

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

**2473304 ONTARIO INC.**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS MONITOR OF  
2473304 ONTARIO INC.**

**June 17, 2016**

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**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.**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.  
In its capacity as Monitor of the Applicant**

**June 17, 2016**

**Introduction**

1. On June 7, 2016 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") granting 2473304 Ontario Inc. ("**247**") which carries on business under the licensed trade name "Jones New York" in Canada, protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**"). The proceedings commenced by 247 under the CCAA are herein referred to as the "**CCAA Proceedings**". A copy of the Initial Order is attached hereto as **Appendix "A"**.
2. In support of the Initial Order, Richter in its capacity as proposed monitor, filed a report with the Court dated June 6, 2016 (the "**Pre Filing Monitor's Report**"). A copy of the Pre Filing Monitor's Report is attached hereto as **Appendix "B"**.
3. The Initial Order provided 247 with, *inter alia*, a stay of proceedings until July 7, 2016 (the "**Stay Period**"). The Initial Order also granted 247 the authority to enter into forbearance agreements (the "**Forbearance Agreements**") with its two primary secured creditors, being Canadian Imperial Bank of Commerce ("**CIBC**" or the "**ABL Lender**") and GSO Capital Partners, LP ("**GSO**"). Under the terms of the forbearance agreement with CIBC, (the "**ABL Forbearance Agreement**") amendments were made to the existing

operating facility (the “**ABL Facility**”) to provide 247 with interim financing on a priority basis as secured by the ABL DIP Lender’s Charge (as defined in Initial Order). The Initial Order also permits repayment of pre-filing amounts owing to CIBC with post-filing receipts.

4. The principal purpose of the CCAA Proceedings is to create a stabilized environment to enable 247 to implement the transaction resulting from the SISP (as described in the Pre Filing Monitor’s Report), being an orderly liquidation of 247’s merchandise and furniture, fixtures and equipment (the furniture, fixtures and equipment collectively referred to as the “**FF&E**”).
5. On June 13, 2016, the Court issued an order (the “**June 13 Order**”) which, among other things, authorized 247 to enter into an agency agreement (the “**Agency Agreement**”) with GA Retail Canada, ULC (the “**Agent**”) under which the Agent is undertaking, on behalf of 247, a liquidation of the merchandise and FF&E at the 37 Jones New York stores and distribution centre operated by 247. A copy of the June 13 Order is attached hereto as **Appendix “C”**.

#### **Purpose of this Report**

6. The purpose of this report, the Monitor’s first report (the “**First Report**”) is to provide information to the Court in respect of the following:
  - (i) the activities of 247 since the issuance of the Initial Order;
  - (ii) the activities of the Monitor since the issuance of the Initial Order;
  - (iii) the motion by 247 seeking an order, among other things:
    - authorizing a distribution of funds to CIBC in the amount of \$7,486,600 to reduce amounts owing by 247 and its parent company Grafton Fraser Inc. (“**GFI**”) under the ABL Facility related to the advances made by CIBC prior to the Filing Date (the “**Distribution Approval**”);
    - extending the Stay Period until September 30, 2016 (the “**Stay Extension**”); and
    - approving the Pre Filing Report and this First Report.

## **Terms of Reference**

7. In preparing this First Report, the Monitor has relied on unaudited financial information prepared by the representatives of 247, discussions with 247's management ("**Management**") and discussions with 247's advisors. The Monitor has not conducted an audit or other verification of such information.
8. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

## **247's activities since the issuance of the Initial Order**

9. Since the date of the Initial Order, 247's activities have included:
  - (i) meeting and communicating with employees regarding the CCAA Proceedings;
  - (ii) terminating the employment of 13 employees, including 8 head office employees and 5 warehouse employees, whose services are not required during the orderly liquidation;
  - (iii) preparing weekly financial reports, in accordance with the terms of the Forbearance Agreements;
  - (iv) communicating with service suppliers to secure services during the CCAA Proceedings and to address payment terms;
  - (v) negotiating with landlords regarding the conduct of the liquidation sale contemplated by the Agency Agreement;
  - (vi) attending at court to obtain the June 13 Order approving the Agency Agreement and attending to the necessary steps to move forward with the transaction contemplated by the Agency Agreement;
  - (vii) responding to calls and enquiries from creditors and other stakeholders regarding the CCAA Proceedings; and
  - (viii) reporting receipts and disbursements.

## **The Monitor's activities since the issuance of the Initial Order**

10. Since the date of the Initial Order, the Monitor's activities have included:
  - (i) arranging for notice of the CCAA Proceedings to be published in the June 13, 2016 edition of the Globe & Mail (National Edition; English) and a second publication that is scheduled for June 20, 2016;
  - (ii) sending a notice, within 5 days of the issuance of the Initial Order, of the CCAA Proceedings to all known creditors of 247;

- (iii) establishing a website at <https://www.richter.ca/en/folder/insolvency-cases/0-9/2473304-ontario-inc>, where all materials filed with the Court, and all orders made by the Court in connection with the CCAA Proceedings, are available in electronic form;
- (iv) implementing procedures for the monitoring of 247's cash flows and for ongoing reporting of variances to the 247 cash flow forecast;
- (v) assisting 247 with the preparation of its weekly report to CIBC in accordance with the terms of the ABL Forbearance Agreement;
- (vi) attending frequently at 247's premises and meeting with Management to discuss 247's operations and the CCAA Proceedings;
- (vii) discussion with various landlords and counsel to certain landlords regarding the terms of the Agency Agreement and the June 13 Order, including compliance with the Sale Guidelines as defined in the June 13 Order and specifically the placement of banners at certain locations;
- (viii) attending at Court with respect to the June 13 Order;
- (ix) corresponding and communicating with the Agent to prepare for implementation of the Agency Agreement;
- (x) establishing various trust accounts for funds to be remitted to the Monitor in accordance with the June 13 Order;
- (xi) corresponding and communicating extensively with 247 and its legal counsel;
- (xii) corresponding and communicating with CIBC, GSO and their advisors;
- (xiii) responding to calls and enquiries from creditors and other stakeholders regarding the CCAA Proceedings; and
- (xiv) preparing this First Report.

### **Distribution Motion**

11. Following the issuance of the June 13 Order, the Agent remitted \$6,969,100 being the balance of the Initial Guaranty Payment (as defined in the Agency Agreement) to the Monitor. Along with the previously received deposit, the Monitor now holds \$7,986,600 in trust representing the Initial Guaranty Payment.
12. In accordance with the requirements under the ABL Forbearance Agreement, 247 has brought a motion seeking, among other things, authorization to distribute the Initial Guaranty Payment, less a \$500,000 holdback (the "**Administration Holdback**") to CIBC in partial repayment of amounts owing by 247 to CIBC related to the period prior to the Filing Date.

13. As outlined in the Pre Filing Report, searches conducted on May 30, 2016 (with a file currency of May 29, 2016) of the Personal Property Security Registry in Ontario (and similar searches in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, and Nova Scotia) conducted on May 30, 2016 show registrations against 247 in favour of CIBC, GSO and Xerox Canada Ltd. (in respect of specific equipment in Ontario).
14. Further, the Monitor understands that pursuant to an intercreditor agreement dated as of February 12, 2016 (the "**Intercreditor Agreement**") between 247, GFI, CIBC and GSO, as between CIBC and GSO, CIBC has a first priority security interest in the ABL Priority Collateral as defined therein - generally being the inventory, accounts receivable, bank accounts, cash and securities (to the extent they are not proceeds of the Term Priority Collateral as defined therein) and GSO has a first priority security interest on the Term Priority Collateral - generally being the intellectual property and FF&E of 247.
15. As outlined in the Pre Filing Report, Richter as proposed monitor, received an opinion from its independent legal counsel, Cassels Brock & Blackwell LLP dated June 3, 2016 that, subject to the typical qualifications and assumptions, the CIBC security (including a general security agreement) with respect to 247 is valid and enforceable in Ontario, British Columbia, Manitoba, Alberta and Nova Scotia. Richter, as proposed monitor, also received an opinion from LaPointe Rosenstein Marchand Melancon, LLP dated June 3, 2016, that, subject to typical qualifications and assumptions, the CIBC security with respect to 247 is valid and enforceable in Quebec. Although there is one store in Saskatchewan, for cost reasons, the Monitor has not obtained an independent legal opinion with respect to the CIBC security in that jurisdiction.
16. It is the Monitor's understanding that CIBC has the first secured interest (other than pursuant to Court ordered charges) in the Initial Guaranty Payment amount held by the Monitor as such amount represents proceeds of inventory (being ABL Priority Collateral). The Monitor understands that as of June 11, 2016 CIBC is owed approximately \$31.4 million under the ABL Facility, which would be reduced by the distribution amount.
17. With respect to the Court ordered charges, the Administration Holdback will ensure that sufficient funds are available to satisfy the Administration Charge (as defined in the Initial Order).

**Cash Flow for the Period May 29, 2016 to June 11, 2016**

18. In support of the motion for an Initial Order, 247 filed a cash flow projection with the Court for the period May 29, 2016 to July 16, 2016. A comparison of 247's budget to reported results for the period May 29, 2016 to June 11, 2016 is summarized as follows:

<b>2473304 Ontario Inc.</b>			
<b>Cash Flow Variance Analysis</b>			
<b>For the Period May 29 to June 11, 2016</b>			
<b>(\$000's)</b>	<b>Reported</b>	<b>Forecast</b>	<b>Variance</b>
<b>Receipts</b>			
Gross Receipts	\$ 1,403	\$ 1,149	\$ 254
Rent Recovery	-	-	-
	<b>1,403</b>	<b>1,149</b>	<b>254</b>
<b>Disbursements</b>			
Rent	(508)	(536)	28
Store Expenses & Other	(74)	(140)	66
Payroll	(230)	(366)	136
Sales Tax	(39)	(76)	37
Interest	-	(29)	29
Deposits	(19)	(100)	81
Professional Fees	(617)	(666)	49
	<b>(1,487)</b>	<b>(1,912)</b>	<b>426</b>
<b>Net Cash Flow</b>	<b>\$ (84)</b>	<b>\$ (763)</b>	<b>\$ 679</b>
Opening Revolver	\$ 6,925	\$ 6,925	\$ -
Cash in Excess of O/S Checks	160	-	(160)
Net Cash Flow	84	763	679
<b>Closing Revolver</b>	<b>\$ 7,169</b>	<b>\$ 7,688</b>	<b>\$ 519</b>

19. As reflected in the summary table above, 247 reported a positive cash flow of approximately \$0.7 million and had an outstanding revolver of approximately \$7.2 million as of June 11, 2016, which was approximately \$0.5 million lower than forecast.
20. The principal reasons for the positive cash flow variance of approximately \$0.7 million are:
- (i) approximately \$0.3 million of higher than forecasted receipts due to stronger sales during the period; and

- (ii) approximately \$0.4 million positive variance in disbursements is primarily timing related and is expected to reverse in future periods. In particular, the favorable payroll variance is because accrued pre-filing vacation pay was forecast to be paid in the week ended June 11, 2016, but instead will be paid out upon termination of the employment of such employees.

**247's Request for an Extension of the Stay Period to September 30, 2016**

21. The current Stay Period expires on July 7, 2016. 247 is seeking the Stay Extension to September 30, 2016. 247, with the assistance of the Monitor, has prepared a forecast of its receipts, disbursements and financing requirements for the period June 12, 2016 to October 1, 2016 (the "**June 12 Cash Flow Forecast**"). A copy of the June 12 Cash Flow Forecast is attached hereto as **Appendix "D"** and is summarized below:

<b>2473304 Ontario Inc. Cash Flow Forecast For the Period June 12 to October 1, 2016</b>	
<b>(\$000's)</b>	<b>Total</b>
<b>Receipts</b>	
Gross Receipts	\$ 9,880
Rent Recovery	858
	<b>10,737</b>
<b>Disbursements</b>	
Rent	(1,072)
Store Expenses & Other	(1,519)
Payroll	(584)
Sales Tax	99
Interest	(55)
Deposits	19
Professional Fees	(1,402)
	<b>(4,513)</b>
<b>Net Cash Flow</b>	<b>\$ 6,224</b>
Opening Revolver	\$ 7,169
Net Cash Flow	(6,224)
Transfer to/(from) Monitor Escrow Account	500
<b>Ending Revolver</b>	<b>\$ 1,445</b>

22. The June 12 Cash Flow Forecast indicates that, taking into account availability under the ABL Facility, 247 will have sufficient liquidity to fund both operating costs and the costs of these CCAA Proceedings during the Stay Extension if granted.

23. The Monitor is of the view that the Stay Extension is appropriate in the circumstances and supports 247's request for an extension of the Stay Period for the following reasons:
- (i) the Monitor is not aware of any fact which would indicate that 247 has not acted or continues to act in good faith and with due diligence;
  - (ii) the Agency Agreement entered into between 247 and the Agent (and which is now underway) calls for the orderly liquidation of 247's inventory and FF&E in 247's store locations as well as its distribution center, with a final store vacate date of September 22, 2016;
  - (iii) the ABL Forbearance Agreement will terminate, unless otherwise extended, no later than September 30, 2016;
  - (iv) the granting of the extension should not prejudice any employee or creditor, as 247 is projected to have sufficient funds to pay post-filing services and supplies, as contemplated by the June 12 Cash Flow Forecast;
  - (v) CIBC and GSO support the granting of the extension; and
  - (vi) If the extension is not granted, 247 will not be in a position to fulfill its obligations under the Agency Agreement, to the detriment of its stakeholders.

**Monitor's Recommendation**

24. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order for the relief requested and as set out in paragraph 6(iii) above.

All of which is respectfully submitted this 17th day of June, 2016.

**Richter Advisory Group Inc.  
in its capacity as Monitor of  
2473304 Ontario Inc.**

Per:



Gilles Benchaya, CPA, CIRP



Andrew Adessky, CPA, MBA, CIRP

# Appendix “A”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.  
JUSTICE HAINEY

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TUESDAY, THE 7<sup>th</sup>  
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.

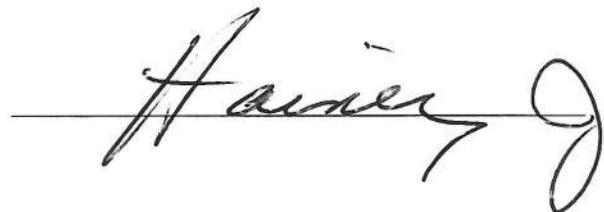
57. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court 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:

JUN 07 2016

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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")

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

**Proceedings commenced in Toronto**

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

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**FASKEN MARTINEAU DuMOULIN LLP**  
333 Bay Street – Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Stuart Brotman (LSUC#43430D)**

Tel: 416 865 5419

Fax: 416 364 7813

[sbrotman@fasken.com](mailto:sbrotman@fasken.com)

**Dylan Chochla (LSUC#62137I)**

Tel: 416 868 3425

Fax: 416 364 7813

[dchochla@fasken.com](mailto:dchochla@fasken.com)

Lawyers for the Applicant, 2473304 Ontario Inc.

# Appendix “B”

**2473304 ONTARIO INC.**

**REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS PROPOSED MONITOR OF  
2473304 ONTARIO INC.**

**June 6, 2016**

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**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.**

**PRE-FILING REPORT OF RICHTER ADVISORY GROUP INC.  
In its capacity as proposed Monitor of the Applicant**

**June 6, 2016**

**Introduction**

1. Richter Advisory Group Inc. ("**Richter**") understands that 2473304 Ontario Inc. (the "**Applicant**") which carries on business under the licensed trade name "Jones New York" in Canada intends to make an application to the Court for an order (the "**Initial Order**"), among other things, granting a stay of proceedings in favour of the Applicant until July 7, 2016 pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. The requested form of Initial Order contains provisions that Richter be appointed as monitor (the "**Proposed Monitor**") and if appointed "**Monitor**") of the Applicant in the CCAA proceedings.
3. Richter, in its capacity as the Proposed Monitor, has reviewed the Court materials to be filed by the Applicant in support of its application. The purpose of this limited scope report of the Proposed Monitor is to provide information to this Honourable Court regarding the following:
  - i. Richter's qualifications to act as Monitor (if appointed);
  - ii. A limited summary of certain background information about the Applicant and the CCAA proceedings;
  - iii. The objectives of the CCAA proceedings;
  - iv. The Applicant's consolidated statement of projected cash flow for the period from May 29, 2016 to July 16, 2016;
  - v. The Applicant's request to approve the Forbearance Agreements (as defined below) including the ability to continue to borrow and repay amounts under the ABL Credit Facility (as defined below);

- vi. The charges proposed in the Initial Order, including the ABL DIP Lender's Charge (for amounts advanced following the Initial Order under the ABL Credit Facility), the Administration Charge and the Directors' Charge;
- vii. The Applicant's motion for an Order approving the Agency Agreement (as defined below) to be heard at a hearing scheduled for June 13, 2016; and
- viii. The Proposed Monitor's conclusions and recommendations.

#### **Terms of Reference**

- 4. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
- 5. Capitalized terms not otherwise defined herein are as defined in the Applicant's application materials, including the affidavit of Mark Sun sworn June 6, 2016 (the "**Sun Affidavit**") filed in support of the Applicant's application for relief under the CCAA. This report should be read in conjunction with the Sun Affidavit, as certain information contained in the Sun Affidavit has not been included herein in order to avoid unnecessary duplication.
- 6. The information contained in this report is based on unaudited financial information as well as discussions with representatives of the Applicant. The Proposed Monitor has not conducted an audit or other verification of such information and, accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained herein. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

#### **Richter's Qualifications to Act as Monitor**

- 7. Richter Consulting Canada Inc. (the "**Consultant**"), an affiliate of the Proposed Monitor, was engaged by the Applicant on March 16, 2016 to provide consulting services relating to financial performance, liquidity management and to assist the Applicant and its parent Grafton-Fraser Inc. ("**Grafton**") in developing and assessing various strategic alternatives.
- 8. Richter is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada). The senior Richter professional personnel with carriage of this matter have acquired knowledge of the Applicant and its business through the engagement of the Consultant. Richter is, therefore, in a position to immediately assist the Applicant in its CCAA proceedings. The current intention is for the Consultant to continue to act as consultant in respect of Grafton.

9. Richter is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA and, in particular, neither Richter nor any of its representatives has been at any time in the two preceding years;
  - i. A director, an officer or an employee of the Applicant;
  - ii. Related to the Applicant or to any director or officer of the Applicant; or
  - iii. The auditor of the Applicant.
10. Richter has consented to act as Monitor, should the Court grant the Applicant's request to commence the CCAA proceedings.

### **General Background to the Proposed CCAA Proceedings**

#### Applicant Overview

11. The Applicant is a women's clothing retailer and operates a chain of 37 retail stores in seven provinces with the majority of its locations in Ontario (23 stores) and Quebec (7 stores). All of its locations are leased.
12. The Applicant's head office and distribution center ("**Distribution Center**") operates out of leased premises in Vaughan, Ontario. The Distribution Center was also responsible for handling the e-commerce inventory of Grafton, although this is being phased out with the intention of relocating the inventory to another location over the course of the next three months.
13. The Applicant acquired the right to use the "Jones New York" brand in the sale of womenswear in Canada pursuant to a term sheet with ABG-Jones LLC ("**ABG**"). The term sheet with ABG is more fully described in the Sun Affidavit. As of May 20, 2016, the Applicant had approximately 300 employees of which approximately 70 are full time and 230 are part time employees.
14. As described in the Sun Affidavit, as a result of sustained losses, the Applicant is experiencing a liquidity crisis and, as set out in more detail below, has defaulted on various financial and other covenants with its two primary secured lenders, Canadian Imperial Bank of Commerce ("**CIBC**") and GSO Capital Partners, LP ("**GSO**").

15. The Applicant's business, affairs, financial performance and position, as well as the causes of its insolvency, are detailed in the Sun Affidavit and are, therefore, not repeated herein. The Proposed Monitor has reviewed the Sun Affidavit and discussed the business and affairs of the Applicant and the causes of insolvency with senior management personnel of the Applicant and is of the view that the Sun Affidavit provides a fair summary thereof.

Grafton-Fraser Inc.

16. The Applicant is a wholly owned subsidiary of Grafton, a privately held company that operates menswear retail stores in Canada under a variety of banners including Tip Top Tailors.
17. Grafton and the Applicant have the following inter-company service arrangements:
  - i. The Applicant has been providing logistics and warehousing services in support of Grafton's e-commerce business. Any merchandise of Grafton that is currently located in the Applicant's Distribution Center is identifiable (as it consists of menswear) and is segregated from the Applicant's inventory; and
  - ii. Grafton provides various financial, accounting, technology, buying and other services to the Applicant. In this respect, the Applicant has paid Grafton \$1.6 million for the period from July 2015 to April 2016. The Applicant will be unable to make the payment owing to Grafton for services provided in May 2016. Grafton has confirmed it will continue to provide these services during the restructuring period, and such payments will be calculated in a manner consistent with prior charges and are included in the Applicant's Cash Flow Forecast (as defined below).
18. In addition to the above inter-company services:
  - i. Grafton has guaranteed the obligations of the Applicant for the Contract Year 1 (as defined in the Sun Affidavit) pursuant to the term sheet with ABG;
  - ii. Grafton and the Applicant are jointly and severally liable for amounts owing under the ABL Credit Facility (as described in more detail below); and
  - iii. The Applicant has guaranteed Grafton's obligations to GSO and has granted security to GSO in respect of such obligations (as described in more detail below).

19. As well, prior to the full implementation of the ABL Credit Facility, the Applicant required financial assistance to pay for necessary inventory and Grafton paid certain amounts to the Applicant on an interim basis to permit it to acquire inventory. These amounts (approximately \$4.1 million) were repaid by the Applicant to Grafton on March 9, 2016 and are reflected in the financial statements as having been repaid at the end of February 2016.

### **Objective of CCAA Proceedings**

20. The primary objective of the Applicant's CCAA proceedings is to implement the transaction resulting from the SISF (as discussed below) which, as noted below, will result in an orderly liquidation of the Applicant's operations. In the Applicant's view, which the Proposed Monitor supports, an orderly liquidation is the most efficient way to maximize the value from the sale of the Applicant's assets for the benefit of all of the Applicant's stakeholders. In the Proposed Monitor's view, the orderly liquidation of the Applicant's assets will be more beneficial to the Applicant's creditors than a bankruptcy proceeding.

### **Creditors**

#### Secured Creditors

21. The Applicant was incorporated by Grafton in the summer of 2015 to acquire the right to operate the "Jones New York" brand in Canada. The Applicant has advised the Proposed Monitor that at that time, Grafton's existing secured operating lender was not interested in providing an operating credit facility for the Applicant and therefore Grafton and the Applicant sought and obtained an operating facility from CIBC. In order for Grafton and the Applicant to enter into the new credit facility with CIBC, the consent of GSO, as an existing secured creditor of Grafton, was required. The Proposed Monitor understands that as a condition of granting its consent to the new credit facilities, GSO required that the Applicant guarantee the existing debt owing by Grafton to GSO and grant security in respect of the same. GSO and CIBC also entered into an intercreditor agreement dated as of February 12, 2016 (the "**Intercreditor Agreement**"). These transactions were implemented in February of 2016.

22. Pursuant to the Intercreditor Agreement, as between CIBC and GSO, CIBC has a first priority security interest on the ABL Priority Collateral as defined in the Intercreditor Agreement, generally being the inventory, accounts receivable, bank accounts, cash and securities (to the extent they are not proceeds of the Term Priority Collateral as defined in the Intercreditor Agreement) of the Applicant and GSO has a first priority security interest on the Term Priority Collateral, generally being intellectual property, insurance proceeds (related to the Term Priority Collateral, but not related to the ABL Priority Collateral), furniture, fixtures and equipment of the Applicant.
23. Searches conducted on May 30, 2016 (with a file currency of May 29, 2016) of the Personal Property Security Registry in Ontario (and similar searches in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, and Nova Scotia conducted on May 30, 2016) show registrations against the Applicant in favour of CIBC, GSO and Xerox Canada Ltd. (in respect of specific equipment in Ontario).

#### CIBC

24. CIBC and the Applicant (along with Grafton as co-borrower) are parties to a credit agreement dated February 12, 2016 ("**ABL Credit Agreement**") pursuant to which CIBC provides a revolving asset-based loan facility available to the Applicant and Grafton (the "**ABL Credit Facility**"). As security for its obligations owing to CIBC, the Applicant has delivered a general security agreement and moveable hypothec each dated February 12, 2016 and security under Section 427 of the *Bank Act* (Canada) over all of its present and after-acquired property (the "**CIBC Security**").
25. The Proposed Monitor is advised that CIBC is owed approximately \$30.5 million as of May 20, 2016, comprised of approximately \$7.5 million related to borrowings by the Applicant and \$23 million related to borrowings by Grafton.
26. The Proposed Monitor has received an opinion from its independent legal counsel, Cassels Brock & Blackwell LLP ("**Cassels**") dated June 3, 2016 that, subject to the typical qualifications and assumptions, the CIBC Security with respect to the Applicant is valid and enforceable in the following jurisdictions: Ontario, British Columbia, Manitoba, Alberta and Nova Scotia. The Proposed Monitor has also received an opinion from LaPointe Rosenstein Marchand Melancon, LLP dated June 3, 2016 that, subject to typical qualifications and assumptions, the CIBC Security with respect to the Applicant is valid and enforceable in Quebec.

27. On April 21, 2016, the Applicant received a letter from CIBC (“**ROR Letter**”) pursuant to which CIBC notified the Applicant that various defaults had occurred under the ABL Credit Agreement thereby triggering various additional reporting requirements and operating constraints. CIBC reserved all of its rights and remedies against both the Applicant and Grafton. A further letter from CIBC on April 22, 2016 advised the Applicant that notwithstanding the ROR Letter, the obligations under the ABL Credit Agreement were not accelerated at that time.
28. On June 6, 2016, the Applicant, Grafton and CIBC agreed on the terms of a forbearance agreement (the “**ABL Forbearance Agreement**”), pursuant to which CIBC agreed to forbear, subject to certain terms and conditions, from enforcing its rights and remedies until the earlier of the Termination Date and the existence of any Terminating Event (each as defined therein).
29. The ABL Forbearance Agreement<sup>1</sup> also modifies and amends the existing ABL Credit Facility to (among other things) (i) separate the total commitment by CIBC between Grafton and the Applicant based on separate borrowing base calculations; (ii) provide additional financing to the Applicant during the CCAA Proceedings (subject to Court approval of the same, compliance with the Approved CCAA Cash Flow (as defined in the ABL Forbearance Agreement) and the granting of a priority charge (the “**ABL DIP Lender’s Charge**”) to secure such additional borrowings); and (iii) provide that Canadian Prime Rate Loans and Base Rate Loans to each of Grafton and the Applicant shall be made at the Canadian Prime Rate plus 1% per annum and the Base Rate plus 1% per annum, respectively; and (iv) provide that each of Grafton and the Applicant shall pay an unused Line Fee in the amount of 0.5% per annum and the Letter of Credit Fee was increased to 1.75% (for documentary letters of credit) and 2.5% (for standby letters of credit). A copy of the ABL Forbearance Agreement is attached to the Sun Affidavit.
30. As a condition of the ABL Forbearance Agreement, the Applicant must be granted an Initial Order in form and substance satisfactory to CIBC, which order shall include the ABL DIP Lender’s Charge. In addition, the Applicant is required to pay an amendment and forbearance fee in the aggregate amount of \$75,000.

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<sup>1</sup> Capitalized terms used in this paragraph and not otherwise defined have the meaning ascribed thereto in the ABL Forbearance Agreement.

31. It is required under the ABL Forbearance Agreement that amounts received by the Applicant following the date of the Initial Order be applied to reduce amounts owing to CIBC prior to the date of the Initial Order. Further borrowings will be available under the ABL Credit Facility such that the total commitment shall be \$8 million following the granting of the Initial Order. Following a distribution of proceeds to CIBC (to be requested by further Court Order) of the amount of the Initial Guaranty Payment (as defined in the Agency Agreement), less a holdback of \$500,000 to secure the Administration Charge (as defined below) (the “**Administration Holdback**”), the commitment in respect of the Applicant is to be reduced to \$2.2 million.
32. The ABL Forbearance Agreement also requires the payment by the Applicant of the expenses incurred by GSO and CIBC prior to and following the Applicant’s filing under the CCAA.
33. Under the ABL Forbearance Agreement, a Termination Date will occur on the earliest of:
  - i. two (2) days following the receipt by CIBC of written notice by the Applicant or Grafton of termination of any or all of the ABL Credit Facilities;
  - ii. the date of issuance of a demand by CIBC for repayment of any or all of the obligations upon the occurrence of a Default or an Event of Default (other than an Existing Default) (as those terms are defined in the ABL Forbearance Agreement);
  - iii. the implementation date of any plan of compromise and/or arrangement under the CCAA proceedings;
  - iv. the date on which the stay imposed under the CCAA proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless CIBC consents thereto;
  - v. September 30, 2016 or such other date as may be agreed to by CIBC; and
  - vi. the occurrence or existence of any Terminating Event (as defined in the ABL Forbearance Agreement).
34. Terminating Events under the ABL Forbearance Agreement include (the following is not an exhaustive list):
  - i. Certain negative variances from the Approved CCAA Cash Flow or the GFI Cash Flow (as defined in the ABL Forbearance Agreement);

- ii. The granting of any court-ordered charges ranking in priority to the CIBC Security other than the Administration Charge, the Director's Charge and the Agent's Charge (each as defined below and in the Sun Affidavit);
  - iii. Termination of the CCAA proceedings, without the prior consent of CIBC;
  - iv. A report by the Monitor that there has been a material adverse change in respect of the Applicant or the CCAA proceedings;
  - v. A Terminating Event (as defined in the GSO Forbearance Agreement occurs); and
  - vi. Certain claims are made against Grafton or the Applicant which are not resolved or Grafton becomes subject to the CCAA proceedings.
35. Upon the earlier of a Terminating Event and the Termination Date, the form of requested Initial Order provides that CIBC will be entitled to immediately cease making advances to the Applicant, provided that CIBC will continue to fund payment by the Applicant of certain employee wage and priority payables for a period of 5 business days and will be entitled to immediately set off or consolidate amounts owing by CIBC to the Applicant against the obligations of the Applicant to CIBC (other than with respect to the Administration Holdback). Further, on not less than 5 business days notice to the Applicant, the Monitor and GSO, CIBC may exercise any and all additional rights and remedies against the Applicant.

#### GSO

36. As noted above, the Applicant executed a guarantee agreement on February 12, 2016 in favour of GSO in respect of the obligations of Grafton to GSO (as more fully set out in the Sun Affidavit) (the "**GSO Guarantee**"). The Proposed Monitor understands that as of May 20, 2016, the outstanding indebtedness owing by Grafton to GSO including accrued interest is approximately \$33.0 million.
37. As security for such Guarantee, the Monitor understands that the Applicant provided to GSO, among other things a general security agreement and a moveable hypothec, each dated February 12, 2016 (the "**GSO Security**"). The Monitor has not yet received an independent legal opinion regarding the validity and enforceability of the GSO Security.

38. The Monitor understands that there are a number of defaults under the GSO Credit Agreement, including the failure to pay interest in the amount of approximately \$375,000 on April 29, 2016 and May 31, 2016, as well as the filing of the CCAA proceedings by the Applicant, which defaults permit GSO to demand on the GSO Guarantee.
39. GSO has agreed to forbear from enforcing its rights and remedies as against Grafton and the Applicant pursuant to the terms of a forbearance agreement (the "**GSO Forbearance Agreement**" and together with the ABL Forbearance Agreement, the "**Forbearance Agreements**") between the Applicant, Grafton and GSO dated June 6, 2016. The GSO Forbearance Agreement provides such forbearance will continue to the earlier of November 30, 2016 and the occurrence or existence of a Terminating Event (as defined therein). The GSO Forbearance Agreement also amends the underlying credit agreement between GSO and Grafton to extend the maturity date of the obligations until January 31, 2017. Furthermore, from April 30, 2016 to the earlier of the Maturity Date and a Terminating Event, unless otherwise paid in cash, the interest due and owing will be capitalized and added to the principal amount of the debt. The interest will accrue going forward at the default rate (being 2% higher than the current interest rate which is 15%).
40. The GSO Forbearance Agreement mandates that the ABL DIP Lender's Charge cannot apply to the Term Priority Collateral.
41. The Applicant is also required to pay the expenses incurred by GSO prior to and following the Applicant's filing under the CCAA under the GSO Forbearance Agreement.
42. The Terminating Events and conditions precedent in respect of the GSO Forbearance Agreement are substantively similar to those in the ABL Forbearance Agreement. A Terminating Event under the ABL Forbearance Agreement is also a Terminating Event under the GSO Forbearance Agreement.
43. A copy of the GSO Forbearance Agreement is attached to the Sun Affidavit.

#### Unsecured Creditors

44. In addition to the amounts owed by the Applicant to CIBC and GSO, the Applicant estimates that it has accrued and unpaid unsecured obligations totaling approximately \$6.5 million (excluding intercompany and related party indebtedness of approximately \$293,000) as of May 20, 2016, as more fully detailed in the Sun Affidavit. The Applicant advises that it is current in respect of obligations to all landlords including rent for the month of June 2016 which was paid in the week ended May 28, 2016.

## Sales and Investment Solicitation Process

45. Following the retention of the Consultant, the Applicant determined that it was in the best interests of the Applicant including its various stakeholders to proceed with a sale and investment solicitation process (“SISP”).
46. As noted in the Sun Affidavit, a company related to Gordon Brothers Group (“GBG”) holds an interest in Grafton (the parent company of the Applicant). The Proposed Monitor has been advised by the Applicant that GBG and two directors of the Applicant closely connected to GBG were not involved in discussions or deliberations over the proposals received during the SISP.
47. Accordingly, with the assistance of the Consultant, an online data room managed by the Consultant was created, a teaser document was prepared and a list of potential interested parties was prepared consisting of retailers/strategic buyers, equity investors and liquidators. A copy of the teaser is attached as an Exhibit to the Sun Affidavit. The following timeline summarizes steps taken under the SISP:
  - i. April 11, 2016 – creation of online data room;
  - ii. April 21, 2016 – issuance of teaser by email to approximately 100 parties;
  - iii. April 22 – May 16, 2016 – execution of non-disclosure agreements with 9 parties;
  - iv. May 16, 2016 – a Request for Proposals (“RFP”) was posted to the data room as well as model asset purchase and agency agreements. A copy of the RFP is attached as an Exhibit to the Sun Affidavit. A deadline of 2:00pm ET on May 19, 2016 was set for the submission of offers by interested parties. At the request of various interested parties, this deadline was subsequently extended to 5:00pm ET on May 21, 2016. None of the interested parties indicated that this extension was insufficient or should have been longer;
  - v. May 21, 2016 – two bids were received by the revised bid deadline, both of which were from liquidators. A comparison of the two bids received is attached hereto as **Confidential Appendix A**. The Applicant has requested that this Confidential Appendix be sealed. If the transaction represented by the Agency Agreement does not close the Applicant may be required to return to the market, and the disclosure of the comparison of the bids will likely impact on the value to be received for the Applicant’s assets;

- vi. Following an analysis of the bids by the Applicant and the Consultant, the bid submitted by GA Retail Canada ULC (“**Great American**”) was selected as the superior bid and negotiations to finalize that bid were undertaken;
- vii. June 6, 2016 – an agency agreement (“**Agency Agreement**”) was entered into between the Applicant and Great American (the “**Agent**”). The Consultant assisted in the negotiation of the terms of the Agency Agreement. The Proposed Monitor understands that both CIBC and GSO understand that the Applicant is entering into the Agency Agreement, and it is a condition of each of the Forbearance Agreements that the Agency Agreement be approved by the Court. A redacted copy of the Agency Agreement is attached to the Sun Affidavit;

#### The Agency Agreement

48. The following summarizes certain key aspects of the Agency Agreement:
- i. The Agency Agreement is subject to approval of the Court in these CCAA proceedings (the “**Approval Order**”), to be obtained no later than June 13, 2016 or such other date as the Agent and the Applicant may agree;
  - ii. Great American has provided a net minimum guarantee (“**NMG**”) based on the cost value of the Applicant’s inventory with a potential upside should results be higher than forecast, the details of which are contained in a Confidential Exhibit to the Sun Affidavit;
  - iii. 85% of the NMG (the “**Initial Guaranty Payment**”) is to be paid immediately following Court approval of the Agency Agreement with the remaining 15% to be paid following the final inventory reconciliation. The Agent is to provide a letter of credit to the Applicant to support, among other things, the remaining 15% of the NMG. The Proposed Monitor currently holds, as a deposit toward the Initial Guaranty Payment, the amount of approximately 10% of the NMG;
  - iv. The Agent is entitled to a fee (the “**Agent’s Fee**”), being a percentage of the aggregate Cost Value of the Merchandise in the Closing Stores plus the cost of the Additional Merchandise (as those terms are defined in the Agency Agreement);
  - v. In the event that the net sale proceeds exceed the NMG, the Agent’s Fee, and the expenses of the liquidation, the Applicant and the Agent will share the excess based on the terms set out in the Agency Agreement;

- vi. If directed by the Agent, and agreed to by the Applicant acting reasonably, the Applicant shall purchase additional merchandise of like nature and quality to include in the sale, at the Applicant's expense (to be reimbursed by the Agent), being Additional Merchandise;
- vii. The liquidation period will commence following approval of the Agency Agreement, with a final vacate date of no later than September 22, 2016. However, the Agent may, on at least seven days notice to the Applicant terminate the Sale in any Store and vacate the Store. The date on which the Agent will vacate will not be later than the 15<sup>th</sup> of the month or the Vacate Date (as defined in the Agency Agreement);
- viii. The Applicant will be required to provide various central services to the Agent throughout the liquidation including but not limited to information technology services, payroll services, store audit functions, etc;
- ix. Gross Sale Proceeds (as defined in the Agency Agreement) of the sale, less amounts owing for sales taxes (the "**Sales Tax Amount**"), will be remitted to the Agent, with the Agent then paying Expenses (as defined in the Agency Agreement). Expenses do not include the payment of any royalties or license fees which shall be the responsibility of the Applicant. In accordance with the ABL Forbearance Agreement, the Sales Tax Amount will be transferred to an account of the Monitor for the benefit of the Applicant and then returned to the Applicant to be remitted to the applicable taxing authorities in accordance with applicable legal requirements. Gross FF&E Proceeds (as defined in the Agency Agreement) will be dealt with as follows: Commission plus amounts owing for applicable sale taxes will be remitted to the Agent with the remaining proceeds transferred to an account of the Monitor for the benefit of the Applicant to be distributed by further Court Order. The Agent's out of pocket expenses related to the disposition of the Owned FF&E which are not duplicative of the Expenses are to be reimbursed by the Applicant;
- x. Reconciliation of Proceeds and Expenses shall take place weekly, with a final reconciliation taking place within 30 days of the Sale Termination Date (as defined in the Agency Agreement); and
- xi. The Agent shall have the exclusive right to dispose of Owned FF&E (as defined in the Agency Agreement) and the Agent shall be entitled to receive a commission, being a percentage of the sale proceeds, plus reimbursement of the Agent's out of pocket expenses related to such disposition, provided such have been mutually agreed to by the Agent and the Applicant.

49. The form of Approval Order requested by the Applicant in respect of the Agency Agreement includes provisions:
- i. That the Sale be conducted in accordance with Sales Guidelines attached to the Approval Order as is typical in Court-approved retail liquidations;
  - ii. Requiring that Gross Sale Proceeds and Gross FF&E Proceeds be deposited into certain designated accounts;
  - iii. Granting the Agent a priority charge over the Merchandise, Additional Merchandise, Proceeds and Gross FF&E Proceeds (to the extent of the FF&E Commission) and the proceeds from the sale of Merchant Consignment Goods (to the extent of the Agent's Commission) (all as defined in the Agency Agreement) to secure payment of amounts owing by the Applicant to the Agent under the Agency Agreement, provided however that the charge is subordinate to all other court-order charges and all encumbrances in favour of CIBC and GSO in respect of certain amounts that are payable to the Applicant under the Agency Agreement; and
  - iv. Treating the Agent as an unaffected creditor in any Plan.
50. Based on the experience of the Proposed Monitor with other retail insolvency liquidations, it is the view of the Proposed Monitor that overall, the terms and conditions of the Agency Agreement and the Approval Order are consistent with general market conditions. As noted above, it is the view of the Proposed Monitor that the liquidation of the Applicant's assets pursuant to the Agency Agreement will be more beneficial to the Applicant's creditors than they would receive under a bankruptcy proceeding.

#### **The Applicant's Cash Flow Statement**

51. The Applicant, with the assistance of the Proposed Monitor, has prepared a consolidated cash flow forecast of its receipts, disbursements and financing requirements for the period May 29, 2016 to July 16, 2016 (the "**Cash Flow Forecast**"). A copy of the Cash Flow Forecast is attached as **Appendix "A"** to this report and is summarized below:

<b>2473304 Ontario Inc.</b> <b>Cash Flow Forecast</b> <b>For the period May 29 - July 16, 2016</b> <b>(\$000's)</b>	
Gross Receipts (Sales)	\$ 9,386
Rent Recovery	334
	<b>9,720</b>
<b>Disbursements</b>	
Rent	(1,072)
Store Expenses & Other	(500)
Payroll	(708)
Sales Tax	(226)
Interest	(73)
Deposits	(100)
Professional Fees	(1,277)
Transfer to Monitor Escrow Acct	(500)
Net Revolver Paydown	(5,264)
	<b>(9,720)</b>
Net Cash Flow	<b>\$ -</b>
Opening Loan	6,925
Net Revolver Paydown	(5,264)
Ending Loan	<b>\$ 1,662</b>

52. The Cash Flow Forecast estimates that during the period of the projection, the additional financial support required by the Applicant will peak at approximately \$1.7 million during the week ended July 16, 2016. We provide the following comments in respect of the cash flow:
- i. Gross receipts/sales includes the collection of the Initial Guaranty Payment following the Approval Order (assuming such is granted by the Court);
  - ii. Disbursements include the distribution to CIBC of the Initial Guaranty Payment less the Administration Holdback following Court approval (to be requested separately) of same;
  - iii. Rent includes the payment of rent for the months of June and July 2016 net of rent recovery representing the Agent's estimated reimbursement of per diem rent during the cash flow period;
  - iv. Payroll includes payment of approximately \$121,000 of pre-filing accrued vacation pay; and
  - v. Professional fees include the payment of retainers to legal counsel for the Applicant, the Proposed Monitor and its legal counsel.

53. The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' standards of professional practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on the Cash Flow Forecast.
54. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussion related to information supplied to it by certain key members of management and employees of the Applicant. Since the probable and hypothetical assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Proposed Monitor also reviewed the support provided by the Applicant for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow Forecast.
55. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
- i. The probable and hypothetical assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - ii. As at the date of this report, the probable and hypothetical assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or
  - iii. The Cash Flow Forecast does not reflect the probable and hypothetical assumptions.
56. Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the probable and hypothetical assumptions occur, and the variation could be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast, or relied upon by the Proposed Monitor in preparing this report.
57. The Cash Flow Forecast has been prepared solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

## **The Applicant's Request for Interim Financing**

58. As shown in the Cash Flow Forecast, it is estimated that for the period ending July 16, 2016, the Applicant will require additional financial support. Accordingly, the ability of the Applicant to borrow additional funds during the CCAA proceedings under the ABL Credit Facility, such additional borrowings to be secured by the requested ABL DIP Lender's Charge, is vital to providing stability to, and the necessary cash flow for, the Applicant to conduct an orderly liquidation of its assets for the benefit of all stakeholders.
59. The material terms of the ABL Forbearance Agreement were described above. As noted, the ABL Forbearance Agreement requires that the Applicant obtained an order of the court permitting CIBC to apply post-filing receipts to reduce amounts owing to CIBC under the ABL Credit Facility prior to the date of the Initial Order. Additional amounts required by the Applicant are to be advanced in accordance with the terms of the ABL Forbearance Agreement. The maximum amount available under the ABL Credit Facility for the Applicant will be \$8 million prior to a distribution to CIBC of the amount of the Initial Guaranty Payment less the Administration Holdback. Thereafter the maximum amount available to the Applicant will be \$2.2 million.
60. As noted above, the ABL Forbearance Agreement is conditional on the Initial Order being granted in form and substance acceptable to CIBC and GSO. Specifically it is required that the Initial Order approve certain blocked account arrangements as described in the Sun Affidavit as well as grant the ABL DIP Lender's Charge.
61. The Proposed Monitor has inquired into the marketing process for the interim financing and has been advised by the Applicant that the interim financing requirement was not marketed externally or to other potential lenders to fund ongoing operations. In its assessment, the Applicant considered the CIBC proposal as advantageous, as CIBC was already familiar with the Applicant's business and financial profile as well as its restructuring options as a result of its discussions with the Applicant and its advisors throughout the Applicant's strategic review process and as a result of their pre-existing relationship with the Applicant.
62. The Applicant is of the opinion that any offer from other lenders would have required a great deal of time and expense to pursue, and there was no commercial advantage to pursuing other options for interim financing. The Applicant has advised the Proposed Monitor that, in its view, the interim

financing provided for under the ABL Forbearance Agreement represents the only viable alternative to the Applicant to ensure the continuation of the Applicant's operations at this time.

63. The Proposed Monitor is of the view that, given the Applicant's current circumstances, the terms of the ABL Forbearance Agreement are commercially reasonable for the following reasons:
- i. The Applicant is facing an imminent liquidity crisis and short term funding is needed urgently in order to permit the Applicant to wind-down its operations in an orderly and efficient manner;
  - ii. Further delays sourcing alternative interim financing cannot be justified, as the Applicant's poor financial performance and highly levered balance sheet make it unlikely that the Applicant would be able to secure alternative interim financing and, even if they could, the funding would likely be insufficient and expensive; and
  - iii. The Proposed Monitor is of the view that, in the circumstances, the financial terms of the financing to be provided under the ABL Forbearance Agreement appear to be commercially reasonable and are consistent with other situations in which the Proposed Monitor has been involved.
64. In light of the foregoing, it is the Proposed Monitor's view that further time spent attempting to source alternative interim financing would: (i) not be in the interest of the Applicant and/or its stakeholders; (ii) not result in the finalization of alternative interim financing on better terms; (iii) reduce overall net realization for the Applicant; and (iv) would severely, and likely fatally, compromise the Applicant's ability to respect the terms of its Agency Agreement and wind-down its operations in an orderly fashion, which is in the best interests of all its stakeholders.

#### **Court Ordered Charges**

65. The proposed Initial Order provides for an Administration Charge, the ABL DIP Lender's Charge and a Directors' Charge (as defined below):

**i. Administration Charge**

66. The proposed Initial Order provides for a charge in the maximum amount of \$500,000 charging the assets of the Applicant to secure the fees and disbursements incurred in connection with services rendered to the Applicant both before and after the commencement of the CCAA proceedings by the following entities: the Monitor, the Monitor's legal counsel, legal counsel to the Applicant and legal counsel to the Directors and Officers (the "**Administration Charge**").
67. The quantum of the Administration Charge sought by the Applicant was determined in consultation with the Proposed Monitor. The creation of the Administration Charge is typical in CCAA proceedings as is the proposed priority of the Administration Charge as set out in the form of Initial Order filed with the Court.

**ii. ABL DIP Lender's Charge**

68. The Applicant requires immediate funding to operate and pursue an orderly wind-down during the CCAA proceedings, as evidenced by the Cash Flow Forecast.
69. As noted above, a condition of the ABL Forbearance Agreement is that CIBC receives the benefit of the ABL DIP Lender's Charge to the maximum amount of the aggregate of any and all advances by CIBC to the Applicant (provided that the ABL DIP Lender's Charge will not charge certain collateral and will not rank in priority to the Administration Charge and the Agent's Charge as described in the Sun Affidavit), subsequent to the granting of the Initial Order.

**iii. Directors' Charge**

70. The proposed Initial Order provides for a charge in the maximum amount of \$500,000 charging the assets of the Applicant to indemnify its directors and officers for liabilities incurred by the Applicant that result in post-filing claims against the directors and officers in their personal capacities (the "**Directors' Charge**").
71. The amount of the Directors' Charge was determined by taking into consideration employee payroll and related expenses (including source deductions), vacation pay and sales tax.
72. The Proposed Monitor has been advised that the Applicant's directors and officers have \$10 million in primary coverage directors and officers insurance indemnification as more fully set out in the Sun Affidavit.

73. However, the Proposed Monitor has been informed that due to the potential for personal liability, the directors and officers of the Applicant are unwilling to continue their services and involvement in the CCAA Proceedings without the protection of the Directors' Charge. As the Applicant will require the participation and experience of the Applicant's directors and officers to pursue a successful orderly liquidation, the Proposed Monitor believes that the Directors' Charge (both the amount and priority ranking) is required and reasonable in the circumstances. The Proposed Monitor understands that the current directors of the Applicant, all of whom would be given the benefit of the Director's Charge are James M. Dworkin, Matthew Kahn, David McGregor, Glenn A. Stonehouse and Frank Tworecke.

**iv. Agent's Charge**

74. The Agency Agreement, if approved, provides that the Agent will be granted a first ranking charge on certain specified property and assets of the Applicant as security for the obligations of the Applicant to the Agent under the Agency Agreement (subject to the subordination of the Agent's Charge in respect of certain entitlements as described in the Sun Affidavit).

**Summary and Proposed Ranking of the Court Ordered Charges**

75. It is contemplated that the priorities of the charges sought by the Applicant (collectively, the "Charges") will be as follows:

- a. First – the Administration Charge;
- b. Second – ABL DIP Lender's Charge; and
- c. Third – the Directors' Charge.

76. The Initial Order sought by the Applicant provides that the Charges will rank in priority to the security interests of CIBC and GSO (provided that the ABL DIP Lender's Charge will not prime the Term Priority Collateral). The Charges will be subordinate to the interests of Xerox Canada Ltd., which are secured by an existing *Personal Property Security Act* (Ontario) registration (being the only such current registration other than those in favour of CIBC and GSO) of which the Proposed Monitor is aware.

77. As noted above, the requested Approval Order contains an additional charge in favour of the Agent, which would have priority with respect to certain assets, over all of the above noted charges.

78. The Proposed Monitor believes that the Charges and rankings are required and reasonable in the circumstances of the CCAA proceedings in order to achieve an orderly and efficient liquidation of the Applicant's assets and accordingly, supports the granting and the proposed ranking of the Charges.

**Proposed Monitor's Conclusions and Recommendations**

79. The Proposed Monitor is of the view that, the Applicant is insolvent and that the relief requested by the Applicant, including the authorization to enter into the ABL Forbearance Agreement, and the GSO Forbearance Agreement, and the Agency Agreement is necessary, commercially reasonable and justified. The Proposed Monitor is also of the view that granting the relief requested will provide the Applicant the best opportunity to undertake an orderly liquidation of its assets under the CCAA proceedings thereby maximizing value for the benefit of the Applicant's stakeholders.

All of which is respectfully submitted this 6th day of June , 2016.

**Richter Advisory Group Inc.**  
**in its capacity as Proposed Monitor of**  
**2473304 Ontario Inc.**

Per:



Gilles Benchaya, CPA, CIRP



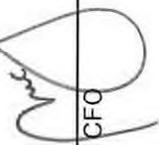
Andrew Adessky, CPA, MBA, CIRP

# **Appendix “A”**

**2473304 Ontario Inc.**  
**Cash Flow Forecast For the Period May 29 to July 16, 2016**

(\$000's)	04-Jun-16	11-Jun-16	18-Jun-16	25-Jun-16	02-Jul-16	09-Jul-16	16-Jul-16	Total
<b>Receipts</b>								
Gross Receipts	619	530	8,237	-	-	-	-	9,386
Rent Recovery	-	-	-	48	95	95	95	334
	619	530	8,237	48	95	95	95	9,720
<b>Disbursements</b>								
Rent	(536)	-	-	-	(536)	-	-	(1,072)
Store Expenses & Other	(94)	(46)	(11)	(75)	(238)	(25)	(11)	(500)
Payroll	(60)	(306)	(59)	(139)	(84)	-	(59)	(708)
Sales Tax	(76)	-	-	-	(150)	-	-	(226)
Interest	(29)	-	-	-	(44)	-	-	(73)
Deposits	-	(100)	-	-	-	-	-	(100)
Professional Fees	(435)	(231)	(152)	(102)	(149)	(119)	(90)	(1,277)
	(1,229)	(683)	(221)	(317)	(1,202)	(144)	(160)	(3,956)
<b>Net Cash Flow</b>	<b>\$ (610)</b>	<b>\$ (153)</b>	<b>\$ 8,015</b>	<b>\$ (269)</b>	<b>\$ (1,106)</b>	<b>\$ (49)</b>	<b>\$ (65)</b>	<b>\$ 5,764</b>
Opening Loan	6,925	7,535	7,688	7,696	7,965	1,548	1,597	6,925
Net Cash Flow	610	153	(8,015)	269	1,106	49	65	(5,764)
Transfer to/(from) Monitor Escrow Acct	-	-	8,023	-	(7,523)	-	-	500
<b>Revolver</b>	<b>\$ 7,535</b>	<b>\$ 7,688</b>	<b>\$ 7,696</b>	<b>\$ 7,965</b>	<b>\$ 1,548</b>	<b>\$ 1,597</b>	<b>\$ 1,662</b>	<b>\$ 1,662</b>
Opening Monitor Escrow Acct	-	-	-	8,023	8,023	500	500	-
Transfer in/(out)	-	-	8,023	-	(7,523)	-	-	500
<b>Monitor Escrow Acct - Closing</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,023</b>	<b>\$ 8,023</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>

Mark Sun, CFO



2473304 ONTARIO INC.

REPORT OF RICHTER ADVISORY GROUP INC., IN ITS CAPACITY AS PROPOSED MONITOR OF 2473304 ONTARIO INC.

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

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

Proceedings commenced at Toronto

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**REPORT OF THE MONITOR  
June 6, 2016**

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**CASSELS BROCK & BLACKWELL LLP**  
Scotia Plaza  
2100 - 40 King Street West  
Toronto, ON M5H 3C2

**Jane Dietrich**  
**LSUC No.: 49302U**  
Tel: 416.860.5223  
Fax: 416.640.3144  
Email: [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com)

*Lawyers for Richter Advisory Group Inc.*

# Appendix “C”

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

THE HONOURABLE )  
 )  
MR. JUSTICE HAINEY )  
 )  
 )  
 )  
 )  
 )  
 )

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, Mosquard 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.

A handwritten signature in black ink, appearing to read "Harris J.", with a horizontal line extending to the left of the first letter.

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](mailto: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.

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:

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")

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

**Proceedings commenced in Toronto**

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

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**FASKEN MARTINEAU DuMOULIN LLP**  
333 Bay Street – Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Stuart Brotman (LSUC#43430D)**  
Tel: 416 865 5419  
Fax: 416 364 7813  
sbrotman@fasken.com

**Dylan Chochla (LSUC#62137I)**  
Tel: 416 868 3425  
Fax: 416 364 7813  
dchochla@fasken.com

Lawyers for the Applicant, 2473304 Ontario Inc.

# Appendix “D”

2473304 Ontario Inc.

Cash Flow Forecast for the Period June 12 to October 1, 2016

(\$000's)	18-Jun-16	25-Jun-16	02-Jul-16	09-Jul-16	16-Jul-16	23-Jul-16	30-Jul-16	06-Aug-16	13-Aug-16	20-Aug-16	27-Aug-16	03-Sep-16	10-Sep-16	17-Sep-16	24-Sep-16	01-Oct-16	Total
<b>Receipts</b>																	
Gross Receipts	\$ 8,236	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,657	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,893
Rent Recovery	-	48	95	95	95	95	95	95	95	95	48	-	-	-	-	-	858
	<u>8,236</u>	<u>48</u>	<u>95</u>	<u>95</u>	<u>95</u>	<u>95</u>	<u>1,752</u>	<u>95</u>	<u>95</u>	<u>95</u>	<u>48</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>10,750</u>
<b>Disbursements</b>																	
Rent	-	-	(536)	-	-	-	-	(536)	-	-	-	-	-	-	-	-	(1,072)
Store Expenses & Other	(1)	(76)	(240)	(27)	(12)	(27)	(744)	(42)	(12)	(77)	(12)	(247)	-	-	-	-	(1,519)
Payroll	(65)	(287)	(85)	-	(60)	-	(86)	-	-	-	-	-	-	-	-	-	(584)
Sales Tax	(5)	-	(158)	-	-	-	-	13	-	-	106	-	-	-	-	144	99
Interest	-	-	(41)	-	-	-	(8)	-	-	-	(6)	-	-	-	-	-	(55)
Deposits	-	(50)	(31)	-	-	-	-	-	-	-	50	-	-	50	-	-	19
Professional Fees	(64)	(282)	(129)	(169)	(140)	(57)	(73)	(40)	(158)	(51)	(45)	(52)	(91)	(51)	-	-	(1,402)
	<u>(136)</u>	<u>(695)</u>	<u>(1,220)</u>	<u>(196)</u>	<u>(213)</u>	<u>(84)</u>	<u>(912)</u>	<u>(605)</u>	<u>(171)</u>	<u>(128)</u>	<u>93</u>	<u>(299)</u>	<u>(91)</u>	<u>(1)</u>	<u>-</u>	<u>144</u>	<u>(4,513)</u>
<b>Net Cash Flow</b>	<b>\$ 8,100</b>	<b>\$ (647)</b>	<b>\$ (1,125)</b>	<b>\$ (100)</b>	<b>\$ (118)</b>	<b>\$ 12</b>	<b>\$ 841</b>	<b>\$ (510)</b>	<b>\$ (75)</b>	<b>\$ (33)</b>	<b>\$ 141</b>	<b>\$ (299)</b>	<b>\$ (91)</b>	<b>\$ (1)</b>	<b>\$ -</b>	<b>\$ 144</b>	<b>\$ 6,237</b>
Opening Revolver	\$ 7,169	\$ 7,055	\$ 7,702	\$ 1,342	\$ 1,442	\$ 1,560	\$ 1,548	\$ 708	\$ 1,217	\$ 1,293	\$ 1,325	\$ 1,185	\$ 1,484	\$ 1,575	\$ 1,576	\$ 1,576	\$ 7,169
Net Cash Flow	(8,100)	647	1,125	100	118	(12)	(841)	510	75	33	(141)	299	91	1	-	(144)	(6,237)
Transfer to/(from) Monitor Escrow Account	7,986	-	(7,486)	-	-	-	-	-	-	-	-	-	-	-	-	-	500
<b>Ending Revolver</b>	<b>\$ 7,055</b>	<b>\$ 7,702</b>	<b>\$ 1,342</b>	<b>\$ 1,442</b>	<b>\$ 1,560</b>	<b>\$ 1,548</b>	<b>\$ 708</b>	<b>\$ 1,217</b>	<b>\$ 1,293</b>	<b>\$ 1,325</b>	<b>\$ 1,185</b>	<b>\$ 1,484</b>	<b>\$ 1,575</b>	<b>\$ 1,576</b>	<b>\$ 1,576</b>	<b>\$ 1,432</b>	<b>\$ 1,432</b>
Opening Monitor Escrow Account	\$ -	\$ 7,986	\$ 7,986	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ -
Transfer to/(from) Monitor Escrow Account	7,986	-	(7,486)	-	-	-	-	-	-	-	-	-	-	-	-	-	500
<b>Ending Monitor Escrow Account</b>	<b>\$ 7,986</b>	<b>\$ 7,986</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>	<b>\$ 500</b>

Mark Sun, CFO

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

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

Proceedings commenced at Toronto

**FIRST REPORT OF THE MONITOR  
DATED JUNE 17, 2016**

**CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
2100 - 40 King Street West  
Toronto, ON M5H 3C2

**Jane Dietrich (LSUC#49302U)**

Tel: 416.860.5223

Fax: 416.640.3144

Email: [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com)

**Hilary Fender (LSUC #68406U)**

Tel: 416.860.6476

Fax: 416.642.7150

Email: [hfender@casselsbrock.com](mailto:hfender@casselsbrock.com)

*Lawyers for Richter Advisory Group Inc.*