

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

**IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHN  
OF THE PROVINCE OF ONTARIO**

**MOTION RECORD OF PROPOSAL TRUSTEE  
(RE: APPROVAL OF PROPOSAL)  
(returnable February 5, 2019)**

January 23, 2019

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

**R. Graham Phoenix (52650N)**  
**Thomas P. Lambert (70354T)**  
**Tel: 416.746 4710**  
**Fax: 416.746.8319**  
**Email: [gphoenix@loonix.com](mailto:gphoenix@loonix.com)**  
**[tlambert@loonix.com](mailto:tlambert@loonix.com)**

*Lawyers for MNP Ltd., in its capacity as  
Proposal Trustee*

**TO:** **Office of the Superintendent of Bankruptcy**  
25 St Clair Ave E, 6<sup>th</sup> Floor  
Toronto, ON  
M4T 1M2

**AND TO:** **Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughn, ON  
L4K 1N3

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
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# TAB 1

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

FORM 40.1  
Notice of Hearing of Application for Court Approval of Proposal  
(Paragraph 58(b) of the Act)

In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

In Ontario Superior Court of Justice in Bankruptcy - Toronto.

In the matter of the proposal of Markdale Aggregates Inc., a debtor.

Take notice that an application will be made to the court, at 393 University Ave., Floor 10, Toronto, Ontario, on the 5th day of February 2019, at 10:00 AM, to approve the proposal of Markdale Aggregates Inc., accepted by the creditors at a meeting held on the 21st day of December 2018.

Dated at the City of Toronto in the Province of Ontario, this 2nd day of January 2019.

MNP LTD. - Licensed Insolvency Trustee

  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711 Fax: (416) 323-5242

# TAB 2



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

REGISTRAR

)  
)  
)

TUESDAY, THE 5<sup>th</sup>  
DAY OF FEBRUARY, 2019

**IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHN  
OF THE PROVINCE OF ONTARIO**

**ORDER APPROVING PROPOSAL**

UPON THE APPLICATION of MNP Ltd., trustee (the “Trustee”) in re the Proposal of Markdale Aggregates Inc., filed on December 11, 2018, and upon reading the Report of the Trustee on Proposal, dated January 10, 2019; and upon hearing submissions of the Trustee; and the Court being satisfied that the required majority of creditors duly accepted the Amended Proposal dated December 21, 2018 (the “Amended Proposal”) and the terms thereof, a complete copy of which is marked as Appendix “A” and annexed hereto, and being satisfied that the said terms are reasonable and calculated to the benefit of the general body of creditors and that no offences or facts have been proved to justify the Court in withholding its approval:

1. **THIS COURT ORDERS** that the Amended Proposal be and is hereby approved.

\_\_\_\_\_  
Registrar

**Appendix “A”**

**AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.**

*(see attached)*

IN THE MATTER OF THE PROPOSAL OF MARKDALE AGGREGATES INC. OF THE CITY OF VAUGHN OF THE PROVINCE OF ONTARIO

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

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**ORDER APPROVING PROPOSAL**

---

**LOOPSTRA NIXON LLP**

Barristers and Solicitors  
135 Queens Plate Drive, Suite 600  
Toronto, Ontario  
M9W 6V7

**R. Graham Phoenix (52650N)  
Thomas P. Lambert (70354T)**

Tel: 416.746 4710

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Email: [gphoenix@loonix.com](mailto:gphoenix@loonix.com)  
[tlambert@loonix.com](mailto:tlambert@loonix.com)

*Lawyers for MNP Ltd., the Proposal  
Trustee*

# TAB 3

District of ONTARIO  
Division No. 09-Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

**AFFIDAVIT OF MAILING**

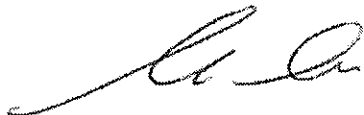
In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

I, Angela Liu, of the Trustee's office of MNP Ltd. hereby make oath and say:

That on the 3rd day of January, 2019, I did cause to be mailed by prepaid ordinary mail to Officer of the Company, and to the proven and contingent creditors of the above-named bankrupt, whose names and addresses appear on the paper-writing marked as Exhibit "A", attached hereto, a copy of the Notice of Amended Proposal to Creditors and Notice of Hearing of Application for Court Approval of Proposal (the "Notice"), marked as Exhibit "B", attached hereto, a copy of Notice of Hearing of Application for Court Approval of Proposal (the "Notice of Hearing"), marked as Exhibit "C", attached hereto, and a copy of Amended Proposal, marked as Exhibit "D", attached hereto.

And that on the 3rd day of January, 2019, I did cause to electronically file the Notice of Hearing together with the Amended Proposal with the Office of the Superintendent of Bankruptcy. Copies of the confirmations of filing are marked as Exhibits "E" and "F", respectively, attached hereto.

SWORN BEFORE ME in )  
the City of Toronto, in the )  
Province of Ontario on )  
the 3<sup>rd</sup> day of January, 2019 )



Angela Liu  
Angela Liu

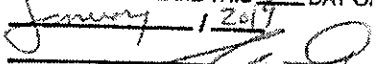
**Matthew Eric Lem, a Commissioner, etc.,  
Province of Ontario, for MNP Ltd. and MNP LLP.,  
Expires December 30, 2019.**

## Creditor Mailing List

In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

THIS IS EXHIBIT **A** REFERRED TO IN  
THE AFFIDAVIT OF  
Angela Liu  
SWORN BEFORE ME THIS 2<sup>nd</sup> DAY OF  
January 2019  
[Signature]  
A Commissioner, Etc.,

Creditor Type	Name	Attention	Address
Director	Louie Frustaglio		111 Creditstone Rd Vaughan ON L4K 1N3
Contingent	Aggregate Processing Services Ltd.		c/o Sorbara Law 31 Union St. E. Waterloo ON N2J 1B8
Unsecured	ARG Group Inc.		c/o B. Simonetta, CPA, CA 111 Creditstone Road Concord ON L4K 1N3
	Arthurs Fuel		202350 County Road 109 East Garafraxa ON L9W 7N1
	Grey Northern Powerline Inc.		c/o Credit Bureau of Owen Sound Limited PO Box 696, 972 1st Ave. W. Owen Sound ON N4K 5R6
	Miller Thomson LLP - Toronto	Craig Mills	Scotia Plaza 5800 - 40 King Street West Toronto ON M5H 3S1
	Powerscreen of Canada Ltd.		800 Farewell Street Oshawa ON L1H 6N5
	Silver Top Supply Limited		324 Sovereign Road London ON N6M 1A8
	Tri-County Aggregates Ltd.		92 Kenhar Drive North York ON M9L 1N2
	Wayne Spears Electric Limited		12 Ronell Crescent Collingwood ON L9Y 4J7

THIS IS EXHIBIT **B** REFERRED TO IN  
THE AFFIDAVIT OF  
Angela Liu  
SWORN BEFORE ME THIS 3<sup>rd</sup> DAY OF  
January 2019  
  
A Commissioner, Etc.,

**MNP** LTD

ESTATE #31-2442243

NOTICE OF AMENDED PROPOSAL TO CREDITORS  
and  
NOTICE OF HEARING OF APPLICATION FOR COURT APPROVAL OF PROPOSAL

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

TAKE NOTICE THAT Markdale Aggregates Inc ("Markdale" or the "Company") lodged with us a Proposal, dated December 5, 2018 pursuant to the *Bankruptcy and Insolvency Act*. On December 10, 2018, the Proposal was filed with the Official Receiver

AND TAKE NOTICE THAT at the General Meeting of Creditors held on December 21, 2018 (the "Creditors Meeting"), Markdale lodged with us an amended Proposal which was filed with the Official Receiver on January 3, 2019 ("Amended Proposal"). A copy of the Amended Proposal is attached for your reference.

The Proposal was amended to add the following condition to implementation of the Proposal:


*"That the Unsecured Creditors Claim of APS Aggregates Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6."*

AND FURTHER TAKE NOTICE THAT at the Creditors Meeting, creditors elected to accept the Amended Proposal and the Trustee will be making an application to the Court to approve the Amended Proposal. Attached to this Notice is a copy of the Notice of Hearing of Application for Court Approval of Proposal which details the hearing date and the location of the hearing.

If you have any questions concerning the foregoing or require any additional information, please contact Sheldon Title at 416-263-6545 or by email at [Sheldon.title@mnp.ca](mailto:Sheldon.title@mnp.ca).

Dated at Toronto, Ontario this 3rd day of January 2019.

MNP LTD.  
Trustee acting in re: the Proposal of  
Markdale Aggregates Inc.  
Per:

  
Sheldon Title CA, CPA, CIRP, LIT

Encl.

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF

Anzela Liu

SWORN BEFORE ME THIS 3<sup>rd</sup> DAY OF

January 2019  
A Commissioner, Etc.,

District of            Ontario  
Division No.        09 - Toronto  
Court No.            31-2442243  
Estate No.          31-2442243

FORM 40.1  
Notice of Hearing of Application for Court Approval of Proposal  
(Paragraph 58(b) of the Act)

In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

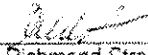
In Ontario Superior Court of Justice in Bankruptcy - Toronto

In the matter of the proposal of Markdale Aggregates Inc., a debtor.

Take notice that an application will be made to the court, at 393 University Ave., Floor 10, Toronto, Ontario, on the 5th day of February 2019, at 10:00 AM, to approve the proposal of Markdale Aggregates Inc., accepted by the creditors at a meeting held on the 21st day of December 2018.

Dated at the City of Toronto in the Province of Ontario this 2nd day of January 2019.

MNP LTD - Licensed Insolvency Trustee

  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711      Fax: (416) 323-5242



THIS IS EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF  
Angela Liu  
SWORN BEFORE ME THIS 3<sup>rd</sup> DAY OF  
January 1, 2019  
[Signature]  
A Commissioner, Etc.,

Court No.: 31-2442243

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.

Markdale Aggregates Inc. hereby submits the following Amended Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) "Administrative Fees and Expenses" means:
  - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (b) "Approval Order" means an Order of the Court approving the Proposal;
- (c) "BIA" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (d) "Business Day" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) "Canada Pension Plan" means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) "Claim" means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date,

whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date:

- (g) "**Court**" means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (h) "**Creditor**" means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (i) "**Creditors' Meeting**" means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (j) "**Creditors' Meeting Date**" means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (k) "**Debtor**" means Markdale Aggregates Inc.;
- (l) "**Directors**" means the Debtor's current and past directors;
- (m) "**Employee Creditors**" means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(1)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period;
- (n) "**Employment Insurance Act**" means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (o) "**Implementation Date**" means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (p) "**Income Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;
- (q) "**Inspectors**" means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;



- (f) **"Official Receiver"** shall have the meaning ascribed thereto in the BIA;
- (s) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (l) **"Preferred Creditors"** means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (u) **"Proof of Claim"** shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
- (v) **"Proposal"** means this proposal together with any amendments or additions thereto;
- (w) **"Proposal Date"** means the date of the filing of the Proposal with the Official Receiver;
- (x) **"Proposal Proceeds"** mean the funds contributed in accordance with **Article [5.1]**;
- (y) **"Proven Claim"** of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (z) **"Related Creditor"** means Tiber Markdale Resources Inc. the parent company to the Debtor;
- (aa) **"Secured Creditor"** means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and **"Secured Creditors"** means all of them;
- (bb) **"Source Deduction Creditors"** means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
- (i) **subsection 224(1.2) of the *Income Tax Act*,**
- (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to **subsection 224(1.2) of the *Income Tax Act*** and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
- (iii) any provision of provincial legislation that has a similar purpose to **subsection 224(1.2) of the *Income Tax Act*,** or that refers to that



subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

- (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
  - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;
- (cc) "Trustee" means MNP Ltd. or its duly appointed successor or successors;
- (dd) "Unsecured Creditors" means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (ee) "Voting Letter" shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

## 1.2 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## 1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## 1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is



unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

#### **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

#### **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

#### **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

#### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **ARTICLE 2**

#### **CLASSIFICATION AND TREATMENT OF CREDITOR**

##### **2.1 Classes of Creditors**

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

##### **2.2 Secured Creditor**

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

##### **2.3 Administrative Fees and Expenses**

The Administrative Fees and Expenses shall be paid by retainers paid by the Debtor or the Related Creditor to the Trustee and will not be paid from the Proposal Proceeds.

#### **2.4 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

#### **2.5 Unsecured Creditors**

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by Article [6].

#### **2.6 Related Creditor**

The Related Creditor, as a Secured Creditor, shall receive no dividend under this Proposal.

### **ARTICLE 3**

#### **PROCEDURE FOR VALIDATION OF CLAIMS**

##### **3.1 Filing of Proofs of Claim**

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

##### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

##### **3.3 Delivery of section 149 Notice**

Immediately after the Implementation Date, the Trustee will deliver notices as provided by section 149 of the BIA.

### **ARTICLE 4**

#### **MEETING OF CREDITORS**

##### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.



#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meetings**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meetings**

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with **subsection 108(3)** of the BIA. The Related Creditor will not be entitled to vote at the Creditors' Meeting.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

#### **4.7 Appointment of Inspectors**

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.

## ARTICLE 5

### FUNDING OF PROPOSAL

#### 5.1 Funding of Proposal.

Within five days of the Implementation Date the Debtor will pay \$75,000 (the "Proposal Proceeds") to the Trustee to be distributed in accordance with Article [6].

## ARTICLE 6

### DISTRIBUTION

#### 6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- (a) First, to payment of Source Deduction Creditors, if any;
- (b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
- (c) Third, to payment of the Claims, if any, of the Employee Creditors;
- (d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
- (e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

#### 6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

#### 6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this Article [6] the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.





## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in **section 50(14)** of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

#### 7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### 7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or

unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **7.4 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors;
- (b) The making of the Approval Order and the expiry of all appeal periods; and,
- (c) That the Unsecured Creditors Claim of APS Aggregate Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6.

#### **7.5 Full Implementation**

This Proposal will be fully implemented by the Debtor on payment of the Proposal Proceeds as provided by **Article [5.1]** and the payment of the Administrative Fees and Disbursements.

#### **7.6 Effect of Proposal Generally**

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

#### **7.7 Conduct of Debtor's Business**

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.



## ARTICLE 8

### ADVOIDANCE OF TRANSACTION

#### 8.1 Avoidance Proceedings

Sections 95 to 101 of the BIA will not apply in respect of the Debtor or this Proposal.

## ARTICLE 9

### GENERAL

#### 9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

**Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughan, ON L4K 1N3  
**Attention: Louie Frustaglio**  
E-mail : lfrustaglio@arggroup.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

**MNP Ltd.**  
300-111 Richmond St W  
Toronto, ON M5H 2G4  
**Attention: Sheldon Title**  
Telecopier: 416-596-7894  
E-mail : sheldon.title@mnp.ca

Or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which

interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in the case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

## **9.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

## **9.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **9.4 Non-Severability**

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

## **9.5 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**



EXECUTION PAGE

DATED at Vaughan, Ontario this 21st day of December, 2018.

Markdale Aggregates Inc.

Per: 

Name: LOUIS FERRI

Title: PRESIDENT

I have authority to bind the corporation.



Government of Canada      Gouvernement du Canada

Update filing - update is confirmed

Welcome [Angela Liu](#) | [Preferences](#) | [E-Filing helpdesk](#) | [Instructions](#) | [Logout](#)

Estate Information

Please Note: The following estate(s) were updated:

- Estate Number: 31-2442243
- Estate Name: Markdale Aggregates Inc.

THIS IS EXHIBIT "E" REFERRED TO IN  
 THE AFFIDAVIT OF  
Angela Liu  
 SWORN BEFORE ME THIS 3<sup>rd</sup> DAY OF  
January 2019  
 \_\_\_\_\_  
 A Commissioner, Etc.,

Document(s) submitted

The following document(s) have been successfully submitted

- Form 40.1: Notice of Hearing of Application for Court Approval of Proposal

Reference

- The Reference Number for this transaction is: **15242060**.
- Submitted by Angela Liu.
- 2019-01-03 13:26 EST

Submit another document for this estate.

If you would like to submit a document against a different estate, please click on the **Update** link in the left hand side menu.

Date modified: 2018-09-28



Government  
of Canada

Gouvernement  
du Canada

### Update filing - update is confirmed

Welcome **Angela Liu** | [Preferences](#) | [E-Filing helpdesk](#) | [Instructions](#) | [Logout](#)

## Estate Information

Please Note: The following estate(s) were updated:

- **Estate Number:** 31-2442243
- **Estate Name:** Markdale Aggregates Inc.

THIS IS EXHIBIT "F" REFERRED TO IN  
THE AFFIDAVIT OF  
Angela Liu  
SWORN BEFORE ME THIS 3<sup>rd</sup> DAY OF  
January 2019  
[Signature]  
A Commissioner, Etc.,

## Document(s) submitted

The following document(s) have been successfully submitted

- Division I Proposal

## Reference

- The Reference Number for this transaction is: **15242073**.
- Submitted by Angela Liu.
- 2019-01-03 13:28 EST

### Submit another document for this estate.

If you would like to submit a document against a different estate, please click on the **Update** link in the left hand side menu.

**Date modified:** 2018-09-28

# TAB 4



District of Ontario  
Division No. 09-Toronto  
Court File Number: 31-2442243  
Estate File Number: 31-2442243

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

**IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN  
IN THE PROVINCE OF ONTARIO**

**REPORT OF TRUSTEE ON PROPOSAL  
(Section 59(1) and paragraph 58(d) of the Act)**

We, **MNP Ltd.** (“**MNP**”), the licensed insolvency trustee (the “**Trustee**”) acting in the proposal of Markdale Aggregates Inc. (“**Markdale**” or the “**Debtor**”) hereby report to the Court as follows:

1. That a proposal was filed with us on the 5<sup>th</sup> day of December, 2018 (the “**Proposal**”) and electronically filed with the Official Receiver on December 10, 2018 a copy of which is attached and marked as **Exhibit “A”**. Attached as **Exhibit “B”** is the Amended Certificate of Filing a Proposal issued by the Office of the Superintendent of Bankruptcy.
2. That prior to filing the Proposal, on 9<sup>th</sup> day of November, 2018, Markdale filed a Notice of Intention to Make a Proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (the “**BIA**”).
3. Markdale is an Ontario corporation having its head office in Vaughan, Ontario. Markdale carries on business as a purveyor of aggregate, stone and premium stone products that are produced from materials extracted from a gravel pit approximately 35 acres in size located at 554605 Gleneg Road #23 in Markdale, Ontario (the “**Pit**”). The Pit is owned by Frank Handy (“**Handy**”) of Markdale, Ontario while Tiber Markdale Resources Inc, a related creditor (“**TMRI**”), holds the licensing agreement with Handy to occupy the site, as well as Class A aggregate license with the Ministry of Natural Recourses and Forestry.
4. That on the 11<sup>th</sup> day of December, 2018, the Trustee gave notice, via email, to Markdale, to the division office and to every known creditor of the Debtor affected by the proposal, whose names and email addresses are shown in **Exhibit “C”** to this report, of the calling of a meeting of creditors to be held on the 21<sup>st</sup> day of December, 2018 (the “**Meeting**”) to consider the Proposal (the “**Notice**”).
5. That included with the Notice was Markdale’s sworn statement of the assets and liabilities as at November 9, 2018 (the “**Statement of Affairs**”), a list of the creditors affected by the Proposal showing the amount of their claims, a copy of the Proposal, the Trustee’s report dated December 10, 2018 (the “**December 10<sup>th</sup> Report**”), a form of a proof of claim, a proxy in blank and a voting letter. Copies of the Notice, the Statement of Affairs and the list of the Debtor’s creditors, are attached and marked as **Exhibits “D”, “E” and “F”**, respectively.

6. That prior to the Meeting, the Trustee made a detailed and careful inquiry into Markdale's liabilities, Markdale's assets and their value, Markdale's conduct and the causes of Markdale's insolvency.
7. That the Meeting was held on the 21<sup>st</sup> day of December, 2018 and was presided over by Sheldon Title of the Trustee's office.
8. During the Meeting, Markdale amended the Proposal (the "**Amended Proposal**") to include a further condition (the "**APS Condition**") on proposal implementation, namely that "the Unsecured Creditors Claim of APS Aggregate Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6". This amendment arose from discussions that occurred between counsel for APS Aggregate Services Inc. ("**APS**") and representatives of the Debtor while the Meeting was recessed. APS was identified as a contingent creditor of Markdale on the Statement of Affairs and not entitled to vote at the Meeting in accordance with **Section 109 (1)** of the BIA. Attached as **Exhibit "G"** is a copy of the Amended Proposal.
9. That the proposal was amended by the Debtor at the Meeting and subsequently was accepted by the required majority of creditors, as detailed below:

	<b>For</b>	<b>%</b>	<b>Against</b>	<b>%</b>
Number of creditors	6	100%	0	0%
Dollar value	\$288,694.80	100%	\$0	0%

10. That a copy of the minutes of the meeting of creditors is attached hereto as **Exhibit "H"**.
11. That on the 3<sup>rd</sup> day of January 2019, the Trustee gave: (i) Notice of Hearing of Application for Court Approval of the Proposal; and (ii) notice of the Amended Proposal, via regular mail, to Markdale, the division office, and all known creditors. A copy is attached hereto as **Exhibit "I"**.
12. That we are of the opinion that:
  - a. The assets of the Debtor and their fair realizable value, as listed on Markdale's Statement of Affairs, are as follows:

<b>Description</b>	<b>Estimated Realizable Value</b>
Inventory	\$234,872
Accounts Receivable (net of allowances for doubtful accounts)	225,614
Vehicles	40,000
<b>TOTAL</b>	<b>\$500,486</b>

- b. the liabilities of the Debtor, as per the Statement of Affairs and creditor claims filed as at January 10, 2019, are as follows:

	As per the Statement of Affairs	Claims Filed as at January 10, 2019
Secured	\$ 500,486 <sup>1</sup>	\$ -
Preferred	0	0
Unsecured	2,663,663	299,840
Total	\$ 3,164,149	\$ 299,840

The December 10th Report provided a Statement of Estimated Realizations arising from the Proposal (as well as the Amended Proposal). In calculating this estimate, for illustration purposes, the Trustee valued APS's claim at \$395,906, being the principal portion of APS's claim. The Trustee cautioned readers that "Given the contingent nature of APS's claim, the Trustee will need to determine whether APS has a proven claim against Markdale, and if so, the extent that APS's claim is a provable claim. However, regardless of the outcome of the APS Litigation claim, the Amended Proposal offers a greater distribution to creditors than a bankruptcy." The \$395,906 was the figure inserted as part of the APS Condition.

To date, the claims received are consistent with the liabilities disclosed by Markdale on the Statement of Affairs.

13. That we are also of the opinion that:

- a. the causes of insolvency of the Debtor are as follows:
  - i) Markdale has struggled with profitability since its inception in 2013;
  - ii) In or about April 2013, Markdale entered into an agreement with APS wherein APS would provide crushing, screening and washing of material extracted from the Pit. APS claims damages in the amount of \$395,906 (plus interest), representing the price of labour materials supplied by APS and received by Markdale;

---

<sup>1</sup> The total indebtedness to TMRI is \$2,767,116 and is secured by a general security agreement granted by Markdale to TMRI. The value of Markdale's assets that are subject to TMRI's security are estimated at \$461,436. The difference between the estimated realizable value of the assets and TMRI's secured claim, namely \$2,305,680, represents TMRI's notional unsecured claim (the "TMRI Unsecured Claim"), which is included in the \$2,663,663 figure reflected on the Statement of Affairs and noted above. The TMRI Unsecured Claim is only a notional figure; accordingly, as TMRI is a secured creditor who is not a party to the Proposal, TMRI will not share in the Proposal Proceeds (as such term is defined in the Amended Proposal).

- iii) In 2014, APS and Markdale entered into discussions/negotiations aimed at resolving the dispute. Shortly thereafter, negotiations fell through and a lawsuit was initiated by APS (the “**APS Litigation**”). The lawsuit has not been resolved and costs associated with the continued APS Litigation have been a significant financial burden to Markdale; and
- iv) In 2017, because of numerous issues with contracting the production of gravel at the Pit, TMRI, purchased its own equipment to rent to Markdale and Markdale brought its own staff in an attempt to complete its own gravel production efficiently and at a reduced cost. However, costs of staff and equipment rentals have remained high relative to revenues as revenues have not grown sufficiently to enable Markdale to meet its obligations. Markdale has been dependent on TMRI to fund operational shortfalls of Markdale.

b. the conduct of the Debtor is subject to censure in the following respects:

None.

The Amended Proposal stipulates that Sections 95 to s.101 of the BIA do not apply in the Amended Proposal. To assess the reasonableness of the inclusion of this provision, the Trustee completed a limited review of Markdale’s books and records for the purpose of identifying potential preferences and transfers at undervalue. Through its review of the books and records and through continued monitoring of the business, the Trustee has not identified any transactions in the last 12 months that could be considered preferences or transfers at under value.

c. The following facts, mentioned in Section 173 of the BIA, may be proved against the Debtor:

Not Applicable

14. That we are further of the opinion that the Debtor’s proposal is an advantageous one for the creditors for the following reasons:

- a. the Amended Proposal contemplates a greater distribution to the creditors than in a bankruptcy, as outlined in the December 10<sup>th</sup> Report; and
- b. The Amended Proposal provides for the continuation of the business, which is advantageous to many of Markdale’s stakeholders, including its employees.

15. That we forwarded a copy of this report to the official receiver on this day.

Dated at Toronto, Ontario, the 10<sup>th</sup> day of January, 2019.

**MNP LTD., solely in its capacity as  
Trustee acting in re the Proposal of  
Markdale Aggregates Inc., and not in its  
personal or corporate capacity**

Per:

A handwritten signature in black ink, appearing to read 'Sheldon Title', written over a horizontal line.

Sheldon Title, CPA, CA, CIRP  
Licensed Insolvency Trustee

Encl.

**EXHIBIT "A"**

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

PROPOSAL OF MARKDALE AGGREGATES INC.

Markdale Aggregates Inc. hereby submits the following Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) **“Administrative Fees and Expenses”** means:
  - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (b) **“Approval Order”** means an Order of the Court approving the Proposal;
- (c) **“BIA”** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (d) **“Business Day”** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) **“Canada Pension Plan”** means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) **“Claim”** means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date,

whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;

- (g) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (h) “**Creditor**” means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (i) “**Creditors’ Meeting**” means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (j) “**Creditors’ Meeting Date**” means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (k) “**Debtor**” means Markdale Aggregates Inc.;
- (l) “**Directors**” means the Debtor’s current and past directors;
- (m) “**Employee Creditors**” means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(l)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor’s business during the same period;
- (n) “**Employment Insurance Act**” means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (o) “**Implementation Date**” means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (p) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;
- (q) “**Inspectors**” means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;





- (r) **“Official Receiver”** shall have the meaning ascribed thereto in the BIA;
- (s) **“Person”** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (t) **“Preferred Creditors”** means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (u) **“Proof of Claim”** shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (v) **“Proposal”** means this proposal together with any amendments or additions thereto;
- (w) **“Proposal Date”** means the date of the filing of the Proposal with the Official Receiver;
- (x) **“Proposal Proceeds”** mean the funds contributed in accordance with **Article [5.1]**;
- (y) **“Proven Claim”** of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (z) **“Related Creditor”** means Tiber Markdale Resources Inc. the parent company to the Debtor;
- (aa) **“Secured Creditor”** means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and **“Secured Creditors”** means all of them;
- (bb) **“Source Deduction Creditors”** means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
  - (i) **subsection 224(1.2) of the *Income Tax Act***;
  - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to **subsection 224(1.2) of the *Income Tax Act*** and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
  - (iii) any provision of provincial legislation that has a similar purpose to **subsection 224(1.2) of the *Income Tax Act***, or that refers to that



subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;

- (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
- (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

- (cc) “Trustee” means MNP Ltd. or its duly appointed successor or successors;
- (dd) “Unsecured Creditors” means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (ee) “Voting Letter” shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

## 1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## 1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## 1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is



unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

#### **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

#### **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

#### **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

#### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

## **ARTICLE 2**

### **CLASSIFICATION AND TREATMENT OF CREDITOR**

#### **2.1 Classes of Creditors**

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

#### **2.2 Secured Creditor**

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

#### **2.3 Administrative Fees and Expenses**

The Administrative Fees and Expenses shall be paid by retainers paid by the Debtor or the Related Creditor to the Trustee and will not be paid from the Proposal Proceeds.



#### **2.4 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

#### **2.5 Unsecured Creditors**

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by Article [6].

#### **2.6 Related Creditor**

The Related Creditor, as a Secured Creditor, shall receive no dividend under this Proposal.

### **ARTICLE 3**

#### **PROCEDURE FOR VALIDATION OF CLAIMS**

##### **3.1 Filing of Proofs of Claim**

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

##### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

##### **3.3 Delivery of section 149 Notice**

Immediately after the Implementation Date, the Trustee will deliver notices as provided by section 149 of the BIA.

### **ARTICLE 4**

#### **MEETING OF CREDITORS**

##### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.



#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meetings**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meetings**

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with **subsection 108(3)** of the BIA. The Related Creditor will not be entitled to vote at the Creditors' Meeting.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

#### **4.7 Appointment of Inspectors**

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.



## ARTICLE 5

### FUNDING OF PROPOSAL

#### 5.1 Funding of Proposal.

Within five days of the Implementation Date the Debtor will pay \$75,000 (the "Proposal Proceeds") to the Trustee to be distributed in accordance with Article [6].

## ARTICLE 6

### DISTRIBUTION

#### 6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- (a) First, to payment of Source Deduction Creditors, if any;
- (b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
- (c) Third, to payment of the Claims, if any, of the Employee Creditors;
- (d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
- (e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

#### 6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

#### 6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this Article [6] the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.



## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in section 50(14) of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

#### 7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### 7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or



unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **7.4 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors; and,
- (b) The making of the Approval Order and the expiry of all appeal periods.

#### **7.5 Full Implementation**

This Proposal will be fully implemented by the Debtor on payment of the Proposal Proceeds as provided by **Article [5.1]** and the payment of the Administrative Fees and Disbursements.

#### **7.6 Effect of Proposal Generally**

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

#### **7.7 Conduct of Debtor's Business**

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.

### **ARTICLE 8**

#### **AVOIDANCE OF TRANSACTION**

##### **8.1 Avoidance Proceedings**

**Sections 95 to 101** of the BIA will not apply in respect of the Debtor or this Proposal.





## ARTICLE 9

### GENERAL

#### 9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

**Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughan, ON L4K 1N3  
**Attention: Louie Frustaglio**  
E-mail : lfrustaglio@arggroup.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

**MNP Ltd.**  
300-111 Richmond St W  
Toronto, ON M5H 2G4  
**Attention: Sheldon Title**  
Telecopier: 416-596-7894  
E-mail : sheldon.title@mnp.ca

Or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>) Business Day following the date on which such notice or other



communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

## **9.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

## **9.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **9.4 Non-Severability**

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

## **9.5 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.


**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**



**EXECUTION PAGE**

**DATED** at Vaughan, Ontario this 5<sup>th</sup> day of December, 2018.

**Markdale Aggregates Inc.**

Per:   
Name: LOUIS PALASTACIO  
Title: PRESIDENT

I have authority to bind the corporation.

**EXHIBIT "B"**



Industry Canada

Industrie Canada

Office of the Superintendent  
of Bankruptcy Canada

Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

In the Matter of the Proposal of:

**Markdale Aggregates Inc.**  
Debtor

**MNP LTD / MNP LTÉE**  
Licensed Insolvency Trustee

---

Date of Proposal:	December 10, 2018	Security:	\$
Meeting of Creditors:	December 21, 2018, 14:00 111 Richmond ST W, Suite 300 Toronto, Ontario Canada,		
Chair:	Trustee		

---

CERTIFICATE OF FILING OF A PROPOSAL - Section 62

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that:

- a proposal in respect of the aforementioned debtor was filed under section 62 of the *Bankruptcy and Insolvency Act*.

The aforementioned trustee is required:

- to provide to me, without delay, security in the aforementioned amount; and
- to send to all creditors, at least ten days prior to the meeting, a notice of a meeting of creditors, which will be held at the aforementioned time and place.

Date: December 11, 2018, 08:22

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**

**EXHIBIT "C"**

**In the Matter of the Proposal of Markdale Aggregates Inc.  
Email Listing**

---

**Creditor Name**

407 ETR Express Toll RouteAttn: Marion Richardson/Collections  
407 ETR Express Toll RouteAttn: Marion Richardson/Collections  
Active Scale Manufacturing Inc.  
Aggregate Processing Services Ltd.  
ARG Group Inc.  
Arthurs Fuel  
Bird Fuels  
Cardinal Couriers Ltd.  
CRA - Tax - Ontario  
Fastenal Canada Ltd.  
GM BluePlan Engineering Limited  
Grey Northern Powerline Inc.  
Kreator Equipment & Services Inc.  
Miller Thomson LLP  
Ministry of Finance - ON PST, EHT & Other TaxesAttn: Mrs. Asta Alberry  
Powerscreen of Canada Ltd.  
RBC Royal Bank / Banque RoyaleAttn: c/o BankruptcyHighway.com  
RSI Truck & Trailer Repair Inc.  
Silver Top Supply Limited  
Steer Enterprises Ltd.  
Tiber Markdale Resources Inc.  
Tiber Markdale Resources Inc.  
Tri-County Aggregates Ltd.  
Wayne Spears Electric Limited  
Wilton Sanitation Inc  
Workplace Safety and Insurance BoardAttn: c/o Collection Services  
Caterpillar Financial Services Ltd.

**Email Address**

Bankruptcy@407ETR.com  
dedicatedsupport@407ETR.com  
info@activescale.com  
gmurdoch@sorbaralaw.com  
bsimonetta@arggroup.com  
gary@arthursfuel.com  
chris@birdfuels.com  
salesinfo@cardinalcouriers.com  
CRA-ARC\_TAX-FISC\_INS\_T-F\_G@cra-arc.gc.ca  
onowe@stores.fastenal.com  
john.slocombe@gmblueplan.ca  
Greynorthern@everus.ca  
g.sabatini@kreator.com  
ediiorio@millerthomson.com  
FinanceCommunications.fin@ontario.ca  
psc@powerscreencanada.com  
bankruptcydocuments@asset.net  
tony@rsitruckandtrailer.com  
info@silvertopsupply.com  
info@steer.ca  
lfrustaglio@arggroup.com  
lfrustaglio@arggroup.com  
TriCountyAggregates@outlook.com  
wspears@auracom.com  
info@wiltionsanitation.ca  
Eric\_kupka@wsib.on.ca  
Sherry.Pottie@cat.com

**EXHIBIT "D"**



District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

FORM 92  
Notice of Proposal to Creditors  
(Section 51 of the Act)

In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

Take notice that Markdale Aggregates Inc. of the City of Vaughan in the Province of Ontario has lodged with us a proposal under the Bankruptcy and Insolvency Act.

A copy of the proposal, a condensed statement of the debtor's assets, and liabilities, and a list of the creditors affected by the proposal and whose claims amount to \$250 or more are enclosed herewith.

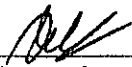
A general meeting of the creditors will be held at 300-111 Richmond Street West, Toronto, ON on the 20th day of December 2018 at 2:00 PM.

The creditors or any class of creditors qualified to vote at the meeting may by resolution accept the proposal either as made or as altered or modified at the meeting. If so accepted and if approved by the court the proposal is binding on all the creditors or the class of creditors affected.

Proofs of claim, proxies and voting letters intended to be used at the meeting must be lodged with us prior to the commencement of the meeting.

Dated at the City of Toronto in the Province of Ontario, this 10th day of December 2018.

MNP LTD. - Licensed Insolvency Trustee

  
\_\_\_\_\_  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711 Fax: (416) 323-5242

(A form of proof of claim, a form of proxy and a voting letter should be enclosed with each notice.)

**EXHIBIT "E"**

District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2442243  
 Estate No. 31-2442243

Original  Amended

- Form 78 -  
 Statement of Affairs (Business Proposal) made by an entity  
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

In the matter of the proposal of  
 Markdale Aggregates Inc.  
 of the City of Vaughan  
 in the Province of Ontario

To the debtor:  
 You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the filing of your proposal (or notice of intention, if applicable), on the 9th day of November 2018. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (as stated and estimated by the officer)		ASSETS (as stated and estimated by the officer)	
1. Unsecured creditors as per list "A" .....	357,983.68	1. Inventory .....	234,872.45
Balance of secured claims as per list "B" .....	2,305,679.76	2. Trade fixtures, etc. ....	0.00
Total unsecured creditors .....	2,663,663.44	3. Accounts receivable and other receivables, as per list "E"	
2. Secured creditors as per list "B" .....	500,486.24	Good .....	225,613.79
3. Preferred creditors as per list "C" .....	0.00	Doubtful .....	69,925.15
4. Contingent, trust claims or other liabilities as per list "D"		Bad .....	0.00
estimated to be reclaimable for .....	1.00	Estimated to produce .....	225,613.79
Total liabilities .....	3,164,150.68	4. Bills of exchange, promissory note, etc., as per list "F" ..	0.00
Surplus .....	NIL	5. Deposits in financial institutions .....	0.00
		6. Cash .....	0.00
		7. Livestock .....	0.00
		8. Machinery, equipment and plant .....	0.00
		9. Real property or immovable as per list "G" .....	0.00
		10. Furniture .....	0.00
		11. RRSPs, RRIFs, life insurance, etc. ....	0.00
		12. Securities (shares, bonds, debentures, etc.) .....	0.00
		13. Interests under wills .....	0.00
		14. Vehicles .....	40,000.00
		15. Other property, as per list "H" .....	0.00
		If debtor is a corporation, add:	
		Amount of subscribed capital .....	0.00
		Amount paid on capital .....	0.00
		Balance subscribed and unpaid .....	0.00
		Estimated to produce .....	0.00
		Total assets .....	500,486.24
		Deficiency .....	2,663,664.44

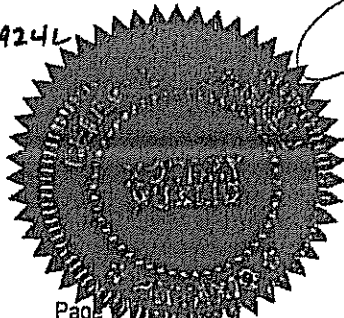
I, Louie Frustaglio, of the City of Vaughan in the Province of Ontario, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 5th day of December 2018 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)  
 before me at the City of Toronto in the Province of Ontario, on this 5th day of December 2018.

Vaughan  
*Celeste Iacobelli*

CELESTE IACOBELLI LSUC # 19924L

*Louie Frustaglio*  
 Louie Frustaglio



District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2442243  
 Estate No. 31-2442243

FORM 78 – Continued

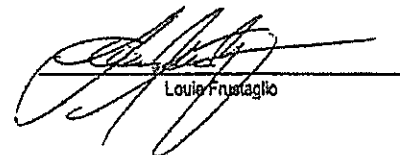
List "A"  
 Unsecured Creditors

Markdale Aggregates Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	407 ETR Express Toll Route Attn: Marion Richardson/Collections	6300 Steeles Ave W Woodbridge ON L4H 1J1	207.44	0.00	207.44
2	Active Scale Manufacturing Inc.	P.O. Box 2145 Branford ON N3T 5Y6	18,367.52	0.00	18,367.52
3	ARG Group Inc.	111 Creditstone Road Concord ON L4K 1N3	8,128.86	0.00	8,128.86
4	Arthurs Fuel	202350 County Road 109 East Garafraxa ON L9W 7N1	56,227.95	0.00	56,227.95
5	Bird Fuels	490 Richardson Road Orangeville ON L9W 4W8	38,399.52	0.00	38,399.52
6	Cardinal Couriers Ltd.	6600 Goreway Drive Unit D Mississauga ON L4V 1S6	84.36	0.00	84.36
7	CRA - Tax - Ontario	Shawinigan-Sud National Verification and Collection Centre 4695 Shawinigan-Sud Blvd Shawinigan-Sud QC G9P 5H9	0.00	0.00	0.00
8	Fastenal Canada Ltd.	900 Wabasaki Drive Kitchener ON N2C 0B7	637.96	0.00	637.96
9	GM BluePlan Engineering Limited	1260-2nd Avenue East, Unit 1 Owen Sound ON N4K 2J3	596.08	0.00	596.08
10	Grey Northern Powerline Inc.	15543 <sup>rd</sup> 7th Line, RR 2 Markdale ON N0C 1H0	10,397.50	0.00	10,397.50
11	Kreator Equipment & Services Inc.	473036 County Road 11 Amaranth ON L9W 0R2	4,633.00	0.00	4,633.00
12	Miller Thomson LLP	60 Columbia Way, Suite 600 Markham ON L3R 0C9	70,127.19	0.00	70,127.19
13	Ministry of Finance - ON PST, EHT & Other Taxes Attn: Mrs. Asta Alberry	Ministry of Revenue 33 King Street West 6th Floor Oshawa ON L1H 8H5	0.00	0.00	0.00
14	Powerscreen of Canada Ltd.	800 Farewell Street Oshawa ON L1H 6N5	37,514.33	0.00	37,514.33
15	RSI Truck & Trailer Repair Inc.	P.O. Box 2148 Angus ON L0M 1B0	8,047.78	0.00	8,047.78
16	Silver Top Supply Limited	324 Scvereign Road London ON N6M 1A8	748.06	0.00	748.06
17	Steer Enterprises Ltd.	14 Station Street Glen Huron ON L0M 1L0	564.71	0.00	564.71
18	Tiber Markdale Resources Inc.	111 Creditstone Road Concord ON L4K 1N3	0.00	2,305,679.76	2,305,679.76
19	Tri-County Aggregates Ltd.	92 Kenhar Drive North York ON M9L 1N2	99,202.46	0.00	99,202.46
20	Wayne Spears Electric Limited	12 Rorell Crescent Collingwood ON L9Y 4J7	4,097.96	0.00	4,097.96
21	Wilton Sanitation Inc	405549 City Road 4, RR 5 Fleisher ON N0C 1E0	1.00	0.00	1.00
22	Workplace Safety and Insurance Board Attn: c/o Collection Services	200 Front St W Toronto ON M5V 3J1	0.00	0.00	0.00
<b>Total:</b>			<b>357,983.68</b>	<b>2,305,679.76</b>	<b>2,663,663.44</b>

05-Dec-2018

Date

  
 Louis Fusciaglio

District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2442243  
 Estate No. 31-2442243

FORM 78 – Continued

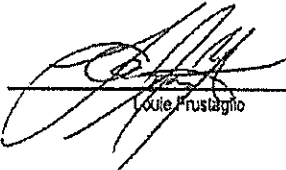
List "B"  
 Secured Creditors

Markdale Aggregates Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	RBC Royal Bank / Banque Royale Attn: c/o BankruptcyHighway.com	PO Box 57100 Etobicoke ON M8Y 3Y2	39,050.00	Motor Vehicles - Automobile - 2017 - GMC - Sierra SLE 1500 - 1GTV2MEC2GZ157013  Motor Vehicles - Automobile - 2013 - GMC - Sierra SLE 1500 - 3GTP2VE74DG255652  Motor Vehicles - Automobile - 2013 - GMC - Sierra SLT 1500 - 3GTP1WE73DG322828		17,050.00  11,000.00  11,000.00		
2	Tiber Markdale Resources Inc.	111 Creditstone Road Concord ON L4K 1N3	2,767,116.00	Business Assets - Stock In Trade - Inventory  Debts Due - Business - Accounts Receivable  Motor Vehicles - Automobile - 2017 - GMC - Sierra SLE 1500 - 1GTV2MEC2GZ157013		234,872.45  225,613.79  950.00		2,305,679.76
<b>Total:</b>			<b>2,806,166.00</b>			<b>500,486.24</b>	<b>0.00</b>	<b>2,305,679.76</b>

05-Dec-2018

Date



Louie Prustaglio

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

FORM 78 – Continued

List "D"  
Contingent or Other Liabilities

Markdale Aggregates Inc.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
1	Aggregate Processing Services Ltd.	669 Charles St. East Kitchener ON N2G 2R6	1.00	0.00		Contingent claim
Total:			1.00	0.00		

05-Dec-2018

Date



Eric Frustaglio

District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2442243  
 Estate No. 31-2442243

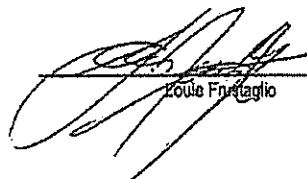
FORM 78 – Continued

List "E"  
 Debts Due to the Debtor  
 Markdale Aggregates Inc.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	Accounts Receivable	111 Creditstone Road Vaughan ON L4K 1N3	Accounts Receivable	225,613.79 0.00 0.00		09-Nov-2018	225,613.79	Accounts Receivable
2	Legal Action	111 Creditstone Road Vaughan ON L4K 1N3	Legal Action	0.00 69,925.15 0.00		09-Nov-2018	0.00	Legal Action
Total:				225,613.79 69,925.15 0.00			225,613.79	

05-Dec-2018

Date



Louie Frustaglio

District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2442243  
 Estate No. 31-2442243

FORM 78 - Concluded

List 'H'  
 Property

Markdale Aggregates Inc.  
 FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade		Inventory	0.00	234,872.45
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand			0.00	0.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture			0.00	0.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles		Automobile - 2013 - GMC - Sierra SLE 1500 - 3GTP2VE74DG256652	0.00	11,000.00
		Automobile - 2013 - GMC - Sierra SLT 1500 - 3GTP1WE73DG322828	0.00	11,000.00
		Automobile - 2017 - GMC - Sierra SLE 1500 - 1GTV2MEC2GZ157013	0.00	18,000.00
(l) Taxes			0.00	0.00
(m) Other			0.00	0.00
			<b>Total:</b>	<b>274,872.45</b>

05-Dec-2018

Date



Louie F. Scaglio



**EXHIBIT "F"**

District of ONTARIO  
Division 09-Toronto  
Estate #: 31-2442243  
Court # 31-2442243

**SUPERIOR COURT OF JUSTICE (IN BANKRUPTCY)**

**IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO**

**REPORT OF TRUSTEE TO THE CREDITORS**  
*(Section 50(5) of the Bankruptcy and Insolvency Act)*

Enclosed are the following documents:

- ♦ Notice of Proposal to Creditors;
- ♦ Proposal under Part III, Division I, of the *Bankruptcy and Insolvency Act* (the “**BIA**”), dated December 5, 2018 (the “**Proposal**”) lodged with MNP Ltd. (the “**Trustee**”) by Markdale Aggregates Inc. (“**Markdale**” or the “**Company**”) and filed with the Official Receiver on December 10, 2018;
- ♦ a statement of affairs, detailing the Company’s assets and liabilities as at November 9, 2018 (“**SOA**”);
- ♦ a proof of claim form;
- ♦ voting letter if you wish to vote in advance of the meeting; and
- ♦ general proxy.

The following is an outline of the background and financial position of the Company, including relevant information that should be of assistance to the creditors in considering their position with respect to the Proposal.

In preparing this Report and making the comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company’s books and records, discussions with employees and management and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Trustee 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 Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

Capitalized terms used in this Report are the same as those referenced in the Proposal.

## SECTION A - Background

Markdale is an Ontario corporation having its head office in Vaughan, Ontario. Markdale carries on business as a purveyor of aggregate, stone and premium stone products that are produced from the materials extracted from a gravel pit approximately 35 acres in size located at 554605 Glenelg Road #23 in Markdale, Ontario (the "Pit"). The Pit is owned by Frank Handy ("Handy") of Markdale, Ontario while Tiber Markdale Resources Inc, a related creditor ("TMRI"), holds the licensing agreement with Handy to occupy the site, as well as Class A aggregate license with the Ministry of Natural Resources and Forestry. In addition, all operating equipment onsite is owned by TMRI and rented to Markdale for a monthly fee for the purpose of extraction of materials.

Markdale filed a Notice of Intention to Make a Proposal on November 9, 2018, as a means of: (i) stabilizing the Company; and (ii) developing a proposal with the assistance of the Trustee for the purposes of offering its creditors a dividend that would be higher than its creditors would receive in the event of a bankruptcy. On December 10, 2018, the Company filed a Proposal pursuant to the BIA.

The Trustee is maintaining a website at <https://mnpdebt.ca/en/corporate/engagements/markdale-aggregates-inc> with publicly available information on the Company's proposal proceedings.

## SECTION B - Summary of the Proposal

This section contains a summary of the Proposal, the terms of which would be effective only if the Proposal is accepted by the creditors and approved by the Court, in accordance with the provisions of the BIA.

As set out in the Proposal, the Proposal provides for the following:

- (i) Conditional on the approval of the Proposal by the Unsecured Creditors of Markdale and the making of the Approval Order, Markdale will pay to the Trustee the sum of \$75,000 (the "Proposal Proceeds", as defined in the Proposal);
- (ii) Secured Creditors will be paid in accordance with existing arrangements, or as may be arranged with them and are not affected by this Proposal;
- (iii) The Administrative Fees and Expenses shall be paid by retainers paid by Markdale or TMRI to the Trustee and will not be paid from the Proposal Proceeds;
- (iv) The Proposal Proceeds shall be distributed by the Trustee as soon as practicably possible, but in any event within six (6) months of the Implementation Date and in accordance with the provisions of the BIA as follows:
  - a) First, to payment of Source Deduction Creditors (defined below), if any;
  - b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
  - c) Third, to payment of the Claims, if any, of the Employee Creditors (defined below);
  - d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
  - e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

- (v) Any Claims against Markdale by any Creditor that are also Claims against the directors and/or officers of Markdale that relate to obligations of Markdale where the directors and/or officers are under any law liable in their capacity as directors and/or officers for the payment of such obligations shall be, and upon Court approval of the Proposal, are to the extent permitted by the BIA, released and forever discharged as against the directors and/or officers of Markdale;
- (vi) Sections 95-101 of the BIA will not apply in respect of this Proposal;
- (vii) TMRI, as a Secured Creditor, will not share in the distribution of the Proposal Proceeds.

The above description of the Proposal is a summary only, and readers are cautioned that if there is inconsistency between this report and the Proposal, the terms of the Proposal shall govern.

### **SECTION C - Financial Position and Causes of Difficulties**

Markdale advises that the causes of its financial difficulties are attributable to the following:

- i. Markdale has struggled with profitability since its inception in 2013.
- ii. In or about April 2013, Markdale entered into an agreement with Aggregate Processing Services Limited<sup>1</sup> (“APS”) wherein APS would provide crushing, screening and washing of material extracted from the Pit. APS claims damages in the amount of \$395,906 (plus interest), representing the price of labour materials supplied by APS and received by Markdale.
- iii. Markdale defends the claim by asserting set-off as against the entire amount claimed by APS alleging that APS breached the terms of the agreement that resulted in, *inter alia*, lower than anticipated quality and quantity of product delivered to Markdale. Markdale also claims from APS damages for, among other things, loss in sales and costs to reprocess the aggregate produced by APS.
- iv. In 2014, APS and Markdale entered into discussions/negotiations aimed at resolving the dispute. Shortly thereafter, negotiations fell through and a lawsuit was initiated by APS (the “APS Litigation”). To date the lawsuit has not been resolved and costs associated with continuing the APS Litigation have been a significant financial burden to Markdale. With the APS Litigation not resolved, APS is shown as a contingent creditor on the SOA.
- v. In 2017, because of numerous issues with contracting the production of gravel at the Pit, TMRI purchased its own equipment to rent to Markdale and Markdale brought on its own staff in an attempt to complete its own gravel production efficiently and at reduced cost. However, costs of staff and equipment rentals have remained high relative to revenues as revenues have not grown sufficiently to enable Markdale to meet its obligations. Markdale has been dependent on TMRI to fund operational shortfalls of Markdale.

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<sup>1</sup> APS’s Amended Statement of Claim notes that all rights to pursue this action were transferred by APS to APS Aggregate Services Inc. on July 3, 2014 and that an Order to Continue reflecting the transmission of interest was issued on May 11, 2017.

- vi. Recently Markdale entered into a labor agreement with Olympia Sand and Gravel (“Olympia”), another related party operating from a separate location, wherein Markdale provides labour services to Olympia that has generated additional revenues to Markdale allowing the Company to mitigate some of its losses going forward;
- vii. Regardless of the new revenues resulting from Olympia’s labour requirements, with the APS Litigation, current outstanding debts to its creditors, and TMRI’s requirement to fund its operations, Markdale filed the NOI as part of an overall restructuring of the Company.
- viii. A summary of Markdale’ historical financial results is set out below:

Year Ended March 31 (CAD\$)	F2019 (Nov 8)	F2018 Unaudited	F2017
Revenue	\$ 770,298	\$ 1,185,930	\$1,127,630
% Growth	n/a	5%	n/a
Cost of Goods Sold	800,644	1,106,350	1,308,388
Gross Margin	- 30,346	79,580	- 180,758
Gross Margin (%)	-4%	7%	-16%
Operating Expenses	201,375	190,803	208,013
Operating Expenses (%)	26%	16%	18%
EBITDA	- 231,721	- 111,223	- 388,771

**SECTION D - Interim Receiver**

Not Applicable.

**SECTION E - Identification and Evaluation of Assets**

According to the SOA, the Company’s assets and their estimated realizable value are as listed below. Further details can be found in Section L of this Report.

Description	Estimated Realizable Value
Accounts receivable (net of allowance for doubtful accounts)	\$ 225,614
Inventory (gravel and sand inventories, extracted and unextracted)	234,872
Vehicles	40,000
<b>TOTAL</b>	<b>\$500,486</b>

The Trustee performed a *Personal Property Security Act* (Ontario) registration search on November 8, 2018. The search revealed registrations by Royal Bank of Canada (“RBC”), Caterpillar Financial (“Caterpillar”), and TMRI.

## SECTION F - Conduct of the Company

The conduct of the Company does not appear to be subject to censure.

## SECTION G - Creditors' Claims

As per the SOA, the Company's creditors consist of:

Creditor Classifications	SOA <sup>2</sup> Amount
Secured	\$ 500,486
Preferred	0
Unsecured	2,663,663
Contingent	1
TOTAL	<u>\$ 3,164,150</u>

Based on Markdale's books and records, there do not appear to be any outstanding source deductions obligations due by Markdale to Canada Revenue Agency ("CRA" or the "Source Deduction Creditors") at the date of filing the NOI and the Company has maintained their remittances in the post filing period. CRA has contacted to the Trustee in order to facilitate it carrying out a trust examination of Markdale's books and records.

The Company has advised the Trustee there are no amounts owing to the employees for unpaid wages and vacation pay ("Employee Creditors") of Markdale.

Included in the secured creditor claims is TMRI's claim in the amount of approximately \$2,767,000. Markdale granted a general security agreement ("GSA") in favour of TMRI. This claim relates to the advances described above to fund the ongoing financial obligations of Markdale. The Trustee's independent legal counsel, Loopstra Nixon LLP, is of the opinion that, subject to the assumptions and qualifications normal to this type of opinion, the security interest granted pursuant to the GSA by Markdale in favour of TMRI is valid and enforceable.

## SECTION H - Previous Business Dealings with the Company

Not applicable.

## SECTION I - Informal Meeting with Major Creditors

Not applicable.

## SECTION J - Remuneration of Trustee

The Trustee's fees and expenses related to the administration of the Proposal, including those of its and Markdale's legal counsel, will be paid separately from the Proposal Proceeds by either Markdale or the Related Creditor and will not form part of the Proposal.

To date, Markdale has provided a retainer of \$15,000 to the Trustee.

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<sup>2</sup> The secured claims total \$2,806,167. The value of Markdale's assets is estimated at \$500,486. The difference between the estimated realizable value of the assets and the secured claims, namely \$2,305,681 represents an unsecured claim.

**SECTION K - Other**

Not applicable.

**SECTION L - Statement of Estimated Realizations**

Set out below is the Trustee's estimate of the distribution to ordinary unsecured creditors if the Proposal is accepted by the Unsecured Creditors and approved by the Court:

Proposal Proceeds	\$ 75,000
Less:	
Source Deduction Creditors	(0)
Estimated Trustee's Fees and Expenses <sup>3</sup>	<u>(0)</u>
Estimated Net Funds Available for Distribution to Unsecured Creditors	<u>\$ 75,000</u>
Estimated claims of Unsecured Creditors per SOA (net of TMRI's claims)	753,889
<b>Estimated distribution to Unsecured Creditors</b>	<u><b>9.95%</b></u>

**Note:** The estimated distribution to Unsecured Creditors includes APS's \$395,906 claim (before inclusion of interest). The inclusion of APS's claim in the above-noted calculation is for illustrative purposes only. Given the contingent nature of APS's claim, the Trustee will need to determine whether APS has a proven claim against Markdale, and if so, the extent that APS's claim is a provable claim. However, regardless of the outcome of the APS Litigation claim, the Proposal offers a greater distribution to creditors than a bankruptcy

If the Proposal is rejected by the Creditors, the Company will be deemed bankrupt. The anticipated realizations from a bankruptcy, per the SOA, are summarized below.

	<u>Notes</u>	<u>Estimated Realization</u>
Accounts receivable (book value is net of allowance for doubtful account)	(1)	225,614
Inventory	(2)	234,872
Vehicles	(3)	40,000
<b>Total:</b>		<u><b>\$500,486</b></u>
Less:		
Claims of Secured Creditors	(4)	(2,806,116)
Estimated Professional fees		<u>(25,000)</u>
Estimated Amount Available for Distribution		<u><b>0</b></u>

<sup>3</sup> The Administrative Fees and Expenses shall be paid by retainers paid by Markdale or TMRI to the Trustee and will not be paid from the Proposal Proceeds

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Notes:

1. Based on the Trustee's discussions with Management, if Markdale were bankrupt, it appears the recoveries from this source would be similar to what is value ascribed on the SOA.
2. The estimated realization of the inventory is based on the current pricing schedules of Markdale. The Trustee has not obtained a formal appraisal in respect of the liquidation value of Markdale inventory but understands—from discussions with management that in a liquidation scenario the amounts received would be approximately 20% of the book value of the assets. The Trustee also consulted a third-party industry appraiser and auctioneer who confirmed the reasonableness of Management's estimate of the realizable value of the inventory in a liquidation scenario.
3. The estimated realization of the vehicles is based on the black book value searches of the Trustee and discussions with management regarding the condition of the vehicles.
4. In the event of a bankruptcy, claims of the Secured Creditors would rank ahead of unsecured creditors. As described earlier in this report, the Trustee's independent counsel is of the opinion that subject to certain assumptions and qualifications, the security interest granted pursuant to the GSA by Markdale in favour of TMRI to be valid and enforceable.

**Preferences and Transfers at Undervalue**

The Proposal provides that sections 95-101 are not applicable. Accordingly, and to assess the appropriateness of the inclusion of this clause, the Trustee has undertaken a limited review of the Company's books and records in order to report to the creditors on any potential preferences or transfers at undervalue identified, consisting of the following:

- Markdale's bank statements and cancelled cheques for the period beginning one year prior to the filing of the NOI and ending on November 9, 2018;
- examining cheques and transfers greater than \$10,000 in the twelve (12) month period preceding the NOI filing; and,
- inquiring with management whether any assets were transferred or disposed for no consideration or conspicuously less than fair market value.

To date, the Trustee has not identified any transactions in the last 12 months that could be considered preferences or transfers at under value. The Trustee has not yet completed its review at this time and will advise creditors at the meeting of creditors on December 20, 2018 should any preferences or transfers at undervalue be identified as part of the Trustee's further review.

The Trustee has not identified any post filing transactions that are material in nature but notes the following:

***Telus***

Upon filing of the NOI, Markdale advised the Trustee that it made a payment to Telus in the amount of \$977 with respect to outstanding amounts due prior to November 9, 2018 to ensure continued services of cell phones to their employees.



## **SECTION M - Recommendations**

Based on the above, the Trustee recommends the acceptance of the Proposal as the Proposal contemplates a higher distribution to the Unsecured Creditors than a bankruptcy. The Proposal would also provide for the continued employment of Markdale's current employees and the preservation of business relationships with Markdale's existing suppliers and customers.

## **SECTION N - Technical Requirements for a Successful Proposal**

This Proposal will become effective only if it is accepted by a resolution of the Unsecured Creditors and approved by the Court. To obtain Creditor approval, a simple majority in the number of Unsecured Creditors voting, with this majority representing at least 2/3 of the dollar value of the proven claims of the Unsecured Creditors voting, must vote in favour of the Proposal. If the Unsecured Creditors do not accept the Proposal, then the Company will be deemed to have made an assignment in bankruptcy and a meeting of creditors in the matter of the bankruptcy will immediately take place.

If the Unsecured Creditors vote to accept the Proposal, Court approval of the Proposal must then be sought. If the Court does not approve the Proposal, the Company would be deemed to have made an assignment in bankruptcy and the Trustee will then call a meeting of creditors in the matter of the bankruptcy.

When completing the Proof of Claim form submitted herewith, Creditors should include all outstanding amounts as at November 9, 2018, the date of the filing of the NOI. It is expressly noted and should be clearly understood that the Trustee, in its capacity as Trustee, assumes no personal liability for any claims that Creditors may have against Markdale either before or after the filing of the Proposal.

Creditors may attend, in person or by proxy, the meeting to consider the Proposal, which will be held at MNP's offices located on the 3<sup>rd</sup> floor at 111 Richmond Street in the City of Toronto in the Province of Ontario on December 20, 2018 at 2 PM (Toronto Time).

Creditors who do not wish to attend or be represented at the meeting but who wish to vote, may forward their Proofs of Claim and voting letters by either email to [echa.odeh@mnp.ca](mailto:echa.odeh@mnp.ca) or fax to (416) 323-5242, to the Trustee so as to be received prior to 2 PM (Toronto Time) on December 20, 2018.

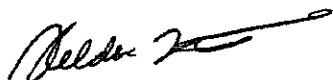
Should you have any questions or comments on the Proposal or this report, please do not hesitate to contact the undersigned.

Dated at Toronto, Ontario, the 10<sup>th</sup> day of December, 2018.

**MNP LTD.**

**Trustee acting in *re the Proposal of*  
Markdale Aggregates Inc., and not in its  
personal capacity**

Per:



Sheldon Title, CPA, CA, CIRP, LIT

Encl.

**EXHIBIT "G"**

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.

Markdale Aggregates Inc. hereby submits the following Amended Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) “**Administrative Fees and Expenses**” means:
  - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (b) “**Approval Order**” means an Order of the Court approving the Proposal;
- (c) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (d) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) “**Canada Pension Plan**” means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) “**Claim**” means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date,

whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;

- (g) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (h) “**Creditor**” means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (i) “**Creditors’ Meeting**” means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (j) “**Creditors’ Meeting Date**” means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (k) “**Debtor**” means Markdale Aggregates Inc.;
- (l) “**Directors**” means the Debtor’s current and past directors;
- (m) “**Employee Creditors**” means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(l)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor’s business during the same period;
- (n) “**Employment Insurance Act**” means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (o) “**Implementation Date**” means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (p) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;
- (q) “**Inspectors**” means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;



- (r) “**Official Receiver**” shall have the meaning ascribed thereto in the BIA;
- (s) “**Person**” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (t) “**Preferred Creditors**” means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (u) “**Proof of Claim**” shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (v) “**Proposal**” means this proposal together with any amendments or additions thereto;
- (w) “**Proposal Date**” means the date of the filing of the Proposal with the Official Receiver;
- (x) “**Proposal Proceeds**” mean the funds contributed in accordance with **Article [5.1]**;
- (y) “**Proven Claim**” of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (z) “**Related Creditor**” means Tiber Markdale Resources Inc. the parent company to the Debtor;
- (aa) “**Secured Creditor**” means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and “**Secured Creditors**” means all of them;
- (bb) “**Source Deduction Creditors**” means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
  - (i) **subsection 224(1.2)** of the *Income Tax Act*;
  - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to **subsection 224(1.2)** of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
  - (iii) any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that



subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;

- (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
  - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;
- (cc) “**Trustee**” means MNP Ltd. or its duly appointed successor or successors;
- (dd) “**Unsecured Creditors**” means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (ee) “**Voting Letter**” shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

## 1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## 1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## 1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is



unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

#### **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

#### **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

#### **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

#### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **ARTICLE 2**

#### **CLASSIFICATION AND TREATMENT OF CREDITOR**

##### **2.1 Classes of Creditors**

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

##### **2.2 Secured Creditor**

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

##### **2.3 Administrative Fees and Expenses**

The Administrative Fees and Expenses shall be paid by retainers paid by the Debtor or the Related Creditor to the Trustee and will not be paid from the Proposal Proceeds.



**2.4 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

**2.5 Unsecured Creditors**

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by **Article [6]**.

**2.6 Related Creditor**

The Related Creditor, as a Secured Creditor, shall receive no dividend under this Proposal.

**ARTICLE 3**

**PROCEDURE FOR VALIDATION OF CLAIMS**

**3.1 Filing of Proofs of Claim**

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

**3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

**3.3 Delivery of section 149 Notice**

Immediately after the Implementation Date, the Trustee will deliver notices as provided by **section 149** of the BIA.

**ARTICLE 4**

**MEETING OF CREDITORS**

**4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.





#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meetings**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meetings**

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with **subsection 108(3)** of the BIA. The Related Creditor will not be entitled to vote at the Creditors' Meeting.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

#### **4.7 Appointment of Inspectors**

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.



## ARTICLE 5

### FUNDING OF PROPOSAL

#### 5.1 Funding of Proposal.

Within five days of the Implementation Date the Debtor will pay \$75,000 (the "Proposal Proceeds") to the Trustee to be distributed in accordance with Article [6].

## ARTICLE 6

### DISTRIBUTION

#### 6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- (a) First, to payment of Source Deduction Creditors, if any;
- (b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
- (c) Third, to payment of the Claims, if any, of the Employee Creditors;
- (d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
- (e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

#### 6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

#### 6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this Article [6] the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.



## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in **section 50(14)** of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

#### 7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### 7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or



unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **7.4 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors;
- (b) The making of the Approval Order and the expiry of all appeal periods; and,
- (c) That the Unsecured Creditors Claim of APS Aggregate Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6.

#### **7.5 Full Implementation**

This Proposal will be fully implemented by the Debtor on payment of the Proposal Proceeds as provided by **Article [5.1]** and the payment of the Administrative Fees and Disbursements.

#### **7.6 Effect of Proposal Generally**

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

#### **7.7 Conduct of Debtor's Business**

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.



## ARTICLE 8

### ADVOIDANCE OF TRANSACTION

#### 8.1 Avoidance Proceedings

Sections 95 to 101 of the BIA will not apply in respect of the Debtor or this Proposal.

## ARTICLE 9

### GENERAL

#### 9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

**Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughan, ON L4K 1N3  
**Attention: Louie Frustaglio**  
E-mail : lfrustaglio@arggroup.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

**MNP Ltd.**  
300-111 Richmond St W  
Toronto, ON M5H 2G4  
**Attention: Sheldon Title**  
Telecopier: 416-596-7894  
E-mail : sheldon.title@mnp.ca

Or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which

interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

## **9.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

## **9.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **9.4 Non-Severability**

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

## **9.5 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK**



**EXECUTION PAGE**

**DATED** at Vaughan, Ontario this 21st day of December, 2018.

**Markdale Aggregates Inc.**

Per:   
Name: LOUIS PROSTAGLIO  
Title: PRESIDENT

I have authority to bind the corporation.

**EXHIBIT "H"**



District of Ontario  
Division No. 09 – Toronto  
Court File Number: 31-2442243  
Estate File Number: 31-2442243

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

MINUTES OF THE GENERAL MEETING OF CREDITORS

These are the minutes of the general meeting of creditors (the "**Meeting**") in connection with the Proposal filed by Markdale Aggregates Inc. ("**Markdale**") held at Trustee's office on the 21<sup>st</sup> day of December 2018 at the hour of 2 PM.

<u>Present:</u>	<u>Representing</u>
Sheldon Title	Trustee
Louie Frustaglio	Markdale Aggregates Inc.

See attached attendance sheet for additional individuals present.

**CALL TO ORDER**

Sheldon Title acted as the Chairperson and acted as Secretary of the meeting. The Chairperson informed the Meeting that pursuant to section 51(3) of the *Bankruptcy and Insolvency Act (the "Act")*, he would act as Chairperson and would decide any questions or disputes arising at the meeting and from such decision any creditor may appeal to the court. The Chairperson examined the Proofs of Claim and Proxies in favour of the Trustee and determined that there was a quorum. The Chairperson declared the Meeting duly convened and called the Meeting to order.

The Chairperson tabled the following documents:

- Affidavit of Mailing December 11<sup>th</sup> mailing
- Proposal
- Statement of Affairs ("**SOA**")
- Trustee's Report on the Proposal dated December 10, 2018 (the "**Trustee's Report**")
- Notice to Creditors of the Meeting of Creditors

**UPDATE TO CREDITORS**

The Trustee advised the Meeting that the Proposal contemplated that sections 95-101 of the Act would not be applicable to the Proposal.

After issuing the Trustee's Report, the Trustee completed its review of Markdale's books and records to enable it to report to creditors on potential preferences or transfers at undervalue.

Based on the Trustee's preliminary review, nothing material came to the Trustee's attention that warrants further consideration.

**QUESTION PERIOD**

The Trustee opened the floor for questions to be asked. There were no questions.

**RECESS**

The meeting was recessed until approximately 3:20 PM.

After the recess the Proposal was amended (the "Amended Proposal") to add the following condition to implementation of the Proposal:

- (a) That the Unsecured Creditors Claim of APS Aggregate Services Inc. ("APS") be valued at \$395,906.41 for the purposes of distribution under Article 6.

After the Proposal was amended, counsel for APS left the Meeting.

The Chairperson informed the Meeting that in order for the Amended Proposal to be accepted, a majority in number of proven creditors (present in person, by proxy or voting letter) and two-thirds in value of the proven creditor claims was necessary. Should that not be achieved, the Debtor would be deemed bankrupt and a creditor meeting in connection with the bankruptcy proceeding would then immediately follow.

The Chairperson then called for a motion for the approval of the Amended Proposal, which was carried. A vote was then held on the Amended Proposal, which was approved by the creditors voting.

Results of the voting as duly filed with the Trustee before the Meeting and in person at the meeting is summarized as follows:

	<b>For</b>	<b>%</b>	<b>Against</b>	<b>%</b>
Number of creditors	6	100%	0	0%
Dollar value	\$288,694.80	100%	\$0	0%

**INSPECTORS**

The Chairperson called for persons wishing to be appointed as inspectors. There were no inspectors appointed.

**DIRECTIONS TO THE TRUSTEE**

The Trustee was directed to apply to Court for date for the hearing of the approval of the Amended Proposal.

**CONCLUSION**

There being no further business, the Meeting was concluded at 3:40 PM


DATED AT TORONTO, Ontario this 21<sup>st</sup> day of December 2018.

**MNP Ltd.**

**Trustee in re: the proposal of  
Markdale Aggregates Inc.**

Per:

Per:




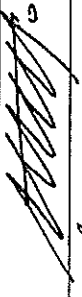
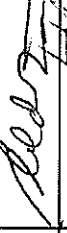


  
\_\_\_\_\_

Sheldon Title

Markdale Aggregates Inc.

File No. 31-2442243

Attendance Sheet – First Meeting of Creditors

Name (print)	Signature	Representing	Amount of Claim	Remarks
LOUIS FRUSTAGLIO		MARKDALE	—	
BIAGIO SIMONETTA		ARK GROUP INC.	\$ 8128.86	
CRAIG MILLS		MILLER THOMPSON	70,127	
LARRY PEONTO		Markdale Agg	—	
Shelby Tite		MNP LTD. - Trustee	—	
David Adams		MNP LTD. - Trustee	—	
Greg Murdoch		APS		

**EXHIBIT "F"**

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

FORM 40.1  
Notice of Hearing of Application for Court Approval of Proposal  
(Paragraph 58(b) of the Act)

In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

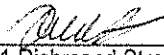
In Ontario Superior Court of Justice in Bankruptcy - Toronto.

In the matter of the proposal of Markdale Aggregates Inc., a debtor.

Take notice that an application will be made to the court, at 393 University Ave., Floor 10, Toronto, Ontario, on the 5th day of February 2019, at 10:00 AM, to approve the proposal of Markdale Aggregates Inc., accepted by the creditors at a meeting held on the 21st day of December 2018.

Dated at the City of Toronto in the Province of Ontario, this 2nd day of January 2019.

MNP LTD. - Licensed Insolvency Trustee

  
\_\_\_\_\_  
300 - 111 Richmond Street West  
Toronto ON M5H 2G4  
Phone: (416) 596-1711 Fax: (416) 323-5242

# TAB 5

District of ONTARIO  
Division No. 09-Toronto  
Court No. 31-2442243  
Estate No. 31-2442243

**AFFIDAVIT OF MAILING**

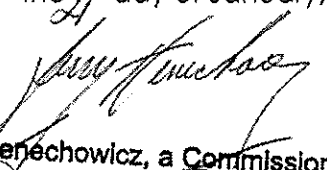
In the matter of the proposal of  
Markdale Aggregates Inc.  
of the City of Vaughan  
in the Province of Ontario

I, Angela Liu, of the Trustee's office of MNP Ltd. hereby make oath and say:

That on the 10th day of January, 2019, I did cause to electronically file with the Office of the Superintendent of Bankruptcy, a copy of the Report of Trustee on Proposal (the "Report"), marked as Exhibit "A", attached hereto. A copy of the confirmation of filing is marked as Exhibits "B", attached hereto.

SWORN BEFORE ME in )  
the City of Toronto, in the )  
Province of Ontario on )  
the 27<sup>th</sup> day of January, 2019 )  
)  
)  
)  
)  
)  
)

Angela Liu  
Angela Liu

  
Jerry Henechowicz, a Commissioner, etc.,  
Province of Ontario, for MNP Ltd.  
Expires September 27, 2020.





Government of Canada

Gouvernement du Canada

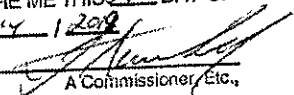
Update filing - update is confirmed

Welcome **Angela Liu** | [Preferences](#) | [E-Filing helpdesk](#) | [Instructions](#) | [Logout](#)

Estate Information

Please Note: The following estate(s) were updated:

- Estate Number: 31-2442243
- Estate Name: Markdale Aggregates Inc.

THIS IS EXHIBIT "B" REFERRED TO IN  
 THE AFFIDAVIT OF  
Angela Liu  
 SWORN BEFORE ME THIS 21<sup>st</sup> DAY OF  
JANUARY 2019  
  
 A Commissioner, Etc.,

Document(s) submitted

The following document(s) have been successfully submitted

- Report of Trustee on Proposal

Reference

- The Reference Number for this transaction is: 15271628.
- Submitted by Angela Liu.
- 2019-01-10 16:42 EST

Submit another document for this estate.

If you would like to submit a document against a different estate, please click on the Update link in the left hand side menu.

Date modified: 2018-09-28

# TAB 6

IN THE MATTER OF THE PROPOSAL OF  
MARKDALE AGGREGATES INC.  
OF THE CITY OF VAUGHAN,  
IN THE PROVINCE OF ONTARIO

AMENDED PROPOSAL OF MARKDALE AGGREGATES INC.

Markdale Aggregates Inc. hereby submits the following Amended Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) “**Administrative Fees and Expenses**” means:
  - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
  - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (b) “**Approval Order**” means an Order of the Court approving the Proposal;
- (c) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (d) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) “**Canada Pension Plan**” means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (f) “**Claim**” means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date,



whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;

- (g) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (h) “**Creditor**” means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (i) “**Creditors’ Meeting**” means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (j) “**Creditors’ Meeting Date**” means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (k) “**Debtor**” means Markdale Aggregates Inc.;
- (l) “**Directors**” means the Debtor’s current and past directors;
- (m) “**Employee Creditors**” means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(l)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor’s business during the same period;
- (n) “**Employment Insurance Act**” means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (o) “**Implementation Date**” means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (p) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;
- (q) “**Inspectors**” means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;



- (r) “**Official Receiver**” shall have the meaning ascribed thereto in the BIA;
- (s) “**Person**” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (t) “**Preferred Creditors**” means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (u) “**Proof of Claim**” shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (v) “**Proposal**” means this proposal together with any amendments or additions thereto;
- (w) “**Proposal Date**” means the date of the filing of the Proposal with the Official Receiver;
- (x) “**Proposal Proceeds**” mean the funds contributed in accordance with **Article [5.1]**;
- (y) “**Proven Claim**” of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (z) “**Related Creditor**” means Tiber Markdale Resources Inc. the parent company to the Debtor;
- (aa) “**Secured Creditor**” means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and “**Secured Creditors**” means all of them;
- (bb) “**Source Deduction Creditors**” means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
  - (i) **subsection 224(1.2)** of the *Income Tax Act*;
  - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to **subsection 224(1.2)** of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
  - (iii) any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that



subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;

- (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
  - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;
- (cc) “**Trustee**” means MNP Ltd. or its duly appointed successor or successors;
- (dd) “**Unsecured Creditors**” means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (ee) “**Voting Letter**” shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

## 1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

## 1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

## 1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## 1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is



unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

#### **1.6 Numbers**

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

#### **1.7 Currency**

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

#### **1.8 Statutory References**

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

#### **1.9 Successors and Assigns**

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

### **ARTICLE 2**

#### **CLASSIFICATION AND TREATMENT OF CREDITOR**

##### **2.1 Classes of Creditors**

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

##### **2.2 Secured Creditor**

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

##### **2.3 Administrative Fees and Expenses**

The Administrative Fees and Expenses shall be paid by retainers paid by the Debtor or the Related Creditor to the Trustee and will not be paid from the Proposal Proceeds.



## **2.4 Preferred Creditors**

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

## **2.5 Unsecured Creditors**

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by **Article [6]**.

## **2.6 Related Creditor**

The Related Creditor, as a Secured Creditor, shall receive no dividend under this Proposal.

# **ARTICLE 3**

## **PROCEDURE FOR VALIDATION OF CLAIMS**

### **3.1 Filing of Proofs of Claim**

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

### **3.2 Allowance or Disallowance of Claims by the Trustee**

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.

### **3.3 Delivery of section 149 Notice**

Immediately after the Implementation Date, the Trustee will deliver notices as provided by **section 149** of the BIA.

# **ARTICLE 4**

## **MEETING OF CREDITORS**

### **4.1 Unsecured Creditors' Meeting**

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.





#### **4.2 Time and Place of Meeting**

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

#### **4.3 Conduct of Meetings**

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

#### **4.4 Adjournment of Meetings**

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

#### **4.5 Voting by Creditors**

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with **subsection 108(3)** of the BIA. The Related Creditor will not be entitled to vote at the Creditors' Meeting.

#### **4.6 Approval by Creditors**

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

#### **4.7 Appointment of Inspectors**

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.



## ARTICLE 5

### FUNDING OF PROPOSAL

#### 5.1 Funding of Proposal.

Within five days of the Implementation Date the Debtor will pay \$75,000 (the "Proposal Proceeds") to the Trustee to be distributed in accordance with Article [6].

## ARTICLE 6

### DISTRIBUTION

#### 6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- (a) First, to payment of Source Deduction Creditors, if any;
- (b) Second, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
- (c) Third, to payment of the Claims, if any, of the Employee Creditors;
- (d) Fourth, to payment of all Claims of any other Preferred Creditors, if any, in the priority set out in section 136 of the BIA;
- (e) Fifth, the ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

#### 6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

#### 6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this Article [6] the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.



## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in **section 50(14)** of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

#### 7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

#### 7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or



unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

#### **7.4 Conditions to Proposal Implementation**

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors;
- (b) The making of the Approval Order and the expiry of all appeal periods; and,
- (c) That the Unsecured Creditors Claim of APS Aggregate Services Inc. be valued at \$395,906.41 for the purposes of distribution under Article 6.

#### **7.5 Full Implementation**

This Proposal will be fully implemented by the Debtor on payment of the Proposal Proceeds as provided by **Article [5.1]** and the payment of the Administrative Fees and Disbursements.

#### **7.6 Effect of Proposal Generally**

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

#### **7.7 Conduct of Debtor's Business**

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.



## ARTICLE 8

### ADVOIDANCE OF TRANSACTION

#### 8.1 Avoidance Proceedings

Sections 95 to 101 of the BIA will not apply in respect of the Debtor or this Proposal.

## ARTICLE 9

### GENERAL

#### 9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

**Markdale Aggregates Inc.**  
111 Creditstone Road  
Vaughan, ON L4K 1N3  
**Attention: Louie Frustaglio**  
E-mail : lfrustaglio@arggroup.com

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and

- (c) if to the Trustee:

**MNP Ltd.**  
300-111 Richmond St W  
Toronto, ON M5H 2G4  
**Attention: Sheldon Title**  
Telecopier: 416-596-7894  
E-mail : sheldon.title@mnp.ca

Or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which

interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5<sup>th</sup>) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

## **9.2 Foreign Currency Obligations**

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

## **9.3 Applicable Law**

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **9.4 Non-Severability**

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

## **9.5 Deeming Provisions**

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.


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**EXECUTION PAGE**

**DATED** at Vaughan, Ontario this 21st day of December, 2018.

**Markdale Aggregates Inc.**

Per:   
Name: LOUIS FRUSTAGLIO  
Title: PRESIDENT

I have authority to bind the corporation.

IN THE MATTER OF THE PROPOSAL OF MARKDALE AGGREGATES INC. OF THE CITY OF VAUGHN OF THE  
PROVINCE OF ONTARIO

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding commenced at Toronto

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**MOTION RECORD OF THE  
PROPOSAL TRUSTEE  
(RE: APPROVAL OF PROPOSAL)  
(returnable February 5, 2019)**

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**LOOPSTRA NIXON LLP**

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*Lawyers for MNP Ltd., the Proposal  
Trustee*