

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**MOTION RECORD OF THE APPLICANT
(Re: Distributions & Termination of CCAA)
(Returnable November 28, 2016)**

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TAB 1

Court File No. CV-16-11419-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**NOTICE OF MOTION
(returnable November 28, 2016)
(Re Distribution, Stay Extension, Discharge & Termination of CCAA)**

2473304 ONTARIO INC., the Applicant in these proceedings, will make a motion to a judge of the Commercial List on Monday, November 28, 2016 at 10:00 a.m., or as soon after that time as the motion can be heard, at the Court House at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

- (a) an Order substantially in the form attached hereto as Schedule "A", *inter alia*:
 - (i) abridging the time for service of the Notice of Motion and the Motion Record herein, if necessary, and validating service thereof;

- (ii) authorizing and directing the Company to distribute \$125,590.91 to GSO Capital Partners, LP (“**GSO**”) in partial satisfaction of its secured claim against the Company (the “**GSO Distribution**”);
- (iii) following the making of the GSO Distribution, authorizing and directing the Company to distribute to Canadian Imperial Bank of Commerce (“**CIBC**”), without further Order of the Court, all such amounts as the Company may have available for distribution (including amounts held in trust by the Monitor (as defined below) for the Company) as the Monitor may approve from time to time until the CCAA Termination Time (as defined below);
- (iv) approving the third report of Richter Advisory Group Inc., in its capacity as Court-appointed monitor of the Company (the “**Monitor**”), and approving the activities of the Monitor as described therein;
- (v) approving the Monitor’s fees and disbursements and those of the Monitor’s counsel, Cassels Brock & Blackwell LLP (“**Cassels**”);
- (vi) approving the anticipated further fees and disbursements of the Monitor and of Cassels, each estimated not to exceed \$50,000 (plus H.S.T.) to complete their remaining dues and the administration of these CCAA proceedings;
- (vii) authorizing and directing the Monitor, Cassels and the Company’s counsel, Fasken Martineau DuMoulin LLP, as applicable, to apply any funds held by them as professional fee retainers or under the

Administration Holdback (as defined in the Order of the Court dated June 23, 2016) on account of their respective outstanding fees and disbursements and directing that any unused balance of the professional fee retainers and the Administration Holdback shall be transferred to the Company;

- (viii) authorizing and directing the Monitor to release to the Company all amounts held by the Monitor in an account as authorized by the Order of the Court dated June 13, 2016 (the “**June 13 Order**”) on account of Sales Taxes (as defined in the June 13 Order);
- (ix) terminating the Company’s proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and discharging and releasing the Monitor upon the filing of a certificate of the monitor substantially in the form attached as Schedule “A” to the CCAA Termination Order (the “**Monitor’s Discharge Certificate**”);
- (x) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Honourable Justice Hainey dated June 7, 2016 (the “**Initial Order**”)) until the filing of the Monitor’s Discharge Certificate (the “**Stay Extension**”);
- (xi) authorizing, but not obligating, the Company to file an assignment in bankruptcy and, if the Company ultimately decides that a filing is appropriate, immediately prior to the appointment of a trustee in bankruptcy (the “**Trustee**”) directing the Company to pay to the Trustee a

retainer in the amount of \$30,000 (plus H.S.T.) (the “**Bankruptcy Retainer**”) in connection with the anticipated fees and disbursements of the Trustee and its counsel in connection with the administration of the Company’s bankruptcy proceedings; and

- (b) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

I. BACKGROUND

- (a) on June 7, 2016 the Company sought and obtained the Initial Order under the CCAA;
- (b) the Company served a motion contemporaneously with its application for the Initial Order, returnable on June 13, 2016, for an order approving the agency agreement entered into between the Company and GA Retail Canada, ULC (the “**Agent**”) on June 6, 2016 (the “**Agency Agreement**”) providing for the orderly liquidation of the Company’s inventory and furniture, fixtures and equipment (“**FF&E**”) at the Company’s stores and distribution centre (the “**Agency Agreement Approval Order**”);
- (c) on June 13, 2016 the Court granted the Agency Agreement Approval Order;
- (d) the orderly liquidation of the Company’s inventory and FF&E was completed on September 21, 2016 and the Agent vacated all of the Company’s leased premises as of September 22, 2016;

- (e) the Company has disclaimed all of its leases in accordance with the provisions of the CCAA and the Initial Order, the last of which disclaimers was effective September 21, 2016;
- (f) the Company no longer has any business operations or non-management employees;

II. DISTRIBUTION TO GSO

- (g) the Company is seeking Court approval for the GSO Distribution, which represents the net proceeds from the liquidation of the Company's FF&E (the "**GSO Distribution**");
- (h) the Company is a guarantor of its parent company, Grafton-Fraser Inc.'s, term loan obligations to GSO pursuant to a guarantee agreement dated February 12, 2016 executed by the Company, as guarantor, in favour of GSO;
- (i) CIBC and GSO are party to an intercreditor agreement dated as of February 12, 2016 (the "**Intercreditor Agreement**") which provides, *inter alia*, that GSO will have a first priority security interest in the FF&E of the Company;
- (j) the Monitor has obtained a legal opinion from its independent legal counsel stating that, subject to the typical qualifications and assumptions, GSO's security with respect to the Company's indebtedness to GSO is valid and enforceable in Ontario, British Columbia, Manitoba, Alberta and Nova Scotia. The Monitor received a similar security opinion from local counsel in Quebec, but, due to cost reasons, did not obtain a local counsel opinion in Saskatchewan where the Company operated only one retail location;

III. DISTRIBUTION TO CIBC

- (k) the Court has previously issued an order approving a distribution to CIBC in partial repayment of the Company's secured indebtedness to CIBC;
- (l) following the making of the GSO Distribution, the Company is seeking an order authorizing it to distribute to CIBC, without further Order of the Court, all such amounts as the Company may have available for distribution (including amounts held in trust by the Monitor for the Company) as the Monitor may approve from time to time until the CCAA Termination Time (the "**CIBC Distribution**", and together with the GSO Distribution, the "**Distributions**");
- (m) the Intercreditor Agreement provides that CIBC will have a first priority security interest in the accounts receivable and inventory of the Company;
- (n) the remaining funds in the estate of the Company, after payment of professional fees, the Bankruptcy Retainer (if any) and the GSO Distribution represent proceeds from the liquidation of the Company's inventory;

IV. EXTENSION OF STAY & TERMINATION OF CCAA PROCEEDINGS

- (o) following the proposed Distributions, the Company will have no further assets to administer;
- (p) the Distributions in these proceedings will not result in the repayment in full of the indebtedness owing by the Company to each of CIBC and GSO;
- (q) the Company is in the final stages of winding down its remaining activities and completing the steps and actions necessary to conclude these CCAA proceedings;

- (r) an extension of the Stay Period until the filing of the Monitor's Discharge Certificate will provide the Company and the Monitor with the opportunity to effectuate the Distributions, complete the remaining matters in the CCAA proceedings and for the Company to possibly file an assignment into bankruptcy;
- (s) the Company has acted, and continues to act, in good faith and with due diligence in pursuing the orderly conclusion of these proceedings;
- (t) the Company will have sufficient liquidity to fund its post-filing obligations and the costs of its CCAA proceedings during the Stay Extension;
- (u) the Company is not aware of any stakeholders that would suffer any material prejudice if the Stay Period is extended as requested;

V. FILING ASSIGNMENT IN BANKRUPTCY

- (v) the Company is seeking Court approval to allow it to file an assignment in bankruptcy if it is ultimately determined that such a filing is appropriate;
- (w) the Company is also seeking authorization to pay the Bankruptcy Retainer if the Company determines to make an assignment in bankruptcy;
- (x) a bankruptcy is being considered as a mechanism to allow a Trustee to effect an orderly wind-up of the Company and provide a source of contact for creditors whose claims remain unpaid;

VI. OTHER GROUNDS

- (y) those grounds set out in the Affidavit of Mark Sun sworn November 22, 2016, and the exhibits thereto (the "**November 22 Affidavit**");

- (z) those grounds set out in the Third Report, and the Appendices thereto, filed;
- (aa) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (bb) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (cc) such further other grounds as counsel may advise and this Court may permit.

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

- (a) the November 22 Affidavit;
- (b) the Third Report, and the Appendices thereto; and
- (c) such other material as counsel may advise and this Honourable Court may permit.

November 22, 2016

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AND TO:	<p>OSLER, HOSKIN & HARCOURT LLP Barristers & Solicitors 450 1 St SW #2500 Calgary, AB T2P 5H1</p> <p>Melanie Gaston/ Ashley Taborda Tel: 403.260.7050/ 416.646.3894 E-mail: megaston@osler.com; ataborda@osler.com</p> <p><i>Counsel to Western Securities Limited</i></p>
AND TO:	<p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>John C. Wolf Tel: 416.593.2994 E-Mail: jwolf@blaney.com</p> <p><i>Lawyers for 2725321 Canada Inc.</i></p>
AND TO:	<p>MINDEN GROSS LLP Barristers & Solicitors 2200-145 King Street West Toronto, ON M5H 4G2</p> <p>Timothy R. Dunn Tel: 416.369.4335 Fax: 416.864.9223 Email: tdunn@mindengross.com</p> <p><i>Lawyers for Yonge Kingston Centre Inc.</i></p>
AND TO:	<p>OWEN BIRD LAW CORPORATION Bentall 3, Suite 2900, 595 Burrard Street PO Box 49130, Vancouver, BC V7X 1J5</p> <p>Scott H. Stephens Tel: 604.691.7521 Fax: 604.688.2827 E-mail: sstephens@owenbird.com</p> <p><i>Lawyers for Onni 7771 Alderbridge Holding Corp.</i></p>

AND TO:	ABG-JONES, LLC 1411 Broadway, 4 th Floor New York, NY 10018 Noah P. Rosen Tel: 646.694.9682 Fax: 212.760.2419 E-mail: nrosen@abg-nyc.com
AND TO:	RIOCAN HOLDINGS (TJV) INC. AND 1633272 ALBERTA ULC c/o RioCan Management Inc. 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4 Jodi Chamberland E-mail: jodi.chamberland@tangeroutlets.com
AND TO:	SUNLIFE ASSURANCE COMPANY OF CANADA AND ST. JACOBS COUNTRYSIDE INC. 47 King Street, St. Jacobs, ON N0B 2N0 Tara Payne E-mail: tpayne@stjacobs.com
AND TO:	KCAP KINGSTON INC. c/o Knightstone Capital Management Inc. 45 St. Clair Avenue West, Suite 1001 Toronto, ON M4V 1K9 Les Closenber Tel: 416.306.2287 x 233 E-mail: lclosenber@k-cap.com
AND TO:	OPTRUST RETAIL INC. c/o Bentall Kennedy (Canada) LP 65 Port Elgin Street, Unit 110 Mississauga, ON L5G 4V3 Oleg Rudnitsky E-mail: manage-group@royalcourtyards.com

AND TO:	PRIMARIS MANAGEMENT INC. 435 Stone Road Mall, Suite 204 Guelph, ON N1G 2X6 Gail Turner E-mail: gturner@primarisreit.com
AND TO:	CO-ENTREPRISE FIDUCIE LEQUIN & 108227 CANADA INC. 551 Chemin Knowlton Knowlton, QC J0E 1V0 Attn: Serge Richer Lorraine Cournoyer E-mail: lorraine@aluminiumknowlton.com
AND TO:	FACTORERIES SAINT-SAUVEUR II SEC 100 Guindon Street, C.P. 22 St-Sauveur-des-Monts, QC J0R 1R0 Avi Abecassis E-mail: Aabecassis@riocan.com
AND TO:	1136974 ONTARIO INC. 105 Six Point Road Etobicoke, ON M8Z 2X3 Michael DiPasquale E-mail: M.DiPasquale@dunpar.ca
AND TO:	LANDMARK SHOPPING CENTRE INC. c/o Emshih Developments Inc. 895 Brant Street, Unit 7 Burlington, ON L7R 2J6 Attn: Michael Shih Carla Parkinson E-mail: carla.emshih@gmail.com
AND TO:	DEV-LEE PROPERTIES LTD. 55 City Centre Drive, Suite 1000 Mississauga, ON L5B 1M3 Storme Viggers E-mail: sviggers@morguard.com

AND TO:	PICKERING BROCK CENTRE INC. c/o Bayfield Realty Advisors Inc. 2300 Yonge Street, Suite 904 Toronto, ON M4P 1E4 Deb Schneider E-mail: d.schneider@northumberlandmall.ca
AND TO:	ONNI 7771 ALDERBRIDGE DEVELOPMENT LIMITED PARTNERSHIP 300 – 550 Robson Street Vancouver, BC V6B 2B7 Geoffrey Geldart E-mail: ggeldart@onni.com
AND TO:	RIOTRIN PROPERTIES (KIRKLAND) INC. c/o RioCan Real Estate Investment Trust The Exchange Tower 130 King Street West, Suite 700 Toronto, ON M5X 1E2 CC: RioCan Property Services 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4 Gina Laterza E-mail: glaterza@riocan.com
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. 70 York Street, Suite 710 Toronto, ON M5J 1S9 Attn: Servicing Vice-President Oriana Estrela E-mail: Oestrela@penequity.com
AND TO:	YONGE-KINGSTON CENTRE INC. c/o 2851 John Street, Suite One Markham, ON L3R 5R7 Attn: Vice President, Legal Department Julie Fernandes E-mail: jfernandes@centrecorp.com

AND TO:	MIROMAR DEVELOPMENT CORPORATION 10801 Corkscrew Road, Suite 305 Estero, FL 33928 Robert Roop Tel: 239.390.5100 E-mail: rroop@miromar.com
AND TO:	2725321 CANADA INC. c/o Bentall Kennedy (Canada) LP 65 Port Street East, Unit 110 Mississauga, ON L5G 4V3 CC: c/o Bentall Kennedy (Canada) LP Cloverdale Mall The Management Office 250 The East Mall Etobicoke, ON M9B 3Y8 Rebecca Rachoff-Brown E-mail: rrachoff@Bentallkennedy.com
AND TO:	LAWRENCE PLAZA EQUITIES INC. c/o Steele Valley Developments Ltd. 2014 Highway 7, Unit 28 Concord, ON L4K 2S9 Harry Kichler/Alan Smoskowitz E-Mail: hkichler@steelevalley.com/ asmoskowitz@rogers.com
AND TO:	151516 CANADA INC. c/o RioCan Real Estate Investment Trust The Exchange Tower 130 King Street West, Suite 700 Toronto, ON M5X 1E2 CC: RioCan Property Services 700 Lawrence Avenue West, Suite 315 Toronto, ON, M6A 3B4 Ana Hayley E-mail: ahayley@riocan.com

AND TO:	INNESS SHOPPING CENTRES LIMITED c/o Smart Center 700 Applewood Crescent, Suite 100 Vaughan, ON L4K 5X3 Jeff Grove E-mail: JGrove@callowayreit.com
AND TO:	WESTLO FINANCIAL CORP. 400 – 1245 West Broadway Vancouver, BC V6H 1G7 Alex Omichinski/ Morgan Nicolsfigueiredo E-mail: alexis@valueindustries.com/ morgan@valueindustries.com
AND TO:	2090950 ONTARIO LIMITED c/o Two+One Property Management Inc. 14-2770 14 th Avenue, Suite 102 Markham, ON L3R 0J1 Manuela Ortloan/Kendra Doherty Tel: 905.475.6030x413/905.475.6030x412 Fax:905.470.2836 E-mail:mortolan@twoplusone.ca/kdoherty@twoplusone.ca
AND TO:	FIRST QUEENSBOROUGH SHOPPING CENTRES LIMITED 700 Applewood Crescent, Suite 100 Vaughan, ON L4K 5X3 Jeff Grove E-mail: JGrove@callowayreit.com
AND TO:	ORLANDO CORPORATION 6205 Airport Road, 5 th Floor Mississauga, ON L4V 1E3 Attn: President Joy Okpara E-mail: okparaj@orlandocorp.com
AND TO:	WELLINGTON SOUTHDALE CENTRE INC. c/o 2851 John Street, Suite One Markham, ON L3R 5R7 Celina Dacosta E-mail: Celina.Dacosta@partnersreit.com

AND TO:	RIOTRIN PROPERTIES (RICHMOND HILL) INC. 2300 Yonge Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Enza Briguglio E-mail: ebriguglio@riocan.com
AND TO:	PLAZACORP PROPERTY HOLDINGS INC. AND 3088409 NOVA SCOTIA LIMITED 527 Queen Street, Suite 200 Fredericton, NB E3B 1B8 And: 1801 Hollis Street, Suite 2210 Halifax, NS B3J 3N4 Jennifer White E-mail: jwhite@creit.ca
AND TO:	HARVARD DEVELOPMENTS INC. c/o Harvard Property Management Inc. 1874 Scarth Street, Suite 2000 Regina, SK S4P 4B3 Katie Jessop E-mail: KJessop@harvard.ca
AND TO:	IMMEUBLES MARCHÉ TREMBLANT INC. 4120, rue Ste-Catherine West, 5 th Floor Westmount, QC H3Z 1P4 Attn: Dean Mendel, President
AND TO:	9139-6366 QUEBEC INC. 324 rue Aimé-Vincent Vaudreuil-Dorion, QC J7V 5V5 Attn: The Vice-President Leasing Lynn Harden E-mail: lynn@harden.ca

AND TO:	4240073 CANADA INC. 9224-1892 QUEBEC INC. 9171-9922 QUEBEC INC. c/o Quartier DIX30 Management LP 9120 boulevard Leduc, Bureau 230 Brossard, QC J4Y 0L3 Karine Aube E-mail: kaube@oxfordproperties.com
AND TO:	W.S. PARTNERSHIP c/o Kennington Properties Ltd. P.O. Box 1212, Station M Calgary, AB T2P 2K9 Carol Hughes E-mail: Carol.Hughes@kennington.ca
AND TO:	XEROX CANADA LTD. 33 Bloor Street East, 3 rd Floor Toronto, ON M4W 3H1
AND TO:	CANADA REVENUE AGENCY c/o Department of Justice The Exchange Tower 130 King Street West Suite 3400, P.O. Box 36 Toronto, ON M5X 1K6 Attention: Diane Winters Phone: 416.973.3172 Fax: 416.973.0810 E-mail: diane.winters@justice.gc.ca <i>Counsel to Canada Revenue Agency</i>
AND TO:	ZENTIL PROPERTY MANAGEMENT LTD. 3655 Keele Street Toronto, ON M3J 1M8 Attention: Antoinette Benedetto Tel: 416.638.6300 Email: antoinetteb@zentil.com <i>Landlord for the 388 Applewood Property (distribution centre and retail location)</i>

TAB A

Court File No. CV-16-11419-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 28 th
)	
JUSTICE)	DAY OF NOVEMBER, 2016

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**ORDER
(DISTRIBUTION, STAY EXTENSION, DISCHARGE & TERMINATION OF CCAA)**

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Mark Sun sworn November 22, 2016, and the exhibits thereto, the third report of Richter Advisory Group Inc., in its capacity as the monitor of the Applicant (the "**Monitor**"), and the appendices thereto (the "**Third Report**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Canadian Imperial Bank of Commerce ("**CIBC**") and counsel for GSO Capital Partners, LP ("**GSO**"), no one else appearing although duly served as appears from the affidavit of service of Mai-Ling Patel sworn November 22, 2016, filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and validated so that the Motion is properly returnable today.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Applicant or the Monitor, as the case may be, be and are hereby authorized and directed to distribute \$125,590.91 to GSO, in partial repayment of amounts owing by the Applicant to GSO under the Term Guarantee and the Term Security Documents (the “**GSO Distribution**”).

4. **THIS COURT ORDERS** that, following the making of the GSO Distribution, the Applicant be and is hereby authorized and directed to distribute to CIBC, without further Order of the Court, all such amounts as the Applicant may have available for distribution (including amounts held in trust by the Monitor for the Applicant) as the Monitor may approve from time to time until the CCAA Termination Time (as defined below), provided such distributions are allocated:

- (a) first in payment of advances made to the Applicant under the ABL Facility from and after the date of the Initial Order and outstanding at the time of such distribution; and
- (b) second in payment of advances made to the Applicant under the ABL Facility prior to the date of the Initial Order and outstanding at the time of such distribution (the “**CIBC Distribution**” and together with the GSO Distribution, the “**Distributions**”).

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

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

the Distributions shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by GSO or CIBC, as applicable, be free of all claims, liens, security interests, charges or encumbrances granted by or relating to the Applicant.

APPROVAL OF MONITOR'S THIRD REPORT

6. **THIS COURT ORDERS** that the Third Report, and the activities of the Monitor referred to therein, be and are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and of its counsel, Cassels Brock and Blackwell LLP ("**Cassels**"), as set out in the Third Report and in the Appendices thereto, be and are hereby approved.

8. **THIS COURT ORDERS** that the anticipated further fees and disbursements of the Monitor and of Cassels, each estimated not to exceed \$50,000 (plus H.S.T.), to complete their remaining duties and the administration of these CCAA proceedings, all as set out in the Third Report and in the Appendices thereto, be and are hereby approved, and that the Monitor and Cassels shall not be required to pass their accounts in respect of any further activities in connection with the administration of these CCAA proceedings provided the fees and disbursements of the Monitor and Cassels do not exceed the amount of \$50,000 (plus H.S.T.) each.

RELEASE OF FUNDS TO THE APPLICANT

9. **THIS COURT ORDERS** that the Monitor, Cassels and the Applicant's counsel, Fasken Martineau DuMoulin LLP, be and are hereby authorized and directed to apply any funds held by them as professional fee retainers, including, without limitation, any funds held under the Administration Holdback (as defined in the Order of the Court dated June 23, 2016), on account of their respective outstanding fees and disbursements, provided, however, that any unused balance of the professional fee retainers and the Administration Holdback shall be transferred to the Applicant to be distributed in accordance with this Order.

10. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and directed to release to the Applicant all amounts held by the Monitor in an account as authorized by the Order of the Court dated June 13, 2016 (the "**June 13 Order**") on account of Sales Taxes (as defined in the June 13 Order) to be distributed in accordance with this Order.

TERMINATION OF CCAA PROCEEDINGS

11. **THIS COURT ORDERS** that upon the filing of a certificate of the Monitor substantially in the form attached hereto as Schedule "A" (the "**Monitor's Discharge Certificate**") certifying that the Distributions have been made pursuant to the terms of this Order and that the Applicant has confirmed to the Monitor that all matters to be attended to in connection with these CCAA proceedings have been completed, the CCAA proceedings shall be terminated effective as of the date and time set out in the Monitor's Discharge Certificate without any further act or formality (the "**CCAA Termination Time**").

12. **THIS COURT ORDERS** that the Administration Charge and the Agent's Charge and Security Interest shall be and are hereby terminated, released and discharged at the CCAA Termination Time.

DISCHARGE OF THE MONITOR

13. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Time, the Monitor shall be and is hereby discharged as Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time.

14. **THIS COURT ORDERS AND DECLARES** that, in addition to the protections in favour of the Monitor as set out in the CCAA, the Initial Order, any other Order of this Court in the CCAA proceedings or otherwise, all of which are expressly continued and confirmed, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of the Monitor's duties in the CCAA proceedings or with respect to any other duties or obligations of the Monitor under the CCAA or otherwise, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing, and in addition to the protections in favour of the Monitor as set out in the CCAA, the Initial Order, any other Order of this Court in the CCAA proceedings or otherwise, any claims against the Monitor in connection with the performance of its duties as Monitor be and are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

15. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA proceedings, and the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Order of this Court in the CCAA proceedings or otherwise, all of which are expressly continued and confirmed.

16. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor in these CCAA proceedings except with prior leave of this Court and on prior written notice to the Monitor.

STAY EXTENSION

17. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 14 of the Initial Order) be and is hereby extended until and including the CCAA Termination Time.

ASSIGNMENT IN BANKRUPTCY

18. **THIS COURT ORDERS** that the Applicant is hereby empowered and authorized, but not obligated, to file an assignment in bankruptcy and to take any steps reasonably incidental thereto, and immediately prior to the appointment of the trustee in bankruptcy (the “Trustee”), the Applicant be and is hereby authorized and directed to pay to the Trustee to be named in the assignment in bankruptcy a retainer in the amount of \$30,000 (plus H.S.T.) in respect of the anticipated fees and disbursements of the Trustee and its counsel in connection with the administration of the Applicant’s bankruptcy proceedings.

GENERAL

19. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions to give effect to the Distributions and other matters proposed herein.

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

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

SCHEDULE "A"

Court File No. CV-16-11419-00CL

ONTARIO**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED****AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.****(the "Applicant")****MONITOR'S DISCHARGE CERTIFICATE****RECITALS**

- A. Richter Advisory Group Inc. was appointed as the monitor (the "**Monitor**") of the Applicant in the within CCAA proceedings pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 6, 2016 (the "**Initial Order**");
- B. Pursuant to an Order of the Court dated November 28, 2016 (the "**CCAA Termination Order**"), the Monitor shall be discharged and the CCAA proceedings shall be terminated upon the filing of this Monitor's Discharge Certificate with the Court;
- C. Unless otherwise indicated herein, capitalized terms used in this Monitor's Discharge Certificate shall have the meanings ascribed thereto in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. The Distributions have been made pursuant to the terms of the CCAA Termination Order; and
2. The Applicant confirmed to the Monitor that all matters to be attended to in connection with the CCAA proceedings have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario at _____[TIME] on this ____ day of _____, 20____.

RICHTER ADVISORY GROUP INC.,
solely in its capacity as Court-appointed
Monitor of 2473304 ONTARIO INC. and
not in its personal capacity

By: _____

Name:

Title:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

	<p>ONTARIO SUPERIOR COURT OF JUSTICE [COMMERCIAL LIST]</p> <p>Proceedings commenced in Toronto</p>
	<p>ORDER (DISTRIBUTIONS & TERMINATION OF CCAA)</p> <p>FASKEN MARTINEAU DuMOULIN LLP 333 Bay Street – Suite 2400 Bay Adelaide Centre, Box 20 Toronto, ON M5H 2T6</p> <p>Stuart Brotman (LSUC#43430D) Tel: 416 865 5419 Fax: 416 364 7813 sbrotman@fasken.com</p> <p>Dylan Chochla (LSUC#62137I) Tel: 416 868 3425 Fax: 416 364 7813 dchochla@fasken.com</p> <p>Lawyers for the Applicant, 2473304 Ontario Inc.</p>

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN
THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

NOTICE OF MOTION
(RETURNABLE NOVEMBER 28, 2016)
(RE: DISTRIBUTIONS & TERMINATION OF CCAA)

FASKEN MARTINEAU DUMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

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Lawyers for the Applicant, 2473304 Ontario Inc.

TAB 2

Court File No.: CV-16-11419-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**AFFIDAVIT OF MARK SUN
(DISTRIBUTIONS, STAY EXTENSION, DISCHARGE & TERMINATION OF CCAA)
(SWORN NOVEMBER 22, 2016)**

I, Mark Sun, Executive, of the City of Brampton, in the Province of Ontario,
Canada, **MAKE OATH AND SAY:**

1. I am the Vice-President and Chief Financial Officer of the Applicant, 2473304 Ontario Inc., which carried on business under the licensed trade name "Jones New York" in Canada (the "**Company**"), and as such I have knowledge of the matters set out herein. I have also reviewed the books and records of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where information has been received from other sources, I have stated the source of the information and believe it to be true.

I. OVERVIEW

2. I swear this affidavit in support of a motion by the Company for an order (the "**CCAA Termination Order**"), among other things,

- (a) authorizing and directing the Company to make a distribution to GSO Capital Partners, LP (“**GSO**”) in partial satisfaction of its secured claim against the Company (the “**GSO Distribution**”);
- (b) following the making of the GSO Distribution, authorizing and directing the Company to distribute any amount received by the Company or remaining in the estate of the Company (or received by the Monitor (as defined below) in trust for the Company) prior to the CCAA Termination Time (as defined below) to Canadian Imperial Bank of Commerce (“**CIBC**”), first in an amount not exceeding the maximum amount of advances made to the Company under the ABL Facility (as defined below) from and after the date of the Initial Order (as defined below), and second in an amount not exceeding the maximum amount of advances made to the Company under the ABL Facility prior to the date of the Initial Order, all as such are outstanding at the time of such distribution;
- (c) terminating the Company’s proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and discharging Richter Advisory Group Inc. (“**Richter**”), in its capacity as Court-appointed monitor of the Company (the “**Monitor**”), as Monitor upon the filing of a certificate of the monitor substantially in the form attached as Schedule “A” to the CCAA Termination Order (the “**Monitor’s Discharge Certificate**”);
- (d) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Honourable Justice Hailey dated June 7, 2016 (the “**Initial Order**”)) until the filing of the Monitor’s Discharge Certificate (the “**Stay Extension**”); and

- (e) authorizing, but not obligating, the Company to file an assignment in bankruptcy and, if the Company ultimately decides that a filing is appropriate, immediately prior to the appointment of a trustee in bankruptcy (the “**Trustee**”) directing the Company to pay to the Trustee a retainer in the amount of \$30,000 (plus H.S.T.) (the “**Bankruptcy Retainer**”) in connection with the anticipated fees and disbursements of the Trustee and its counsel in connection with the administration of the Company’s bankruptcy proceedings.

II. BACKGROUND

3. The Company is a privately held women’s clothing retailer that operated 37 stores in Canada. In July, 2015, the Company acquired the tangible assets of the Canadian retail business formerly operated under the name “Jones New York” from Sycamore Partners, a private equity firm based in New York (the “**Acquisition**”). In connection with the Acquisition the Company entered into a term sheet with ABG-Jones, LLC, the licensor of the “Jones New York” brand, giving the Company the right to use the “Jones New York” brand in the sale of womenswear in Canada.

4. The Company faced a liquidity crisis as a result of, among other things, lower than expected retail sales, delays in receipt of seasonal inventory, higher inventory costs due to unfavourable currency fluctuations and unexpected freight charges, and excess prior season inventory remaining from the July 2015 acquisition of the business.

5. The Company entered into forbearance agreements with its operating lender, CIBC, and with its term lender GSO, respectively, each of which contemplates, among other

things, an orderly liquidation of the Company's inventory and furniture, fixtures and equipment ("FF&E") in the context of proceedings under the CCAA.

6. On June 7, 2016, the Company sought and obtained an initial order under the CCAA (the "**Initial Order**"). The Initial Order granted an initial stay of proceedings in favour of the Company until and including July 7, 2016 (as subsequently extended from time to time) and appointed Richter as Monitor in these CCAA proceedings. Attached hereto and marked as Exhibit "A" is a true copy of the Initial Order.

7. The Company served a motion contemporaneously with its application for the Initial Order, returnable on June 13, 2016, for an order approving the agency agreement entered into between the Applicant and GA Retail Canada, ULC (the "**Agent**") on June 6, 2016 (the "**Agency Agreement**") providing for the orderly liquidation of the Company's inventory and FF&E at the Company's stores and distribution centre (the "**Agency Agreement Approval Order**"). On June 13, 2016, the Court granted the Agency Agreement Approval Order. Attached hereto and marked as Exhibit "B" is a true copy of the Agency Agreement Approval Order. A redacted copy of the Agency Agreement was attached as Exhibit "N" to my Affidavit sworn June 6, 2016 in support of the Initial Order (the "**June 6 Affidavit**").

III. LIQUIDATION COMPLETE

8. The orderly liquidation of the Company's inventory and FF&E commenced on or about June 13, 2016 and was completed on or about September 21, 2016.

9. The Agent vacated all of the Company's leased premises as of September 22, 2016.

10. The Applicant has disclaimed all of its leases in accordance with the provisions of the CCAA and the Initial Order, the last of which disclaimers was effective September 21, 2016.

11. On or about October 17, 2016, the Company and the Agent agreed to a final reconciliation of amounts owing between the Company and the Agent under the Agency Agreement and there is nothing left to be done by either the Company or the Agent under the Agency Agreement.

IV. DISTRIBUTIONS

Distribution to GSO

12. The Company is seeking Court approval for the GSO Distribution, which represents the net proceeds from the liquidation of the Company's FF&E. The amount of the GSO Distribution will be finalized prior to the hearing of this motion.

13. As described in the June 6 Affidavit, the Company is a guarantor of its parent company, Grafton-Fraser Inc.'s ("**Grafton**"), term loan obligations to GSO pursuant to a guarantee agreement dated February 12, 2016 executed by the Company, as guarantor, in favour of GSO (the "**GSO Guarantee**").

14. The obligations of the Company to GSO under the GSO Guarantee are secured by, among other things, a general security agreement dated February 12, 2016 (the "**GSO GSA**"), pursuant to which the Company granted a security interest in all of its present and after-acquired personal property in favour of GSO.

15. CIBC and GSO are party to an intercreditor agreement dated as of February 12, 2016 (the “**Intercreditor Agreement**”) which provides, among other things, that GSO will have a first priority security interest in the FF&E of the Company.

16. Grafton is indebted to GSO in the approximate amount of \$35,860,967, including accrued interest to October 29, 2016 under an amended and restated credit agreement dated as of June 16, 2009, as amended from time to time (the “**GSO Credit Agreement**”).

17. A copy of the GSO Gurantee, the GSO Security, the Intercreditor Agreement and the GSO Credit Agreement were attached to the June 6 Affidavit.

18. I am advised by Andrew Adessky of the Monitor, and do verily believe that the Monitor has obtained a legal opinion from its independent legal counsel stating that, subject to the typical qualifications and assumptions, GSO’s security with respect to the Company’s indebtedness to GSO is valid and enforceable in Ontario, British Columbia, Manitoba, Alberta and Nova Scotia. I am further advised that the Monitor received a similar security opinion from local counsel in Quebec, but, due to cost reasons, did not obtain a local counsel opinion in Saskatchewan where the Company operated only one retail location.

Distribution to CIBC

19. On June 23, 2016, the Court issued an order approving a distribution to CIBC in partial repayment of amounts owing by the Company to CIBC under a credit agreement (the “**ABL Credit Agreement**”) dated as of February 12, 2016 with CIBC, as agent and as lender, pursuant to which CIBC has provided to the Company and Grafton revolving credit facilities (the “**ABL Facility**”). A copy of the ABL Credit Agreement was attached to the June 6 Affidavit.

20. The Intercreditor Agreement provides that CIBC will have a first priority security interest in the accounts receivable and inventory of the Company.

21. The remaining funds in the estate of the Company, after payment of professional fees, the Bankruptcy Retainer (if any) and the GSO Distribution represent proceeds from the liquidation of the Company's inventory.

22. The Company is therefore seeking an order authorizing it to distribute to CIBC, without further Order of the Court, any amount received by the Company or remaining in the estate of the Company (or received by the Monitor in trust for the Company) prior to the CCAA Termination Time, provided such distributions are applied first to advances made to the Company under the ABL Facility from and after the date of the Initial Order and outstanding at the time of distribution, which are secured by the ABL Lender's DIP Charge (as defined in the Initial Order), and second to advances made to the Company under the ABL Facility prior to the date of the Initial Order and outstanding at the time of distribution (the "**CIBC Distribution**", and together with the GSO Distribution, the "**Distributions**").

23. The distribution, if any, to CIBC will not result in the repayment in full of amounts owing by the Company under the ABL Facility.

V. EXTENSION OF STAY & TERMINATION OF THE CCAA PROCEEDING

24. Following the proposed Distributions, the Company will have no further assets to administer. Further, the Distributions in these proceedings will not result in the repayment in full of the indebtedness owing by the Company to each of CIBC and GSO. As there will be no funds available for distribution to the Company's unsecured creditors, the Company will not undertake a claims process.

25. The liquidation of the Company's inventory and FF&E is complete and the Company has disclaimed all of its leases and vacated all of its leased premises. The Company no longer has any business operations or non-management employees.

26. The Company is in the final stages of winding down its remaining activities and completing the steps and actions necessary to conclude these CCAA proceedings. Those activities and steps include receiving and paying outstanding supplier and service provider invoices, and agreeing on an orderly cessation of the Company's activities (likely by way of an assignment in bankruptcy). Further, as previously disclosed, the Company is a party (as co-borrower with Grafton) to the ABL Credit Agreement and a guarantor of the GSO Credit Agreement. The ABL Credit Agreement and the GSO Credit Agreement have not yet been amended to permit the wind-down (and likely bankruptcy) of the Company's business. An extension of the Stay Period is required to provide the parties with sufficient time to finalize such necessary amendments.

27. An extension of the Stay Period until the filing of the Monitor's Discharge Certificate will provide the Company and the Monitor with the opportunity to effectuate the Distributions, complete the remaining matters in the CCAA proceedings and for the Company to possibly file an assignment into bankruptcy.

28. The Company does not expect that there will be any material costs or disbursements during the extended Stay Period. As a result, I understand that the Company will have sufficient liquidity to fund its post-filing obligations and the costs of its CCAA proceedings during the Stay Extension.

29. It is my belief that the Company has acted, and continues to act, in good faith and with due diligence in pursuing the orderly conclusion of these proceedings.

30. I do not believe that any of the Company's stakeholders will suffer material prejudice if the Stay Extension is granted as requested.

31. The outside termination date in the GSO forbearance agreement expires on November 30, 2016. The outside termination date in the CIBC forbearance agreement was initially September 30, 2016, and was subsequently extended to November 30, 2016. GSO has agreed to extend the outside termination date under the GSO forbearance agreement until the CCAA Termination Time. CIBC is working on a similar amendment to extend the outside termination under the CIBC forbearance agreement. Those agreements are in the process of being documented and amending agreements should be executed prior to the hearing of this motion. If it is not, the Court will be informed at the hearing.

32. I understand that CIBC and GSO support the requested Stay Extension.

33. Upon completion of all matters to be attended to in connection with the CCAA proceedings, including a possible filing by the Company of an assignment in bankruptcy, I understand that the Monitor will file the Monitor's Discharge Certificate and the CCAA proceedings will be terminated (the "**CCAA Termination Time**").

VI. FILING AN ASSIGNMENT IN BANKRUPTCY

34. The Company is seeking Court approval to allow it to file an assignment in bankruptcy if it is ultimately determined that such a filing is appropriate. The Company is also

seeking authorization to pay the Bankruptcy Retainer if the Company determines to make an assignment in bankruptcy.

35. I understand that the board of directors of the Company intends to resign once the CCAA proceedings are terminated.

36. A bankruptcy is being considered as a mechanism to allow a Trustee to effect an orderly wind-up of the Company and provide a source of contact for creditors whose claims remain unpaid.

VII. PURPOSE OF AFFIDAVIT

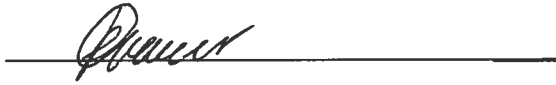
37. I swear this Affidavit in support of the Company's Motion for, among other things, the Distributions and the termination of the CCAA proceeding.

SWORN BEFORE ME at the
City of Toronto, in the
Province of Ontario, this
22nd day of November, 2016

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)
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)


Mark Sun

Mark G. Sun
Vice President & CFO
Grafton-Fraser Inc.


Kai Christian Kramer,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires February 11, 2018.

KAI KRAMER

TAB A

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Mark Sun sworn before me on
November 22, 2016



A Commissioner for taking Affidavits
Kai Kramer

Court File No. CV-16-11419-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 7th

JUSTICE HAINEY

)

DAY OF JUNE, 2016

)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Sun sworn June 6, 2016 and the Exhibits thereto (the "**Sun Affidavit**"), the report of Richter Advisory Group Inc. ("**Richter**") as the proposed monitor dated June 6, 2016 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Richter, in its capacity as the proposed monitor (the "**Monitor**") of the Applicant in these CCAA proceedings, ~~counsel for the directors of the Applicant~~, counsel for Canadian Imperial Bank of Commerce ("**CIBC**"), counsel for GSO Capital Partners, LP ("**GSO**") and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Dylan Chochla sworn June 6, 2016, filed, and on reading the consent of Richter to act as the Monitor

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, in accordance with the ABL Forbearance Agreement (as hereinafter defined), as described in the Sun Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment,

collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that, subject to the terms of the Forbearance Agreements (as hereinafter defined), including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the Forbearance Agreements) the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreements, including the terms therein that refer to the Approved CCAA Cash Flow, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include (subject to the provisions of the Forbearance Agreements), without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied (including royalties under license agreements relating to the sale of branded inventory) to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein or in the Forbearance Agreements, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Forbearance Agreements, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased

premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that, subject to paragraph 15(v) hereof, until and including July 7, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any

business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 38 and 39 hereof, prevent the Lenders (as hereinafter defined) from exercising any rights or remedies in accordance with their respective Forbearance Agreements.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, intellectual property licenses, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names, trademarks and trade names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the Applicant for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Lenders and their respective counsel of financial and other information as agreed to between the Applicant and each Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Lenders;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and similar legislation in other provinces, and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the Lenders with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by the Applicant as part of the costs of these proceedings, subject to any assessment by the Court. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant on a weekly basis or on such other basis agreed by the Applicant and the applicable payee and, in addition, the Applicant is hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, and counsel to the directors of the Applicant retainers in the amounts of \$175,000, \$55,000, \$120,000 and \$10,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, and counsel for the directors of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

FORBEARANCE AGREEMENTS AND DIP FINANCING

32. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the following forbearance agreements (together, the “**Forbearance Agreements**”) is hereby ratified and approved:

- (a) the Forbearance Agreement dated as of June 6, 2016 (the “**ABL Forbearance Agreement**”) among the Applicant and Grafton-Fraser Inc., as borrowers, and CIBC, as lender and as agent (in that capacity, the “**ABL Lender**”); and
- (b) the Forbearance Agreement dated as of June 6, 2016 (the “**Term Forbearance Agreement**”) among Grafton-Fraser Inc., as borrower, the Applicant, as guarantor, the lenders that are parties to the Existing Credit Agreement (as defined in the Term Forbearance Agreement), as lenders (collectively, the “**GSO Lenders**”), and GSO, as administrative agent for itself and the GSO Lenders (the GSO Lenders and GSO being collectively referred to as the “**Term Lenders**”, and together with the ABL Lender, the “**Lenders**”);

and the Applicant is hereby directed to comply with and perform the provisions of (i) the ABL Forbearance Agreement and the credit agreement dated as of February 12, 2016 by and among Grafton-Fraser Inc. and the Applicant, as borrowers, and the ABL Lender, as amended by the ABL Forbearance Agreement (the “**ABL Credit Agreement**”), and (ii) the Term Forbearance Agreement and the guarantee agreement dated as of February 12, 2016 and entered into by the Applicant in favour of GSO as administrative agent for itself and the GSO Lenders and the Term Lenders (the “**Term Guarantee**”).

33. THIS COURT ORDERS that the Applicant’s compliance with and performance of the Blocked Account Agreements (as defined in the ABL Credit Agreement) from and after the date of this Initial Order, as required pursuant to Section 4.1.12 of the ABL Forbearance Agreement, is hereby authorized and approved and the Applicant is hereby directed to comply with the provisions of the Blocked Account Agreements in accordance with the terms of the ABL Forbearance Agreement.

34. THIS COURT ORDERS that the Applicant shall be entitled, subject to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, to continue to obtain and borrow,

repay and re-borrow additional monies under the credit facility (the “**ABL Facility**”) from the ABL Lender pursuant to the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant’s working capital requirements, provided that borrowings by the Applicant under the ABL Facility shall not exceed the amounts contemplated in the ABL Forbearance Agreement. For greater certainty, the ABL Lender shall be entitled to apply receipts and deposits made to the Applicant’s bank accounts, whether directly or pursuant to the Blocked Account Agreements, against the indebtedness of the Applicant to the ABL Lender in accordance with the ABL Credit Agreement, the ABL Forbearance Agreement and the Blocked Account Agreements, whether such indebtedness arose before or after the date of this Initial Order.

35. THIS COURT ORDERS that subject to the provisions of the Forbearance Agreements, the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Lenders under and pursuant to the ABL Credit Agreement, the Term Guarantee and the Forbearance Agreements as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. THIS COURT ORDERS that in addition to the existing liens, charges, mortgages and encumbrances in favour of the ABL Lender, as security for all of the obligations of the Applicant to the ABL Lender relating to advances made to the Applicant under the ABL Facility from and after the date of this Initial Order, the ABL Lender shall be entitled to the benefit of and is hereby granted a charge (the “**ABL Lender’s DIP Charge**”) on the Property (excluding the Term Priority Collateral as defined in the Intercreditor Agreement (as hereinafter defined)). The ABL Lender’s DIP Charge shall have the priority set out in paragraphs 43 and 45 hereof.

37. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the ABL Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ABL Lender’s DIP Charge.

38. THIS COURT ORDERS that, upon the earlier of the occurrence of a Terminating Event or the Termination Date (in each case as defined in the ABL Forbearance Agreement), the ABL Lender may:

- (a) cease making advances to the Applicant, provided that the ABL Lender will continue to fund the payment by the Applicant of employee wages and Priority Payables (as defined in the ABL Forbearance Agreement) for a period of not less than five (5) business days following the last day of the Forbearance Period (as defined in the ABL Forbearance Agreement), and
- (b) (i) set off and/or consolidate any amounts owing by the ABL Lender to the Applicant against the obligations of the Applicant to the ABL Lender under the ABL Credit Agreement, the Blocked Account Agreements, the ABL Forbearance Agreement or any other Loan Document (as defined in the ABL Credit Agreement) and make demand, accelerate payment and give other notices, provided the ABL Lender shall not set off or consolidate against amounts held back from distribution to the ABL Lender in respect of the Administration Charge, and (ii) upon not less than five (5) business days' notice to the Applicant, the Monitor and the Term Lenders, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the other Loan Documents, the ABL Lender's DIP Charge, or the *Personal Property Security Act* (Ontario) or similar legislation in any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the ABL Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS that, upon the occurrence of a Terminating Event (as defined in the Term Forbearance Agreement), the Term Lenders may:

- (a) set off and/or consolidate any amounts owing by the Term Lenders to the Applicant against the obligations of the Applicant to the Term Lenders under the Term Guarantee, the Term Forbearance Agreement or any security agreements, mortgages, deeds of trust, hypothecs or other collateral documents executed and delivered by the

Applicant in favour of the Term Lender (the “**Term Security Documents**”), and make demand, accelerate payment and give other notices; and

- (b) upon not less than five (5) business days’ notice to the Applicant, the Monitor and the ABL Lender, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Term Forbearance Agreement, the Term Guarantee or the Term Security Documents, or the *Personal Property Security Act* (Ontario) or similar legislation of any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

40. THIS COURT ORDERS that nothing in this Order shall amend, override or relieve the ABL Lender or the Term Lenders of any of the provisions of the intercreditor agreement among them dated as of February 12, 2016 (the “**Intercreditor Agreement**”).

41. THIS COURT ORDERS AND DECLARES that each of the ABL Lender and the Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), with respect to (i) any obligations outstanding as of the date of this Order or arising hereafter under the ABL Credit Agreement or the ABL Forbearance Agreement, and (ii) any obligations outstanding as of the date of this Order or arising hereafter under the Term Guarantee or the Term Forbearance Agreement.

42. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the Term Forbearance Agreement, and the granting of the ABL Lender’s DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the ABL Lender's DIP Charge over the Property so charged by them, as among them, shall be as follows:

First – Administration Charge;

Second – ABL Lender's DIP Charge; and

Third – Directors' Charge.

44. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the ABL Lender's DIP Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property so charged by them and, subject to the provisions of the Intercreditor Agreement, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than (subject to further Order of the Court) validly perfected and enforceable security interests, if any, in favour of Xerox Canada Ltd. (File No. 710539839 under the *Personal Property Security Registry* (Ontario)).

46. THIS COURT ORDERS that except as otherwise expressly provided for herein or in the Intercreditor Agreement, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the ABL Lender, the Term Lenders and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that the Charges and the Forbearance Agreements shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the ABL Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Forbearance Agreements shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party; and
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Forbearance Agreements or the creation of the Charges.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SEALING ORDER

49. THIS COURT ORDERS that Exhibit "N" to the Sun Affidavit and Confidential Appendix "A" of the Pre-Filing Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition; English) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available

in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.richter.ca/en/folder/insolvency-cases/0-9/2473304-ontario-inc>

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

GENERAL

53. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

54. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

55. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

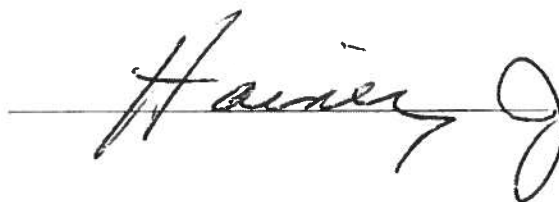
57. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the ABL Credit Agreement or the ABL Forbearance Agreement up to and including the date this order may be varied or amended.

58. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

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Court File No.: CV-16-11419-00CL

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**ORDER
(INITIAL CCAA APPLICATION)
(Returnable June 7, 2016)**

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Lawyers for the Applicant, 2473304 Ontario Inc.

TAB B

THIS IS EXHIBIT "B"
referred to in the Affidavit of
Mark Sun sworn before me on
November 22, 2016



A Commissioner for taking Affidavits
Kai Kramer

Court File No. CV-16-11419-00CL

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

THE HONOURABLE
MR. JUSTICE HAINEY

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)

MONDAY, THE 13TH
DAY OF JUNE, 2016

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 2473304 ONTARIO INC. (the "Applicant")**

APPROVAL ORDER – AGENCY AGREEMENT

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, approving: (i) the transactions contemplated under the Agency Agreement entered into between the Applicant and GA Retail Canada, ULC (the "**Agent**") on June 6, 2016 (the "**Agency Agreement**") and certain related relief; and (ii) the granting of the Agent's Charge and Security Interest (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Mark Sun sworn on June 6, 2016 including the exhibits thereto (the "**Sun Affidavit**"), and the Pre-Filing Report (the "**Monitor's Pre-Filing Report**") of Richter Advisory Group Inc., in its capacity as Monitor (the "**Monitor**"), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Agent, and

CIBC, GSO, Mosguard Investments Ltd.,
Smart Reit,

such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order and the Agency Agreement, as applicable.

APPROVAL OF THE AGENCY AGREEMENT

3. **THIS COURT ORDERS** that the Agency Agreement, including the Sales Guidelines attached hereto as Schedule "A" (the "**Sales Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Applicant is hereby approved, authorized, and ratified with such minor amendments as Applicant (with the consent of the Monitor) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Applicant is hereby authorized and directed to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that subject to receipt of the Initial Guaranty Payment by the Applicant in accordance with the Agency Agreement, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sales Guidelines and to advertise and promote the Sale within the Closing Stores in accordance with the Sales Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority of documents to

resolve such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Agency Agreement.

5. **THIS COURT ORDERS** that subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Applicant, is authorized to market and sell the Merchandise, the Additional Merchandise, the Merchant Consignment Goods and the Owned FF&E, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the Directors' Charge, and the ABL Lender's DIP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts due and payable by the Agent to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. **THIS COURT ORDERS** that subject to the terms of this Order, the Initial Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Closing Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to

the benefit of the Applicant's stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the applicable Vacate Date for each Closing Store (which shall in no event be later than September 22, 2016), the Agent shall have access to the Closing Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Agent is an agent of Applicant and Applicant has granted the right of access to the applicable Closing Store to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for Applicant's leased Closing Stores. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Applicant or the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement.

9. **THIS COURT ORDERS** that except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Closing Stores, subject to, and in accordance with this Order, the Agency Agreement and the Sales Guidelines, the Agent, as agent for Applicant, is authorized to advertise and promote the Sale, without further consent of any Person other than Applicant and the Monitor as provided under the Agency Agreement or a Landlord as provided under the Sales Guidelines.

10. **THIS COURT ORDERS** that the Agent shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale of the Merchandise and the Remaining Merchandise in accordance with the terms of the Agency Agreement, the Sales Guidelines, and this Order, provided that

the Agent provides the Applicant with a copy of any advertising prior to its use in the Sale.

11. **THIS COURT ORDERS** that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "B" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to Applicant of the Guaranteed Amount, the Expenses, Merchant's First Portion of Sharing Recovery Amount, any Merchant's Sharing Recovery Amount, and all other amounts payable to Applicant under the Agency Agreement, all of Applicant's right, title and interest in and to any Remaining Merchandise, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and such Encumbrances will attach instead to the Guaranteed Amount, and all other amounts due and payable to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date. Nothing in this paragraph 11 shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Applicant in respect thereof including, without limitation, the obligations of the Agent to account for and remit the proceeds of sale of the Remaining Merchandise to the Designated Merchant Accounts.

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

AGENT LIABILITY

13. **THIS COURT ORDERS** that the Agent shall act solely as an agent to Applicant and that it shall not be liable for any claims against Applicant other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores, of the assets located therein or associated therewith or of Applicant's employees (including the

Retained Employees) located at the Closing Stores or any other property of Applicant;

- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Closing Stores and at the Distribution Centre during and after the Sale Term in connection with the Sale, except in accordance with the Agency Agreement.

14. **THIS COURT ORDERS** to the extent the Landlords (or any of them) may have a claim against Applicant arising solely out of the conduct of the Agent in conducting the Sale for which Applicant has claims against the Agent under the Agency Agreement, Applicant shall be deemed to have assigned free and clear such claims to the applicable Landlord (the "**Assigned Landlord Rights**").

AGENT AN UNAFFECTED CREDITOR

15. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Applicant nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent's Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a "**Plan**"). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. **THIS COURT ORDERS** that Applicant is hereby authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.

17. **THIS COURT ORDERS** that, except for Encumbrances on the Subordinated Amount as set for in paragraph 20, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Applicant to the Agent pursuant to the Agency Agreement, and Applicant will pay such amounts to the Agent in accordance with the Agency Agreement, and, except for Encumbrances on the Subordinated Amount as set for in paragraph 20, at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED MERCHANT ACCOUNTS

18. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to Gross Sale Proceeds and the Gross FF&E Proceeds deposited into the Designated Merchant Accounts pursuant to the Agency Agreement.

19. **THIS COURT ORDERS** that Gross Sale Proceeds and the Gross FF&E Proceeds deposited in the Designated Merchant Accounts by or on behalf of the Agent or Applicant pursuant to the Agency Agreement shall be and be deemed to be held in trust for Applicant and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such Gross Sale Proceeds and Gross FF&E Proceeds , including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Applicant.

AGENT'S CHARGE AND SECURITY INTEREST

20. **THIS COURT ORDERS** that subject to the receipt by Applicant of the Initial Guaranty Payment, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, the Additional Merchandise, the Proceeds, the Gross FF&E Proceeds (to the extent of the FF&E Commission and the Applicant's out-of-pocket expenses related to the disposition of the Owned FF&E as set out in the Agency Agreement) and, if any, the proceeds of the Merchant Consignment Goods (to the extent of the commission payable to Agent with respect thereto) as security for all of the obligations of Applicant to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances; provided, however, that the Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Merchant's Entitlements due to Applicant under the Agency Agreement (the "**Subordinated Amount**").

PRIORITY OF CHARGES

21. **THIS COURT ORDERS** that the priorities of the Agent's Charge and Security Interest, the Administration Charge, the Directors' Charge, and the ABL Lender's DIP Charge, over the property so charged by them, as among them, shall be as follows:

First - The Agent's Charge and Security Interest (but only in respect of the Merchandise, the Additional Merchandise, the Proceeds, the Gross FF&E Proceeds (to the extent of the FF&E Commission and the Applicant's out-of-pocket expenses related to the disposition of the Owned FF&E as set out in the Agency Agreement) and, if any, the proceeds of the Merchant Consignment Goods (to the extent of the commission payable to the Agent with respect thereto)); provided, however, that the Subordinated Amount, shall be subordinated in accordance with paragraph 20;

Second – The Administration Charge;

Third - ABL Lender's DIP Charge; and

Fourth - Directors' Charge.

22. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent' s Charge and Security Interest shall not be required; and upon receipt of the Initial Guaranty Payment, the Agent' s Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent' s Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent' s Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Applicant shall not grant or suffer to exist any Encumbrances over any Merchandise, Additional Merchandise, Proceeds, Gross FF&E Proceeds (to the extent of the FF&E Commission and the Applicant's out-of-pocket expenses related to the disposition of the Owned FF&E as set out in the Agency Agreement) and, if any, the proceeds of the Merchant Consignment Goods (to the extent of the commission payable to the Agent with respect thereto) that rank in priority to, or *pari passu* with the Agent's Charge and Security Interest.

23. **THIS COURT ORDERS** that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Additional Merchandise, the Proceeds, the Gross FF&E Proceeds (to the extent of the FF&E Commission and the Applicant's out-of-pocket expenses related to the disposition of the Owned FF&E as set out in the Agency Agreement) and the proceeds of the Merchant Consignment Goods (to the extent of the commission payable to the Agent with respect thereto) and, other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

24. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued

pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds Applicant:

- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise,
- (ii) the Agent's Charge and Security Interest, and
- (iii) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to Applicant and shall not be void or voidable by any Person, including any creditor of Applicant, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

BULK SALES ACT AND OTHER LEGISLATION

25. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Agency Agreement and the transfer of any Remaining Merchandise shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

GENERAL

26. **THIS COURT ORDERS** that upon receipt of the Initial Guaranty Payment, the Applicant shall transfer the Initial Guaranty Payment to the Monitor and the Monitor shall hold the Initial Guaranty Payment in trust for the Applicant in an account opened at a Canadian chartered bank for this purpose, subject to further Order of the Court authorizing and directing the distribution of the Initial Guaranty Payment.

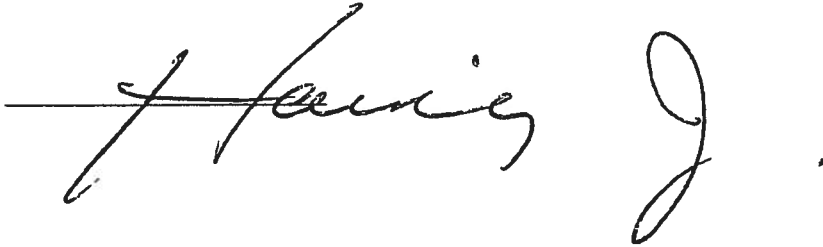
27. **THIS COURT ORDERS** that the Applicant is hereby authorized to transfer on a regular basis, as determined is appropriate in consultation with the Monitor, to an account of the Monitor a portion of the proceeds from the Sale to which the Applicant is entitled under the Agency Agreement in an amount required to pay sales taxes owing by the Applicant that are applicable to such proceeds of the Sale (the "**Sales Taxes**") and the Monitor is hereby authorized to hold such funds and transfer such funds to the Applicant for payment by the Applicant of such Sales Taxes as required pursuant to applicable law.

28. **THIS COURT ORDERS** that the Applicant is hereby authorized to transfer on a regular basis, as determined is appropriate in consultation with the Monitor, to an account of the Monitor the Net FF&E Proceeds from the disposition of the Owned FF&E and the Monitor is hereby authorized to hold such funds in trust for the Applicant in an account opened at a Canadian chartered bank for this purpose, subject to further Order of the Court authorizing and directing the distribution of such Net FF&E Proceeds. Any distribution of Net FF&E Proceeds shall be net of the out of pocket expenses related to the disposition of such Owned FF&E reimbursed by the Applicant in accordance with the Agency Agreement and approved by the Monitor.

29. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All

courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 13 2016

PER / PAR 

SCHEDULE A

SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of 2473304 Ontario Inc. (the "Merchant"). All terms not herein defined shall have the meaning set forth in the Agency Agreement by and between GA Retail Canada, ULC (the "Agent") and the Merchant dated as of June 6, 2016 (the "Agency Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Closing Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remain open during their normal hours of operation provided for in the respective Leases for the Closing Stores until the respective Vacate Date of each Store. The Sale at the Closing Stores shall end by no later than September 22, 2016. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Closing Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Agency Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a separate

entrance from the exterior of the enclosed mall, provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Agent may solicit customers in the Closing Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Closing Store, the Agent shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than Owned FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Subject to the foregoing, the Agent shall vacate the Closing Stores in accordance with the terms and conditions of the Agency Agreement. Any fixtures or personal property left in a Closed Store after it has been vacated by the Agent or in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above, the Agent may sell Owned FF&E which is located in the Closing Stores and the Distribution Centre during the Sale. The Merchant and the Agent may advertise the sale of Owned FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Closing Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any Owned FF&E sold during the Sale shall only be permitted to remove the Owned FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during Store business hours if the Owned FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Agent or by third party purchasers of Owned FF&E from Agent.
10. The Agent shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.
11. The Agent hereby provides notice to the Landlords of the Agent's intention to sell and remove FF&E from the Closing Stores and the Distribution Centre. The Agent will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Agent and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Agent 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

Absent Agent's consent, Merchant shall not seek to disclaim or resiliate any Lease of a Closing Store prior to the earlier of (i) the applicable Vacate Date for such Closing Store and (ii) September 22, 2016.

13. The Agent and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Agent shall not conduct any auctions of Merchandise or Owned FF&E at any of the Closing Stores.
15. The Agent shall be entitled to include in the Sale the Additional Merchandise, to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise will not exceed \$1.5 million at cost in the aggregate; (ii) the Additional Merchandise will be distributed among the Closing Stores such that no Closing Store will receive more than 15% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Closing Stores set out in the applicable Leases.
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Steven Smith, SVP of Financial Operations who may be reached by phone at (818) 264-5446 or email at ssmith@greatamerican.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Merchant, the Agent and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

SCHEDULE B

Court File No. _____

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF 2473304 ONTARIO INC. (the
"Applicant")**

MONITOR'S CERTIFICATE

RECITALS

Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agency Agreement entered into between 2473304 ONTARIO INC. (the "Applicant") and GA Retail Canada, ULC (the "Agent") on _____, a copy of which is attached as Exhibit ___ to the Affidavit of ___ dated ____.

Pursuant to an Order of the Court dated ____, the Court ordered that all of the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Merchant's Sharing Recovery Amount, and all other amounts due and payable to Applicant under the Agency Agreement have been paid in full to the Applicant.

RICHTER ADVISORY GROUP INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of the Applicant certifies that it has been informed by the Agent and Applicant that:

The Sale has ended.

- 18 -

The Guaranteed Amount, the Expenses, any Merchant's Sharing Recovery Amount, and all other amounts due and payable to Applicant under the Agency Agreement have been paid in full to the Applicant.

DATED as of this ● day of ●, 2016.

RICHTER ADVISORY GROUP INC.,
solely in its capacity as Court-
appointed Monitor of 2473304
ONTARIO INC.. and not in its personal
capacity

By: _____
Name:
Title:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced in Toronto

ORDER
(APPROVAL OF AGENCY AGREEMENT)
(Returnable June 13, 2016)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced in Toronto

AFFIDAVIT OF MARK SUN
(DISTRIBUTIONS AND TERMINATION OF CCAA)
(SWORN NOVEMBER 22, 2016)

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

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

Proceedings commenced in Toronto

**MOTION RECORD OF THE APPLICANT
(Re: Distributions & Termination of CCAA)
(Returnable November 28, 2016)**

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