

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) WEDNESDAY, THE 8TH
)
JUSTICE DIETRICH) DAY OF JULY, 2020
)



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 ROBERTS COMPANY CANADA
LIMITED

(the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER

(Amending Initial Order dated June 29, 2020)

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 amending and restating the Initial Order (the "**Initial Order**") issued on June 29, 2020 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein, was heard this day by way of video-conference due to the COVID-19 crisis.

ON READING the affidavit of Ravi Williams-Singh sworn June 26, 2020 (the "**Williams-Singh Affidavit**"), the affidavit of Ravi Williams-Singh sworn July 6, 2020 (the "**Second Williams-Singh Affidavit**") and the Exhibits thereto, the first report of Richter Advisory Services Inc. ("**Richter**") in its capacity as monitor (the "**Monitor**") dated July 6, 2020 (the "**First 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 the Monitor, counsel for Bank of America, N.A., as Agent under the Fourth Amended and Restated Loan Agreement, dated as of January 31, 2017 (as amended, supplemented and otherwise modified from time to time, the "**ABL Credit Agreement**") and those other parties

listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Danish Afroz sworn July 6, 2020,

INITIAL ORDER AND THE INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing 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

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

PLAN OF ARRANGEMENT

4. **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

5. **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 the provisions of this Order and 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, contractors, 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.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilise the central cash management system currently in place, in accordance with the ABL Forbearance Agreement dated as of June 26, 2020 (as amended, restated or otherwise modified from time to time, the “**ABL Forbearance Agreement**”), as described in the Williams-Singh 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.

7. **THIS COURT ORDERS** that, subject to the terms of the ABL Forbearance Agreement, including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the ABL Forbearance Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, commissions, compensation, employee benefits, pension benefits, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing expenses) payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (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; and

- (c) in consultation with the Agent and the Lenders (as defined in the ABL Forbearance Agreement) (collectively, the “**ABL Lender**”), and with the consent of the Monitor, amounts owing for goods and services actually supplied to the Applicant prior to the Initial Filing Date by third party suppliers, up to a maximum aggregate amount of \$700,000, if in the opinion of the Applicant the supplier is critical to the Business, ongoing operations of the Applicant, or preservation of the Property, and the payment is required to ensure ongoing supply.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the ABL Forbearance Agreement, 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 the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include (subject to the terms of the ABL Forbearance Agreement), 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 to the Applicant following the Initial Filing Date.

9. **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 Initial Filing Date, or where such Sales Taxes were accrued or collected prior

to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, 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.

10. **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 Initial Filing Date, 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 Initial Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, 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 the Initial Filing 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

12. **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 ABL Forbearance Agreement, or as otherwise ordered by this Court, have the right to:

- (a) in consultation with the ABL Lender and with the consent of the Monitor, permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing,

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

13. **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.

14. **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

15. **THIS COURT ORDERS** that subject to paragraph 16(v) hereof, from the Initial Filing Date until and including August 31, 2020, 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

16. **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) prevent the ABL Lender from exercising any rights or remedies in accordance with the ABL Forbearance Agreement.

NO INTERFERENCE WITH RIGHTS

17. **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, lease, sublease, 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

18. **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, 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 and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date 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

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order or the Initial 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 Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order or the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **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 Initial Filing Date 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 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

21. **THIS COURT ORDERS** that the Applicant shall indemnify its current and future directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the Initial Filing Date, 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.

22. **THIS COURT ORDERS** that the current and future 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 \$250,000 as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

23. **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 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that Richter is, as of the Initial Filing Date, 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.

25. **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 ABL Lender and their counsel of financial and other information as agreed between the Applicant and the ABL Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the ABL Forbearance Agreement;
- (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 or the Initial 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 or the Initial Order; and
- (i) perform such other duties as are required by this Order, the Initial Order or by this Court from time to time.

26. **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.

27. **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 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 the Initial Order or anything done in pursuance of the Monitor's duties and powers under this Order or the Initial 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.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant 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.

29. **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 or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of the Initial Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicant and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant such reasonable retainers as may be requested to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. **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.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to 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 their standard rates and charges, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

33. **THIS COURT ORDERS AND DECLARES** that the ABL Lender 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 any obligations outstanding as of the date of the Initial Order or arising thereafter under the ABL Credit Agreement or the ABL Forbearance Agreement and the Applicant is authorized to continue to obtain and borrow, repay (including repayment of amounts owing as of the Initial Filing Date) and re-borrow additional monies under the credit facility established in the ABL Credit Agreement pursuant to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant's working capital requirements and expenses.

FORBEARANCE AGREEMENT

34. **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 Credit Agreement from and after

the date of this 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. The ABL Lender's DIP Charge shall have the priority set out in paragraphs 38 and 40 hereof.

KERP, KERP CHARGE AND SEALING THE KERP SUMMARY

35. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "KERP"), as described in the Second Williams-Singh Affidavit, is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

36. **THIS COURT ORDERS** that the key employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "KERP Charge") on the Property, which charge shall not exceed an aggregate amount of \$200,000 to secure amounts owing to such key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 38 and 40 hereof.

37. **THIS COURT ORDERS** that the summary of the KERP (the "KERP Summary"), a copy of which is attached as Confidential Exhibit "A" to the Second Williams-Singh Affidavit, shall be and is hereby sealed, kept confidential, and shall not form part of the public record unless otherwise ordered by the Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the KERP Charge, the ABL Lender's DIP Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Directors' Charge (to the maximum amount of \$250,000);

Third – KERP Charge (to the maximum amount of \$200,000); and

Fourth – ABL Lender's DIP Charge.

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the ABL Lender's DIP Charge or the KERP 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.

40. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and 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.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, 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 and the beneficiaries of the Charges, and the ABL Lender, or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges and the ABL Forbearance Agreement 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**") 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 *Bankruptcy and Insolvency Act* (Canada) (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) the creation of the Charges and the execution and performance of the ABL Forbearance Agreement by the Applicant are hereby approved and shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (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 creation of the Charges or the entry into the ABL Forbearance Agreement; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay from the Initial Filing Date, publish in *The Globe & Mail* (National Edition) a notice containing the information prescribed under the CCAA in respect of the Initial Order, (ii) within five days after the Initial Filing Date (A) make the Initial Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to every known creditor who has a claim against the Applicant of more than \$1,000, 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.

45. **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 <https://www.richter.ca/insolvencycase/roberts-company-canada-limited/>.

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), 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 or electronic message to the Applicant's creditors or other interested parties at their respective addresses (including email addresses) as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, the Initial Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

48. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or the interpretation or the application of this Order.

49. **THIS COURT ORDERS** that nothing in this Order or the Initial 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.

50. **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.

51. **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.

52. **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.

53. **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.



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

JUL 09 2020

PER / PAR: *RW*

**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 ROBERTS COMPANY CANADA LIMITED**

Court File No.: CV-20-00643158-00CL

ONTARIO

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

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