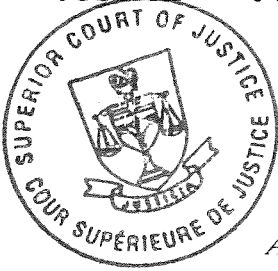


**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE WILTON-SIEGEL)
)

MONDAY, THE 30th
DAY OF JANUARY, 2017 *AMS*



**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
GRAFTON-FRASER INC.**

(the "Applicant")

**ORDER
(Amending and Restating Initial Order)**

1. THIS COURT ORDERS that the Initial Order of the Honourable Justice Hainey dated January 25, 2017 be and is hereby amended and restated by the Amended and Restated Initial Order in the form attached hereto as Schedule "A".

Wilton-Siegel

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

JAN 30 2017

PER / PAR: *[Signature]*

PER / PAR:

JAN 30 2017
ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SCHEDULE "A"

Court File No. CV-17-11677-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 25th
JUSTICE) DAY OF JANUARY, 2017
)

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
GRAFTON-FRASER INC.

(the "Applicant")

AMENDED AND RESTATED 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 January 25, 2017 and the Exhibits thereto (the "**Sun Affidavit**"), the report of Richter Advisory Group Inc. ("**Richter**") as the proposed monitor dated January 25, 2017 (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 Irene Artuso sworn January 25, 2017, filed, and on reading the consent of Richter to act as the Monitor.

SERVICE

2. 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

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to 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.

6. 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 DIP Agreement and the ABL DIP Forbearance Agreement (each 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.

7. THIS COURT ORDERS that, subject to the terms of the DIP Agreement and the Forbearance Agreements (as hereinafter defined) that require the Applicant to comply with the Approved Cash Flow (as defined in the DIP Agreement and 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;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing to vendors determined by the Applicant to be necessary in order to ensure an uninterrupted supply of goods and/or services to the Applicant that are material to the continued operation of the Business, provided that such payments shall not exceed an aggregate amount of \$1 million and are approved in advance by the Monitor or by further Order of the Court.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the DIP Agreement and the Forbearance Agreements that require the Applicant to comply with the Approved 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, subject to the Approved Cash Flow, include, 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.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the 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.

10. THIS COURT ORDERS that the Applicant is hereby authorized to transfer to an account of the Monitor, on a weekly basis, in advance, such amount as the Applicant determines, in consultation with the Monitor, is appropriate and required to remit or pay projected Sales Taxes relating to the sale of goods and services by the Applicant in such week in accordance with applicable law, and the Monitor is hereby authorized to hold such funds and transfer such funds to the Applicant for remittance or payment by the Applicant of such Sales Taxes as required pursuant to applicable law. In the event the Monitor determines, in its discretion, to return any portion of such funds to the Applicant as a result of the Applicant having transferred more than is appropriate or required to pay or remit Sales Taxes as aforesaid, the funds so returned shall form part of the Property.

11. THIS COURT ORDERS that until a real property lease is disclaimed 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.

12. THIS COURT ORDERS that, except as specifically permitted (i) herein or (ii) in the DIP Agreement and 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

13. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) subject to obtaining the prior written consent of the Term DIP Lenders pursuant to the DIP Agreement and Term DIP Forbearance Agreement (each as defined below) and the ABL Agent and ABL Lender pursuant to the ABL Forbearance Agreement (as defined below), unless otherwise permitted by the provisions of the DIP Agreement and Term DIP Forbearance Agreement or by further Order of the Court:
 - (i) permanently or temporarily cease, downsize or shut down any of its business or operations, provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease; and
 - (ii) dispose of redundant or non-material assets not exceeding \$15,000 in any one transaction or \$75,000 in the aggregate;
- (b) subject to such applicable covenants as may be contained in the DIP Agreement, the Term DIP Credit Documents (as defined below), or the Forbearance Agreements, as applicable:
 - (i) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
 - (ii) pursue all avenues of refinancing of its Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing;

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

14. 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 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 of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, 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, 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

16. THIS COURT ORDERS that, subject to paragraph 17(v) hereof, until and including February 23, 2017, 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

17. 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 44, 53 and 54 hereof, prevent the Lenders (as hereinafter defined) from exercising any rights or remedies in accordance with the DIP Agreement or their respective Forbearance Agreements.

NO INTERFERENCE WITH RIGHTS

18. 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

19. 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

20. 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

21. 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

22. 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.

23. 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 \$800,000 as security for the indemnity

provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 58 and 60 herein.

24. 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 22 of this Order.

25. THIS COURT ORDERS and directs the Applicant to deposit with the Monitor, in trust, the sum of \$772,597 (the "**Directors' Escrow**"), which funds shall be held by the Monitor in trust and stand as collateral for the indemnity contemplated in paragraph 22 hereof and subject to the Directors' Charge, to be released only with the consent of the Monitor and the beneficiaries of the Directors' Charge (which consent may be communicated by counsel to the directors) or upon further Order of the Court made on notice to the Monitor and counsel to the directors; provided the indemnification obligations in respect of which the Directors' Escrow stands as collateral shall be limited to those relating to statutory obligations and liabilities of the directors and officers of the Applicant. Notwithstanding the provisions of paragraph 58 hereof, the Directors' Charge shall rank in priority to all other Charges and Encumbrances over the Directors' Escrow.

APPOINTMENT OF MONITOR

26. 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.

27. 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 which may be used in these proceedings including reporting on a basis to be agreed with each Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Lenders, which information shall be reviewed with the Monitor and delivered to the Lenders as required pursuant to the DIP Agreement and the Forbearance Agreements;
- (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.

28. 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.

29. 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 territories, 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.

30. 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.

31. 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.

32. 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 \$100,000, \$50,000, \$100,000 and \$25,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

33. 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.

34. 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 58 and 60 hereof.

KEY EMPLOYEE RETENTION PAYMENTS

35. THIS COURT ORDERS that the key employee retention payments ("**KERPs**") offered by the Applicant to certain of its remaining employees and executive officers, as set out and described in the Sun Affidavit, be and are hereby approved, and the Applicant be and is hereby authorized and empowered to make the KERPs in accordance with the terms set out in the Sun Affidavit.

36. THIS COURT ORDERS that the employees of the Applicant who are the beneficiary of the KERPs shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$190,000, as security for the Applicant’s obligations in respect of the KERPs. The KERP Charge shall have the priority set out in paragraphs 58 and 60 hereof.

SECOND LEASE CONSULTING AGREEMENT

37. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the Second Lease Consulting Agreement (as defined in the Sun Affidavit) be and is hereby authorized and approved.

DIP FINANCING & FORBEARANCE AGREEMENTS

A) DIP AGREEMENT

38. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the lenders that are parties to the DIP Agreement (as defined below) (in such capacity, collectively referred to herein as the “**Term DIP Lenders**”) in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$5.5 million unless permitted by further Order of this Court.

39. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the DIP facility term sheet between the Applicant, the Term DIP Lenders, GSO, as administrative agent for itself and for the Term DIP Lenders (in such capacity, the “**Term DIP Agent**”) and Wilmington Trust, National Association, as servicing agent (the “**Term DIP Servicing Agent**”), dated as of January 24, 2017 (the “**DIP Agreement**”), filed.

40. THIS COURT ORDERS THAT that the execution, delivery, entry into, compliance with, and performance by the Applicant of the DIP Agreement is hereby ratified and approved and the Applicant is hereby directed to comply with and perform the provisions of the DIP Agreement.

41. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver the DIP Security, the Servicing Agent Fee Agreement (each as defined in the

DIP Agreement) and such other documents (collectively, the "**Term DIP Credit Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the Term DIP Agent and the Term DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Term DIP Agent, the Term DIP Lenders and the Term DIP Servicing Agent under and pursuant to the DIP Agreement and the Term DIP Credit Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. THIS COURT that, as security for all of the obligations of the Applicant under or in connection with the DIP Facility (as defined in the DIP Agreement), the DIP Agreement and the other Term DIP Credit Documents from and after the date of this Order, the Term DIP Agent on behalf of and for the benefit of itself, the Term DIP Lenders and the Term DIP Servicing Agent, shall be entitled to the benefit of and is hereby granted a charge (the "**Term Lenders' DIP Charge**") on the Property (excluding the ABL Priority Collateral to the extent of the ABL Obligations (each as defined in the Intercreditor Agreement (as hereinafter defined)), which Term Lenders' DIP Charge shall not secure an obligation that exists before this Order is made. The Term Lenders' DIP Charge shall have the priority set out in paragraphs 58 and 60 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the Term DIP Agent on behalf of and for the benefit of itself, the Term DIP Lenders and the Term DIP Servicing Agent, may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Term Lenders' DIP Charge or any of the Term DIP Credit Documents.

44. THIS COURT ORDERS that, notwithstanding any other provision of this Order, upon the occurrence of an event of default under the DIP Agreement, the Term DIP Credit Documents or the Term Lenders' DIP Charge, or following the Maturity Date (as defined in the DIP Agreement), the Term DIP Lenders may:

- (a) immediately cease making advances to the Applicant, provided that, if there are funds available under the DIP Agreement, the Term DIP Lenders shall, to the extent of the funds available only, fund the payment by the Applicant of 50% of the Priority Payables (as defined in the DIP Agreement, but, for greater certainty, excluding HST and all Sales Taxes) for a period of not less than five (5) business days following

written notice to the Applicant, the Monitor and the ABL Lender (as defined below) of the event of default or the Maturity Date; and

- (b) set off and/or consolidate any amounts owing by the Term DIP Lenders to the Applicant against the obligations of the Applicant to the Term DIP Lenders under the DIP Agreement, the Term DIP Credit Documents or the Term Lenders' DIP Charge, and make demand, accelerate payment and give other notices; and
- (c) upon not less than five (5) business days' written notice to the Applicant, the Monitor and the ABL Lender, subject to the terms of the Intercreditor Agreement and paragraphs 44(a) and 55 of this Order, exercise any and all of their rights and remedies against the Applicant or the Property (other than the ABL Priority Collateral to the extent of the ABL Obligations) under or pursuant to the DIP Agreement, the Term DIP Credit Documents, the Term Lenders' DIP Charge, 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 in respect of the Property (other than the ABL Priority Collateral to the extent of the ABL Obligations), 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 DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property (other than the ABL Priority Collateral to the extent of the ABL Obligations).

45. THIS COURT ORDERS AND DECLARES that the Term DIP Agent, the Term DIP Servicing Agent and the Term DIP 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* of Canada (the "**BIA**"), with respect to any advances made under the DIP Agreement or the Term DIP Credit Documents.

46. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the DIP Agreement, the Term DIP Credit Documents, and the granting of the Term 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.

B) FORBEARANCE AGREEMENTS

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

- (a) the Forbearance Agreement dated as of January 24, 2017 (the “**ABL DIP Forbearance Agreement**”) among the Applicant and 2473304 Ontario Inc. (“**247**”), as borrowers, and CIBC, as lender and as agent (in that capacity, the “**ABL Lender**”); and
- (b) the Forbearance Agreement dated as of January 24, 2017 (the “**Term Forbearance Agreement**”) among the Applicant, as borrower, 247, as guarantor, and the lenders that are parties to the Existing Credit Agreement (as defined in the Term Forbearance Agreement), as lenders (in such capacity, collectively referred to herein as the “**GSO Lenders**”), and GSO, as administrative agent for itself and the GSO Lenders (GSO and the GSO Lenders being collectively referred to as the “**Term Lenders**”, and together with the ABL Lender, the Term DIP Lenders and the Term DIP Agent, the “**Lenders**”);

and the Applicant is hereby directed to comply with and perform the provisions of (i) the ABL DIP Forbearance Agreement and the credit agreement dated as of February 12, 2016 by and among, the Applicant and 247, as borrowers, and the ABL Lender, as amended, including by the ABL DIP Forbearance Agreement (the “**ABL Credit Agreement**”), and (ii) the Term Forbearance Agreement and the Existing Credit Agreement, as amended, including by the Term Forbearance Agreement.

48. 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 4.1.8 of the ABL DIP 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 DIP Forbearance Agreement.

49. THIS COURT ORDERS that the Applicant shall be entitled, subject to the terms of the ABL Credit Agreement and the ABL DIP 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 DIP 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 DIP 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 DIP Forbearance Agreement and the Blocked Account Agreements, whether such indebtedness arose before or after the date of this Initial Order.

50. 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 Existing Credit Agreement, the Forbearance Agreements and the Term DIP Credit Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

51. 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 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 to the extent of the Term Obligations (each as defined in the Intercreditor Agreement (as hereinafter defined))). The ABL Lender’s DIP Charge shall have the priority set out in paragraphs 58 and 60 hereof.

52. 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.

53. THIS COURT ORDERS that, upon the earlier of the occurrence of a Terminating Event or the last day of the Forbearance Period (in each case as defined in the ABL DIP Forbearance Agreement), the ABL Lender may,

- (a) immediately cease making advances to the Applicant, provided that, if there are funds available under the ABL Facility, the ABL Lender shall, to the extent of the funds available only, fund the payment by the Applicant of 50% of the Specified Priority Payables (as defined in the ABL DIP Forbearance Agreement, but, for greater certainty, excluding HST and Sales Taxes) for a period of not less than five (5) business days following written notice to the Applicant, the Monitor and the Term DIP Lenders of the Terminating Event or the Termination Date;
- (b) 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 DIP Forbearance Agreement or any other Loan Document (as defined in the ABL Credit Agreement) and make demand, accelerate payment and give other notices; and
- (c) upon not less than five (5) business days' written notice to the Applicant, the Monitor, the Term Lenders and the Term DIP Agent on behalf of the Term DIP Lenders, subject to the terms of the Intercreditor Agreement and paragraphs 53(a) and 55 of this Order, exercise any and all of its rights and remedies against the Applicant or the Property (other than the Term Priority Collateral to the extent of the Term Obligations) under or pursuant to the ABL Credit Agreement, the ABL DIP 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 in respect of the Property (other than the Term Priority Collateral to the extent of the Term Obligations), 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 (other than the Term Priority Collateral to the extent of the Term Obligations).

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

- (a) immediately 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 Existing Credit Agreement, 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’ written notice to the Applicant, the Monitor, the ABL Lender and the Term DIP Agent on behalf of the Term DIP Lenders, subject to the terms of the Intercreditor Agreement and paragraphs and 55 of this Order, exercise any and all of its rights and remedies against the Applicant or the Property (other than the ABL Priority Collateral to the extent of the ABL Obligations) under or pursuant to the Existing Credit Agreement, the Term Forbearance Agreement, 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 in respect of the Property (other than the ABL Priority Collateral to the extent of the ABL Obligations), 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 (other than the ABL Priority Collateral to the extent of the ABL Obligations).

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

- (a) the priorities of the claims of the ABL Lender, the Term Lenders and the Term DIP Lenders,
- (b) the priorities of the Term Lenders’ DIP Charge, the ABL Lender’s DIP Charge and the Liens granted to the Term Secured Parties and the ABL Secured Parties (each as defined in the Intercreditor Agreement), and
- (c) the enforcement rights of the Term DIP Lenders, the ABL Secured Parties and the Term Secured Parties,

the ABL Lender’s DIP Charge and the Term Lenders’ DIP Charge, and the obligations secured by those charges, shall be treated in a manner consistent with Liens granted to, and obligations owing to, the ABL Secured Parties and the Term Secured Parties, respectively for the purposes of the Intercreditor Agreement.

56. 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 BIA, with respect to any obligations outstanding as of the date of this Order or arising hereafter under (i) the ABL Credit Agreement or the ABL DIP Forbearance Agreement, and (ii) the Existing Credit Agreement or the Term Forbearance Agreement, respectively.

57. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the ABL Credit Agreement, the ABL DIP 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

58. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Term Lenders' DIP Charge, the ABL Lender's DIP Charge and the KERP Charge and the Liens granted to the Term Secured Parties and the ABL Secured Parties over the Property so charged by them, as among them, shall be as follows:

(a) With respect to the ABL Priority Collateral:

First – Administration Charge;

Second – ABL Lender's DIP Charge;

Third – Liens granted to the ABL Secured Parties;

Fourth – Term Lenders' DIP Charge;

Fifth – Liens granted to the Term Secured Parties;

Sixth – KERP Charge; and

Seventh – Directors' Charge.

(b) With respect to the Term Priority Collateral:

First – Administration Charge;

Second – Term Lenders' DIP Charge;

Third – Liens granted to the Term Secured Parties;

Fourth – ABL Lender's DIP Charge;

Fifth – Liens granted to the ABL Secured Parties;

Sixth – KERP Charge; and

Seventh – Directors' Charge.

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

60. 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 (except as expressly provided herein) 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. 675686367), and Canadian Dealer Lease Services Inc. and Bank of Nova Scotia-DLAC (File No. 719663706), in each case under the *Personal Property Security Registry* (Ontario)).

61. 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 Lenders, and the beneficiaries of the Directors' Charge, the Administration Charge and the KERP Charge, or further Order of this Court.

62. THIS COURT ORDERS that the Charges, the DIP Agreement, the Term DIP Credit Documents 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 Term DIP Lenders 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 DIP Agreement, the Term DIP Credit Documents or 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 DIP Agreement, the Term DIP Credit Documents or the Forbearance Agreements or the creation of the Charges or the execution, delivery or performance of such documents.

63. 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.

SERVICE AND NOTICE

64. 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.

65. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall

constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.richter.ca/en/folder/insolvency-cases/g/grafton-fraser-inc>

66. 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

67. 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.

68. 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.

69. 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.

70. 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.

71. 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 Term DIP Lenders and the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the DIP Agreement, the ABL Credit Agreement or the ABL DIP Forbearance Agreement up to and including the date this order may be varied or amended.

72. 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.

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 GRAFTON-FRASER INC.

(the "Applicant")

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

Proceedings commenced in Toronto

ORDER

(Amending and Restating Initial Order)

(Returnable January 30, 2017)

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