7A 1T7
Attention: Legal Department

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FOR THE REGISTRATION DIVISION OF MONTRÉAL**

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#RC10 and 1.10
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**LAND REGISTRAR OF THE LAND REGISTRY OFFICE
FOR THE REGISTRATION DIVISION OF BROME**

550 chemin Knowlton
Lac-Brome, QC J0E 1V0

**LAND REGISTRAR FOR THE LAND REGISTRY OFFICE
FOR THE REGISTRATION DIVISION OF SHEFFORD**

77 rue Principale
#1.24
Granby, QC J2G 9B3

REGISTRAR OF PERSONAL AND MOVEABLE REAL RIGHTS

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Suite 7.07
Montréal, QC H2Y 1B6

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BARZEL INDUSTRIES CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
Proceeding Commenced at Toronto

NOTICE OF MOTION
(Returnable October 30, 2009)

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Lawyers for the Applicant

TWO

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 30TH DAY
)
JUSTICE MORAWETZ) OF OCTOBER, 2009.

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Applicant and [NAME OF PURCHASER] (the "Purchaser") made as of [DATE] and appended to the Report of the Monitor dated [DATE] (the "Report"), and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Applicant, Deloitte & Touche Inc. in its capacity as the court-appointed monitor in these proceedings (the "Monitor"), the Purchaser, JP Morgan Chase Bank, NA and CIBC World Markets Corp., [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The execution of the Sale Agreement by the Applicant is hereby authorized and approved, and

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the Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto 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 Mr. Justice Morawetz dated September 15, 2009 (the "**Initial Order**"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the Register of Personal and Movable Real Rights (the "**RPMRR**") (Québec) 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 Land Titles Division of Wentworth (No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") as 830 South Service Road, Hamilton, Ontario L8E 5M7 bearing Property Identifier No. 17357-0062(LT) (the "**Ontario Property**") in fee simple, and is hereby directed to delete and expunge from title to the Ontario Property all of the Claims listed in Schedule C hereto denoted as pertaining to the Ontario Property.

4. THIS COURT ORDERS that upon the registration in the Land Registry for the registration divisions of Brome, Shefford and Montréal of a Deed of Sale or equivalent document in the applicable prescribed forms, duly executed by the Applicant, the applicable Registrar in charge of the Land Registry is hereby ordered and directed to enter the Purchaser as the owner of the Real Property in Québec as reflected in Schedule B (the "Québec Property").

5. THIS COURT ORDERS the Registrar of the Land Registry Office of the Province of Québec for the appropriate registration division to accept, upon payment of the prescribed fees, a true copy of this Order, the Monitor's Certificate and an affidavit of the Monitor attesting that the Monitor's Certificate has been duly filed in accordance with this Order, on title to the Québec Property and further orders that such registration shall take place without a certificate attesting that no appeal of this Order has been taken, this Order being good and sufficient authority for so doing.

6. THIS COURT ORDERS AND DIRECTS the Registrar in charge of the RPMRR and the Registrar in charge of the Land Registry Office of the Province of Québec for the registration divisions of Brome, Shefford and Montréal, upon payment of the prescribed fees and the filing of a true copy of this Order, the Monitor's Certificate and an affidavit of the Monitor attesting that the Monitor's Certificate has been duly filed in accordance with this Order, to proceed with the cancellation, radiation and discharge of any and all Encumbrances pertaining to the Québec Property as set out in Schedule C or as otherwise registered in respect of the Applicant in the RPMRR.

7. 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 (being the proceeds from the sale of the Purchased Assets paid to the Applicant less the amount that the Applicant is required to immediately repay the DIP Lender (as defined in the Initial Order) under the DIP Credit Agreement (as defined in the Initial Order) upon consummation of the Transaction) (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately

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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.

8. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant 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 Applicant's past and current employees, including 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 Applicant.

10. 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 Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

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 Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, a paulian action or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), the *Civil Code of Québec* 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.

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

12. THIS COURT ORDERS AND DECLARES that upon the filing of the Monitor's Certificate with the Court, the Transaction and any other document to be executed for the purposes of the Transaction, shall have the same effect as a forced sale by a public officer acting under judicial authority as per the provisions of the *Code of Civil Procedure*.

13. THIS COURT ORDERS AND DECLARES that the Transaction shall have the same effect as a sale by judicial authority as per the provisions of the *Civil Code of Québec*.

14. 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 Monitor 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 orders and to provide such assistance to the Applicant as may be necessary or desirable to give effect to this Order or to assist the Applicant and its agents in carrying out the terms of this Order.

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Schedule A – Form of Monitor's Certificate

Court File No.

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

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA INC.**

Applicant

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated September 15, 2009, Deloitte & Touche Inc. was appointed as the monitor in these proceedings (the "Monitor").

B. Pursuant to an Order of the Court dated October 30, 2009, the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Applicant and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor 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 Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

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1. The Purchaser has paid and the Applicant 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 Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

DELOITTE & TOUCHE INC., in its capacity as Monitor of the Applicant, and not in its personal capacity

Per _____
 Name: ■
 Title: ■

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Schedule B – Purchased Assets (Real Property)

1. 830 South Service Road, Hamilton, Ontario L8E 5M7

Property Identifier No. 17357-0062(LT)

PT LTS 11 & 12, CON 1, SALTFLEET, PTS 1 & 11 ON 62R-4565, T/W RT OVER PT LT 12 BEING PT 14 ON 62R-4565 AS IN 14505CD, S/T SA52340; T/W EASEMENT OVER PT LT 11, CON 1 SALTFLEET, BEING PTS 2 TO 10 INCLUSIVE AND PTS 12 & 13 ON 62R-4565AS IN WE511460; CITY OF HAMILTON.

Being the whole of the said PIN.

Land Titles Division of Wentworth (No. 62).

2. 19460 Clark Graham Avenue, Baie d'Urfé, Québec H9X 3R8

Immovable property situated in the City of Baie-D'Urfé, Province of Québec, known and designated as being lot number one million five hundred fifty-seven thousand eight hundred seventy-eight (1 557 878) of the Cadastre of Québec, Registration Division of Montréal.

3. 553 Léon Harmel, Granby, Québec J2G 3G5

Immovable property situated in the City of Granby, Province of Québec, known and designated as being lot number one million four hundred one thousand eight hundred forty-four (1 401 844) of the Cadastre of Québec, Registration Division of Shefford.

4. 424 St. Vallier, Granby, Québec J2G 7Y4

Immovable property situated in the City of Granby, Province of Québec, known and designated as being lot number one million four hundred four thousand two hundred forty-five (1 404 245) of the Cadastre of Québec, Registration Division of Shefford.

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

830 South Service Road, Hamilton, Ontario L8E 5M7

1. Charge registered on November 16, 2007 as No. WE511548 from Novamerican Steel Inc., as chargor, to BNY Trust Company of Canada, as chargee, securing the principal amount of \$400,000,000.

19460 Clark Graham Avenue, Baie d'Urfé, Québec H9X 3R8

1. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and BNY Trust Company of Canada before P. Venne, Notary, on November 15, 2007 and registered under number sixteen million twenty-four thousand four hundred eighty-seven (16 024 487) at the Registration Division of Montréal, and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657287-0001.
2. Deed of Hypothec executed between Barzel Industries Canada Inc. and JPMorgan Chase Bank, National Association, before R. Alain, Notary, on September 17, 2009 and registered under number sixteen million five hundred fifty-nine thousand eight hundred twenty-two (16 559 822) at the Registration Division of Montréal, and registered at the Register of Personal and Movable Real Rights (Québec) under number 09-0581178-0001.
3. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and JPMorgan Chase Bank, National Association, before P. Venne, Notary, on November 15, 2007 and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657283-0001.

553 Léon Harmel, Granby, Québec J2G 3G5

1. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and BNY Trust Company of Canada before P. Venne, Notary, on November 15, 2007 and registered under number fourteen million seven hundred eighty-five thousand three hundred forty-one (14 785 341) at the Registration Division of Shefford, and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657287-0001.
2. Deed of Hypothec executed between Barzel Industries Canada Inc. and JPMorgan Chase Bank, National Association, before R. Alain, Notary, on September 17, 2009 and registered under number sixteen million five hundred seventy thousand four hundred sixty-seven (16 570 467) at the Registration Division of Shefford, and registered at the Register of Personal and Movable Real Rights (Québec) under number 09-0581178-0001.
3. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and JPMorgan Chase Bank, National Association, before P. Venne, Notary, on November 15, 2007 and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657283-0001.

424 St. Vallier, Granby, Québec J2G 7Y4

1. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and BNY Trust Company of Canada before P. Venne, Notary, on November 15, 2007 and registered under number fourteen million seven hundred eighty-five thousand three hundred forty-one (14 785 341) at the Registration Division of Shefford, and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657287-0001.

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**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

830 South Service Road, Hamilton, Ontario L8E 5M7

1. Transfer of Easement registered on June 3, 1954 as No. SA52340 in favour of The Hydro-Electric Power Commission of Ontario.
2. By-Law registered on January 25, 1956 as No. BL1738 for the purpose of subdivision control.
3. Notice registered on November 4, 1998 as No. LT528564 being a maintenance and use agreement between The Corporation of the City of Stoney Creek and 3419584 Canada Inc.
4. Notice registered on November 15, 2007 as No. WE511467 being an agreement to grant an easement in perpetuity from 4421591 Canada Inc. and Novamerican Steel Inc. to Chriscott Properties Inc.

19460 Clark Graham Avenue, Baie d'Urfé, Quebec H9X 3R8

1. Deed creating a servitude executed between Fry-Cadbury Ltd, The Quebec Hydro-Electric Commission (Hydro-Québec) and the Bell Telephone Company of Canada on April 18, 1967, May 19, 1967 and June 5, 1967 and registered under number one million nine hundred ninety-one thousand six hundred sixty-eight (1 991 668) at the Registration Division of Montréal

553 Léon Harmel, Granby, Quebec J2G 3G5

1. Deed creating a servitude executed between Wilmac Holdings Ltd and The Corporation of the City of Granby on March 7, 1967 and registered under the number one hundred eighty one thousand four hundred forty-four (181 444) at the Registration Division of Shefford.
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2. Deed creating a servitude between J.H. Leroux and Southern Canada Power Company, Limited on February 16, 1953 and registered under the number one hundred thirty-three thousand two hundred ninety-six (133 296) at the Registration Division of Shefford.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BARZEL INDUSTRIES CANADA INC.**

Court File No: 09-8363-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

Davies Ward Phillips & Vineberg LLP
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Robin Schwill (LSUC #384521)

Tel: 416.863.5502

Fax: 416.863.0871

Lawyers for the Applicant

THREE

Court File No. 09-8363-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE = COMMERCIAL LIST

~~THE HONOURABLE~~)
~~JUSTICE~~)
~~DAY THE~~)
~~DAY~~)
~~OF~~)
~~2007~~)

BETWEEN:-

~~PLAINTIFF~~

Plaintiff

-and-

~~DEFENDANT~~

Defendant

DRAFT

~~THE HONOURABLE MR.~~)
~~JUSTICE MORAWETZ~~)
~~FRIDAY THE 30TH DAY~~)
~~OF OCTOBER 2009~~)

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA
INC.

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court appointed interim receiver and receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") ~~the Applicant~~ for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver ~~Applicant~~ and [NAME OF PURCHASER] (the "Purchaser") made as of [DATE] and appended to the Report of the Receiver ~~Monitor~~ dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's ~~Applicant's~~ right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330393 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, Applicant, Deloitte & Touche Inc. in its capacity as the court-appointed monitor in these proceedings (the "Monitor"), the Purchaser, JP Morgan Chase Bank, NA and CIBC World Markets Corp., [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] Affidavit of Service filed¹:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver's ~~Applicant~~ is hereby authorized and approved, and the Receiver ~~Applicant~~ is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's ~~Monitor's~~ certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver ~~Monitor's~~ Certificate"), all of the Debtor's ~~Applicant's~~ right, title and

¹ 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.

² 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.

interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]³ 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"⁴) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice [NAME] Morawetz dated [DATE] September 15, 2009 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the Register of Personal and Movable Real Rights (the "RPMRR") (Québec) 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 Land Title Titles Division of [LOCATION] of a ~~transfer/deed~~ Wentworth (No. 62) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* ~~duly executed by the Receiver~~, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") as 830 South Service Road, Hamilton, Ontario L8E 5M7 bearing Property Identifier No. 17357-0062(LT) (the "Ontario Property") in fee simple, and is hereby directed to delete and expunge from title to the ~~Real~~ Ontario Property all of the Claims listed in Schedule C hereto denoted as pertaining to the Ontario Property.

³ 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.

⁴ 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.

4. THIS COURT ORDERS that upon the registration in the Land Registry for the registration divisions of Brome, Shefford and Montréal of a Deed of Sale or equivalent document in the applicable prescribed forms, duly executed by the Applicant, the applicable Registrar in charge of the Land Registry is hereby ordered and directed to enter the Purchaser as the owner of the Real Property in Québec as reflected in Schedule B (the "Québec Property").

5. THIS COURT ORDERS the Registrar of the Land Registry Office of the Province of Québec for the appropriate registration division to accept, upon payment of the prescribed fees, a true copy of this Order, the Monitor's Certificate and an affidavit of the Monitor attesting that the Monitor's Certificate has been duly filed in accordance with this Order, on title to the Québec Property and further orders that such registration shall take place without a certificate attesting that no appeal of this Order has been taken, this Order being good and sufficient authority for so doing.

6. THIS COURT ORDERS AND DIRECTS the Registrar in charge of the RPMRR and the Registrar in charge of the Land Registry Office of the Province of Québec for the registration divisions of Brome, Shefford and Montréal, upon payment of the prescribed fees and the filing of a true copy of this Order, the Monitor's Certificate and an affidavit of the Monitor attesting that the Monitor's Certificate has been duly filed in accordance with this Order, to proceed with the cancellation, radiation and discharge of any and all Encumbrances pertaining to the Québec Property as set out in Schedule C or as otherwise registered in respect of the Applicant in the RPMRR.

7. 4-THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁵ from the sale of the Purchased Assets (being the proceeds from the sale of the Purchased Assets paid to the Applicant less the amount that the Applicant is required to immediately repay the DIP Lender (as defined in the Initial Order) under the DIP Credit Agreement (as defined in the Initial Order) upon consummation of the Transaction) (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver-Monitor's Certificate all Claims and

⁵The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

Encumbrances shall attach to the ~~net proceeds from the sale of the Purchased Assets~~ **Net Proceeds** with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁶, 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.

8. ~~5.~~ THIS COURT ORDERS AND DIRECTS the Receiver **Monitor** to file with the Court a copy of the Receiver **Monitor's** Certificate, forthwith after delivery thereof.

9. ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver **Applicant** 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 **Applicant's** past and current employees, including 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 **Applicant**.

10. ~~7.~~ 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 Debtor **Applicant** and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor **Applicant**;

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 **Applicant** and shall not be void or voidable by creditors of the Debtor **Applicant**, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, **a paulian action** or

⁶ 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.

other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), the *Civil Code of Québec* 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.

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

12. THIS COURT ORDERS AND DECLARES that upon the filing of the Monitor’s Certificate with the Court, the Transaction and any other document to be executed for the purposes of the Transaction, shall have the same effect as a forced sale by a public officer acting under judicial authority as per the provisions of the *Code of Civil Procedure*.

13. THIS COURT ORDERS AND DECLARES that the Transaction shall have the same effect as a sale by judicial authority as per the provisions of the *Civil Code of Québec*.

14. 9.—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, Monitor 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 orders and to provide such assistance to the Receiver, as an officer of this Court, Applicant as may be necessary or desirable to give effect to this Order or to assist the Receiver, Applicant and its agents in carrying out the terms of this Order.



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Schedule A – Form of Receiver'~~Monitor~~'s Certificate

Court File No. _____

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

BETWEEN:

~~PLAINTIFF~~

Plaintiff

–and–

~~DEFENDANT~~

Defendant

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BARZEL INDUSTRIES CANADA
INC.

Applicant

RECEIVER'~~MONITOR~~'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [~~NAME OF JUDGE~~] Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated [~~DATE OF ORDER~~], [~~NAME OF RECEIVER~~] was appointed as the interim receiver and receiver (the "Receiver") of the undertaking, property and assets of [~~DEBTOR~~] (the "Debtor"). September 15, 2009, Deloitte & Touche Inc. was appointed as the monitor in these proceedings (the "Monitor").

B. Pursuant to an Order of the Court dated [~~DATE~~], October 30, 2009, the Court approved the agreement of purchase and sale made as of [~~DATE OF AGREEMENT~~] (the "Sale Agreement")

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between the Receiver ~~[Debtor]~~Applicant and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver Monitor 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 and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver Monitor.

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

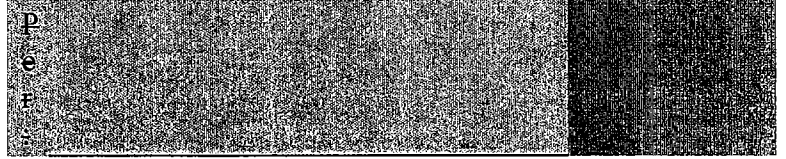
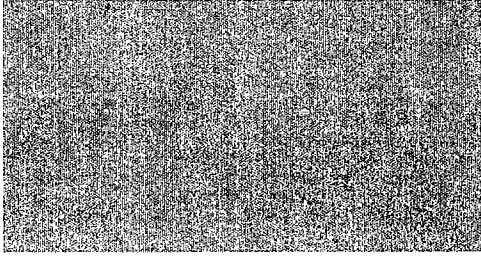
THE RECEIVER MONITOR CERTIFIES the following:

1. 1. The Purchaser has paid and the Receiver Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. 2. The conditions to Closing as set out in section ~~◆■~~ of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and
3. 3. The Transaction has been completed to the satisfaction of the Receiver Monitor.
4. 4. This Certificate was delivered by the Receiver Monitor at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER]~~ DELOITTE & TOUCHE INC., in its capacity as Receiver Monitor of the undertaking, property and assets of ~~{DEBTOR}~~ Applicant, and not in its personal capacity

Per _____

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Name: ■

Title: ■

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Schedule B – Purchased Assets (Real Property)

1. 830 South Service Road, Hamilton, Ontario L8E 5M7

Property Identifier No. 17357-0062(LT)

PT LTS 11 & 12, CON 1, SALTELEET, PTS 1 & 11 ON 62R-4565, T/W RT OVER PT LT 12 BEING PT 14 ON 62R-4565 AS IN 14505CD, S/T SA52340; T/W EASEMENT OVER PT LT 11, CON 1 SALTELEET, BEING PTS 2 TO 10 INCLUSIVE AND PTS 12 & 13 ON 62R-4565 AS IN WE511460; CITY OF HAMILTON.

Being the whole of the said PIN.

Land Titles Division of Wentworth (No. 62).

2. 19460 Clark Graham Avenue, Baie d'Urfé, Québec H9X 3R8

Immovable property situated in the City of Baie-D'Urfé, Province of Québec, known and designated as being lot number one million five hundred fifty-seven thousand eight hundred seventy-eight (1 557 878) of the Cadastre of Québec, Registration Division of Montréal.

3. 553 Léon Harmel, Granby, Québec J2G 3G5

Immovable property situated in the City of Granby, Province of Québec, known and designated as being lot number one million four hundred one thousand eight hundred forty-four (1 401 844) of the Cadastre of Québec, Registration Division of Shefford.

4. 424 St. Vallier, Granby, Québec J2G 7Y4

Immovable property situated in the City of Granby, Province of Québec, known and designated as being lot number one million four hundred four thousand two hundred forty-five (1 404 245) of the Cadastre of Québec, Registration Division of Shefford.

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

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830 South Service Road, Hamilton, Ontario L8E 5M7

1. Charge registered on November 16, 2007 as No. WE511548 from Novamerican Steel Inc., as chargor, to BNY Trust Company of Canada, as chargee, securing the principal amount of \$400,000,000.

19460 Clark Graham Avenue, Baie d'Urfé, Québec H9X 3R8

1. Deed of Hypothec executed between Barzel Industries Canada Inc. (formerly Novamerican Steel Inc.) and BNY Trust Company of Canada before P. Venne, Notary, on November 15, 2007 and registered under number sixteen million twenty-four thousand four hundred eighty-seven (16 024 487) at the Registration Division of Montréal, and registered at the Register of Personal and Movable Real Rights (Québec) under number 07-0657287-0001.
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related to the Real Property**

(unaffected by the Vesting Order)

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Document comparison by Workshare Professional on October 26, 2009 2:52:01 PM

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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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