

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
GRAFTON-FRASER INC.**

(the "Applicant")

**APPLICATION RECORD OF THE APPLICANT
(Initial CCAA Order)
(Returnable January 25, 2017)**

VOLUME 1 OF 2

January 25, 2017

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To: The Attached Service List

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(as of January 25, 2017)

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GRAFTON-FRASER INC.**

(the "Applicant")

**NOTICE OF APPLICATION
(Initial CCAA Order)**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on January 25, 2017, at 3:30 p.m. at the Court House at 361 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: January 25, 2017

Issued by: _____

Local Registrar
330 University Ave
7th Floor
Toronto, Ontario
M5G 1R7

TO:	The Service List
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APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- (a) an Order substantially in the form attached hereto as Schedule "A" (the "**Initial Order**")¹, *inter alia*:
 - (i) abridging the time for service of the Notice of Application and the Application Record herein, if necessary, and validating service thereof;
 - (ii) declaring that Grafton-Fraser Inc. (the "**Company**") is a company to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;
 - (iii) granting a stay of proceedings in favour of the Company and its directors and officers;
 - (iv) approving the Second Lease Consulting Agreement (as defined below);
 - (v) authorizing payments to critical vendors;
 - (vi) approving the DIP Agreement and granting the Term Lenders' DIP Charge (each as defined below);
 - (vii) approving the ABL DIP Forbearance Agreement and granting the ABL Lender's DIP Charge (each as defined below);
 - (viii) approving the Term Forbearance Agreement (as defined below);

¹ A blackline of the Initial Order against the Commercial List User's Committee Model Order is attached at Schedule "B"

- (ix) granting the Administration Charge (as defined below);
 - (x) declaring that the directors and officers of the Company shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of the Company after the commencement of these proceedings, and granting the D&O Charge (as defined below) as security for such indemnity;
 - (xi) authorizing the KERPs and granting the KERP Charge (each as defined below) as security for the Company's obligations in respect of the KERPs;
 - (xii) appointing Richter Advisory Group Inc. ("**Richter**" or the "**Proposed Monitor**") to act as the monitor (the "**Monitor**") of the Company in these CCAA proceedings; and
- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. **THE GROUNDS FOR THIS APPLICATION ARE:**

Background

- (a) the Company is a leading Canadian retailer of men's clothing that operates 158 stores in Canada under the "Tip Top Tailors", "George Richards Big and Tall", "Mr. Big and Tall" and "Kingsport Big and Tall Clothier" banners;
- (b) the Company is facing a liquidity crisis as a result of, among other things, financial consequences arising from the insolvency of its wholly-owned subsidiary 2473304

Ontario Inc. (“247”), lower than expected retail sales, increased overhead costs, delays in receipt of seasonal inventory and turnover of key personnel;

Secured Creditors

- (c) the Company is a party (as co-borrower with 247) to a credit agreement dated as of February 12, 2016 with Canadian Imperial Bank of Commerce (“CIBC”), as agent and as lender, as amended, pursuant to which CIBC agreed to provide the Company and 247 with revolving credit facilities (the “CIBC Credit Facility”) in the maximum aggregate principal amount of \$35 million (the “CIBC Credit Agreement”);
- (d) as of January 21, 2017, the Company has borrowed \$12.8 million under the CIBC Credit Agreement. Pursuant to the terms of the CIBC Credit Agreement, the Company is jointly and severally liable with 247 for all indebtedness outstanding under the CIBC Credit Facility, accordingly, the Company is liable for approximately \$1.6 million of 247’s indebtedness under the CIBC Credit Agreement as a result of 247’s insolvency;
- (e) the Company is also indebted to lenders affiliated with GSO Capital Partners LP (“GSO”) under an amended and restated credit agreement dated as of June 16, 2009, as amended from time to time, (the “GSO Credit Agreement”). The outstanding indebtedness under the GSO Credit Agreement (including accrued interest) as of January 21, 2017 was approximately \$39.4 million;
- (f) CIBC and GSO are parties to an intercreditor agreement dated as of February 12, 2016 (the “Intercreditor Agreement”) pursuant to which CIBC and GSO agreed to, among other things, the relative priority of their security interests in the property of the Company. The Intercreditor Agreement provides that CIBC will have a first priority

security interest in, among other things, the accounts receivable and inventory of the Company (the “**ABL Priority Collateral**”) to the extent of the ABL Obligations (as defined in the Intercreditor Agreement), with GSO having a second priority security interest in such collateral, and GSO will have a first priority security interest in, among other things, the furniture, fixtures, equipment, intellectual property and securities of the Company (the “**Term Priority Collateral**”) to the extent of the Term Obligations (as defined in the Intercreditor Agreement), with CIBC having a second priority security interest in such collateral. The relative priorities set out in the Intercreditor Agreement are intended to continue in these CCAA proceedings with respect to advances made by CIBC or the Term DIP Lenders (as defined below), as applicable, to the Company, pursuant to the ABL DIP Forbearance Agreement and the DIP Agreement;

Restructuring Plan

- (g) the Company, with the assistance of the retail consulting group at Richter Consulting Canada Inc. (the “**Retail Consultant**”) has reviewed its present and projected financial performance and considered the strategic alternatives available to the Company;
- (h) as part of its review and planning process, the Company engaged Oberfeld Snowcap Inc. (the “**Lease Consultant**”) pursuant to the terms of a letter agreement dated November 30, 2016 (the “**First Lease Consulting Agreement**”) to act as its exclusive real estate consultant to provide lease administration services to the Company, including, without limitation, assessing the Company’s lease portfolio for profitable and non-profitable leases. The term of the First Lease Consulting Agreement expires on January 31, 2017;

- (i) following its internal review, the Company discussed with CIBC and GSO the various strategic alternatives identified with the Retail Consultant. Based upon those discussions, GSO made a non-binding restructuring proposal to the Company to implement a sale and investment solicitation process involving a going concern “stalking horse credit bid” to be completed through an insolvency proceeding coupled with the liquidation of assets located at underperforming store locations;

- (j) the Company determined, with the assistance of the Retail Consultant, that negotiating such a transaction was the best course of action to maximize value for its stakeholders. As part of that process, the Company has:
 - (i) developed a process of soliciting offers for a sale of, or investment in the Company, its business and assets (the “SISP”);

 - (ii) entered into an asset purchase agreement (the “**Stalking Horse Agreement**”) for the sale of all or substantially all of its assets to 1104307 B.C. Ltd. (an entity related to GSO) (the “**Stalking Horse Purchaser**”) by way of a “credit bid”, which will serve as the “stalking horse credit bid” under the proposed SISP, subject to approval of the Court; and

 - (iii) entered into a liquidation consulting agreement with a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the “**Liquidation Consultant**”) dated January 24, 2017 (the “**Liquidation Consulting Agreement**”) pursuant to which the Company proposes to engage the Liquidation Consultant as its exclusive consultant to

advise the Company with respect to the liquidation of certain stores (the “Closing Stores”), subject to approval of the Court;

- (k) the Stalking Horse Agreement and Liquidation Consulting Agreement are subject to the Company obtaining further Orders of the Court approving those agreements and the proposed SISP;
- (l) subject to the Initial Order being granted by the Court, the Company will serve its Application Record and the Initial Order, along with materials in support of a motion returnable January 30, 2017, seeking, *inter alia*, approval of the execution of the Stalking Horse Agreement, the proposed SISP and the Liquidation Consulting Agreement, on the Company’s landlords, among other interested parties;

Interim Financing & Forbearance Agreements

- (m) the Company entered into forbearance agreements, as amended from time to time, with CIBC and with GSO, respectively, in connection with 247’s CCAA proceedings. CIBC and GSO have agreed, in the context of the CCAA proceedings in respect of the Company, to amend and restate the existing forbearance agreements;
- (n) the Company, 247 and CIBC entered into an amended and restated forbearance agreement dated as of January 24, 2017 (the “**ABL DIP Forbearance Agreement**”) pursuant to which CIBC agreed to, *inter alia* (a) continue to forbear from enforcing its rights under the CIBC Credit Agreement and the other loan documents under certain conditions, and (b) allow the Company to continue to borrow under the revolving facility in an amount not to exceed the lesser of \$25,000,000 million and the Company’s

borrowing base formula, subject to a number of terms and conditions, including that CIBC be granted the ABL Lender's DIP Charge;

- (o) the Company and 247 also entered into an amended and restated forbearance agreement with GSO, among others, dated as of January 24, 2017 (the "**Term Forbearance Agreement**") pursuant which GSO agreed to continue to forbear from exercising its rights and remedies under the GSO Credit Agreement under certain conditions and to continue to capitalize material interest payments until June 2017;
- (p) to supplement the interim financing provided by CIBC under the ABL DIP Forbearance Agreement, the Company entered into a DIP facility term sheet with GSO, as administrative agent (in such capacity, the "**Term DIP Agent**") for itself and for certain other entities related to it (the "**Term DIP Lenders**"), and Wilmington Trust, National Association, as servicing agent (the "**Term DIP Servicing Agent**"), dated as of January 24, 2017 (the "**DIP Agreement**"), pursuant to which the Term DIP Lenders have agreed to advance to the Company interim financing in the amount of up to \$5.5 million to provide additional funding for the Company's operations during the CCAA proceeding, subject to a number of terms and conditions, including that the Court grant the Term Lenders' DIP Charge;
- (q) among other terms, it is a condition of each of the ABL DIP Forbearance Agreement, the Term Forbearance Agreement and any advance under the DIP Agreement that:
 - (i) the Company obtain the Initial Order; and

- (ii) the Company obtain further Orders approving the execution of the Stalking Horse Agreement, the Liquidation Consulting Agreement and authorizing the Company to pursue the proposed SISP in the context of CCAA proceedings;

Relief Sought in the Initial Order

- (r) the Company is in default under the CIBC Credit Agreement and the Company does not have sufficient liquidity to repay the outstanding indebtedness to CIBC in full if CIBC should make a demand for repayment;
- (s) the Company is also indebted to GSO, and others, under the GSO Credit Agreement and the Company is unable to satisfy these obligation in full if required by GSO;
- (t) the Company is insolvent. It cannot meet its liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP Agreement, the ABL DIP Forbearance Agreement and the Term Forbearance Agreement, the ability of the Company to undertake the proposed SISP for the benefit of its stakeholders may be seriously impaired;
- (u) the Company requires a broad stay of proceedings to allow it to continue to operate and maintain the status quo while it pursues its restructuring with a view to maximizing benefits to its creditors and other stakeholders;
- (v) the Company is seeking Court approval of an expanded engagement for the Lease Consultant and authorization to comply with its obligations under a new lease consulting agreement (the “**Second Lease Consulting Agreement**”) that it has entered into with the Lease Consultant. It is contemplated that the Lease Consultant will be retained to

assist the Company with renegotiating lease terms in respect of certain of the Closing Stores in an effort to make those leases attractive to the Stalking Horse Purchaser or to another bidder under the proposed SISP, as applicable, so that those leases may be removed from the liquidation process and the stores kept open following completion of a sale or other transaction entered into pursuant to the proposed SISP;

- (w) the continued engagement of certain of the Company's merchandise suppliers is critical to its ongoing operations and the Company is therefore requesting that it be permitted to pay pre-filing amounts owing to certain of those suppliers that it considers critical to its business, in the maximum aggregate amount of \$1 million, subject to the express prior approval of the Monitor or Order of the Court;
- (x) the Company seeks the Court's approval of two separate but coordinated interim financing agreements, being the DIP Agreement & the ABL DIP Forbearance Agreement, which are intended to provide the Company with sufficient liquidity to (i) maintain its ongoing operations during the course of these CCAA proceedings, including payment of employees; (ii) fund the costs of these proceedings; and (iii) pursue its restructuring efforts;
- (y) it is a condition of the ABL DIP Forbearance Agreement that CIBC maintain its priority in the ABL Priority Collateral and be granted a court-ordered charge on all the assets, rights, undertakings and properties of the Company (the "**Property**") as security for amounts advanced to the Company under the ABL DIP Forbearance Agreement after the date of the Initial Order (the "**ABL Lender's DIP Charge**");

- (z) it is also a condition of the DIP Agreement that the Term DIP Agent on behalf of and for the benefit of itself, the Term DIP Lenders and the Term DIP Servicing Agent, be granted a court-ordered charge on the Property as security for amounts advanced to the Company under the DIP Agreement (the “**Term Lenders’ DIP Charge**”);
- (aa) the Company is also seeking the Court’s authorization to carry out its obligations under the Term Forbearance Agreement which will provide the Company with stability during these CCAA proceedings and allow the Company to focus its efforts on its restructuring;
- (bb) the Company is seeking a charge on the Property in the maximum amount of \$500,000 (the “**Administration Charge**”) to secure the fees and disbursements of the Monitor, counsel to the Monitor, independent counsel to the directors of the Company and counsel to the Company, in each case incurred in connection with services rendered to the Company both before and after the commencement of these CCAA proceedings;
- (cc) similarly, the Company will require the participation of its directors and officers during these CCAA proceedings and proposes to indemnify its directors and officers and to secure such indemnity by way of a charge on the Property in the amount of \$800,000 (the “**D&O Charge**”);
- (dd) the Company is also proposing to provide key employee retention payments (“**KERPs**”) to certain key management employees and executives to provide them with an incentive to remain with the Company through these CCAA proceedings. The proposed beneficiaries of the KERPs have intimate knowledge of the Company and its assets and relationships with critical vendors and other constituents. Their continued participation is essential to these CCAA proceedings. The Company seeks an Order approving the

KERPs and a charge on its property to secure the obligations of the Company in respect of the KERP entitlements (the “**KERP Charge**”); and

(ee) Richter has consented to act as Monitor of the Company, subject to court approval;

Other Grounds

(ff) those further grounds as set out in the Affidavit of Mark Sun, sworn January 25, 2017, and the Exhibits thereto (the “**Sun Affidavit**”);

(gg) those further grounds as set out in the pre-filing report of the Proposed Monitor dated January 25, 2017, and the Appendices thereto (the “**Pre-Filing Report**”), to be filed;

(hh) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(ii) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(jj) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

(a) the Sun Affidavit, and the Exhibits thereto;

(b) the Pre-Filing Report, to be filed;

(c) the consent of Richter to act as Monitor dated January 24, 2017; and

(d) such other material as counsel may advise and this Honourable Court may permit.

January 25, 2017

FASKEN MARTINEAU DUMOULIN LLP

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SCHEDULE “A”

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 25th
JUSTICE HAINEY) 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")

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

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 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.

6. 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.

7. 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.

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 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.

10. 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.

11. 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

12. 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; 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**").

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of

the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims 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.

14. 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

15. THIS COURT ORDERS that, subject to paragraph 16(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

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the

foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 43, 52 and 53 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

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

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, 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

19. 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

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the 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

21. 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.

22. 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 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 57 and 59 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

24. 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 21 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 57 hereof, the Directors' Charge shall rank in priority to all other Charges and Encumbrances over the Directors' Escrow.

APPOINTMENT OF MONITOR

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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 57 and 59 hereof.

KEY EMPLOYEE RETENTION PAYMENTS

34. 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.

35. 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 57 and 59 hereof.

SECOND LEASE CONSULTING AGREEMENT

36. 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

37. 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.

38. 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.

39. 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.

40. 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.

41. 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 57 and 59 hereof.

42. 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.

43. 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 43(a) and 54 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).*

44. 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.

45. 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

46. 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.

47. 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.

48. 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.

49. 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.

50. 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 57 and 59 hereof.

51. 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.

52. 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 52(a) and 54 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).

53. 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 54 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).

54. 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.

55. 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.

56. 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

57. 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.

58. 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.

59. 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)).

60. 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.

61. 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.

62. 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

63. 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.

64. 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/grafon-fraser-inc>

65. 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

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

Court File No.:

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
(INITIAL CCAA APPLICATION)
(Returnable January 25, 2017)**

FASKEN MARTINEAU DuMOULIN LLP
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Lawyers for the Applicant, Grafton-Fraser Inc.

SCHEDULE “B”

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____MR.) ~~WEEKDAY~~WEDNESDAY, THE #
JUSTICE _____HAINES) 25th
DAY OF MONTHJANUARY, 20YR2017

**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
[APPLICANT'S NAME] GRAFTON-FRASER 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 [NAME] Mark Sun sworn [DATE] 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 [NAMES], ~~no one~~ appearing for [NAME]¹ 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

¹ Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

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 [NAME]Irene Artuso sworn [DATE]January 25, 2017, filed, and on reading the consent of [MONITOR'S NAME]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 validated² 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.

² If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

5. {THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system³ 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 of [NAME] sworn [DATE] 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 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 ~~and pension~~ 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; and 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

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

- (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.

7. 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.

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 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.

10. THIS COURT ORDERS that until a real property lease is disclaimed ~~or resiliated~~⁴ 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.

⁴~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

11. ~~10.~~ THIS COURT ORDERS that, except as specifically permitted ~~herein~~ (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

12. ~~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 Definitive Documents (as hereinafter defined)~~, 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; and

(ii) (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 \$•15,000 in any one transaction or \$•75,000 in the aggregate]⁵.

(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) (b) [terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]; and

⁵ Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (ii) ~~(e)~~ 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**").

13. ~~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.

14. ~~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

15. ~~14.~~ THIS COURT ORDERS that, subject to paragraph 16(v) hereof, until and including ~~[DATE MAX. 30 DAYS], 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

16. ~~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, ~~or~~ (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 43, 52 and 53 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

17. ~~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

18. ~~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 ~~and~~, 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

19. ~~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 ~~lease~~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.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~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

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

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

21. ~~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,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~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**")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~800,000~~ as security for the indemnity provided in paragraph ~~{20}21~~ of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}57~~ and ~~{40}59~~ herein.

23. ~~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}21~~ of this Order.

24. 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 21 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;

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

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 57 hereof, the Directors' Charge shall rank in priority to all other Charges and Encumbrances over the Directors' Escrow.

APPOINTMENT OF MONITOR

25. ~~23.~~ THIS COURT ORDERS that ~~[MONITOR'S NAME]~~ 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.

26. ~~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 ~~DIP Lender~~ Lenders and ~~its~~ their respective counsel on a ~~[TIME INTERVAL]~~ basis of financial and other information as agreed to between the Applicant and the ~~DIP~~ each Lender which may be used in these proceedings including reporting on a basis to be agreed with the ~~DIP~~ each Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the ~~DIP Lender~~ Lenders, which information shall be reviewed with the Monitor and delivered to the ~~DIP Lender~~ and ~~its counsel~~ on a periodic basis,

~~but not less than [TIME INTERVAL], or as otherwise agreed to by Lenders as required pursuant to the DIP Lender 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.

~~27. 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.

~~28. 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 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.

29. ~~27.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the ~~DIP Lender~~ 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.

30. ~~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.

31. ~~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 for~~ counsel to the Monitor, counsel to the Applicant, and counsel for the directors of the Applicant on a ~~[TIME INTERVAL]~~ 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 amount[s] of \$● [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.

32. ~~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.

33. ~~31-~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, ~~if any, and 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 ~~{38}~~~~57~~ and ~~{40}~~~~59~~ hereof.

KEY EMPLOYEE RETENTION PAYMENTS

34. 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.

35. 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 57 and 59 hereof.

SECOND LEASE CONSULTING AGREEMENT

36. 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

37. ~~32.~~ THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ (the "~~DIP Lender~~" 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.

38. ~~33.~~ THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter between the Applicant and the DIP Lender~~ dated as of ~~[DATE]~~ (the "~~Commitment Letter~~" 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.

39. 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.

40. ~~34.~~ 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 credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive other documents (collectively, the "Definitive Term DIP Credit Documents"), as are contemplated by the ~~Commitment Letter~~ DIP Agreement or as may be reasonably required by the ~~DIP Lender~~ 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 ~~DIP Lender~~ Term DIP Agent, the Term DIP Lenders and the Term DIP Servicing Agent under and pursuant to the ~~Commitment Letter~~ DIP Agreement and the ~~Definitive~~ Term DIP Credit Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. ~~35.~~ THIS COURT ORDERS ~~that the DIP Lender~~ 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 Lender's Charge") on the Property, which DIP Lender's (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 Lender's Charge shall have the priority set out in paragraphs ~~{38}~~⁵⁷ and ~~{40}~~⁵⁹ hereof.

42. 36- THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender, 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 Lender's Charge or any of the Definitive Term DIP Credit Documents;

43. 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) ~~(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon not less than five (5) business days' written notice to the Applicant and the Monitor, may, the Monitor and the ABL Lender, subject to the terms of the Intercreditor Agreement and paragraphs 43(a) and 54 of this Order, exercise any and all of ~~its~~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 Commitment Letter, Definitive DIP Agreement, the Term DIP Credit Documents and, the Term Lenders' DIP Lender's Charge, or the Personal Property Security Act (Ontario) or similar legislation of any other applicable jurisdiction, including without limitation, to ~~cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or 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).~~
- (e) ~~the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

44. ~~37.~~ THIS COURT ORDERS AND DECLARES that the ~~DIP Lender~~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 ~~Definitive DIP Agreement or the Term DIP Credit Documents.~~

45. 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

46. 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.

47. 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.

48. 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.

49. 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.

50. 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 57 and 59 hereof.

51. 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.

52. 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 52(a) and 54 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).

53. 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 54 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).

54. 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.

55. 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.

56. 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

57. ~~38.~~ THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the Term Lenders' DIP Lender's Charge 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 follows⁹:

(a) With respect to the ABL Priority Collateral:

First – Administration Charge ~~(to the maximum amount of \$●);~~

Second – ~~DIP Lender's Charge; and~~ 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;

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

Sixth – KERP Charge; and

~~Third~~Seventh – Directors' Charge ~~(to the maximum amount of \$●).~~

58. ~~39.~~ THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge ~~or, 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.

59. ~~40.~~ THIS COURT ORDERS that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~ Charges (all as constituted and defined herein) shall constitute a charge on the Property ~~and 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).~~

60. ~~41.~~ 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 Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the Applicant also obtains the prior written consent of the Monitor, the ~~DIP Lender~~ Lenders, and the beneficiaries of the Directors' Charge ~~and, the Administration Charge and the KERP Charge, or further Order of this Court.~~

61. ~~42.~~ THIS COURT ORDERS that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Charges, the DIP Agreement, the Term DIP Credit Documents and the DIP Lender's Charge~~ 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 ~~Commitment Letter or DIP Agreement~~, the Definitive 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 ~~Commitment Letter, DIP Agreement, the Term DIP Credit Documents or the Forbearance Agreements~~ or the creation of the Charges; or the execution, delivery or performance of ~~the Definitive Documents~~; and
- (c) ~~the payments made by the Applicant pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable laws~~ such documents.

62. 43- 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

63. ~~44.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ 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.

64. ~~45.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at

~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~~~<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/grafon-fraser-inc>

65. ~~46.~~ 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

66. ~~47.~~ 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.

67. ~~48.~~ 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.

68. ~~49.~~ 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.

69. ~~50.~~ 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.

70. ~~51.~~ 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.

71. ~~52.~~ 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.

Court File No.:

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
(INITIAL CCAA APPLICATION)
(Returnable January 25, 2017)

EASKEN MARTINEAU DuMOULIN LLP

333 Bay Street – Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Stuart Brotman (LSUC#43430D)

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Lawyers for the Applicant, Grafton-Fraser Inc.

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Court File No.

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

NOTICE OF APPLICATION
(Initial CCAA Order)
(Returnable January 25, 2017)

FASKEN MARTINEAU DuMOULIN LLP
333 Bay Street – Suite 2400
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Lawyers for Applicant, Grafton-Fraser Inc.

TAB 2

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
GRAFTON-FRASER INC.**

(the "Applicant")

**AFFIDAVIT OF MARK SUN
(INITIAL ORDER)
(SWORN JANUARY 25, 2017)**

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

1. I am the Vice-President and Chief Financial Officer of the Applicant Grafton-Fraser Inc. (the "**Company**"), and as such I have knowledge of the matters set out herein. I have also reviewed the books and records of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where information has been received from other sources, I have stated the source of the information and believe it to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. INTRODUCTION

3. I swear this affidavit in support of an application by the Company for an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), among other things:

- (a) granting a stay of proceedings in favour of the Company and its directors and officers;
- (b) approving the Second Lease Consulting Agreement (as defined below);
- (c) authorizing payments to critical vendors;
- (d) approving the DIP Agreement and granting the Term Lenders’ DIP Charge (each as defined below);
- (e) approving the ABL DIP Forbearance Agreement and granting the ABL Lender’s DIP Charge (each as defined below);
- (f) approving the Term Forbearance Agreement (as defined below);
- (g) authorizing the KERP and granting the KERP Charge (each as defined below) as security for the Company’s obligations in respect of the KERP; and
- (h) appointing Richter Advisory Group Inc. (“**Richter**” or the “**Proposed Monitor**”) to act as the monitor (the “**Monitor**”) of the Company in these CCAA proceedings.

4. I also swear this affidavit in support a motion by the Company, which the Company proposes to be heard on January 30, 2017 (subject to the Initial Order being granted by the Court) for Orders, among other things,

- (a) approving the execution of the Stalking Horse Agreement and proposed SISP (each as defined below) with respect to the business and assets of the Company; and
- (b) approving the Liquidation Consulting Agreement and the Sale Guidelines (each as defined below).

5. The Company is a leading Canadian retailer of men's clothing that operates 158 stores in Canada under the "Tip Top Tailors", "George Richards Big and Tall", "Mr. Big and Tall" and "Kingsport Big and Tall Clothier" banners.

6. In July, 2015 the Company's wholly-owned subsidiary, 2473304 Ontario Inc. ("247"), acquired the tangible assets of the Canadian retail business formerly operated under the name "Jones New York" from Sycamore Partners, a private equity firm based in New York. In connection with the acquisition, 247 entered into a term sheet with ABG-Jones, LLC, the licensor of the "Jones New York" brand, giving 247 the right to use the "Jones New York" brand in the sale of womenswear in Canada.

7. 247's retail sales and financial performance were lower than expected and, on June 7, 2016, 247 sought and obtained protection under the CCAA to allow it to pursue an orderly liquidation of its inventory as well as its furniture, fixtures and equipment. The orderly liquidation was complete on or about September 21, 2016 and 247 has vacated all of its retail

store locations and disclaimed all of its leases. As of the date hereof, 247 remains under CCAA protection to allow it to arrange for an orderly conclusion of its CCAA proceedings.

8. 247's CCAA proceedings negatively impacted the Company's financial performance as a result of, among other things, the Company being a co-borrower with 247 under the CIBC Credit Agreement (as defined below). As co-borrower with 247 under the CIBC Credit Agreement, the Company is liable for approximately \$1.6 million of 247's indebtedness under the CIBC Credit Agreement as a consequence of 247's insolvency.

9. In addition, the Company's liquidity has further deteriorated as a result of, among other things, lower than expected retail sales, increased overhead costs (costs which are no longer shared with 247 as a result of its insolvency), delays in receipt of seasonal inventory and turnover of key personnel.

10. The Company has also been subject to a number of claims asserted against it by 247's creditors and other stakeholders in connection with 247's insolvency proceedings. The Company's management has had to divert considerable time and effort from attending to the Company's business operations to respond to these claims.

11. As of January 21, 2017 the Company was indebted, on a secured basis, to CIBC in the approximate amount of \$12.8 million and, as co-borrower with 247, is liable for approximately \$1.6 million of 247's indebtedness under the CIBC Credit Agreement. In addition to its indebtedness to CIBC, the Company is also indebted to lenders affiliated with GSO Capital Partners LP ("GSO") under the GSO Credit Agreement (as defined below) in the approximate amount of \$39.4 million.

12. The Company entered into forbearance agreements, as amended from time to time, with CIBC and with GSO, respectively, in connection with 247's CCAA proceedings. The Company is dependent on continued forbearance from CIBC and GSO as it does not have sufficient liquidity to repay amounts outstanding under the CIBC Credit Agreement and the GSO Credit Agreement.

13. On or about January 24, 2017, the Company entered into amended and restated forbearance agreements with CIBC and with GSO, respectively, each of which contemplate, among other things, the Company executing the Stalking Horse Agreement and pursuing the SISF in the context of CCAA proceedings.

14. The ABL DIP Forbearance Agreement that the Company has entered into with CIBC further contemplates that CIBC will continue to make its revolving asset-based loan facilities available to the Company during these CCAA proceedings, subject to a number of terms and conditions, including that CIBC be granted the ABL Lenders DIP Charge in respect of advances it makes to the Company during these proceedings. Among other terms, it is a condition of the ABL DIP Forbearance Agreement that the Company execute the Stalking Horse Agreement and pursue the SISF in the context of CCAA proceedings.

15. As described in greater detail below, the Company has also entered into a term sheet with GSO, among others (the "**DIP Agreement**"), pursuant to which GSO and certain other entities related to it (the "**Term DIP Lenders**") have agreed to advance to the Company interim financing in the amount of up to \$5.5 million to provide additional funding for the Company's operations during the CCAA proceeding, subject to obtaining Court approval of the DIP Agreement and obtaining the Term Lenders' DIP Charge. It is also a condition of the DIP

Agreement, among other conditions, that the Company obtain a Court order recognizing the Stalking Horse Agreement as a “stalking horse bid” and approving the SISP.

16. The Company, with the assistance of the retail consulting group at Richter Consulting Canada Inc. (the “**Retail Consultant**”), has developed a process of soliciting offers for a sale of, or investment in the Company, its business and assets (the “**SISP**”). As part of that process, the Company has entered into an asset purchase agreement (the “**Stalking Horse Agreement**”) for the sale of all or substantially all of its assets to 1104307 B.C. Ltd. (a company related to GSO) (the “**Stalking Horse Purchaser**”) by way of a “credit bid”.

17. The Stalking Horse Agreement will, subject to Court approval, serve as the “stalking horse credit bid” in the proposed SISP.

18. In conjunction with the proposed restructuring transaction to be carried out through the SISP, the Company, in consultation with the Retail Consultant, has determined that it is in the best interests of the Company’s stakeholders to liquidate the inventory and owned furniture fixtures and equipment (“**FF&E**”) at a number of the poorest performing stores (which the Stalking Horse Purchaser has indicated it will not assume on existing lease terms) pursuant to and in accordance with the Liquidation Consulting Agreement.

19. The Company is not able to successfully restructure its affairs outside of formal insolvency proceedings. The Company is insolvent and unable to meet its liabilities as they become due. The Company requires the protection and other provisions of an initial order under the CCAA to provide it with a stable environment to preserve its value for its stakeholders while the Company liquidates the merchandise and FF&E at certain underperforming stores and

pursues the proposed SISP, and to allow the Company to consummate any transaction(s) arising thereunder.

II. BACKGROUND

A) Corporate History and Structure

20. The Company is the product of an amalgamation resulting from articles of amalgamation filed under the *Business Corporations Act* (Ontario) on May 24, 2007. The Company's head office is located at 44 Apex Road, Toronto, Ontario.

21. As described above, the Company's subsidiary 247 entered into CCAA proceedings on June 7, 2016. 247 is in the final stages of winding down its remaining activities and completing the steps necessary to conclude its CCAA proceedings. 247 no longer has any business operations or non-management employees. It is expected that 247 will eventually file an assignment in bankruptcy to effect an orderly wind-up of the company.

22. The Company also owns 50% of the issued and outstanding shares of Gailwood Investments Limited ("Gailwood"), a corporation incorporated under the *Business Corporations Act* (Ontario) on January 20, 1988, with its head office located at 44 Apex Road, Toronto, Ontario. Dominic Bellissimo Fashions Inc. ("**Bellissimo Fashions**") holds the remaining 50% of the Gailwood shares.¹ As described below, the Company has pledged its Gailwood shares to GSO Special Situations Fund LP (a predecessor to GSO as administrative agent under the GSO Credit Agreement).

¹ In and around June 2013, Bellissimo Fashions agreed to transfer its shares in Gailwood to the Corporation, although the transfer documents were never executed.

23. Gailwood is a sole purpose corporation that was formed to hold certain trademarks with respect to the “Bellissimo” or “Dominic Bellissimo” brands. The Company and Bellissimo Fashions are parties to a shareholders’ agreement dated May 10, 1988 pursuant to which they agreed, among other things, that the Company has the right to use the “Bellissimo” mark for menswear and accessories and Bellissimo Fashions has the right to use the “Dominic Bellissimo” mark for womenswear and accessories.

B) Business & Premises

24. The Company operates 158 retail stores across Canada that sell men’s clothing and accessories, with a focus on men’s business attire. The Company has store locations in Ontario (74), Alberta (30), British Columbia (20), Saskatchewan (8), Manitoba (7), Nova Scotia (6), Newfoundland (6), New Brunswick (6) and Prince Edward Island (1). All store locations are operated out of leased premises.

25. The Company’s head office and main distribution center is located in a 38,000 square foot facility located at 44 Apex Road, Toronto, Ontario, where it receives, stores and ships the majority of its inventory to its various store locations. The Company also leases space in a smaller second distribution centre located at 21 Hafis Road, Toronto, Ontario (together with the Apex Road distribution centre, the “**Distribution Centres**”).

C) Employees

26. As of January 21, 2017 the Company had approximately 1,226 employees, of which approximately 526 were full time employees and 700 were part time employees. The Company’s employees are not represented by a union and are not subject to a collective bargaining agreement.

27. It is critical to the Company that certain of its key management and executive employees remain with the Company through these proceedings. Upon the direction of the Company's board of directors, the Company is proposing to provide key employee retention payments ("KERPs") to five of its key employees and executives (including me, as the CFO) to provide them with an incentive to remain with the Company through these CCAA proceedings (the "Key Employees").

28. The Key Employees (of which I am one) have intimate knowledge of the Company and its assets and relationships with critical vendors and other constituents, and I believe their continued participation is essential to these CCAA proceedings and the success of the SISP. The board of directors of the Company has approved the KERPs.

29. The Company is proposing KERPs for the Key Employees under which the aggregate amount of \$190,000 will be available to be paid to those employees at the earlier of: (a) the sale of all or substantially all of the assets of the Company; or (b) the issuance of an order of the Court declaring that the CCAA proceedings in respect of the Company are terminated. Attached hereto and marked as Exhibit "A" is a true copy of the form of KERP letter that the Company proposes to issue to the Key Employees, which has been redacted to protect the personal information of the Key Employees.

30. In accordance with the terms of the KERP letters, the Company is seeking an Order approving the KERPs and establishing a charge on the assets, undertakings and property of the Company as security for the KERP entitlements.

31. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the KERPs and the KERP Charge. I understand that CIBC and GSO

have been consulted in respect of the proposed KERPs and I understand that they have no objection to the KERPs being sought, including the KERP Charge.

D) License Agreement & Supply Relationships

License Agreements

32. The Company has acquired the right to manufacture and/or market and sell certain brands of menswear in Canada pursuant to various licence agreements that it has entered into with the owners or authorized licensors of those brands, including men's clothing bearing the "Jones New York" and "Daniel Hechter" brands.

33. The Company pays royalties (and in some cases has agreed to pay guaranteed minimum royalty amounts) to the licensors of the brands in exchange for the right to market and sell branded product in Canada (and the U.S. in the case of Daniel Hechter).

34. As of January 14, 2017, "Jones New York" and "Daniel Hechter" branded merchandise represented approximately 32.3% of the Company's inventory (17.6% for "Jones New York" and 14.7% of "Daniel Hechter").

35. Aside from "Jones New York" and "Daniel Hechter" branded clothing, the majority of the remaining product sold by the Company is labelled with other brands and has been purchased outright for resale, without royalty or licensing agreement.

36. It is anticipated (and reflected in the Cash Flow Statement discussed below) that the Company will pay applicable royalties relating to sales of branded inventory during the CCAA proceedings.

Critical Vendors

37. The Company does not manufacture any of its merchandise. All inventory is purchased from third party suppliers and is resold to customers through the Company's store locations. The Company is dependent on the continued supply of product from its vendors to ensure that it has sufficient inventory to meet the needs of its customers. Disruption to the continued supply of inventory from some of these vendors could severely impact the ongoing financial performance of the Company. The continued supply of goods and services from these parties is critical to the Company's ongoing operations.

38. The Company is therefore requesting that it be permitted to pay pre-filing amounts owing to those vendors that the Company deems critical to its operations in the maximum aggregate amount of \$1 million, subject to the express approval of the Monitor or Order of the Court.

E) Assets

39. The Company's assets, as reflected in its internal unaudited financial statements for the period ended December 31, 2016, had a net book value of approximately \$75.991 million, as follows (all amounts in \$000's):

ASSETS	As at 12/31/2016
Cash and cash equivalents	\$1,898
Accounts receivable	\$438
Inventories	\$28,982
Deposits and prepaid expenses	\$1,140
Total Current Assets	\$32,458
Property, plant and equipment	\$8,871
Intangible assets	\$34,662
Total Non-current Assets	\$43,533

TOTAL ASSETS	\$75,991
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F) Liabilities

40. As of December 31, 2016, the said financial statements reflected liabilities totalling \$100.299 million, as follows (all amounts in \$000's):

LIABILITIES	As at 12/31/2016
Accounts payable and accrued liabilities	\$11,433
CIBC Credit Agreement	\$12,183
GSO Credit Agreement	\$39,158
Total Current Liabilities	\$62,779
Deferred Lease Credits and Intercompany Liabilities	\$37,520
Total Non-current Liabilities	\$37,520
TOTAL LIABILITIES	\$100,299

Principal Secured Indebtedness of the Company

41. As discussed in detail below under the heading "Secured Creditors", as of January 21, 2017 the Company was indebted, on a secured basis, to GSO in the approximate amount of \$39.4 million (including accrued interest, fees and other amounts) and to CIBC in the amount of \$12.8 million (including accrued interest). As co-borrower with 247 under the CIBC Credit Agreement, the Company is also liable to CIBC for approximately \$1.6 million of 247's indebtedness to CIBC.

Employee Liabilities of the Company

42. The Company is current in its payroll and related remittances. As at January 14, 2017 the Company owed its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

- (a) ordinary course wage arrears: \$1.3 million (accrued since the last pay period that ended on December 31, 2016); and
- (b) accrued and unused vacation pay: \$0.8 million (for store level employees, vacation entitlement amounts are paid along with wages in each pay period and do not accrue. Vacation entitlements only accrue for the Company's head office employees).

43. It is contemplated (and reflected in the Cash Flow Statement discussed below) that the current wage arrears and accrued and unused vacation pay amounts for existing employees of the Company will be paid or applied in the ordinary course during the post-filing period. As discussed in greater detail below, at the request of the Company's directors, the Company has agreed to deposit funds in escrow with the Monitor (if so appointed) in amounts sufficient to allow the Company to remit and pay sales tax and to stand as cash collateral for the D&O Charge (as defined below) in respect of certain employment related priority obligations in the event the Company's cash flow from operations and loan facilities are either insufficient or unavailable to remit and pay such amounts. These escrow arrangements are contemplated in the Cash Flow Statement.

44. The Company does not maintain a pension plan for its employees. The Company is current on deductions from employee wages at source.

Sales Tax

45. The Company is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be

remitted in the ordinary course post-filing. These HST remittances are reflected in the projected Cash Flow Statement discussed below.

46. The Company's HST remittances for January are due on January 31, 2017. The Company made arrangements to pay these amounts prior to bringing this Application. The Company has also made arrangements to transfer funds to the Monitor (if so appointed) in an amount sufficient to satisfy its projected HST remittance requirements in advance, on a weekly basis, to ensure that any amounts owing in respect of HST for each week in the post-filing period will be paid by the Company.

Trade Suppliers

47. The Company has several main merchandise suppliers, including one overseas supplier. In the case of its overseas supplier, under the terms of the Company's Vendor Terms and Conditions, title to goods passes to the Company when it makes a payment representing 50% of the cost of such goods. Upon receiving the 50% payment, the overseas supplier loads the goods onto ships in the overseas port.

48. Title to goods of which purchase orders are issued domestically passes either at the loading dock of the Company's Distribution Centres in Ontario or at the domestic vendor's distribution centre in Canada. Payment terms afforded to the Company by its smaller volume suppliers are generally 3% 15, net 60 days (i.e. 3% discount if payment is made within 15 days of receiving the invoice, otherwise full payment is due in 60 days). Payment terms for the Company's larger volume suppliers are negotiated. The Company is not required to post letters of credit or any other form of security in respect of its current suppliers.

49. As of January 14, 2017, the Company was indebted to its suppliers for goods received in the aggregate amount of approximately \$4.5 million.

Landlords

50. As discussed above, the Company operates 158 retail stores across Canada and two Distribution Centres in Ontario. All of those premises are leased from third party landlords. The Company remits rent monthly, in advance, in the aggregate approximate amount of \$3.1 million (inclusive of sales taxes). The Company remitted rents in respect of the month of January in the ordinary course in the week ended January 6, 2017.

51. On February 1, 2017 rent totalling approximately \$3.1 million will become due. Without further financing, the Company does not have sufficient liquidity or funding available to pay its rent obligations.

Other Unsecured Creditors of the Company

52. As at January 14, 2017 the Company had approximately \$8 million in accrued and unpaid unsecured liabilities (excluding professional fees and disbursements that the Company will pay prior to the commencement of these CCAA proceedings), including:

- (a) suppliers: \$4.5 million;
- (b) outstanding gift cards: \$1.2 million;
- (c) accrued sales taxes: \$1.7 million (accrued since the last remittance period that ended on November 26, 2016). As described above, the Company paid this amount in advance of bringing this Application; and

- (d) other non-supplier creditors: \$0.6 million.

53. The Company intends to honour outstanding gift card and credit notes during these proceedings, and to honour existing warranty and return policies.

Litigation against the Company

54. The Company has been named as a defendant in a number of lawsuits which are at various stages, including, without limitation, the following claims:

- (a) a claim by 9148655 Canada Inc., a former supplier to 247, wherein the plaintiff alleges, among other things, that the Company is liable for damages in the amount of approximately \$789,119.38 in connection with orders placed by 247 for “Jones New York” branded merchandise. It is the Company’s position that such orders were placed by 247 and that the Company is not responsible for amounts, if any, that may be owing by 247 to the plaintiff in respect of those orders; and
- (b) a claim by one of its former executives seeking damages in the amount of approximately \$1.6 million for, among other things, wrongful dismissal.

55. The Company is defending both of these claims.

III. SECURED CREDITORS

A) GSO Credit Agreement

56. The Company is indebted to GSO under an amended and restated credit agreement dated as of June 16, 2009 (as amended pursuant to each of the amendments dated as of April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015, February 12, 2016, and as has been further amended (in connection with

247's CCAA proceedings) and as may be further amended, restated, supplemented, replaced or otherwise modified from time to time (collectively, the "GSO Credit Agreement"). Attached hereto and marked as Exhibit "B" is a true copy of the GSO Credit Agreement.

57. The GSO Credit Agreement was further amended on a number of occasions pursuant to terms of the forbearance agreement, as amended, that was entered into by 247, the Company and GSO, among others, in connection with 247's CCAA proceedings. As described below, that existing forbearance agreement was amended and restated by the Term Forbearance Agreement.

58. The GSO Credit Agreement provides for a term credit facility in the principal amount of approximately \$32.5 million maturing on January 31, 2017 (which will be extended to June 15, 2017 under the Term Forbearance Agreement described below). Advances under the GSO Credit Agreement bear interest at the rate of 15% per annum plus the default rate of 2% (as described below, pursuant to the Term Forbearance Agreement the Company now has the option to have the interest due and owing under the GSO Credit Agreement capitalized and added to principal). The outstanding indebtedness under the GSO Credit Agreement (including accrued interest) as of January 21, 2017 was approximately \$39.4 million.

59. The obligations of the Company to GSO under the GSO Credit Agreement are secured by, among other things, a general security agreement (the "GSO GSA") dated as of May 24, 2007 between GF Acquisition Corp. (a predecessor corporation by amalgamation to the Company) and GSO Special Situations Fund LP (a predecessor to GSO as administrative agent under the GSO Credit Agreement). Pursuant to the GSO GSA, the Company granted a security interest in all of its present and after-acquired personal property as general and continuing

security for the payment and performance of, among other obligations, any and all indebtedness, obligations and liabilities, present or future, at any time owing by the Corporation to GSO Special Situations Fund LP and/or the lenders from time to time party to a credit agreement dated as of May 24, 2007 (which was subsequently amended and restated by the GSO Credit Agreement). A true copy of the GSO GSA is attached hereto and marked as Exhibit "C".

60. I understand that the Company has also pledged all of its issued and outstanding shares in Gailwood to GSO Special Situations Fund LP as security for its obligations under the GSO Credit Agreement. In connection with the Company's pledge of its Gailwood shares, the Company and Bellissimo Fashions (the sole shareholders of Gailwood) executed a shareholders' resolution approving the share pledge and consenting to the transfer of such pledged shares to, among others, GSO Special Situations Fund LP or its nominees, in the event of a realization of GSO Special Situations Fund LP's security.

61. In the period leading up to the Company seeking protection under the CCAA, the Company estimated that it would have a working capital shortfall of approximately \$3 million as a result of, among other things, rent becoming due to its landlords as of January 1, 2017. To address the Company's liquidity concerns during this period, and to allow the Company sufficient time to finalize the DIP Agreement, the Company and GSO, among others, entered into an amending agreement made as of December 23, 2016 pursuant to which GSO, among others, agreed to amend the GSO Credit Agreement to increase the size of the facility (from \$30 million to \$32.5 million) and make an additional advance to the Company in the amount \$2,500,000 (as described below, CIBC also agreed to certain amendments to the CIBC Credit Agreement to make an additional \$500,000 available to the Company). GSO's security in respect of its additional advance ranks in the same priority as the initial advance under the GSO Credit

Agreement in accordance with the terms of the Intercreditor Agreement (as defined below) between GSO and CIBC. Attached hereto and marked as Exhibit "D" is a true copy of the December 23 amendment to the GSO Credit Agreement.

62. In connection with 247's CCAA proceedings, the Company (as borrower), 247 (as guarantor of the Company's indebtedness to GSO under the GSO Credit Agreement), the lenders that are parties to the GSO Credit Agreement (as lenders), and GSO (as administrative agent for itself and the lenders), entered into a forbearance agreement dated as of June 6, 2016, as amended from time to time. In connection with the Company's CCAA proceedings, the parties to the existing GSO forbearance agreement entered into an amended and restated forbearance agreement dated as of January 24, 2017 (the "**Term Forbearance Agreement**"), pursuant to which GSO, among others, agreed to forbear from exercising its rights and remedies under the GSO Credit Agreement until the earlier of (a) June 15, 2017 (subject to the Company obtaining the Initial Order on or before January 30, 2017 and an Order approving the Stalking Horse Agreement and SISP on or before February 7, 2017), and (b) the occurrence or existence of a Terminating Event (as defined in the Term Forbearance Agreement), in consideration of certain representations and covenants from the Company and 247 and certain amendments to the GSO Credit Agreement. Among those amendments to the GSO Credit Agreement, the maturity date was extended to June 15, 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 under the GSO Credit Agreement will be capitalized and added to principal. The capitalized interest will bear interest at the current interest rate plus the default rate of 2%. Attached hereto and marked as Exhibit "E" is a true copy of the Term Forbearance Agreement.

63. Among other terms, the Term Forbearance Agreement is conditional upon (a) approval of the Approved Cash Flow (as defined below) by GSO, and (b) an Initial Order in the CCAA proceedings that, among other terms, (i) provides that GSO and the lenders under the GSO Credit Agreement shall be treated as an “unaffected creditor” in the CCAA proceedings, and (ii) directs that at no time on or after the date of the Initial Order will the property of the Company be subject to a Court ordered charge in favour of any person ranking in priority to the GSO security and charge, without GSO’s consent (other than the Administration Charge, the ABL Lender’s DIP Charge (solely in respect of ABL Priority Collateral (as defined in the Intercreditor Agreement)) and any Liens in respect of ABL Priority Collateral granted by the Company to the ABL Secured Parties (each as defined in the Intercreditor Agreement)).

64. In addition, and as described in greater detail below, on or about January 24, 2017, the Company and the Term DIP Lenders, among others, entered into a debtor-in-possession term sheet (referred to herein as the DIP Agreement) pursuant to which the Term DIP Lenders will provide interim financing to the Company of up to \$5.5 million to fund the Company’s cash requirements during its CCAA proceedings, subject to a number of terms and conditions, including that GSO be granted the Term Lenders’ DIP Charge as security for the Company’s obligations under the DIP Agreement and other DIP Credit Documents (as defined in the DIP Agreement). Attached hereto and marked as Exhibit “F” is a true copy of the DIP Agreement.

B) CIBC Credit Agreement

65. The Company is a party (as co-borrower with 247) to a credit agreement dated as of February 12, 2016 with CIBC, as agent and as lender, as amended, pursuant to which CIBC agreed to provide the Company and 247 with revolving credit facilities (the “**CIBC Credit**

Facility”) in the maximum aggregate principal amount of \$35 million (the “**CIBC Credit Agreement**”). Attached hereto and marked as Exhibit “G” is a true copy of the CIBC Credit Agreement.

66. The CIBC Credit Agreement was amended on a number of occasions pursuant to terms of the forbearance agreement, as amended, that was entered into by 247, the Company and CIBC in connection with 247’s CCAA proceedings. As described below, that existing forbearance agreement was amended and restated by the ABL DIP Forbearance Agreement.

67. Availability under the CIBC Credit Agreement was historically calculated in accordance with a borrowing base formula. The borrowing base formula was calculated separately for each of the Company and 247 and has historically been aggregated for the purpose of determining availability under the CIBC Credit Facility (i.e., the Company could borrow against the value of the 247 inventory, and vice versa, if at any time its borrowing base did not support its liquidity requirements). As discussed in more detail below, this shared availability concept was discontinued in the ABL DIP Forbearance Agreement.

68. As of January 21, 2017, the Company has borrowed \$12.8 million under the CIBC Credit Agreement. Pursuant to the terms of the CIBC Credit Agreement, the Company is jointly and severally liable with 247 for all indebtedness outstanding under the CIBC Credit Facility, accordingly, the Company is liable for approximately \$1.6 million of 247’s indebtedness under the CIBC Credit Agreement.

69. The obligations of the Company under the CIBC Credit Agreement are secured by, among other things, a general security agreement (the “**CIBC GSA**”) dated as of February 12, 2016, pursuant to which the Company has granted to CIBC a continuing security interest in

all of its present and after-acquired personal property. A true copy of the CIBC GSA is attached hereto as Exhibit "H".

70. As described above, the Company estimated that it would have a working capital shortfall of approximate \$3 million in the period leading up to the Company seeking protection under the CCAA. In order to address the Company's working capital shortfall, on December 23, 2016 the Company and CIBC agreed to an amendment to the CIBC Credit Agreement to temporarily adjust certain calculations in the Company's borrowing base formula so that, among other calculations, availability under the CIBC Credit Agreement would be calculated based upon 95% (as opposed to 90%) of the appraised net orderly liquidation value of the Company's Eligible Inventory (as defined in the CIBC Credit Agreement). The effect of this amendment was to provide the Company with approximately \$500,000 of additional liquidity, which, in conjunction with the additional advance made by GSO under the GSO Credit Agreement in the amount of \$2.5 million, was sufficient to provide the Company with adequate working capital until it was able to finalize, among other things, the DIP Agreement.

71. In connection with 247's CCAA proceedings, the Company and 247, as borrowers, entered into a forbearance agreement with CIBC dated as of June 6, 2016, as amended from time to time. In contemplation of the Company's CCAA proceedings, the parties to the existing CIBC forbearance agreement entered into an amended and restated forbearance agreement dated as of January 24, 2017 (the "**ABL DIP Forbearance Agreement**") by which CIBC agreed to forbear from exercising its rights and remedies under the CIBC Credit Agreement until the earlier of (a) June 15, 2017 (subject to the Company obtaining the Initial Order on or before January 30, 2017, all conditions necessary to permit the Company to obtain advances under the DIP Agreement being satisfied or waived on or before January 30, 2017, and

the Company obtaining an Order approving the Stalking Horse Agreement and SISP on or before February 7, 2017), (b) the implementation date of any plan of compromise and/or arrangement under the Company's CCAA proceedings or the consummation of a sale or investment transaction for the business of the Company pursuant to the SISP, including the transaction contemplated by the Stalking Horse Agreement, (c) the date on which the stay imposed under the Company's CCAA proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless CIBC consents thereto, or (d) the occurrence or existence of a Terminating Event (as defined in the ABL DIP Forbearance Agreement), in consideration of certain representations and covenants from the Company and 247 and certain amendments to the CIBC Credit Agreement. Attached hereto and marked as Exhibit "I" is a true copy of the ABL DIP Forbearance Agreement, and the amendments thereto.

72. Among other amendments to the CIBC Credit Agreement in the ABL DIP Forbearance Agreement, the total commitment by CIBC was redesignated so that CIBC's commitment to the Company will be \$25,000,000 and its commitment to 247 is reduced to \$0 and terminated, such that all amounts owing by 247 under the CIBC Credit Agreement are added to the borrowings of the Company under the CIBC Credit Agreement for borrowing base availability purposes. Generally, borrowings under the CIBC Credit Agreement by the Company are now limited to the lesser of \$25,000,000 million and the Company's borrowing base and 247's collateral is no longer available to the Company to support its borrowings under the CIBC Credit Agreement. The proceeds of the Company's borrowings must be used for funding its costs and expenses solely in accordance with the Approved Cash Flow.

73. Further, the CIBC Credit Agreement was amended such that (i) Canadian Prime Rate Loans and Base Rate Loans to the Company shall be made at the Canadian Prime Rate plus

3% (formerly 0.00%) per annum and the Base Rate plus 3% (formerly (0.00%) per annum, respectively; (ii) the Company shall pay an Unused Line Fee in the amount of 0.5% (formerly 0.25%) per annum; and (iii) the Letter of Credit Fee in respect of documentary letters of credit and standby letters of credit was increased to 1.75% per annum (formerly 0.75%) and 2.50% (formerly 1.50%) per annum, respectively.

74. The ABL DIP Forbearance Agreement requires that the Company operate under a blocked account arrangement which requires the Company to convert each of its accounts (including those with banks other than CIBC) that receive proceeds of inventory and other property subject to CIBC's security into a blocked account subject to a blocked account agreement. Those blocked account arrangements were also contemplated in the CIBC Credit Agreement and require that all cash receipts of the Company be deposited into designated accounts subject to CIBC's security interest and blocked account agreements, and swept on a daily basis into a consolidated account held by CIBC (the "**Consolidated Account**"). The blocked account arrangements have been put in place in respect of all Company accounts and all receipts of the Company have been deposited into the blocked accounts, swept by CIBC on a daily basis into the Consolidated Account, and applied against the indebtedness of the Company to CIBC. The ABL DIP Forbearance Agreement requires that these arrangements continue throughout the CCAA proceedings, subject to certain exceptions, including that the Company will set up a separate account, that will not be a blocked account, where it will deposit advances made by the Term DIP Lenders under the DIP Agreement). All borrowings by the Company from CIBC after the CCAA filing date will be advances by CIBC under the ABL DIP Forbearance Agreement. In addition, the ABL DIP Forbearance Agreement requires that the

Company be permitted to use the Company's post-CCAA filing receipts to pay the Company's pre-filing indebtedness under the CIBC Credit Agreement.

C) Intercreditor Agreement

75. CIBC and GSO are parties to an intercreditor agreement dated as of February 12, 2016 (the "**Intercreditor Agreement**") pursuant to which CIBC and GSO agreed to, among other things, the relative priority of their security interests in the property of the Company. Attached hereto and marked as Exhibit "J" is a true copy of the Intercreditor Agreement.

76. In summary, the Intercreditor Agreement provides that CIBC will have a first priority security interest in, among other things, the accounts receivable and inventory of the Company (the "**ABL Priority Collateral**") to the extent of the ABL Obligations (as defined in the Intercreditor Agreement), with GSO having a second priority security interest in such collateral, and GSO will have a first priority security interest in, among other things, the furniture, fixtures, equipment, intellectual property and securities of the Company (the "**Term Priority Collateral**") to the extent of the Term Obligations (as defined in the Intercreditor Agreement), with CIBC having a second priority security interest in such collateral. The relative priorities set out in the Intercreditor Agreement are intended to continue in these CCAA proceedings with respect to advances made by CIBC or the Term DIP Lenders, as applicable, to the Company.

D) PPSA Searches

77. Fasken Martineau DuMoulin LLP, legal counsel to the Company, conducted a search of registrations made against the Company on January 16, 2017 under to the *Personal Property Security Act* (Ontario) and similar registration systems in each of the provinces of

Canada in which the Company operates. Attached hereto and marked as Exhibit "K" is a true copy of the search results. The Company does not own any real property.

78. Other than registrations in favour of CIBC and GSO, the only other registrations appear to be in favour of (i) Xerox Canada Ltd. ("Xerox") (in Ontario only) with respect to its interest in specific collateral (File No. 675686367); and (ii) Canadian Dealer Lease Services Inc. ("CDLS") and Bank of Nova Scotia-DLAC ("BNS") (in Ontario only) with respect to their interest in "inventory", "accounts", "other" and "motor vehicle included" (File No. 719663706). The Court-ordered charges sought by the Company in this Application are not proposed, at this time, to rank in priority to the registrations in favour of Xerox, CDLS or BNS, to the extent they represent a validly perfected and enforceable security interest.

IV. FINANCIAL DIFFICULTIES & THE NEED FOR CCAA PROTECTION

A) Financial Difficulties

79. As discussed above, 247's insolvency and subsequent proceedings under the CCAA had a significant negative impact on the Company's financial performance. In addition to being a co-borrower under the CIBC Credit Agreement, the Company is a guarantor of 247's indebtedness to CIBC under the CIBC Credit Agreement and is liable for approximately \$1.6 million of 247's indebtedness to CIBC.

80. In addition, the Company and 247 shared certain management and personnel and 247's insolvency proceedings required that the Company's management divert significant time and resources away from the Company to deal with the 247 CCAA proceedings. For example, the Company's management was required to provide weekly reporting to CIBC and GSO

throughout the 247 CCAA proceedings and had to respond to a number of claims asserted against the Company as a result of 247's insolvency.

81. The Company and 247 also shared the costs of a distribution center and certain other overhead and shared services costs, and as a result of the wind-down of 247's business, the Company is now solely responsible for paying these costs. This has resulted in an increase of approximately \$1 million in the Company's selling, general and administrative expenses.

82. During the past fiscal year, the Company has also incurred certain other non-recurring costs in the approximate amount of \$3.7 million, including a \$1.5 million margin loss due primarily to the clearance of aged inventory, \$1.5 million in professional fees related to 247's restructuring and \$700,000 in severance costs related to employee related matters.

83. In addition to the financial strains resulting from 247's insolvency, the Company's liquidity has been further deteriorated as a result of, among other things, lower than expected retail sales, increased overhead costs, delays in receipt of seasonal inventory and turnover of key personnel.

B) Financial Position

84. The internal unaudited financial statements for the eleven month period ended December 31, 2016 reflect a net loss of \$6.478 million.

85. Attached hereto is a true copy of the internal financial statements, prepared during the past year for the Company, which are marked as Exhibit "L".

C) Responses to Financial Difficulties

86. As a result of the wind-down of the 247 business, the credit arrangements with CIBC and GSO need to be restructured to contemplate the Company as the sole obligor and source of collateral. In connection with the possible restructuring of the CIBC and GSO debt, the Company engaged the Retail Consultant to assist in reviewing its present and projected financial performance and to consider strategic alternatives available to the Company.

87. Following its internal review, the Company discussed the various strategic alternatives identified with the Retail Consultant with CIBC and GSO. Based upon those discussions, GSO made a non-binding restructuring proposal to the Company to implement a sale and investment process involving a going concern “stalking horse credit bid” to be completed through an insolvency proceeding. The Company determined, with the assistance of the Retail Consultant, that negotiating such a transaction was the best course of action to maximize value for its stakeholders, culminating in the Stalking Horse Agreement and proposed SISP to be undertaken in restructuring proceedings under the CCAA, coupled with the liquidation of assets located at underperforming store locations pursuant to and in accordance with the Liquidation Consulting Agreement.

88. As part of its review and planning process, the Company engaged Oberfeld Snowcap Inc. (the “**Lease Consultant**”) pursuant to the terms of a letter agreement dated November 30, 2016 (the “**First Lease Consulting Agreement**”) to act as its exclusive real estate consultant to provide lease administration services to the Company, including, without limitation, assessing the Company’s lease portfolio for profitable and non-profitable leases. The term of the First Lease Consulting Agreement expires on January 31, 2017.

89. The Company is seeking Court approval of an expanded engagement for the Lease Consultant and authorization to comply with its obligations under a new lease consulting agreement (the “**Second Lease Consulting Agreement**”) that it has entered into with the Company. It is contemplated that the Lease Consultant will be retained to assist the Company with renegotiating lease terms in respect of certain of the Closing Stores (as defined below) in an effort to make those leases attractive to the Stalking Horse Purchaser or to another bidder under the SISP, as applicable, so that those leases may be removed from the liquidation process and the stores kept open following completion of a sale or other transaction entered into pursuant to the SISP. Attached hereto and marked as Exhibit “M” is a true copy of the Second Lease Consulting Agreement.

90. The Company has also served a motion contemporaneously with this initial application, returnable on January 30, 2017 (subject to the Initial Order being granted by the Court) to seek approval of the Stalking Horse Agreement, the Liquidation Consulting Agreement and the SISP. Subject to the making of the Initial Order, it is the Company’s intention to serve that motion on the Company’s landlords, among other interested parties.

D) The Stalking Horse Agreement

91. The Stalking Horse Agreement will, subject to Court approval, serve as the “stalking horse credit bid” in the SISP. Attached hereto and marked as Exhibit “N” is a true copy of the Stalking Horse Agreement.

92. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to purchase substantially all of the Company’s assets necessary to operate the business. The Purchaser has also agreed to assume specified liabilities of the Company

(including selected leases and supplier obligations) and as part of the purchase price, provide a release by GSO of the existing pre-filing debt under the GSO Credit Agreement (except for the additional advance by GSO, as discussed above, in the amount of \$2.5 million) by way of a “credit bid” transaction.

93. The purchased assets under the Stalking Horse Agreement include all the shares of Gailwood owned by the Company. As discussed above, the Company is a 50% shareholder of Gailwood and has pledged its shares in Gailwood to GSO Special Situations Fund LP (a predecessor to GSO as administrative agent under the GSO Credit Agreement) as security for its obligations under the GSO Credit Agreement. Gailwood is a sole purpose corporation that was formed to hold certain trademarks with respect to the “Bellissimo” or “Dominic Bellissimo” brands that are used in connection with the Company’s business.

94. The Stalking Horse Agreement contemplates that the Stalking Horse Purchaser will continue to operate the business as a going concern (at least 110 store locations will continue to operate), which will result in the preservation of a significant number of jobs in Canada (at least 1,100 jobs).

95. It is contemplated that, if the Stalking Horse Purchaser is the successful bidder under the terms of the SISP, it will assume the indebtedness of the Company to CIBC and, upon closing, CIBC will provide the Stalking Horse Purchaser with a new revolving credit facility to replace the existing CIBC Facility.

96. The other material terms of the Stalking Horse Agreement are as follows:

- (a) the purchase of a majority (at least 110) of the Company’s store locations and assets by the Stalking Horse Purchaser;

- (b) no later than February 17, 2016, the Stalking Horse Purchaser will deliver to the Company a list of the store locations it wishes to acquire, representing not less than 110 of the Company's retail stores;
- (c) the Stalking Horse Purchaser will offer employment to not less than 1,100 of the Company's employees on terms and conditions of employment which are *substantially similar in the aggregate* to those employees' existing terms and conditions of employment;
- (d) the assumption by the Stalking Horse Purchaser of the Company's debts and liabilities in respect of the Purchased Assets (as defined in the Stalking Horse Agreement) from and after the closing of the transaction;
- (e) the assumption by the Stalking Horse Purchaser of the Company's trade debt to be paid by the Stalking Horse Purchaser over a six month period, provided that acceptable terms can be reached with respect to the continued terms of trade and payments;
- (f) the assumption by the Stalking Horse Purchaser of (i) amounts owing to the Term DIP Lenders under the DIP Agreement, and (ii) the additional advance under the GSO Credit Agreement in the amount of \$2.5 million;
- (g) it is conditional on the Stalking Horse Purchaser obtaining a commitment letter from CIBC with respect to CIBC providing the Stalking Horse Purchaser with a new revolving credit facility on terms acceptable to the Stalking Horse Purchaser;

- (h) to the extent notification is required, it is subject to approval under the *Competition Act* (Canada);
- (i) it is conditional upon the Court issuing the Initial Order approving, among other things, the DIP Agreement;
- (j) it is subject to Court approval; and
- (k) closing of the transaction within four business days of the satisfaction of the conditions to closing, which is expected to be in May, 2017, or such earlier or later date as agreed to by the parties.

97. The Stalking Horse Agreement provides for the continuation of a substantial portion of the Company's business, thereby assuring a customer for suppliers, a tenant for landlords, employment for a majority of the Company's employees, and an ongoing business for its many customers. It also provides stability during the SISP.

E) The Liquidation Consulting Agreement

98. Prior to seeking protection under the CCAA, the Company, with the assistance of the Retail Consultant and the Lease Consultant, conducted an analysis of the performance of each of its retail store locations. As a result of this analysis the Company, in consultation with the Retail Consultant, has determined that it is in the best interests of the Company's stakeholders to liquidate the inventory and owned FF&E at a number of the poorest performing stores (which the Stalking Horse Purchaser has indicated it will not assume on existing lease terms).

99. In conjunction with the proposed restructuring transaction to be carried out through the SISP, the Company entered into a liquidation consulting agreement with a contractual joint venture composed of Gordon Brothers Canada ULC (“**Gordon Brothers**”) and Merchant Retail Solutions ULC (together, the “**Liquidation Consultant**”) dated January 24, 2017 (the “**Liquidation Consulting Agreement**”) pursuant to which the Company proposes to engage the Liquidation Consultant as its exclusive consultant to advise the Company with respect to the liquidation of certain stores. The Company is to provide an initial list of stores to be liquidated (the “**Closing Stores**”) to the Liquidation Consultant no later than February 2, 2017, and the Company may then add or remove stores from the list of Closing Stores until March 15, 2017. It is the Company’s intention, with the assistance of the Lease Consultant, to attempt to negotiate rent concessions between the filing date and March 15, 2017 in order to determine if any of the underperforming stores can be continued. Absent rent concessions, the Company would designate such underperforming stores as Closing Stores. Attached hereto and marked as Exhibit “O” is a true copy of the Liquidation Consulting Agreement.

100. The Liquidation Consulting Agreement is not effective unless the Company has obtained an order approving the Liquidation Consulting Agreement (the “**Liquidation Consultant Approval Order**”).

101. I understand that Gordon Brothers is related to the majority shareholder of the Company. The Company marketed the liquidation consulting opportunity to approximately 6 firms that provide liquidation consultant services. The Company received four bids and selected the Liquidation Consultant as the successful bidder. A number of the liquidation proposals received, including that from the Liquidation Consultant, contained financial terms that were within a narrow competitive range. The Liquidation Consultant’s bid was selected because the

Company was of the view that the level of services, including supervisory and advertising support, as reflected in the proposed budget and through discussions with the Liquidation Consultant, were the most attractive.

102. The Liquidation Consulting Agreement provides that the Liquidation Consultant will assist the Company in liquidating Merchandise (as defined in the Liquidation Consulting Agreement) and FF&E at the Closing Stores commencing on or about February 4, 2017, or on such other date as agreed to by the Company and the Liquidation Consultant, and conclude no later than April 30, 2017, subject to amendment by agreement of the Company and the Liquidation Consultant (the “**Sale Term**”).

103. The liquidation sale is to be conducted in accordance with the sales guidelines appended as Schedule “A” to the draft Court Order for approval of the Liquidation Consulting Agreement (which in turn is appended as Exhibit “A” to the Liquidation Consulting Agreement) (the “**Sale Guidelines**”).

104. The Liquidation Consulting Agreement permits the Company to, among other things, increase or decrease the number of stores involved in the liquidation process at any time up to March 15, 2017. Accordingly, if during the Sale Term the Company, with the assistance of the Lease Consultant (subject to obtaining Court approval of the Second Lease Consulting Agreement), is able to renegotiate lease terms in respect of certain stores such that the store becomes desirable to the Stalking Horse Purchaser or another bidder under the SISP, as applicable, such store can be removed from the liquidation process and kept open following completion of a sale or other transaction entered into pursuant to the SISP.

105. The Liquidation Consulting Agreement provides that the Company is responsible for all reasonable costs and expenses incurred in connection with the sale of Merchandise and FF&E at the Closing Stores. The Liquidation Consultant will be paid a fee equal to 1.25% of the gross proceeds of the sale of Merchandise (as defined in the Liquidation Consulting Agreement) at the Closing Stores and 20.0% of the gross receipts (net only of applicable sales taxes, if any) from all sales or other dispositions of FF&E.

106. Employees at the Closing Stores will be paid all wage and vacation pay amounts in the ordinary course through the liquidation.

107. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the Liquidation Consulting Agreement and the transactions contemplated therein. I understand that both GSO and CIBC are also supportive of the sale of inventory and FF&E at the Closing Stores pursuant to the Liquidation Consulting Agreement.

F) SISP

108. The Stalking Horse Agreement provides for the marketing of the Company's business and assets pursuant to the proposed SISP. The proposed SISP contemplates a six week marketing/ bid period. In order to protect the release of certain sensitive lease information to the Company's competitors, the SISP contemplates a two phase bidding process. During the first phase, bidders will receive access to coded lease information. If a bidder submits a qualified bid under the first phase of the bid process, it will be invited to participate in the second phase of bidding where it will be provided with uncoded information in respect of the leases that reveals additional sensitive information.

109. The deadline for submission of phase 1 bids under the SISP is proposed to be 5:00 p.m. (Eastern Time) on March 13, 2017. The deadline for submission of phase 2 bids for those phase 1 bidders that are determined by the Company, in consultation with the Monitor, to be qualified bidders, is proposed to be 5:00 p.m. (Eastern Time) on March 24, 2017. Attached hereto and marked as Exhibit "P" is a true copy of the proposed SISP.

110. The SISP will be initiated by distribution of a teaser document (the "Teaser") to potential interested parties that describes the opportunity and invites interested parties to consider a potential transaction with or involving the Company by gaining access to a confidential data room upon execution of a non-disclosure agreement. The Teaser will be distributed to potential interested parties, including retailers, private equity firms and liquidation firms. Attached hereto and marked as Exhibit "Q" is a true copy of the Teaser.

111. The SISP was designed in the hopes of attracting offers for the Company's business and/or assets that is superior to the offer contemplated in the Stalking Horse Agreement. The Stalking Horse Agreement will, subject to Court approval, serve as the "stalking horse credit bid" in the SISP.

112. The SISP contemplates that, in the case of a sale proposal, a bidder will submit an executed purchase agreement substantially in the form of a template agreement that the Proposed Monitor will upload to the dataroom, together with a blackline. Because investment proposals could take several different forms, the SISP does not contemplate the use of a base form of investment agreement. Rather, parties interested in making an investment proposal would be permitted to submit that proposal in a form of their choosing, provided it included sufficient

transaction details that the Company and the Monitor can understand and assess the commercial and legal terms of the proposal.

113. The SISP contemplates that the Company can accept, subject to Court approval, one (or more than one, if for distinct and compatible transactions) of the qualified phase 2 bids (the “**Successful Bid**”). The Company is also entitled to conditionally accept one (or more than one, if for distinct and compatible transactions) of the qualified phase 2 bids, which acceptance will be conditional upon the failure of the transaction(s) contemplated by the Successful Bid to close (the “**Back-up Bid**”).

114. If more than one qualified bid is received in the phase 2 bid process, or if the Company, in consultation with the Monitor, otherwise determines that an auction is appropriate under the circumstances, the Company, with the approval of the Monitor, may pursue an auction (an “**Auction**”) in accordance with the procedures set out in Schedule “C” to the SISP.

115. The outside date for closing a transaction under the SISP is anticipated to be June 15, 2017, or such other date as the Company, the Monitor and the Successful Bidder(s) and any Back-up Bidder may agree, acting reasonably.

116. Under the terms of the SISP, the Company shall be under no obligation to accept the highest or best offer or any offer (other than the offer contained in the Stalking Horse Agreement if no other higher or better offer is accepted).

117. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the SISP, and that the terms of the SISP will be more fully described in a report of the Proposed Monitor, to be filed. I understand that both GSO and CIBC are also supportive of the SISP.

G) The Company is Insolvent

118. As described above, the Company is indebted to GSO, among others, under the GSO Credit Agreement in the approximate amount of \$39.4 million (including accrued interest) as at January 21, 2017, and the Company is unable to satisfy these obligations in full if required by GSO.

119. The Company is also indebted to CIBC and does not have sufficient liquidity to repay the outstanding indebtedness to CIBC in full if CIBC should make a demand for repayment. As of January 21, 2017, there was approximately \$14.4 million (including accrued interest) outstanding under the CIBC Credit Agreement.

120. Accordingly, and as set out elsewhere in this affidavit, the Company is insolvent. It cannot meet its liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP Agreement and the ABL DIP Forbearance Agreement, the ability of the Company to undertake the SISP for the benefit of its stakeholders may be seriously impaired.

121. If the DIP Facility, or some other financing, is not available to the Company before February 1, 2017, the Company will have insufficient liquidity to pay its rents and meet its other obligations.

122. The Company, in consultation with the Retail Consultant, has explored its strategic alternatives and the Company has determined that it is in the best interests of the Company and its stakeholders to enter into the Second Lease Consulting Agreement, the Stalking Horse Agreement, the Liquidation Consulting Agreement, and to pursue the SISP. The protection of the CCAA, including the stay of proceedings and interim financing which are available under the ABL DIP Forbearance Agreement and the DIP Agreement, will enable the

Company to maintain and stabilize operations while pursuing its restructuring to maximize value for the Company's various stakeholders.

V. INTERIM FINANCING - DIP AGREEMENT & ABL DIP FORBEARANCE AGREEMENT

A) DIP Agreement

123. As discussed above, on or about January 24, 2017, the Company and the Term DIP Lenders entered into the DIP Agreement. It is contemplated that the Term DIP Lenders will advance to the Company as a debtor-in-possession non-revolving credit facility (the "**DIP Facility**") up to the amount of \$5.5 million (the "**Loan Amount**") pursuant to the DIP Agreement to fund the portion of the cash requirements of the business in accordance with the Approved Cash Flow, subject to a number of terms and conditions, including that GSO be granted the Term Lenders' DIP Charge as security for advances it makes during these CCAA proceedings.

124. The proceeds of the Company's borrowings under the DIP Facility must be used for funding its costs and expenses solely in accordance with the Company's projected rolling 13-week period detailed cash flow (the "**Approved Cash Flow**"), as approved by the Majority Lenders (defined in the DIP Agreement as the Term DIP Lenders whose outstanding commitments represent more than 50% of the sum of the total Loan Amount).

125. Subject to limited exclusions, advances under the DIP Agreement bear interest at the CDOR Rate (as defined in the DIP Agreement) plus 14%. The Company has the option to have the interest due and owing under the DIP Agreement capitalized and added to principal.

126. As discussed above, the Stalking Horse Agreement is conditional upon the Court issuing an Order approving the DIP Agreement. The DIP Agreement also provides that the Term Lenders' agreement to make advances under the DIP Facility is conditional upon, among other things, the Company obtaining a Court Order recognizing the Stalking Horse Agreement as a "stalking horse credit bid" and approving the proposed SISF.

127. Among other terms, advances under the DIP Agreement are also conditional upon (a) the payment of all fees and expenses payable to the Term DIP Lenders, among others, including a DIP facility fee in the aggregate amount of \$55,000 and an annual administration fee to the Servicing Agent (as defined in the DIP Agreement) in the aggregate amount of USD \$15,000, (b) approval of the Approved Cash Flow by the Majority Lenders, (c) an Initial Order in the CCAA proceedings that, among other terms, approved the DIP Agreement and grants the Term DIP Lenders, among others, a priority charge (ranking immediately behind the Administrative Charge, the ABL Security (in respect of the ABL Priority Collateral) and the Permitted Encumbrances (each as defined in the DIP Agreement)) on the assets of the Company in respect of all of the obligations of the Company under or in connection with the DIP Facility, the DIP Agreement and the other DIP Credit Documents, (d) a commitment letter between GSO and CIBC for a new revolving credit facility available to the Stalking Horse Purchaser immediately following the closing of the transaction contemplated by the Stalking Horse Agreement, and (e) an Order approving the Stalking Horse Agreement and SISF.

B) ABL DIP Forbearance Agreement

128. As discussed above, on or about January 24, 2017, the Company and CIBC entered into the ABL DIP Forbearance Agreement. Pursuant to the terms of the ABL DIP

Forbearance Agreement, CIBC has agreed, among other things, to allow the Company to continue to borrow under the revolving facility in an amount not to exceed the lesser of \$25,000,000 million and the Company's borrowing base formula as set forth in the Approved Cash Flow, to fund the Company's operations during the CCAA proceedings.

129. Among other terms, the ABL DIP Forbearance Agreement is conditional upon (a) the payment of all fees and expenses payable to CIBC including the payment of a forbearance fee in the aggregate amount of \$125,000, (b) approval of the Approved Cash Flow by CIBC, (c) an Initial Order in the CCAA proceedings that, among other terms, (i) provides that CIBC shall be treated as an "unaffected creditor" in the CCAA proceedings, (ii) grants CIBC a priority charge (ranking immediately behind the Administration Charge) on the assets of the Company (excluding the Term Priority Collateral) in respect of all advances made on or after the time of granting the Initial Order, (iii) directs that at no time on or after the date of the Initial Order will the property of the Company be subject to a Court ordered charge in favour of any person ranking in priority to the CIBC security and charge, without CIBC's consent (other than the Administration Charge, the Term Lenders' DIP Charge (solely in respect of the Term Priority Collateral), and any existing liens in respect of the Term Priority Collateral granted by the Company to the Term DIP Lenders, and (iv) authorizes the Company to use the Company's post-CCAA filing receipts to pay the Company's pre-filing indebtedness under the CIBC Credit Agreement. The ABL DIP Forbearance Agreement expressly provides that post-filing borrowings shall not be used to pay pre-filing indebtedness to CIBC.

130. As discussed above, the ABL DIP Forbearance Agreement requires that the blocked account arrangements continue throughout the CCAA proceedings (with the exception

of a separate account, that will not be a blocked account, where the Company will deposit advances made by the Term DIP Lenders under the DIP Agreement).

VI. CASH-FLOW FORECASTS

131. Attached hereto and marked as Exhibit “R” is a true copy of a projected cash flow statement with respect to the Company for the seven week period January 22, 2017 to March 11, 2017 (the “Cash Flow Statement”).

132. The Cash Flow Statement demonstrates the cash needs of the Company during the forecast period and demonstrates that, assuming the DIP Agreement and the ABL DIP Forbearance Agreement are approved and funds are advanced to the Company in accordance with their terms, the Company will have sufficient liquidity to fund its post-filing obligations and the costs of these CCAA proceedings during the cash flow period.

133. The Cash Flow Statement has been prepared with the assistance of the Proposed Monitor and is accompanied by the prescribed representations in accordance with the CCAA.

134. As described below, it is contemplated that the D&O Charge will rank behind the charges in favour of the Term DIP Lenders and the ABL Lender, including the ABL Lender’s DIP Charge and the Term Lenders’ DIP Charge. The directors of the Company are concerned that, if they are required to rely upon the D&O Charge, there may be insufficient value in the Company’s property to satisfy any underlying liability. The directors have therefore requested, and the Company has agreed (with the support of the ABL Lender and the Term DIP Lenders) to deposit funds in escrow with the Monitor (if so appointed) in amounts sufficient to allow the Company to remit and pay sales tax and to stand as cash collateral for the D&O Charge in respect of certain employment related priority obligations in the event the Company’s cash flow

from operations and loan facilities are either insufficient or unavailable to remit and pay such amounts.

135. As part of this arrangement, the Company will transfer funds to the Monitor (if so appointed) in an amount sufficient to satisfy its projected HST remittance requirements in advance, on a weekly basis, to ensure that any amounts owing in respect of HST for each week in the post-filing period will be paid by the Company.

136. The escrow arrangements are reflected in the Cash Flow Statement approved by the ABL Lender and Term DIP Lenders, and presented to the Court on this Application.

VII. RELIEF SOUGHT

A) Stay of Proceedings

137. The Company requires a broad stay of proceedings to allow it to continue to operate and maintain the status quo while it pursues its restructuring described herein with a view to maximizing benefits to its creditors and other stakeholders.

138. In addition to a stay of proceedings against the Company and its assets, the Company is seeking a stay of proceedings against its officers and directors to ensure that they are able to focus their efforts on the restructuring and related activities and to prevent creditors and others from seeking to do indirectly what they cannot do directly by asserting claims or other relief relating to the debts and obligations of the Company against its officers and directors.

B) Approval of the Second Lease Consulting Agreement

139. It is contemplated that the Lease Consultant will continue to advise the Company pursuant to the terms of the Second Lease Consulting Agreement, subject to approval of the Court.

140. As described above, the Lease Consultant will be engaged to assist the Company in renegotiating lease terms for certain of the Closing Stores in the hopes of making those leases more attractive to the Stalking Horse Purchaser or another bidder under the SISP, as applicable, so that those leases may be removed from the liquidation process and the stores kept open following completion of a sale or other transaction entered into pursuant to the SISP.

141. The Second Lease Consulting Agreement contemplates the payment of a fee to the Lease Consultant of (i) \$50,000 upon the issuance of the Initial Order, (ii) \$50,000 payable by February 15, 2017, and (iii) an amount which is 2% of the annual rental saving to the Company resulting from the renegotiation of the Company's existing leases (which shall be no less than \$75,000 and no more than \$150,000).

142. It is a condition of the Second Lease Consulting Agreement that the Company obtaining Court authorization to fulfill its obligations under the Second Lease Consulting Agreement.

143. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the engagement of the Lease Consultant pursuant to the Second Lease Consulting Agreement. I understand that both GSO and CIBC are also supportive of the engagement of the Lease Consultant.

C) Payment of Pre-Filing Amounts

144. The Company anticipates paying certain pre-filing amounts which must be paid following the date of the Initial Order to prevent significant impact to the Company's business.

145. As described above, the continued engagement of certain of the Company's merchandise suppliers is critical to its ongoing operations. Disruption to these vendors may interrupt the supply of inventory to the Company. The Company is therefore requesting that it be permitted to pay certain pre-filing amounts owing to certain of those vendors that it considers critical to its business, in the maximum aggregate amount of \$1 million, subject to the express prior approval of the Monitor or Order of the Court.

D) Approval of Stalking Horse Agreement, SISP & Liquidation Consulting Agreement

146. In a separate motion returnable January 30, 2017, the Company is seeking Court approval of the execution of the Stalking Horse Agreement, the SISP and the Liquidation Consulting Agreement.

147. The Company, with the assistance of the Retail Consultant, has engaged in a thorough review of its strategic alternatives and has concluded that the execution of the Stalking Horse Agreement and the Liquidation Consulting Agreement, and the pursuit of the SISP through proceedings under the CCAA, is the best course of action to maximize value for its stakeholders.

148. The Stalking Horse Agreement will provide the Company's stakeholders with assurance that the business conducted by the Company will continue as a going-concern.

149. The Stalking Horse Agreement will also provide for the continuation of a substantial portion of the Company's business, thereby assuring a customer for suppliers, a tenant for landlords, employment for a majority of the Company's employees, and an ongoing business for its many customers. It also provides stability during the SISP

150. The SISP provides a means for testing the market, gauging interest in the Company and its assets and determining whether a transaction is available that is more advantageous to the Company and its stakeholders than the Stalking Horse Agreement.

151. In conjunction with the proposed restructuring transaction to be carried out through the SISP, the Company, in consultation with the Retail Consultant, has determined that it is in the best interests of the Company's stakeholders to liquidate the inventory and owned FF&E at the Closing Stores pursuant to and in accordance with the Liquidation Consulting Agreement.

152. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the Stalking Horse Agreement, the Liquidation Consulting Agreement and the SISP. I understand that both GSO and CIBC are also supportive of these restructuring steps.

E) Approval of the DIP Agreement & Term Lenders' DIP Charge and the ABL DIP Forbearance Agreement & ABL Lender's DIP Charge

153. As reflected in the Cash Flow Statement, the DIP Agreement and the ABL DIP Forbearance Agreement are intended to provide the Company with sufficient liquidity to (i) maintain its ongoing operations during the course of these CCAA proceedings, including payment of employees; (ii) fund the costs of these proceedings; and (iii) pursue the SISP and any transaction(s) resulting therefrom.

154. It is a condition of any advance under the DIP Agreement that, in addition to its existing contractual security, GSO be granted a priority Court-ordered charge on all the assets, rights, undertakings and properties of the Company (the “**Property**”) as security for amounts advanced to the Company under the DIP Agreement (the “**Term Lenders’ DIP Charge**”).

155. In addition, it is a condition of the ABL DIP Forbearance Agreement that CIBC maintain its priority in the ABL Priority Collateral and be granted a Court-ordered charge on the Property as security for amounts advanced to the Company under the CIBC Credit Agreement after the date of this Initial Order (the “**ABL Lender’s DIP Charge**”).

156. The relative priority of the Court-ordered charges (collectively, the “**Charges**”) is proposed to 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 (as defined in the Intercreditor Agreement);

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.

157. The Term DIP Lenders and CIBC have advised the Company that they will not advance any funds under the DIP Agreement or the ABL DIP Forbearance Agreement, respectively, unless the Court approves the Term Lenders’ DIP Charge and the ABL Lender’s DIP Charge.

158. I understand that both CIBC and GSO are amenable to the Charges. The only other secured creditors of the Company appear to be Xerox, CDLS and BNS. As stated above, the Charges sought by the Company in this Application are not proposed, at this time, to rank in priority to the registrations in favour of Xerox, CDLS or BNS, to the extent they represent validly perfected and enforceable security interests.

159. The Cash Flow Statement demonstrates that, without financing through the cash flow period, the Company is unable to fund its operations or pursue its restructuring. If the Court approves the DIP Agreement and the ABL DIP Forbearance Agreement and funds are made available thereunder, the Cash Flow Statement projects that the Company will have sufficient funding to continue its operations and to pursue the restructuring during the projected cash-flow period.

160. Prior to executing the DIP Agreement and the ABL DIP Forbearance Agreement, the Company considered, among other things, the following factors:

- (a) the Cash Flow Statement indicates that the interim financing provided under the DIP Agreement and the ABL DIP Forbearance Agreement will provide the Company with sufficient liquidity to fund its ongoing operations while pursuing the restructuring throughout the projected cash-flow period;
- (b) it is expected that the Company will continue to operate the majority of its stores, with continued employment of its store-level employees and ongoing payment of rents, while it pursues the SISP;
- (c) the Company has the support of its primary secured creditors CIBC and GSO;
- (d) as the existing secured lenders with first registered security on the assets of the Company, CIBC and GSO, are best positioned to provide the interim financing on commercially reasonable terms;
- (e) the interim financing is necessary to permit the Company to maintain its operations while it pursues its restructuring; and
- (f) the Proposed Monitor has indicated that it is supportive of the DIP Agreement and the ABL DIP Forbearance Agreement and the financing contemplated therein.

161. In addition, the DIP Agreement and the ABL DIP Forbearance Agreement will provide the Company with stability during these CCAA proceedings which will allow the Company to focus its efforts on its restructuring.

F) Approval of the Term Forbearance Agreement

162. The Company is seeking the Court's authorization to carry out its obligations under the Term Forbearance Agreement which will provide the Company with stability during these CCAA proceedings and allow the Company to focus its efforts on its restructuring.

163. The Company is dependent on continued forbearance from its secured term lender GSO.

G) Approval of the Administration Charge

164. The Company is seeking a charge on the Property, in priority to all other charges, in the maximum amount of \$500,000 (the "**Administration Charge**") to secure the fees and disbursements of the Monitor, counsel to the Monitor, independent counsel to the directors of the Company and counsel to the Company, in each case incurred in connection with services rendered to the Company both before and after the commencement of these CCAA proceedings.

165. It is important to the success of the Company's restructuring efforts to have the Administration Charge in place to ensure the continued involvement of critical professionals.

166. The Company has worked with the Proposed Monitor and the other professionals to estimate the proposed quantum of the Administration Charge, and in so doing, has taken into account the amounts held by these firms as retainers, being: \$100,000 (Fasken), \$50,000 (Cassels), \$100,000 (Richter) and \$25,000 (Lax O'Sullivan).

H) Approval of the D&O Indemnity and Charge

167. To ensure the ongoing stability of the Company's business during the CCAA period, the Company requires the continued participation of its directors and officers.

168. The Company is seeking customary provisions staying all proceedings against the directors and officers of the Company with respect to all claims against the directors or officers that relate to any obligations of the Company whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the Company.

169. I understand that in certain circumstances directors can be held liable for certain obligations of a company, including those owing to employees and government entities.

170. The Company maintains directors' and officers' liability insurance (the "**D&O Insurance**"). The current D&O Insurance policies include an aggregate amount of \$10 million in coverage. This coverage is subject to certain retentions, deductibles, exclusions, or some combination of the foregoing, all of which create a degree of uncertainty.

171. The directors and officers of the Company have indicated that, due to the risk of personal exposure associated with the Company's aforementioned liabilities, they will not continue their service with the Company during the post-filing period unless the Initial Order establishes an indemnity in their favour and grants a charge on the Property in the amount of \$800,000 (the "**D&O Charge**") on customary terms. The D&O Charge is proposed to rank in accordance with the priority set out in paragraph 156 of this Affidavit, provided, however, that it will have first priority solely with respect to the Directors' Escrow (as defined in the Initial Order).

172. The D&O Charge will allow the Company to continue to benefit from the expertise and knowledge of its directors and officers. The Company believes the D&O Charge is reasonable in the circumstances. I am informed by Gilles Benchaya of the Proposed Monitor and believe that the Proposed Monitor is supportive of the indemnity and D&O Charge and its

quantum. CIBC and GSO have been consulted in respect of the quantum of the proposed D&O Charge and I understand that they are supportive of the charge.

D) Approval of the KERPs & KERP Charge

173. As described above, the Company seeks an Order approving the KERPs that the Company is offering to the Key Employees as an incentive for them to remain with the Company through these CCAA proceedings. The Company is also seeking a charge on its Property to secure the obligations of the Company in respect of the KERP entitlements (the “KERP Charge”). The KERP Charge is proposed to rank in accordance with the priority set out in paragraph 156 of this Affidavit.

174. Absent Court approval of the KERPs and the KERP Charge, the Key Employees may have little incentive to remain with the Company through these CCAA proceedings and are likely to seek other employment opportunities at some point during these proceedings.

175. The participation of the Key Employees is critical to the Company’s restructuring through these CCAA proceedings. The aggregate maximum amount under the KERPs of \$190,000 is reasonable considering the relative experience of the Key Employees and their familiarity with the Company’s assets and overall business.

176. I am advised by the board of directors of the Company that they have determined that the KERPs are necessary and appropriate in the circumstances. I am advised by Gilles Benchaya of the Proposed Monitor that the Proposed Monitor is supportive of the KERPs and the KERP Charge. I understand that CIBC and GSO have been consulted in respect of the proposed KERPs and I understand that they have no objection to the KERPs being sought, including the KERP Charge.

J) The Monitor

177. Richter has consented to act as Monitor of the Company, subject to Court approval. Attached hereto and marked as Exhibit "S" is a true copy of the written consent of Richter to act as Monitor herein.

178. Richter is a trustee within the meaning of section 2 of the BIA and 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.

179. The Proposed Monitor is an affiliate of the Retail Consultant. The Company does not have a direct or indirect prior business relationship with Richter other than (i) in respect of the Retail Consultant; and (ii) Richter was the monitor in the CCAA proceedings of 247. Having regard to the role of the Retail Consultant and the role of Richter as monitor in 247's CCAA proceedings, and given the Retail Consultant's role to date in the Company's preparation for this CCAA filing, I anticipate that there will be a significant amount of overlap between the personnel who have been involved in the Retail Consultant engagement to date, and those who will be involved in carrying out the duties and activities of the Monitor going forward. I believe this is sensible and efficient and in the interest of the Company's stakeholders. The primary secured creditors, CIBC and GSO, are aware of the relationship between the Retail Consultant, the monitor of 247's CCAA proceedings and the Proposed Monitor and have both consented to the appointment of the Proposed Monitor as Monitor in these proceedings.

VIII. URGENCY

180. The Company requires immediate access to the interim financing under the DIP Agreement and the ABL DIP Forbearance Agreement to normalize its operations, pay rent to its

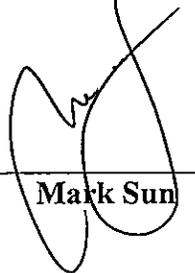
landlords, and to secure the ongoing supply of services from its employees and other service providers to allow it to proceed with the SISP. If the DIP Facility, or some other financing, is not available to the Company before February 1, 2017, the Company will have insufficient liquidity to pay its rents and meet its other obligations. To maximize the recovery available to the Company and its stakeholders, it is imperative that the Company secure approval of the Stalking Horse Agreement and commence the SISP as soon as possible. This application is therefore being brought on an urgent basis.

IX. PURPOSE OF AFFIDAVIT

181. I swear this Affidavit in support of the Company's Application in these proceedings and the Company's Motion for approval of the execution of the Stalking Horse Agreement, the SISP and the Liquidation Consultation Agreement.

SWORN BEFORE ME at the)
City of Toronto, in the)
Province of Ontario, this)
25th day of January, 2017)
)

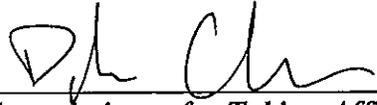
Dylan Chochle



Mark Sun

EXHIBIT "A"

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Mark Sun sworn before me this
25th day of January, 2017



A Commissioner for Taking Affidavits

Dylan Choche

[GFI LETTERHEAD]

STRICTLY PRIVATE AND CONFIDENTIAL

Hand Delivered

January 24, 2017



Dear [REDACTED] ;

RE: Incentive Payment

As Grafton-Fraser Inc. (the “Company”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as [REDACTED], particularly at this time. As you know, the Company is contemplating initiating proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”)

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: a \$ [REDACTED] cash payment payable upon one of the following events having taken place with respect to the Company: (a) the sale of all or substantially all of the assets of the Company in the CCAA proceedings; or (c) the issuance of an order by a Judge of the Ontario Superior Court of Justice declaring that the CCAA proceedings in respect of the Company are terminated. Vacation pay will not accrue in respect of the incentive payment.

As security for the obligations of the Company to make the payments set out herein, the Company intends to create a charge over the property of the Company. This charge is intended to rank below the Administration Charge, the ABL Lender’s DIP Charge, the Liens granted to the ABL Secured Parties, the Term Lenders’ DIP Charge and the Liens granted to the Term Secured Parties, and ahead of the Directors’ Charge. The Company will apply to the Ontario Superior Court of Justice in the CCAA proceedings for approval of this charge.

Prior to the commencement of CCAA proceedings we will seek approval of this proposal from the Company's Board of Directors. The terms of this letter are conditional upon that approval.

In order to receive the incentive bonus described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments would be payable

you cannot have (i) resigned, (ii) been terminated with cause; or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

The incentive payment is to be paid in place of, and not in addition to, any success fee, bonus or other payment to which you may be entitled under your compensation arrangements with the Company that relate, in any way, to the completion of a restructuring or other transaction involving the Company, its balance sheet or its property. By accepting the incentive payment you agree to the compromise and release of any and all claims that you may have against the Company, its officers, directors, employees, agents and representatives in respect of all such success fees, bonuses or other payments.

Yours truly,

[GFI LETTERHEAD]

STRICTLY PRIVATE AND CONFIDENTIAL

Hand Delivered

January 24, 2017



Dear [REDACTED];

RE: Incentive Payment

As Grafton-Fraser Inc. (the “Company”) enters this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company as [REDACTED], particularly at this time. As you know, the Company has initiated proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”)

In consideration of your ongoing loyalty to the Company, the Company is offering you the following incentive in addition to your regular salary: a \$ [REDACTED] cash payment payable upon one of the following events having taken place with respect to the Company: (a) the sale of all or substantially all of the assets of the Company; or (c) the issuance of an order by a Judge of the Ontario Superior Court of Justice declaring that the CCAA proceedings in respect of the Company are terminated. Vacation pay will not accrue in respect of the incentive payment.

As security for the obligations of the Company to make the payments set out herein, the Company has obtained an Order from the Court creating a charge over the property of the Company. This charge ranks below the Administration Charge, the ABL Lender’s DIP Charge, the Liens granted to the ABL Secured Parties, the Term Lenders’ DIP Charge and the Liens granted to the Term Secured Parties, and ahead of the Directors’ Charge (each as defined in the Initial Order made by the Court in the CCAA proceedings dated January [25], 2017).

In order to receive the incentive bonus described above, (a) you must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law), and (b) at the time such payments would be payable you cannot have (i) resigned, (ii) been terminated with cause; or (iii) have failed to perform your duties and responsibilities diligently, faithfully and honestly.

Yours truly,

EXHIBIT "B"

THIS IS EXHIBIT "B"

*referred to in the Affidavit of
Mark Sun sworn before me this
25th day of January, 2017*

A handwritten signature in black ink, appearing to read "Dylan Chocho". The signature is written in a cursive style with a horizontal line underneath it.

A Commissioner for Taking Affidavits

Dylan Chocho

**\$50,000,000
AMENDED AND RESTATED CREDIT FACILITY**

**GRAFTON-FRASER INC.,
As Borrower**

- and -

**THE GUARANTORS THAT MAY BECOME FROM TIME TO TIME
PARTIES HERETO**

- and -

**OFS AGENCY SERVICES, LLC,
as Servicing Agent**

- and -

**BTD CP HOLDINGS LP,
as Administrative Agent and
Lead Arranger**

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO**

Credit Agreement

**Made as of May 24, 2007, as amended and
restated as of September 10, 2008 and as
further amended and restated as of June
16, 2009**

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AMENDED AND RESTATED CREDIT AGREEMENT made as of the
16th day of June, 2009.

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the
Province of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT MAY BECOME
FROM TIME TO TIME PARTIES HERETO,**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO,**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws
of the State of Delaware, as Servicing Agent for the
Lenders

(hereinafter referred to as the "Servicing Agent")

- and -

BTD CP HOLDINGS LP,
a limited partnership formed under the laws of the
State of Delaware, as Administrative Agent and
Lead Arranger, formerly known as GSO CP
Holdings LP

(hereinafter referred to in its own capacity as "BTD
LP" and in its capacity as administrative agent on
behalf of the Lenders, as the "Administrative
Agent"),

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP are parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement");

AND WHEREAS the original lenders party to the Original Credit Agreement subsequently assigned their Participations (as such term is hereinafter defined) in the aggregate Outstanding Advance (as such term is hereinafter defined) to the Lenders;

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD LP was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement (the "Existing Credit Agreement") to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS the parties wish to enter into this amended and restated agreement to, among other things, amend certain covenants of the Borrower set forth in the Existing Credit Agreement and the Interest Rate payable on the Advance;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises, the covenants herein contained and other valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"Accounts" means the accounts kept by the Servicing Agent pursuant to Section 2.14 to record the Borrower's liabilities to the Lenders under this Agreement;

"Acquired Indebtedness" of any Person means Indebtedness of any other Person (including any Subsidiary) existing at the time, and continuing to exist immediately after the time, such other Person becomes a Guarantor or is merged into, or consolidated or amalgamated with, such Person or that is assumed in connection with the acquisition of assets from such other Person and, in each case, not incurred by such other Person in connection with, or in anticipation or contemplation of, such other Person becoming a Guarantor or such merger, consolidation, amalgamation or acquisition;

"Administrative Agent" means BTD LP, in its capacity as administrative agent for the Lenders hereunder, or any successor Administrative Agent appointed pursuant to Section 11.6(c);

"Advance" means the \$50,000,000 advanced by the Lenders to the Borrower pursuant to the Drawdown Notice referred to in Section 2.3, as such amount may be reduced from time to time in the event of any prepayments made by the Borrower pursuant to Section 2.6 or Section 2.8 and as such amount may be increased from time to time on Interest Payment Dates falling on or prior to the first anniversary of the Effective Date pursuant to Section 2.10(b);

"Affiliate" means an affiliated body corporate, partnership, joint venture or other Person and, for the purposes of this Agreement, (i) one body corporate, partnership, joint venture or other Person is affiliated with another if one such body corporate, partnership, joint venture or other Person is the Subsidiary of or is Controlled by the other or both are Subsidiaries of the same body corporate, partnership, joint venture or other entity or each of them is Controlled by the same Person and (ii) if two bodies corporate, partnerships, joint ventures or other Persons are affiliated with the same body corporate, partnership, joint venture or other Person at the same time, they are deemed to be affiliated with each other;

"Affiliate Transaction" has the meaning specified in Section 6.2(i);

"Agents" means, collectively, the Servicing Agent and the Administrative Agent and each individually an "Agent";

"Agreement" means this agreement and all Schedules attached hereto, as the same from time to time may be amended, restated, replaced or superseded in accordance with the terms hereof;

"Applicable Law" means, with respect to any Person, property, transaction or event, all present or future applicable laws, statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees, official policies, guidelines, rulings, interpretation, bulletins and directives of any Governmental Authority (whether or not having the force of law) or court of competent jurisdiction in any applicable jurisdiction, provided that in the case of any of the foregoing that do not have the force of law, the same are nevertheless applicable to or binding on such Person or such Person's property;

"Applicable Pension Legislation" means, at any time, any applicable Canadian federal or provincial pension legislation, including all regulations made thereunder and all rules, regulations, rulings, guidelines, directives and interpretations made or issued by any Governmental Authority in Canada having or asserting jurisdiction in respect thereof, each as amended or replaced from time to time;

"Arm's Length" has the meaning ascribed thereto for the purposes of the *Income Tax Act* (Canada) in effect as of the date hereof;

"Asset Disposition Trigger Event" means any Asset Sale made by the Borrower or a Guarantor;

"Asset Sale" means any direct or indirect sale, issuance, conveyance, assignment, transfer, lease or other disposition (including by way of merger, consolidation or Sale and Lease-Back Transaction), other than to the Borrower or any Guarantor, in any single transaction or series of related transaction of (a) any Stock of or other equity interest in any Guarantor, or (b) any Property of the Borrower or of any Guarantor; provided that an Asset Sale shall not include: (i) a transaction or series of related transactions for which the Borrower and any Guarantor or any of them receive aggregate consideration of less than \$500,000, (ii) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Borrower or any Guarantor as permitted by Section 6.2(d) or Section 9.1, (iii) any disposition of any Cash Equivalents for proceeds equal to the greater of their face or notional amount and their fair market value, (iv) the sale or other disposition of inventory in the ordinary course of business, (v) any sales of property or equipment that has become worn out, obsolete or damaged or otherwise unsuitable for use in connection with the business of the Borrower or a Guarantor, as the case may be, where the proceeds of sale are immediately reinvested in the business of the Borrower or Guarantor, (vi) any sale or discount of receivables in the ordinary course of business on terms customary for transactions of such nature, excluding any securitization transaction, (vii) any transaction consummated in compliance with Section 6.2(h), and (viii) any leases or licences of assets not otherwise prohibited hereunder;

"Asset Sale Proceeds" means, with respect to any Asset Sale, (i) cash received by the Borrower or any Guarantor from such Asset Sale (including cash received as consideration for the assumption of liabilities incurred in connection with or in anticipation of such Asset Sale), after (A) payment of all reasonable brokerage commissions, underwriting and other fees (including legal and accounting fees) and expenses related to such Asset Sale, and (B) deduction of appropriate amounts to be provided by the Borrower or a Guarantor as a reserve, in accordance with GAAP, against any liabilities associated with the assets sold or disposed of in such Asset Sale and retained by the Borrower or a Guarantor after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with the assets sold or disposed of in such Asset Sale, and (ii) promissory notes and other non-cash consideration received by the Borrower or any Guarantor from such Asset Sale or other disposition upon the liquidation or conversion of such notes or non-cash consideration into cash or Cash Equivalents;

"Attributable Indebtedness" means, with respect to any Sale and Lease-Back Transaction, as at the time of determination, the greater of (i) the fair market value of the property subject to such arrangement (as reasonably determined by the Lenders) and (ii) the present value of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Lease-Back Transaction (including any period for which such lease has been extended) or until such lease may be terminated by the lessee without penalty (or if terminable with a penalty, the aforesaid present value shall include the present value of such penalty). Such present value shall be calculated

using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP;

"Banking Day" means a day, other than a Saturday or a Sunday or other day on which banks are required or authorized to close in any of Toronto, Canada, New York, New York, or London, England;

"Borrower" means Grafton-Fraser Inc., the corporation existing as a result of the amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc., and its permitted successors and assigns;

"Borrower's Security" has the meaning specified in Section 7.1;

"Borrower's Security Documents" has the meaning specified in Section 7.1;

"Business" means the business of operating as a specialty retailer of menswear, tailored clothing and big and tall men's apparel, including operating under the Tip Top Tailors, Mr. Big & Tall, George Richards Big & Tall, Kingsport, Kingsport Clothier, Stonehouse and Grafton & Co. trademarks, carried on, or to be carried on, by the Borrower and its Subsidiaries;

"Canadian Dollars" and the symbols "\$", "CAD" and "Cdn.\$" each means the lawful currency of Canada in immediately available funds;

"Capital Asset" means, with respect to any Person, any tangible fixed or capital asset owned or leased (in the case of a Capital Lease) by such Person, or any expense incurred by such Person that is required by GAAP to be reported as a non-current asset on such Person's balance sheet;

"Capital Expenditures" means, with respect to any Person and any period, all amounts expended by such Person during such period to acquire or construct or as may be otherwise expended, in respect of Capital Assets (including all amounts paid or accrued on Capital Leases and other Indebtedness incurred or assumed to acquire or construct or be expended on Capital Assets) net of tenant allowances, required to be capitalized in accordance with GAAP;

"Capital Leases" shall mean any and all lease obligations of a lessee that, in accordance with GAAP, are required to be capitalized;

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the Government of Canada or issued by any agency or instrumentality thereof and backed by the full faith and credit of Canada, in each case maturing within one year from the date of acquisition thereof; (b) marketable direct obligations issued by any province or territory of Canada or any political subdivision of any such province or territory or any agency or instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest rating obtainable from either S&P or Moody's; provided that, in the event that any such obligation is not rated by S&P or Moody's, such obligation shall have the

highest rating from DBRS Limited; (c) investment in time deposit accounts, term deposit accounts, money market deposit accounts, certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized or licensed to carry on business under the laws of Canada or any Canadian branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$1,000,000,000; (d) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (c) above; and (f) investments in money market funds that invest substantially all their assets in securities of the types described in any of clauses (a) through (d) above;

"Change of Control" means (a) any sale, assignment, transfer or other disposition by StonehouseCo and/or the Parent that results in any Person other than the Parent acquiring an aggregate of more than 50% of the outstanding Voting Securities of the Borrower (calculated as of the date of the sale, assignment, transfer or other disposition) to one or more Persons that are not Affiliates of the Parent; (b) any sale, assignment, transfer or other disposition of all or substantially all of the assets of the Borrower or its successor to one or more Persons that are not Affiliates of the Parent; (c) any transaction or series of transactions resulting in a Guarantor ceasing to be a wholly-owned Subsidiary of the Borrower, or (d) any other merger, consolidation, amalgamation or other transaction that results in a Person other than the Parent or its Affiliates having Control of the Borrower;

"Claims" has the meaning specified in Section 10.4(a);

"Closing Date" means May 24, 2007;

"Collateral" means, collectively, all of the Property subject to the Liens, or intended to be subject to the Liens, created by the Security Documents, including any such Property that is or is intended to be subject to the Liens as a result of Borrower's execution and delivery of this Agreement, the Original Agreement and the Existing Agreement;

"Commitment" means, with respect to a Lender, the amount set forth opposite the name of such Lender on Schedule 1.1(a);

"Consolidated Leverage Ratio" means, at any time, the ratio of the Borrower's Senior Indebtedness as at such time to LTM EBITDA for the twelve month period then ended;

"Consolidated Net Income" means, with respect to any Person, for any period, the aggregate of the Net Income of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP;

"Contractual Obligation", of any Person, means any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its Property is bound;

"Control" and its derivatives means, the possession of the power to elect a majority of the board of directors of a Person, directly or indirectly, and whether through the

ownership or control of voting securities, voting rights, contract or otherwise, with or without the cooperation of others;

"Counsel to the Borrower" means Osler, Hoskin & Harcourt LLP or such other firm of legal counsel as the Borrower and any Guarantor may from time to time designate with the approval of the Lenders, such approval not to be unreasonably withheld;

"Cumulative Free Cash Flow" means, at any date, EBITDA for the prior fiscal year, as determined in accordance with this Agreement, less the sum of the Borrower's cash interest payment obligations, Capital Expenditures and cash Taxes actually paid by the Borrower or any Subsidiary of the Borrower during each of the Borrower's fiscal years;

"Default" means an event or condition that constitutes an Event of Default or that, with the giving of notice or the passage of time, the making of any determination, the satisfaction of any other condition or any combination thereof as provided for herein, would constitute an Event of Default;

"Disqualified Capital Stock" of any Person means any Stock of such Person or a Subsidiary thereof that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Maturity Date, for cash or securities constituting Indebtedness. Without limitation of the foregoing, Disqualified Capital Stock shall be deemed to include any preferred stock of a Person or a Subsidiary of such Person, with respect to either of which, under the terms of such preferred stock, by agreement or otherwise, such Person or Subsidiary is obligated to pay current dividends or distributions in cash during the period prior to the Maturity Date; provided, however, that preferred stock of a Person or any Subsidiary thereof that is issued with the benefit of provisions requiring a change of control offer to be made for such preferred stock in the event of a change of control of such Person or Subsidiary shall not be deemed to be Disqualified Capital Stock solely by virtue of such provisions;

"Drawdown" means a drawdown of an Advance;

"Drawdown Notice" means a notice substantially in the form set out in Exhibit A;

"EBITDA" means, for the Borrower on a consolidated basis and for any period, without duplication, the amount equal to Net Income less interest income, income tax recoveries and any non-cash income included in Net Income and:

- (a) plus, to the extent deducted from Net Income, and without duplication, (i) interest expense, income tax expenses depreciation expense, amortization expense and other non-cash expenses (including any non-cash straight line rent adjustments); (ii) up to \$600,000 per annum of Management Fees paid or accrued by the Borrower to GB Merchant Partners LLC, and (iii) for purposes of any determination hereunder for and including all periods commencing on the

beginning of fiscal 2009 to the fiscal period ending July 31, 2010, Termination and Discontinued Store Costs not to exceed \$500,000 in the aggregate;

- (b) less, to the extent added to Net Income, and without duplication, year-end accounting adjustments done in accordance with GAAP;

provided that foreign exchange gains or losses, including gains or losses on the disposition of assets outside the ordinary course of business and restructuring charges, shall not be included in EBITDA;

"Effective Date" means the date on which the conditions set forth in Section 4.1 have been satisfied or waived by the Lenders;

"Environmental Claims" means any and all enforcement, clean-up, removal or other governmental or regulatory actions, orders, directions or proceedings instituted, pending or completed or, to the best of the knowledge of the Borrower and any Guarantor, threatened or anticipated pursuant to any Environmental Laws and all claims made or, to the best of the knowledge of the Borrower and any Guarantor, threatened, by any third party against the Borrower or any Guarantor, any property of the Borrower or any Guarantor or any of their Subsidiaries or any party having charge, management or control of any property of any of the Borrower, any Guarantor or their Subsidiaries relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any violation or alleged violation of Environmental Laws;

"Environmental Laws" means any present or future Applicable Laws (including, for greater certainty, common laws) for the protection of the environment or human health and safety, present or future, including all Permits from any Governmental Authority;

"Equivalent U.S. \$ Amount" means, on any day with respect to any amount of Canadian Dollars, the amount of United States dollars which would be required to buy such amount of Canadian Dollars at the rate of exchange quoted by the Bank of Canada (or if not quoted, the spot rate of exchange quoted for wholesale transactions by the Administrative Agent in accordance with its standard money market practices) at approximately noon (Toronto time) on the Banking Day such rate is to be determined;

"Event of Default" means any of the events described in Section 8.1;

"Equivalent Amount" on any given date in one currency (the **"first currency"**) of any amount denominated in another currency (the **"second currency"**) means the amount of the first currency which could be purchased with such amount of the second currency at the rate of exchange quoted by the Reference Lender at 11:00 a.m. (Toronto time) on such date for the purchase of the first currency with the second currency;

"Existing Credit Agreement" has the meaning set out in the recitals;

"Existing Defaults" has the meaning set out in Section 12.2;

"Facility" means the non-revolving credit facility in an aggregate principal amount of \$50,000,000 made available to the Borrower by the Lenders as set forth in Article 2;

"Financial Statements" means, with respect to any accounting period for any Person, statements of income, retained earnings and cash flows of such Person for such period, and a balance sheet of such Person as of the end of such period, setting forth in each case in comparative form figures for the then current budget and for the corresponding period in the preceding fiscal year if such period is less than a full fiscal year or, if such period is a full fiscal year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP;

"GAAP" means those generally accepted accounting principles consistently applied in Canada as established by the Canadian Institute of Chartered Accountants or its successor;

"Government Lists" means (i) the "Specially Designated Nationals and Blocked Persons Lists" maintained by OFAC, (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that a Lender notified Borrower in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that the Administrative Agent notifies the Borrower in writing is now included in "Governmental Lists".

"Governmental Authority" means any federal, state, provincial, local, municipal, foreign or other government, and any body exercising or entitled or purporting to exercise any administrative, executive, judicial, legislative or regulatory or taxing authority or power, including any governmental department, commission, board, bureau agency or instrumentality and any other governmental, regulatory or fiscal authority;

"Governmental Charges" means, with respect to any Person, all levies, assessments, fees, claims, penalties, interest or other charges imposed by any Governmental Authority upon such Person or any of its property or otherwise payable by such Person;

"Guarantees" means the guarantees to be entered into by a Guarantor in favour of Administrative Agent for the benefit of the Lenders hereunder, as the same may be amended, supplemented or restated from time to time, and "Guarantee" means any of them;

"Guarantors" means any Subsidiary of the Borrower that becomes a guarantor from time to time hereunder, as required by Section 6.2(n), and each of their respective permitted successors and assigns, and "Guarantor" means any of them;

"Guarantors' Security" has the meaning specified in Section 7.2;

"Guarantors' Security Documents" has the meaning specified in Section 7.2;

"Hazardous Material" means any contaminant, pollutant or substance regulated under any Environmental Laws and, without restricting the generality of the foregoing, includes any pollutant, contaminant, waste, hazardous waste, deleterious substance or dangerous good that causes or may cause deleterious adverse effect, harm or degradation to the surrounding environment or injury to human health or that is present in such quantity or state that it contravenes any Environmental Laws or gives rise or could give rise to any liability or obligation under any Environmental Law;

"Headquarters and Warehouse" means the property municipally known as 44 Apex Road, Toronto ON, M6A 2V2 that is sub-leased by Boca L.P. to the Borrower;

"Hedging Obligations" means, with respect to any Person, the net payment obligations of such Person outstanding under (a) interest rate or currency swap agreements, interest rate or currency cap, collar or floor agreements and (b) any other agreements or arrangements entered into in order to protect such Person against fluctuations in commodity prices, interest rates or currency exchange rates;

"Indebtedness" of any Person means, at any date, without duplication, (i) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (ii) all obligations of such Person evidenced by bonds, debentures, the face amount of all bankers' acceptances, letters of credit, letters of guarantee and similar instruments, notes, letters of credit or other similar instruments, including obligations under Sale and Lease-Back Transactions, (iii) all obligations of such Person to pay the deferred purchase price of property or services, (iv) all obligations of such Person as lessee which are capitalized in accordance with GAAP, including Capital Leases, (v) all indebtedness, liabilities and obligations secured by a Lien on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, which, for greater certainty will not include rent paid or payable by the Borrower in the ordinary course under its commercial lease for its retail merchandising locations, (vi) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (vii) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, and (viii) all obligations of such Person to otherwise assure a creditor against loss, (ix) all Hedging Obligations and (x) all obligations of such Person for trade accounts and contracts;

"Indemnitee" has the meaning specified in Section 10.4(a);

"Insurance Trigger Event" means the failure of the Borrower or any Guarantor to reinvest in assets used in the Business, within 365 days of receipt, any insurance (other than proceeds of life insurance that the Borrower has obtained with respect to a senior executive of the Borrower and that are applied to the purchase of Stock of the Borrower from the estate of such senior executive pursuant to Section 6.2(h) or expropriation proceeds (x) in excess of \$750,000, or (y) at a time when a Default or Event of Default has occurred and is continuing;

"Intercreditor Agreement" means the intercreditor agreement made between the Borrower, GSO Special Situations Fund LP (as assigned to BTM LP, as Administrative Agent) and the Revolving Lender dated May 24, 2007;

"Interest Determination" means the determination of the Interest Period applicable to an Advance pursuant to and in accordance with Section 2.10;

"Interest Determination Notice" means a notice substantially in the form of Exhibit B;

"Interest Payment Date" means the last day of each Interest Period;

"Interest Period" means a period commencing (i) in the case of the initial Interest Period for an Advance, on the date of such Advance; and (ii) in the case of any subsequent Interest Period for such Advance, on the last day of the immediately preceding Interest Period applicable thereto and ending, in either case, on the last day of such period as shall be selected by the Borrower pursuant to Section 2.10(c);

"Interest Rate" means 3% (300 basis points) plus either (i) the greater of the LIBOR Rate and 8.0%; or (ii) in the circumstances set out in Section 2.10(c), the greater of the Prime Rate and 8.0%;

"Investment" means, with respect to any Person, directly or indirectly, any advance, account receivable (other than an account receivable arising in the ordinary course of business of such Person), loan or capital contribution to (by means of transfers of Property to others, payments for Property or services for the account or use of others or otherwise), the purchase of any Stock, bonds, notes, debentures, partnership or joint venture interests or other securities of, the acquisition, by purchase or otherwise, of all or substantially all of the business or assets or stock or other evidence of beneficial ownership of, any Person or the making of any investment in any Person. Investments shall exclude (a) extensions of trade credit on commercially reasonable terms in accordance with normal trade practices of such Person and (b) the repurchase of securities of any Person by such Person, provided that:

- (a) for the purposes of Section 6.2(h), Investments shall include and be valued at the fair market value of the net assets of any Subsidiary of the Borrower that is not a Guarantor and shall exclude the fair market value of the net assets of any such Subsidiary of the Borrower that is a Guarantor and the amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments by the Borrower or any Guarantor, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment reduced by the payment of distributions in cash or Cash Equivalents that constitute a return of capital in connection with such Investment; provided that the aggregate of all such reductions shall not exceed the amount of such initial Investment plus the cost of all additional Investments;
- (b) no such payment of distributions or receipt of any such other amounts shall reduce the amount of any Investment if such payment of distributions or receipt of any such amounts would be included in Consolidated Net Income; and

- (c) if the Borrower or any Guarantor sells or otherwise disposes of any Stock of any Subsidiary of the Borrower such that, after giving effect to any such sale or disposition, such Subsidiary shall have ceased to be a Subsidiary of the Borrower, the Borrower shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Stock of such Subsidiary not sold or disposed of;

"Leases" means all offers to lease, agreements to lease, leases, renewals of leases and other rights or licences, including unwritten month-to-month leases, granted to the Borrower and its Subsidiaries;

"Lenders" means the Persons listed as lenders on Schedule 1.1(a) and any other Person that shall have become a party hereto in accordance with the terms of Section 12.12;

"LIBOR Loan" means a conversion or rollover of the Advance in Canadian Dollars bearing interest by reference to the applicable LIBOR Rate;

"LIBOR Period" means, for each LIBOR Loan, a period (subject to availability) of one, two, three or six months as selected by the Borrower and advised to the Servicing Agent by written notice given in accordance with the provisions hereof, commencing with the date on which such LIBOR Loan is made and ending on the last day of such period and thereafter, while such remains outstanding, each successive period of one to six months (subject to availability) selected by the Borrower and notified to the Servicing Agent in accordance with the provisions hereof, commencing on the last day of the immediately preceding LIBOR Period in respect of such LIBOR Loan, provided that whenever the last day of a LIBOR Period would otherwise occur on a day other than a Banking Day, the last day of such LIBOR Period shall be extended to the next succeeding Banking Day;

"LIBOR Rate" means, with respect to any LIBOR Loan, for any LIBOR Period, the product of either (a)(1) the interest rate per annum determined by the Servicing Agent as shown on the applicable Bloomberg page or any successor page as the average offered rate for London interbank deposits of Canadian Dollars for a term equal to such LIBOR Period as at 11:00 a.m. (London time) two Banking Days prior to the first day of such LIBOR Period or (2) if the rate in clause (1) of this definition is not shown for any particular day, the average interest rate per annum (rounded upwards if necessary to the next 1/16th of 1%) offered to the applicable Lender in the London interbank market for Canadian Dollar deposits, for delivery in immediately available funds on the first day of such LIBOR Period, of amounts comparable to the principal amount of such LIBOR Loan and for a term equal to such LIBOR Period as at 11:00 a.m. (London time) two Banking Days prior to the first day of such LIBOR Period; times (b) Statutory Reserves, if any, applicable to such Lender; provided that if neither such rate is available at any time, then the interest rate per annum for such LIBOR Loan shall be equal to the product of (i) the average interest rate per annum (rounded upwards if necessary to the next 1/16th of 1%) offered to the applicable Lender in the London interbank market for U.S. Dollar deposits, for delivery in immediately available funds on the first day of such LIBOR Period, of amounts comparable to the principal amount of such LIBOR Loan and for a term equal to such LIBOR Period as at 11:00 a.m. (London time) two Banking Days

prior to the commencement of such LIBOR Period times (ii) Statutory Reserves, if any, applicable to such Lender, plus (iii) applicable Hedging Obligations;

"Liens" means mortgages, pledges, liens, hypothecs, charges, security agreements or other encumbrances, leases, adverse claims, rights of set-off or agreements, trusts, deemed trusts or other arrangements that in substance secure payment or performance of an obligation, statutory and other non-consensual liens or encumbrances and includes the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement;

"Loan Documents" means, collectively, this Agreement, the Existing Credit Agreement, the Security Documents, the Intercreditor Agreement and all other documents delivered pursuant to this Agreement;

"Losses" has the meaning specified in Section 10.4(a);

"LTM EBITDA" means the Borrower's EBITDA, determined on a consolidated basis in accordance with this Agreement and reported as at the last day of each fiscal quarter of the Borrower for the twelve-month period then ending;

"Management Fees" means any management or similar fees paid by the Borrower and its Subsidiaries to GB Merchant Partners LLC and any other Person from time to time;

"Material Adverse Effect" means an event, occurrence or condition which has a material adverse effect on or results in a material adverse change in (a) the business, assets, operations, liabilities, prospects or financial or other condition of the Borrower and its Subsidiaries as a whole, (b) the ability of the Borrower or any of its Subsidiaries to pay or perform its Obligations in accordance with the terms of this Agreement and the other Loan Documents, (c) the rights and remedies of the Administrative Agent, the Servicing Agent or any Lender under this Agreement, the other Loan Documents or any related document, instrument or agreement, or (d) any Lien on the Collateral in favour of the Administrative Agent or any Lender or the perfection or priority of such Liens;

"Material Contract" shall mean a Contractual Obligation that is material to the Borrower or any Guarantor, including the Leases and agreements set forth in Schedule 5.1(y);

"Maturity Date" means October 24, 2012;

"Modified Financial Reporting Fiscal Year" has the meaning specified in Section 6.1(r);

"Moody's" means Moody's Investor Service, Inc.;

"Net Cash Proceeds" means the gross cash proceeds (including payments from time to time in respect of instalment obligations, if any, as and when received) received by or on behalf of the Borrower or the relevant Guarantor, as applicable, pursuant to a Prepayment Trigger Event less the sum of (a) reasonable and customary fees, commissions, expenses,

issuance costs, discounts and other costs paid by or on behalf of the Borrower or the relevant Guarantor, as applicable, in connection with such Prepayment Trigger Event, and (b) any portion of such gross cash proceeds that have been reinvested in any assets used in the Business, in the case of an Insurance Trigger Event, within 365 days of such event;

"Net Income" means, with respect to any Person, for any period, the net income (loss) of such Person for such period determined in accordance with GAAP;

"Newco" means GF Acquisition Corp., a corporation incorporated under the laws of the Province of Ontario;

"Notice of Amount" has the meaning set out in Section 3.1;

"Obligations" means all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Borrower, any Guarantor or any other Person (other than the Agents and the Lenders) party to any Loan Documents of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of this Agreement or any of the other Loan Documents, including all principal, interest, fees, charges, expenses, legal fees, consultants' fees and accountants' fees chargeable to the Borrower and any Guarantor or payable by the Borrower or any Guarantor hereunder or thereunder;

"OFAC" means the Office of Foreign Assets Control;

"Officer's Certificate" means a certificate signed by any one of the following officers of the Borrower or a Guarantor, as the case may be: (i) the Chief Executive Officer, (ii) the Chief Operating Officer, (iii) the Chief Financial Officer, or (iv) the Treasurer;

"Original Credit Agreement" has the meaning set out in the recitals;

"Other Taxes" means any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery, enforcement or registration of, or otherwise with respect to, this Agreement or any Loan Document;

"Parents" means 1903 Co-Investor, L.P. and 1903 Equity Fund, L.P.;

"Participation" of a Lender means the percentage which such Lender's Commitment with respect to the Facility is of the aggregate Advance, as such percentage may be adjusted pursuant to this Agreement;

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future law;

"Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or (e) the Patriot Act, and includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense;

"Pension Plan" means any plan, program, agreement or arrangement that is a pension plan for the purposes of Applicable Pension Legislation or under the *Income Tax Act* (Canada) (whether or not registered under such law) that is maintained or contributed to, or to which there is or may be an obligation to contribute, by the Borrower, any Guarantor or any of their Subsidiaries in respect of their respective employees;

"Permits" has the meaning specified in Section 5.1(j);

"Permitted Asset Sale" means, with respect to any Person, a substantially concurrent exchange of assets of such Person for assets of another Person that are useful to the business of the afore-mentioned Person;

"Permitted Encumbrances" has the meaning specified in Schedule 1.1(c);

"Permitted Indebtedness" means:

- (a) Indebtedness owing hereunder and under the Loan Documents;
- (b) the Stonehouse Subordinated Note;
- (c) the Revolving Credit Facility;
- (d) trade accounts due and payable within 60 days and similar unsecured indebtedness incurred in the ordinary course of business (but excluding indebtedness for borrowed money);
- (e) unsecured Indebtedness in an aggregate maximum amount of \$500,000;
- (f) intercorporate Indebtedness between the Borrower and its Subsidiaries;
- (g) Hedging Obligations entered into in the ordinary course of business;
- (h) Indebtedness of the Borrower or any Guarantor, as the case may be, arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or Subsidiary of the Borrower or any Guarantor, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary of GFI, the Borrower or any Guarantor for the purpose of financing such acquisition; provided that the maximum assumable

liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Borrower or the Guarantor, as the case may be, and the relevant Subsidiary in connection with such disposition;

- (i) Subordinated Indebtedness; and
- (j) Indebtedness in an amount not to exceed \$2,500,000 incurred or assumed in connection with Permitted Purchase Money Security Interests;

"Permitted Investments" means Investments made on or after the Closing Date consisting of:

- (a) Investments by the Borrower or a Guarantor, in the Borrower or a Guarantor;
- (b) Investments in cash and Cash Equivalents;
- (c) payroll, travel and similar advances made in the ordinary course of business for a *bona fide* business purpose by the Borrower or a Guarantor to employees of the Borrower or a Guarantor, as the case may be; provided that such advances are for items expected at the time of such advances to be treated as expenses for accounting purposes;
- (d) loans or advances made in the ordinary course of business by the Borrower or any Guarantor to employees of the Borrower or any such Guarantor in an amount not to exceed \$500,000 in the aggregate at any one time outstanding;
- (e) securities or other property received from another Person by the Borrower or any Guarantor in connection with any bankruptcy proceeding or by reason of a composition or readjustment of any debt or a reorganization of such Person or as a result of a foreclosure, perfection or enforcement of any Lien in exchange for evidences or Indebtedness, securities or other Property of such Person held by the Borrower or any Guarantor, or for other liabilities or obligations of such other Person to the Borrower or any Guarantor that were created in accordance with the terms of this Agreement;
- (f) lease, utility and other similar deposits made in the ordinary course of business;
- (g) any Investment existing on the Closing Date;
- (h) Hedging Obligations entered into in the ordinary course of business; and
- (i) additional Investments not to exceed \$1,000,000 at any one time outstanding;

"Permitted Purchase Money Security Interest" means any Lien on any property or asset created, issued or assumed to secure Indebtedness incurred, assumed or issued to satisfy, in whole or in part, the purchase price of such property or asset (including installation costs) and expenditures made for any repairs, alterations, construction, development or improvements performed thereon or added thereto, provided that such

Lien, or any agreement or other instrument under which such Lien is constituted, is limited to the property or asset acquired in connection with the assumption, issuance or incurring of such Indebtedness and is created, issued or assumed concurrently with the acquisition of such property or assets;

"**Person**" means an individual, company, partnership (whether or not having separate legal personality), corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government, state or political subdivision thereof or any agency of such government, state or political subdivision;

"**Prepayment Amount**" means, with respect to any Prepayment Trigger Event that is an Asset Disposition Trigger Event, 100% of the Asset Sale Proceeds, with respect to a Prepayment Trigger Event that is an Insurance Trigger Event, 100% of the Net Cash Proceeds and, with respect to a Prepayment Trigger Event that is a Change of Control, 100% of the outstanding Advance, in each case, together with any accrued interest, premium, costs and other amounts payable hereunder and under the Loan Documents;

"**Prepayment Trigger Event**" means an Insurance Trigger Event, an Asset Disposition Trigger Event or a Change of Control;

"**Prime Rate**" means, on any day, the rate of interest per annum equal to the floating rate of interest per annum announced from time to time by Bank of Montreal (or any other lender consented to by the Administrative Agent and the Required Lenders), and in effect on such day, as the reference rate of interest the Servicing Agent will use to determine rates of interest for Canadian Dollar commercial loans made by the Administrative Agent to borrowers in Canada and referred to by Bank of Montreal as its "prime rate", adjusted automatically with each announced or displayed change in any such rate, all without the necessity of any notice to the Borrower or any other Person;

"**Prime Rate Loan**" means an advance or conversion or rollover of an advance in Canadian Dollars bearing interest by reference to the Prime Rate;

"**Property**" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible;

"**Publicly-Traded Securities**" means securities which are publicly traded on any recognized stock exchange or electronic quotation system;

"**Real Property**" means any real property, whether owned or leased, in respect of which the Borrower or any Subsidiary has or hereinafter acquires any right or interest;

"**Reference Lender**" means Bank of America, N.A.;

"**Refinancing Indebtedness**" means Indebtedness that renews, replaces, defeases, refunds, refinances or extends any Indebtedness permitted to be incurred by the Borrower and the Subsidiaries or any of them pursuant to the terms of this Agreement, but only to the extent that: (i) if the Indebtedness being refunded, refinanced, renewed, replaced,

defeased or extended is subordinated in right of payment to the Facility, the Refinancing Indebtedness is subordinated to the Facility to at least the same extent as the Indebtedness being renewed, replaced, defeased, refunded, refinanced or extended, (ii) the Refinancing Indebtedness is scheduled to mature either (A) no earlier than the Indebtedness being renewed, replaced, defeased, refunded, refinanced or extended or (B) after the Maturity Date, (iii) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the Maturity Date has a Weighted Average Life of Maturity at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Weighted Average Life to Maturity of the portion of the Indebtedness being renewed, replaced, defeased, refunded, refinanced or extended that is scheduled to mature on or prior to the Maturity Date, (iv) such Refinancing Indebtedness is in an aggregate maximum principal amount (or, if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (a) the aggregate maximum principal amount (or, if issued with original issue discount, the aggregate accreted value) of the Indebtedness being renewed, replaced, defeased, refunded, refinanced or extended and the amount of any premium reasonably necessary to accomplish such refinancing, (b) the amount of accrued and unpaid interest, if any, and premiums owed, if any, not in excess of pre-existing prepayment provision on such Indebtedness being renewed, replaced, defeased, refunded, refinanced or extended (c) the amount of reasonable fees, expenses and costs related to the incurrence of such Refinancing Indebtedness, (v) such Refinancing Indebtedness is incurred by the same Person that initially incurred the Indebtedness being renewed, replaced, defeased, refunded, refinanced and extended and is either expressly subject to the terms of the Intercreditor Agreement, to the extent such Refinancing Indebtedness is subject to the Intercreditor Agreement as of the Closing Date, or subject to such other arrangements that are satisfactory to the Administrative Agent, in its sole discretion;

"Release" has the meaning specified in Section 5.1(k);

"Reorganization" has the meaning specified in Section 9.1;

"Required Lenders" means, at any time, Lenders whose outstanding Commitments represent more than 50% of the sum of the total outstanding Advance at such time;

"Restricted Payment" means any of the following:

- (a) the declaration of any dividend or other distribution or payment on Stock of the Borrower or any Subsidiary of the Borrower or any payment made to the direct or indirect holders (in their capacities as such) of Stock of the Borrower or any Subsidiary of the Borrower (other than (i) dividends or distributions payable solely in Stock of the Borrower or any Subsidiary of the Borrower or in options, warrants or other rights to purchase such Stock; and (ii) in the case of Subsidiaries, dividends or distributions payable to the Borrower or a Subsidiary of the Borrower that is also a Guarantor and *pro rata* dividends or distributions payable to the other holders of Stock of such Subsidiary), provided that nothing in this clause (a) shall be construed to prohibit any transaction, the prohibition of which, by operation of this definition, would violate Section 6.2(f);

- (b) the purchase, redemption or other acquisition or retirement for value of any Stock of the Borrower or any of the Subsidiaries (other than Stock owned by the Borrower or a Guarantor) or any option, warrant, or other right to purchase Stock;
- (c) the making of any principal payment on, or the purchase, defeasance, repurchase, redemption or other acquisition or retirement for value, of any Subordinated Indebtedness, including the Stonehouse Subordinated Note;
- (d) the making of any interest or other payment on the Stonehouse Subordinated Note prohibited by the Stonehouse Subordination Agreement;
- (e) the payment of any Management Fees; or
- (f) the making of any Investment or guarantee of any Investment in any Person other than a Permitted Investment;

"Revolving Lender" means Bank of America, N.A. (acting through its Canada branch);

"Revolving Credit Facility" means the revolving credit facility made by the Revolving Lender to the Borrower pursuant to the loan and security agreement between the Borrower and the Revolving Lender dated May 24, 2007 maturing November 24, 2012 with a maximum commitment of \$30 million, as may be amended, restated, replaced or superceded in accordance with the terms of the Intercreditor Agreement;

"S&P" means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc.;

"Sale and Lease-Back Transaction" means any arrangement with any Person providing for the leasing by the Borrower or any Guarantor of any Property, which Property has been or is to be sold or transferred by the Borrower or such Guarantor to such Person in contemplation of such leasing;

"Security" means, collectively, the Borrower's Security and the Guarantors' Security;

"Security Documents" means, collectively, the Borrower's Security Documents and the Guarantors' Security Documents;

"Senior Indebtedness" means the principal of and premium, if any, and interest on, and any and all other fees, expense reimbursement obligations and other amounts due pursuant to all agreements, documents and instruments providing for, creating, securing or evidencing or otherwise entered into in connection with:

- (a) all Indebtedness of the Borrower or any Guarantor owed to the Revolving Lender under the Revolving Credit Facility;
- (b) all obligations of the Borrower or any Guarantor with respect to the Facility;

- (c) all obligations of the Borrower or any Guarantor to reimburse any bank or other person in respect of amounts paid under letters of credit, bankers' acceptances or other similar instruments in respect of Indebtedness which is not Subordinated Indebtedness;
- (d) all other Indebtedness of the Borrower or any Guarantor that does not provide that it is subordinated to the Facility or the Guarantee of such Guarantor, as the case may be;
- (e) all deferrals, renewals, extensions and refundings of, and amendments, modifications and supplements to and restatements of, any of the Senior Indebtedness described above;

"Servicing Agent" means OFS Agency Services, LLC in its capacity as servicing agent for the Lenders hereunder, or any successor Servicing Agent appointed pursuant to Section 11.6(b) or 11.6(c);

"Solvent" means, with respect to any Person on any date, that on such date (a) the fair value of the Property of such Person is greater than the fair value of the liabilities (including contingent, subordinated, matured and unliquidated liabilities) of such Person, (b) the present fair saleable value of the assets of such Person is greater than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is paying its debts and liabilities in the ordinary course as they come due, and such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay in the ordinary course as such debts and liabilities mature and (d) such Person is not engaged in or about to engage in business or transactions for which such Person's Property would constitute unreasonably small capital;

"Statutory Reserves" means, in respect of a relevant LIBOR Period and a Lender, a fraction (expressed as a decimal) the numerator of which is the number one and the denominator of which is the number one minus the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal prescribed by the Governmental Authority having jurisdiction over such Lender, in respect of time deposits in Canadian Dollars given outside the home jurisdiction of such Lender in an Equivalent U.S. \$ Amount comparable to the advance for such LIBOR Period and with a maturity comparable to such LIBOR Period. Statutory Reserves shall be adjusted automatically on and as of any change in any reserve percentage;

"Stock" means all shares, options, warrants, general or limited partnership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited partnership or equivalent entity whether common, preferred or special, voting or non-voting or participating or non-participating;

"Stock Purchase Agreement" means the stock purchase agreement between Stonehouse, StonehouseCo and Newco dated April 30, 2007;

"Stonehouse" means Glenn Stonehouse;

"**Stonehouse Subordinated Note**" means the non-amortizing subordinated note made by the Borrower to StonehouseCo in the principal amount of \$12,000,000 maturing May 24, 2013 and bearing interest at a rate of 9.00% per annum, as may be amended, restated, replaced or superseded in accordance with the terms thereof and the terms of the Subordination Agreement;

"**StonehouseCo**" means Stonehouse Group Inc.;

"**Subordinated Indebtedness**" shall mean Indebtedness of the Borrower or any Guarantor or Subsidiary of the Borrower which is: (A) subordinated to all amounts at any time due and payable under any of the Loan Documents in a manner and form satisfactory to the Administrative Agent in its sole discretion, as to right and time of payment and as to any other rights and remedies thereunder, and (B) expressly subject to the terms of an intercreditor agreement or to a subordination agreement acceptable in form and substance to the Administrative Agent in its sole discretion;

"**Subordination Agreement**" means the subordination agreement dated as of May 24, 2007 between GSO Special Situations Fund LP (as assigned to BTM LP, as Administrative Agent) and StonehouseCo, as amended by the Stonehouse Subordinated Amendment Agreement and as may be further amended, restated, replaced or superseded in accordance with the terms thereof;

"**Subordination Amendment Agreement**" means an amendment agreement between the Administrative Agent and StonehouseCo in form and substance satisfactory to the Administrative Agent and each Lender, pursuant to which StonehouseCo has agreed, *inter alia*, that it shall not be entitled to receive any interest payments under the Stonehouse Subordinated Note unless the ratio of Senior Indebtedness to LTM EBITDA, measured as of the last day of the immediately preceding fiscal quarter of the Borrower, is equal to or less than 3.5:1 on an actual and *pro forma* basis, giving effect to the proposed payment as if it had been made on the last day of such fiscal quarter;

"**Subsidiary**" means, with respect to any Person, any corporation more than 50% of the Voting Securities of which at the time of determination are beneficially owned, directly or indirectly, by such Person or any corporation, joint venture, partnership or other entity which is subject to the direct or indirect Control of such Person;

"**Successor Corporation**" has the meaning specified in Section 9.1;

"**Taxes**" means all present and future taxes, charges, fees, levies and other assessments, whether disputed or not, including all income, sales, use, payroll, withholding, employer health, excise, real property, capital, value-added, goods and services, capital gain, stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and charges, fees and other amounts made on or in respect thereof;

"**Termination and Discontinued Store Costs**" means (a) any severance or termination pay made to employees of the Borrower whose employment with the Borrower is terminated, (b) any costs arising from the closure of any of the Borrower's

underperforming retail shops, and (c) any cash losses from stores that have been discontinued;

"Transferee" has the meaning specified in Section 12.12(a);

"Voting Securities" means securities of any class of any Person carrying voting rights under all circumstances, provided that, for the purpose of this definition, securities which only carry the right to vote conditionally on the happening of an event shall not be considered Voting Securities unless such right has become exercisable; and

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding aggregate principal amount of such Indebtedness into (b) the sum of the total of the products obtained by multiplying (i) the amount of each then remaining instalment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

1.2 Headings

The division of this Agreement into Articles and Sections and the insertion of an index and headings are for convenience of reference only and shall not affect the construction or interpretation hereof. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section, paragraph or other portion hereof and include any agreement supplemental hereto. Save as expressly provided herein, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.3 Extended Meanings

Words importing the singular number only shall include the plural and *vice versa*, and words importing any gender shall include all genders. The term "including" means "including without limitation".

1.4 References to the Agents and Lenders

Any reference in this Agreement to the Administrative Agent, the Servicing Agent or any Lender shall be construed so as to include its successors and permitted transferees or assigns hereunder in accordance with its respective interests.

1.5 Accounting Terms and Practices

Unless otherwise provided herein, all accounting terms referred to herein shall be construed in accordance with GAAP and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles, consistently applied except for the absence of footnotes in unaudited statements.

1.6 Non-Banking Days

Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Banking Day, such payment shall be made or such action shall be taken on the next succeeding Banking Day and, in the case of the payment of any monetary amount, the extension of time shall be included for the purposes of computation of interest or fees thereon.

1.7 References to Time of Day

Except as otherwise specified herein, a time of day shall be construed as a reference to the time of day in Toronto, Ontario.

1.8 Severability

In the event that one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any Applicable Law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

1.9 Currency

All monetary amounts in this Agreement refer to Canadian Dollars unless otherwise specified.

1.10 References to Statutes

Except as otherwise provided herein, any reference in this Agreement to a statute, legislation or regulation shall be construed to be a reference thereto as the same may have been, or may from time to time be, amended or re-enacted.

1.11 References to Agreements

Except as otherwise provided herein, any reference herein to this Agreement or any other agreement or document shall be construed to be a reference to this Agreement or such other agreement or document, as the case may be, as the same may have been, or may from time to time be, amended, varied, novated, restated or supplemented.

1.12 Amendment and Restatement

This Agreement is and shall for all purposes be an amendment and a restatement of the provisions of the Existing Credit Agreement, which was an amendment and restatement of the Original Credit Agreement. This Agreement supersedes the Existing Credit Agreement and the Original Credit Agreement insofar as it constitutes the entire agreement between the parties concerning the subject matter of this Agreement, but does not constitute a novation of the Existing Credit Agreement, the Original Credit Agreement or any of the indebtedness, liabilities or obligations of the Borrower under the Existing Credit Agreement or the Original Credit Agreement. All of the indebtedness, liabilities and obligations under the Original Credit

Agreement and the Existing Credit Agreement (including the Advance, as such term is defined in such agreements), constitute indebtedness, liabilities and obligations under this Agreement. Any section references to the Original Credit Agreement and the Existing Credit Agreement in the Loan Documents entered into in connection with such agreements shall be deemed to be amended, as applicable, to refer to the corresponding section references of this Agreement.

1.13 **Schedules**

The following are the Schedules and Exhibits attached hereto and incorporated by reference and deemed to be part hereof:

- Exhibit A - Form of Drawdown Notice
- Exhibit B - Form of Interest Determination Notice
- Exhibit C - Form of Transfer Agreement
- Schedule 1.1(a) - Lenders and Commitments
- Schedule 1.1(c) - Permitted Encumbrances
- Schedule 5.1(h) - Permitted Affiliate Transactions
- Schedule 5.1(g) - Items Not Treated Consistently
- Schedule 5.1(i) - Litigation
- Schedule 5.1(x) - Insurance
- Schedule 5.1(z) - Capitalization and Subsidiaries, Etc.
- Schedule 5.1(bb) - Real Property
- Schedule 12.12 - Disqualified Lenders

ARTICLE 2
THE FACILITY

2.1 **The Facility**

Upon the terms and subject to the conditions hereof, each of the Lenders hereby severally agrees to continue the outstanding Advance to the Borrower on the terms and conditions set forth herein and in the amount of its Participation. The obligations of each Lender hereunder with respect to its Participation are several.

2.2 **Purpose**

The Facility was made available to the Borrower by the Lenders to fund the recapitalization of the Borrower that was consummated on the Closing Date in connection with the transactions contemplated by the Stock Purchase Agreement together with the payment of fees and expenses related to the transactions contemplated by the Stock Purchase Agreement.

2.3 **Availability**

The Borrower made a Drawdown on the Closing Date in an amount equal to \$50,000,000 pursuant to an irrevocable Drawdown Notice given to the Administrative Agent on the Closing Date. The Borrower acknowledges having received such Advance and agrees that no further monies shall be advanced to the Borrower on account of the Advance. The amount of the Advance shall be reduced upon prepayment of any portion thereof pursuant to the terms of

this Article 2 and increased on such Interest Payment Date from the Effective Date to the first anniversary thereof in accordance with Section 2.10(b).

2.4 Participation of Each Lender

The amount of the Participation of each Lender in the Advance is equal to each such Lender's Commitment, as set forth in Schedule 1.1(a).

2.5 Repayment of the Facility

Unless accelerated under Section 8.2 and subject to Section 2.6, the Borrower shall repay and there shall become due and payable on the Maturity Date, the principal amount of the Advance then outstanding, together with accrued and unpaid interest thereon and any other amounts owing hereunder and under the other Loan Documents.

2.6 Voluntary Prepayments

Subject to the terms of the Intercreditor Agreement and Section 2.7 and Section 10.2, at any time and from time to time, the Borrower shall be entitled, at its option, to prepay, on notice to the Servicing Agent in accordance with Section 2.7, all or any portion of the Advance at a redemption price equal to 100% of the principal amount of the Commitments being prepaid.

2.7 Prepayment Notice

The Borrower shall give written notice to the Servicing Agent of each voluntary prepayment pursuant to Section 2.6 not less than three Banking Days prior to such voluntary prepayment. Such notice (a "Prepayment Notice") shall be irrevocable, and shall specify:

- (a) the date on which the prepayment is to take place; and
- (b) the principal amount of the Advance or the portion thereof which is to be prepaid and the additional amounts payable in accordance with Section 2.6, if any.

2.8 Mandatory Prepayments

(a) On the Effective Date, the Borrower shall prepay \$6 million of the outstanding Advance at a redemption price equal to 100% of such outstanding amount.

(b) On or before (i) September 15, 2010, and (ii) April 15 of each year thereafter, a portion of the outstanding Advance equal to 50% of Cumulative Free Cash Flow, calculated as of the last day of the immediately preceding fiscal year of the Borrower, shall become due and payable and the Borrower shall prepay such amount at a redemption price equal to 100% of such portion, provided that the Borrower shall have the option to defer the payment that would otherwise be due on September 15, 2010 to April 15, 2011 if the LTM EBITDA as of January 30, 2009 is less than \$10,000,000.

(c) Subject to the terms of the Intercreditor Agreement, on each occasion that a Prepayment Trigger Event occurs, that portion of the outstanding Advance equal to the relevant Prepayment Amount shall become due and payable and the Borrower shall prepay such amount at a redemption price equal to 100% of such portion within 2 Banking Days following such Prepayment Trigger Event.

(d) Any amount prepaid by the Borrower hereunder, including under Section 2.6 or this Section 2.8, shall be not refundable and may not be redrawn by and shall not be returnable to the Borrower.

2.9 Application of Repayments

Except as otherwise indicated herein, all payments made by or for the Borrower for the account of the Lenders in connection herewith shall be applied *pro rata* in accordance with the Lenders' Participations as follows:

- (i) to amounts (other than principal or interest) due under any Loan Document in respect of fees, expenses, prepayment premiums, breakage costs and other amounts;
- (ii) to amounts due hereunder in respect of interest on the outstanding principal amount of the Advance in order of the day following the last day of each Interest Period thereon, commencing with the earlier or earliest thereof; and
- (iii) to the principal amount of the outstanding Advance.

If any amount paid by the Borrower or received by any Lender, or by the Servicing Agent or Administrative Agent on behalf of any Lender, hereunder is required to be held in trust or returned to any third party, including pursuant to the Intercreditor Agreement, such amount shall be deemed not to have been paid to or received by or on behalf of such Lender and such amount shall continue to form a part of the outstanding Advance and be payable in accordance with the terms of this Agreement.

2.10 Interest on the Advance

(a) The Advance shall bear interest at the Interest Rate. For LIBOR Loans in effect from time to time interest shall be calculated and payable (i) at the end of the applicable LIBOR Period; (ii) if such LIBOR Period is in excess of three months, at the end of each three month period during such LIBOR Period and on the last day of such LIBOR Period; and (iii) on the date on which such LIBOR Loan becomes due and payable or is prepaid.

Each Interest Determination Notice for a LIBOR Loan shall specify the next LIBOR Period. No LIBOR Period shall end after the Maturity Date.

The Borrower shall pay to the Servicing Agent interest in Canadian Dollars on the principal amount of each Prime Rate Loan from the date on which such Prime Rate Loan was made or deemed made until such Prime Rate Loan shall have been repaid in full, at a floating

rate per annum equal to the Prime Rate in effect from time to time, calculated (and if not paid when due compounded) monthly and payable (i) monthly in arrears on the first Banking Day of each month (for all amounts accrued prior thereto), and (ii) on the date on which such Prime Rate Loan becomes due and payable.

(b) Interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed (including the first day of each Interest Period but excluding the last day thereof) and divided by 360. From the Effective Date to the first anniversary thereof, an amount equal to that portion of any interest accrued during such time comprising 2% (or 200 basis points) accrued on the outstanding Advance shall be capitalized and added on the applicable Interest Payment Date to the amounts owing under this Agreement in lieu of being paid by the Borrower in cash. Any interest that is capitalized in accordance with this Section 2.10(b) shall form part of the principal amount of the outstanding Advance and shall bear interest thereafter at the Interest Rate. The balance of any accrued interest shall be payable in cash in Canadian Dollars in arrears on the applicable Interest Payment Date. After the first anniversary of the Effective Date, all of the interest on the outstanding principal amount of the Advance shall be payable in cash in Canadian Dollars in arrears on the Interest Payment Date relating thereto and no portion thereof shall be added to the principal amount of the outstanding Advance.

(c) If, with respect to any LIBOR Loan requested, any Lender determines in good faith and acting reasonably which determination shall be final, conclusive and binding upon the Borrower that:

- (i) by reason of circumstances affecting financial markets inside or outside Canada, as the case may be, deposits in Canadian Dollars (or if relevant, U.S. Dollars) of sufficient amount and applicable term to fund such LIBOR Loan are not available to such Lender in the London interbank offering market;
- (ii) by reason of circumstances affecting the London interbank offering market, adequate and fair means do not exist for such Lender to determine the applicable LIBOR Rate for the LIBOR Period selected by the Borrower;
- (iii) the making or the continuance of a LIBOR Loan has become impractical by reason of circumstances which materially and adversely affect the London interbank market; or
- (iv) any change to any present, or the introduction of any new, legal requirement or any policy or request (whether or not having the force of law) of any Governmental Authority, or in the interpretation or application thereof by any Governmental Authority, has made it unlawful for the Lender to make, fund, or maintain or to give effect to its obligations in respect of any LIBOR Loan as contemplated hereby;

such Lender (if it makes such determination) shall so notify the Servicing Agent whereupon the Servicing Agent shall so notify the Borrower and:

- (A) the right of the Borrower to select such a LIBOR Loan shall be suspended until such Lender determines in good faith that the circumstances causing such suspension no longer exist and so notifies the Borrower;
- (B) any outstanding Drawdown Request or Notice of Interest Determination for such LIBOR Loan shall be deemed to constitute a request for an Advance by way of a Prime Rate Loan for a period of time equal to the requested LIBOR Period; and
- (C) if any LIBOR Loan is already outstanding at any time when the right of the Borrower to select a LIBOR Loan is suspended, the Borrower shall, by written notice to the Servicing Agent and relevant Lender given within three (3) Business Days of the date of the above-described Servicing Agent's notification, elect in its discretion to either (i) prepay within seven (7) Banking Days (or on such earlier date as may be required to comply with any applicable legal requirement) of the date of such written notice to the Servicing Agent and relevant Lender such LIBOR Loan, with all interest accrued to the date of such prepayment and on all such amounts as are required to compensate the affected Lender for (A) any Additional Compensation payable pursuant to Section 3.1, and (B) any additional amounts payable pursuant to Section 10.2, or (ii) convert on the maturity date of the relevant LIBOR Period (or on such earlier date as may be required to comply with any applicable legal requirement), such outstanding LIBOR Loan to a Prime Rate Loan.

(d) Not later than 10:00 a.m. on the third Banking Day prior to the last day of the then current Interest Period the Borrower shall deliver an Interest Determination Notice to the Servicing Agent. If the Advance is not repaid on the last day of any Interest Period and if the Servicing Agent has not received an Interest Determination Notice specifying the term of the next Interest Period for the Advance on or before 10:00 a.m. on the third Banking Day prior to the last day of the then current Interest Period, then the Borrower shall be deemed to have delivered an Interest Determination Notice electing an Interest Period of three months for the Advance and Interest shall be payable on the Advance at the applicable Interest Rate for such period.

(e) Except as otherwise provided herein, the Advance shall not be repaid or prepaid except on the last day of any Interest Period unless the Borrower pays to the Agents and the Lenders any amounts which may be payable under Section 10.2.

2.11 Method and Place of Payment

All payments of principal, interest and fees hereunder shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to an account of the Borrower maintained at the principal office of the Servicing Agent in

its designated place of business or such other place as the Borrower and the Servicing Agent may from time to time agree. Payments received after such time shall be deemed to have been made on the next following Banking Day. Each payment to be made by the Borrower under this Agreement shall be made in full without deduction, set-off or counterclaim of any kind or for any reason. Repayments of the Advance and payments of interest on the Advance shall be made in Canadian Dollars. The Borrower hereby irrevocably authorizes and directs the Servicing Agent to deduct and set-off from such account all amounts due to the Administrative Agent, the Servicing Agent or any Lender from time to time hereunder.

2.12 Fees

The Administrative Agent, on behalf of the Lenders, acknowledges receipt of \$725,000.00, being an amount equal to 1.45% of the Advance, from the Borrower on the Closing Date. From and after the Effective Date, the Borrower shall reimburse the Administrative Agent for the annual administrative fee payable by the Administrative Agent to the Servicing Agent promptly and, in any event, within 30 days of receiving an invoice therefor, provided that the Borrower's maximum liability for such fee shall not exceed \$17,500 for the fiscal year ending on January 31, 2010 and \$35,000 for each fiscal year thereafter.

2.13 Execution of Notices

Each Interest Determination Notice and notice of repayment or prepayment and, unless otherwise provided herein, all other notices, requests, demands or other communications to be given to either Agent by the Borrower hereunder shall be executed by any one officer or director of the Borrower.

2.14 Evidence of Indebtedness

The Servicing Agent shall open and maintain in accordance with its usual practice books of account evidencing the Advance and all other amounts owing by the Borrower to the Servicing Agent, the Administrative Agent and the Lenders hereunder. The Servicing Agent shall enter in the foregoing accounts details of each Interest Determination in respect of the Advance and of all amounts from time to time owing or paid by the Borrower to the Servicing Agent, and the amounts of principal, interest and fees payable from time to time hereunder. The information entered in the foregoing accounts shall constitute, in the absence of manifest error, *prima facie* evidence of the obligations of the Borrower to the Administrative Agent, the Servicing Agent and the Lenders hereunder, the date the Advance and the amounts the Borrower has paid from time to time on account of the principal of, interest on and fees related to the Advance.

2.15 Interest on Overdue Amounts

Where the Borrower or any Guarantor fails to pay any amount required to be paid by the Borrower or such Guarantor hereunder or under the Loan Documents when due, the Borrower or the Guarantor, as the case may be, shall pay interest on such unpaid amount, whether before or following demand, default or judgment, including overdue interest from the time such amount is due until paid at an annual rate equal to the sum of 2% plus the Interest

Rate, compounded monthly in arrears on the last Banking Day of each calendar month in each year and payable on demand.

2.16 Criminal Rate of Interest

Notwithstanding the foregoing provisions of this Article 2, the Borrower shall in no event be obliged to make any payments of interest or other amounts payable to either Agent or any Lender hereunder in excess of an amount or rate which would be prohibited by law or would result in the receipt by either Agent or any Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)).

2.17 Compliance with the Interest Act (Canada)

For the purposes of this Agreement, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis of such determination.

2.18 Nominal Rate of Interest

The parties acknowledge and agree that all calculations of interest under this Agreement are to be made on the basis of the nominal interest rate described herein and not on the basis of effective yearly rates or on any other basis which gives effect to the principle of deemed reinvestment of interest. The parties acknowledge that there is a material difference between the stated nominal interest rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

**ARTICLE 3
CHANGE OF CIRCUMSTANCES**

3.1 Increased Costs

In the event of (i) any Applicable Law coming into force after the date hereof or (ii) any change in any existing Applicable Law, or in the interpretation or application thereof by any court or by any Governmental Authority or other authority or entity charged with the administration thereof or (iii) compliance by a Lender with any direction, request or requirement (whether or not having the force of law) of any Governmental Authority or other authority or entity charged with the administration of any Applicable Law (each such event being hereinafter referred to as a "change in law") which now or hereafter:

- (a) subjects (whether directly, or as a result of any withholding or deduction by the Borrower) a Lender to any Tax (other than Canadian withholding tax) or changes the basis of taxation, or increases any existing Tax (in each case, except for the coming into force of any tax or change in the basis of taxation or manner of collection of any tax in respect of or the change in the rate of Tax charged on

income of a Lender as a whole) and including any Other Tax that is payable by a Lender on, or required by Applicable Law to be withheld by the Borrower from, any Additional Compensation, as hereinafter defined), on payments of principal, interest, premium or other amounts payable by the Borrower to such Lender hereunder or on or by reference to the amount of the Advance made or to be made by such Lender hereunder or on or by reference to the commitment of such Lender hereunder, or

- (b) imposes, modifies or deems applicable any reserve, special deposit or similar requirements or otherwise imposes any cost on a Lender in funding or maintaining all or any of the Advance hereunder, or
- (c) will have the effect of increasing the amount of overall capital required to be maintained by a Lender, taking into account the existence of such Lender's participation in any Advance hereunder (including, without limitation, all or any part of its commitment),

and the result of any of the foregoing is to increase the cost to such Lender, reduce the income receivable by it or reduce the effective return on the capital of such Lender in respect of the Advance and/or its Commitment, such Lender shall give notice thereof to the Borrower and to the Servicing Agent (a "Notice of Amount") stating the event by reason of which it believes it is entitled to Additional Compensation (as hereinafter defined), such cost and/or such reduction in such return (or such proportion of such reduction as is, in the reasonable and *bona fide* opinion of such Lender, attributable to its obligations hereunder), the amount of such Additional Compensation (as hereinafter defined) incurred by such Lender together with a certificate of a duly authorized officer of such Lender setting forth the Additional Compensation and the basis of calculation of such Additional Compensation including a copy of the Applicable Law or direction, request or requirement (whether or not having the force of law) of any Governmental Authority or other authority or entity charged with the administration of any Applicable Law, provided that the disclosure of the same can be lawfully made and that such Lender shall not be required to disclose any information required to be kept confidential by Applicable Law. The Borrower shall pay to such Lender, within 10 Banking Days of the date of receipt of any Notice of Amount, the amount specified in such Notice of Amount (in this Article 3 referred to as "Additional Compensation"). The obligation to pay such Additional Compensation for subsequent periods will continue until the earlier of termination of the Advance or the lapse or cessation of the change in law giving rise to the initial Additional Compensation. Each Lender shall make reasonable efforts to limit the incidence of any such Additional Compensation and seek recovery for the account of the Borrower upon the Borrower's request at the Borrower's expense, provided a Lender in its reasonable determination suffers no appreciable economic, legal, regulatory or other disadvantage. In the event the Lender subsequently recovers all or part of the Additional Compensation paid by the Borrower, it shall promptly repay an equal amount to the Borrower, provided that no Lender shall have any obligation to arrange its affairs in such a way as to ensure that all or any part of such Additional Compensation is recovered. The obligation to pay such Additional Compensation for subsequent periods will continue until the earlier of termination of the Advance or the Commitment affected by the change in law, change in capital requirement or the lapse or cessation of the change in law giving rise to the initial Additional Compensation. A Lender shall only be entitled to rely upon the provisions of this

Section 3.1 if and for so long as it is not treating the Borrower in any materially different or in any less favourable manner than is applicable to any other similar customers of such Lender, where such other similar customers are bound by similar provisions to the foregoing provisions of this Section 3.1.

3.2 Illegality

If, with respect to a Lender, the implementation of any existing provision of Applicable Law or the adoption of any Applicable Law, or any change therein or in the interpretation or application thereof by any court or by any statutory board or commission now or hereafter makes it unlawful for such Lender to make, fund or maintain all or any portion of the Advance, to maintain all or any part of its commitment hereunder, such Lender may, by written notice thereof to the Borrower, declare such affected part of the obligations of such Lender under this Agreement with respect to the activity which is unlawful to be terminated whereupon the same shall forthwith terminate, and the Borrower shall repay to such Lender within the time required by such law (or as promptly as practicable if already unlawful or at the end of such longer period, if any, as such Lender, in its *bona fide* opinion, may agree) the principal of the Advance made by such Lender, together with all accrued interest, premium, costs, expenses and other amounts payable hereunder or if conversion would avoid the activity that is unlawful, convert the affected part of the Advance to an Advance with an Interest Rate equal to the Prime Rate. If any such change shall affect only that portion of such Lender's obligations under this Agreement that is, in the *bona fide* opinion of such Lender, severable from the remainder of this Agreement so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of such Lender or the Borrower hereunder, such Lender shall declare its obligations under only that portion so terminated. Each Lender agrees if possible to designate a different lending office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions to Effectiveness

This Agreement shall not be effective until the date on which each of the following conditions is satisfied by the Borrower:

- (a) this Agreement and the Borrower's Security Documents, in form and on terms satisfactory to the Administrative Agent, shall have been duly authorized, executed and delivered to the Lenders by the Borrower and shall constitute legal, valid and binding obligations of the Borrower;
- (b) the representations and warranties set forth in Section 5.1 shall be true and correct on and as of the Effective Date;
- (c) except for the Events of Default that have been waived pursuant to Section 12.2, no Default or Event of Default shall have occurred and be continuing and the Borrower shall have delivered an Officer's Certificate to such effect;

- (d) the Security and all necessary financing statements shall have been duly registered, filed and recorded against the Borrower in all jurisdictions where such registration, filing or recording, in the reasonable opinion of the Lenders, is necessary or advantageous to preserve, protect and perfect the charges and security interest created or intended to be created by the Security Documents;
- (e) the Borrower shall have delivered to the Administrative Agent reasonably satisfactory evidence that customary insurance coverage (with adequate and customary limits and deductibles) for business and operations of the type and size the Borrower and all of its Subsidiaries is in place, with (i) the Administrative Agent being named as (A) a loss payee, and (B) an additional insured; and (ii) an endorsement that 30 days' notice shall be provided to the Administrative Agent for any cancellation, modification or waiver thereunder and that if the insurance carrier shall have received written notice from the Administrative Agent of the occurrence and continuance of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower under such policies directly to the Administrative Agent;
- (f) all fees and expenses payable to the Lenders or Administrative Agent (including all reasonable legal fees and expenses) in connection with the transactions contemplated hereby shall be paid in full, to the extent that such fees and expenses shall then be due and payable;
- (g) a favourable opinion of Counsel to the Borrower, addressed to the Administrative Agent and the Lenders from time to time party hereto, in form and substance satisfactory to the Administrative Agent and each Lender, shall have been delivered to the Administrative Agent and each Lender;
- (h) the Borrower shall have delivered to the Administrative Agent the Financial Statements referred to in Section 5.1(g) and the unaudited financial statements for the Borrower's fiscal year ended January 31, 2009 in form and substance satisfactory to the Administrative Agent and the Lenders;
- (i) the Administrative Agent shall have received evidence satisfactory to the Administrative Agent that the Revolving Credit Facility is in effect and all of the documents entered into in connection with the amendments to the Revolving Credit Facility shall be in form and substance acceptable to the Administrative Agent acting reasonably;
- (j) the Stonehouse Subordinated Note shall be in form and substance satisfactory to the Administrative Agent, and StonehouseCo shall have entered into and delivered the Subordination Amendment Agreement to the Administrative Agent;
- (k) the \$6 million payment referred to in Section 2.8(a) shall have been made to the Servicing Agent, for the account of the Lenders; and

- (l) the Administrative Agent shall have received such additional evidence, documents or undertakings as the Lenders may reasonably request to establish the consummation of the transactions contemplated hereby.

In each case where a document shall be delivered to the Lenders, the Borrower shall provide a sufficient number of copies for delivery of an originally executed copy of each document to each Lender and to the Administrative Agent and the Servicing Agent. The conditions set forth in this Section 4.1 are inserted for the sole benefit of each Lender and may be waived by each Lender in whole or in part, with or without terms or conditions. The Lenders hereby acknowledge and confirm that the conditions set forth in Sections 4.1(d) and 4.1(h) have been satisfied on or prior to the Effective Date.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

The Borrower and any Guarantor jointly and severally represents and warrants as follows to the Administrative Agent, the Servicing Agent and each Lender, and each of the Administrative Agent and each Lender acknowledges and confirms that it is relying upon such representations and warranties in having made and continuing the Advance hereunder:

- (a) **Corporate Status.** The Borrower is a corporation duly amalgamated and validly existing under the laws of the Province of Ontario and any Guarantor and each of its and the Borrower's Subsidiaries is a corporation duly incorporated or amalgamated or is validly existing as a partnership or is otherwise organized and validly existing under the laws of the jurisdiction of its incorporation specified in Schedule 5.1(z). Each of the Borrower, any Guarantor and each of their Subsidiaries has all necessary corporate power and authority to conduct its business as presently conducted and to own or lease its properties and assets in each jurisdiction where such properties and assets are situated or such business is conducted.
- (b) **Corporate Power and Authority.** Each of the Borrower and any Guarantor has full corporate power and authority to enter into the Loan Documents to which it is a party, and to do all acts and things and execute and deliver all documents as are required hereunder or thereunder to be done, observed or performed by it in accordance with the terms hereof or thereof.
- (c) **Authorization and Enforceability.** This Agreement and each of the other Loan Documents to which each of the Borrower and any Guarantor is a party has been delivered by the Borrower and any such Guarantor and constitutes a valid and legally binding obligation of the Borrower and any such Guarantor, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally.
- (d) **Conflict with Constating Documents and Agreements.** Neither the execution and delivery of the Loan Documents nor the consummation by the Borrower or

any Guarantor of any of the transactions herein and therein contemplated, nor compliance by the Borrower or any such Guarantor with the terms, conditions and provisions of the Loan Documents to which it is a party, will conflict with or result in a breach of any of the terms, conditions or provisions of:

- (i) the constating documents, certificates or articles of incorporation or by-laws of the Borrower, the Guarantor or any of their Subsidiaries or any unanimous shareholders' agreement relating to any of them;
 - (ii) any resolution of the shareholders, directors or any committee of directors of the Borrower, any Guarantor or any of their Subsidiaries;
 - (iii) any agreement (including any Material Contract), instrument or arrangement to which the Borrower, any Guarantor or any of their Subsidiaries is now a party or by which it, or its properties are, or may be, bound, or will constitute a default which could give rise to damages or the right to terminate such agreement, or will result in the creation or imposition of any Lien (other than Permitted Encumbrances) upon any of the properties or assets of the Borrower, the Guarantor or any of their Subsidiaries;
 - (iv) any judgment or order, writ, injunction or decree of any court; or
 - (v) any Applicable Law.
- (e) **No Other Authorization or Consents Necessary.** No action (including, without limitation, the giving of any consent, licence, right, approval, authorization, registration, order or permit) of, or filing with, any Governmental Authority is required to authorize, or is otherwise required in connection with, the execution, delivery and performance by the Borrower or any Guarantor of the Loan Documents or in order to render this Agreement and the Loan Documents legal, valid, binding or enforceable and no consents, approvals or other authorizations are required in connection with the assignment of accounts receivable pursuant to the Loan Documents except those actions which have been obtained or filings which have been made.
- (f) **No Third Party Consents.** Except for the consents and approvals that have been obtained by the Borrower, no consent or approval of any other party (including, without limitation, any landlord that is party to a Lease) is required in connection with the execution, delivery and performance by the Borrower or any Guarantor of the Loan Documents to which it is a party in order to render this Agreement or any of the Loan Documents to which the Borrower or any Guarantor is a party legal, valid, binding or enforceable against such Person except, in each case, those consents or approvals which have been obtained.
- (g) **Financial Statements.** Except as disclosed in Schedule 5.1(g), the audited consolidated Financial Statements most recently delivered to the Administrative Agent pursuant to Section 6.1(a) present fairly, in all material respects, the

financial position of the Borrower and its Subsidiaries as at such date and the unaudited consolidated Financial Statements of the Borrower and its Subsidiaries for the fiscal quarter or calendar month most recently ended present fairly, in all material respects, the financial position of the Borrower and its Subsidiaries as at such date, subject to normal year end adjustments. Since the date of the audited consolidated financial statements most recently delivered to the Administrative Agent, there has been no material adverse change in the assets, liabilities, condition (financial or otherwise) operations, or prospects of the Borrower or any of its Subsidiaries.

- (h) **Affiliate Transactions.** None of the Borrower, any Guarantor or any of their Subsidiaries has a Contractual Obligation with an Affiliate or engages in any transaction with any Affiliate, except (i) transactions among the Borrower and its Affiliates upon terms at least as favourable to such Person as an Arm's Length transaction with unaffiliated Persons, and (ii) the transactions described at Schedule 5.1(h).
- (i) **Litigation.** Other than actions, suits or proceedings claiming solely payment (whether by way of an amount owing, damages or otherwise) of an amount not exceeding \$250,000 in respect of any one matter or \$500,000 in the aggregate and except as disclosed in Schedule 5.1(i), on or before the Effective Date there are no actions, suits or proceedings pending or, to the best of the knowledge and belief of the Borrower and any Guarantor, threatened against or affecting the Borrower, any Guarantor or any of their Subsidiaries or any of their undertaking, property and assets, at law, in equity or before any arbitrator or before or by any Governmental Authority in respect of which the Borrower and any Guarantor have determined in good faith that there is a reasonable possibility of a determination adverse to the Borrower or any of its Subsidiaries and which could, if determined adversely, have a Material Adverse Effect and none of the Borrower, any Guarantor or any of their Subsidiaries is in default with respect to any Applicable Law or any order, writ, injunction or award of any government, commission, board, agency, court, arbitrator or instrumentality.
- (j) **Licences, etc. and Compliance with Laws.** All licences, franchises, certificates, consents, rights, rights-of-way, easements, entitlements, approvals, authorizations, registrations, orders and permits (collectively, "Permits") required to enable the Borrower, any Guarantor and their Subsidiaries to carry on their respective businesses as now conducted by them and to own, lease and operate their properties and assets have been duly obtained and are currently subsisting in good standing, except for such Permits, the absence of which has not had and could not reasonably be expected to have, a Material Adverse Effect. The Borrower, any Guarantor and each of their Subsidiaries have complied with all terms and provisions presently required to be complied with by them in all such Permits and with all Applicable Law and they are not in violation of any of the respective provisions thereof in respect of which such non-compliance or violation could have a Material Adverse Effect.

(k) **Compliance with Environmental Laws.**

- (i) The Borrower, any Guarantor and each of their Subsidiaries and, to the best of the knowledge of the Borrower and any Guarantor after due inquiry, those of any party having charge, management or control of any aspects of the Business, any Real Property of the Borrower and its Subsidiaries have been and are in compliance with Environmental Laws which are applicable to their operations and the release, emission, deposit, issuance, discharge, transportation or disposal ("Release") of any Hazardous Materials; the Borrower and its Subsidiaries have no liabilities (including contingent liabilities) in connection with any Release or likely Release and there are no conditions on any Real Property, which now, or with the passage of time or the giving of notice or both, may give rise to liability, and in respect of which such non-compliance, liabilities or conditions could have a Material Adverse Effect;
 - (ii) none of the Borrower, any Guarantor, or any of their Subsidiaries has received notice of or is aware of any judicial or administrative proceeding alleging with respect to it the violation of or any potential liability under any Environmental Laws and none of the Borrower, any Guarantor or any of their Subsidiaries has received notice of or is aware of or is subject to any Environmental Claim; and
 - (iii) none of the Borrower, any Guarantor or any of their Subsidiaries or, to the best of the knowledge of the Borrower and any Guarantor after due inquiry, any party having charge, management or control of any aspect of the Business or any Real Property, has ever caused or permitted any Hazardous Material to be used, placed, held, located, stored, released or disposed of on, in, under, through or at any such property or any part thereof or any other location that could give rise to liability to the Borrower or the Subsidiaries except in compliance with Environmental Laws.
- (l) **Encumbrances.** The Borrower, any Guarantor and each of their Subsidiaries has good and valid title to all of its Property and there are no Liens on any of the Property or undertaking of the Borrower or any Guarantor other than Permitted Encumbrances.
- (m) **No Default or Event of Default.** Except for the Events of Default that have been waived pursuant to Section 12.2, no Default or Event of Default has occurred and is continuing or would result from the execution, delivery or performance of the Obligations under any of the Loan Documents.
- (n) **No Agreement to Sell Assets, Etc.** Other than the sale of Inventory in the ordinary course of business, none of the Borrower, any Guarantor or any of their Subsidiaries has any legal obligation, absolute or contingent, to any Person to sell its Property (except as permitted by Section 6.2(d)) or to effect any merger,

consolidation or other reorganization of the Borrower, such Guarantor or such Subsidiary, as the case may be (except as permitted by Section 6.2(c)), or to enter into any agreement with respect thereto.

- (o) **No Action for Winding-Up or Bankruptcy.** There has been no voluntary or involuntary action taken either by or against the Borrower, any Guarantor or any of their Subsidiaries for any such corporation's winding-up, dissolution, liquidation, bankruptcy, receivership, administration or similar or analogous events in respect of such corporation or partnership or all or any material part of its assets or revenues.
- (p) **Taxes.** The Borrower, any Guarantor and each of their Subsidiaries have filed all tax returns which were required to be filed, paid all Taxes (including interest and penalties) which are due and payable other than any Tax the payment of which is being contested in good faith by proper proceedings and for which adequate cash reserves are being maintained.
- (q) **Location of Business.** A true and complete list of the location of the chief executive office and places of business of the Borrower, and any Guarantor is set forth in Schedule 5.1(z). Schedule 5.1(z) also contains a complete list of all bank accounts and accounts with securities intermediaries (including account number, beneficiary name, and other institutional information) maintained by the Borrower and any Guarantor.
- (r) **Location of Collateral.** With the exception of inventory in transit, all tangible assets comprising the Borrower's Collateral (as that term is defined in the Borrower's Security Documents) and the Guarantor's Collateral (as that term is defined in the Guarantors' Security Documents) are situate in the provinces and territories of Canada in which a financing statement or similar notice, filing, registration statement or other instrument required or desired to perfect or crystallize a Lien in favour of the Administrative Agent has been filed against the Borrower or the Guarantor, as the case may be.
- (s) **Registrations.** All registrations, filings and recordings as are necessary to preserve, protect and perfect the charges and security interest created, or intended to be created by, the Security Documents have been made.
- (t) **Employee Benefit Plans.** All obligations of the Borrower, any Guarantor and their Subsidiaries (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with employee benefit plans of the Borrower, any Guarantor and their Subsidiaries have been performed on a timely basis.
- (u) **Pension Plans.** None of the Borrower, any Guarantor or any of their Subsidiaries is a party to, has agreed to become a party to or has any Indebtedness, liabilities, obligations under, arising from, relating to or in connection with any Pension Plan.

- (v) **Labour Matters.** There are no strikes or other labour disputes pending or, to the knowledge of Borrower and any Guarantor, after due inquiry or investigation, threatened against the Borrower, any Guarantor or any of their Subsidiaries. There are no proceedings pending or, to the knowledge of Borrower and any Guarantor, after due inquiry or investigation, threatened between the Borrower, any Guarantor or any of their Subsidiaries and any labour organization or the Borrower's, any Guarantor's or any of their Subsidiary's employees, as applicable, including any unfair labour practices, charges or complaints or allegations of sex, age, race or other discrimination that are likely to be adversely determined and if adversely determined could be reasonably expected to have a Material Adverse Effect. The Borrower, any Guarantor and each of their Subsidiaries have each complied with all employment contracts (including all collective bargaining agreements, if any), employment policies, arbitration awards, Applicable Law (including those relating to wages, hours and collective bargaining) and orders resulting from alleged violations of any Applicable Law and have no material liability for any arrears of wages, accrued benefits, taxes or penalties for any failure to comply with any of the foregoing.
- (w) **Intellectual Property.** Each of the Borrower, any Guarantor and each of their Subsidiaries owns, licenses or otherwise has the full right to use, under validly existing agreements, all patents, licenses, trademarks, trade names, trade secrets, copyrights and all rights with respect thereto, which are required to conduct the Business.
- (x) **Adequate Insurance.** All of the Collateral is insured with good and responsible companies against fire and other casualties in the same manner and to the same extent as such insurance is usually carried by Persons carrying on a similar business as that owned by the Borrower, any Guarantor or the relevant Subsidiary, as the case may be, and the Borrower, any Guarantor and each of their Subsidiaries maintains or causes to be maintained with good and responsible insurance companies adequate insurance against business interruption with respect to the operations of all such Property and liability on account of damage to Persons or Property, including damage resulting from product liability, and under all applicable workers' compensation laws, in the same manner and to the same extent as such insurance is usually carried by Persons carrying on a similar business and owning similar property, and attached hereto as Schedule 5.1(x) is a true and complete list of all insurance policies maintained by the Borrower, any Guarantor and each of their Subsidiaries in connection with the foregoing matters.
- (y) **Material Contracts.** Each Material Contract is in full force and effect and, except for the defaults under the Revolving Credit Facility that have been waived pursuant to Section 12.2, none of the Borrower, any Guarantor or any of their Subsidiaries is in default under any Material Contract and no event has occurred which, with the passage of time or the giving of notice or both, could constitute an event of default under any Material Contract or give rise to a right on the part of another party to terminate a Material Contract, the effect of any of which could be reasonably expected to have a Material Adverse Effect.

- (z) **Capitalization and Subsidiaries, Etc.** Part A of Schedule 5.1(z) sets forth for the Borrower, any Guarantor and each of their Subsidiaries, its jurisdiction of organization, the classes of its authorized capital, the number of shares of each such class authorized (as applicable) and issued and outstanding and the holders of such shares. Part B of Schedule 5.1(z) sets forth for the Borrower, any Guarantor and each of their Subsidiaries: (i) a description of the Property owned or leased by the Borrower, any Guarantor and each of their Subsidiaries or to which it has any right; and (ii) the Material Contracts and Indebtedness of the Borrower, any Guarantor and each of their Subsidiaries. Any Guarantor is a direct or indirect wholly-owned Subsidiary of the Borrower. None of the Borrower, any Guarantor or any of their Subsidiaries has any material investment or material equity interest in any other Person other than those entities described in Schedule 5.1(z) and any such investment or equity acquired in accordance with Section 6.2(h).
- (aa) **No Assets or Liabilities.** Other than (i) any Guarantor that has executed and delivered Guarantors' Security Documents to the Administrative Agent pursuant to Section 7.2, and (ii) 644562 Ontario Limited, the assets of which are comprised solely of 100% of issued and outstanding common shares in the capital of 720064 Ontario Limited, none of the Borrower's Subsidiaries owns, leases, licenses or otherwise holds any Property (including, for greater certainty, any Intellectual Property), has any obligations, liabilities or Indebtedness or engages in any business whatsoever, and none the Borrower's Subsidiaries is party to or has agreed to be a party to any Agreements or other arrangements with third parties or Affiliates.
- (bb) **Title; Possession under Leases.** Set forth in Part A of Schedule 5.1(bb) is a complete and accurate list of all Real Property owned by the Borrower and any Guarantor, with the owner of such property, the location of such property and a complete and accurate legal description of such property. Set forth in Part B of Schedule 5.1(bb) is a complete and accurate list of all Real Property leased by the Borrower and any Guarantor as lessee or sublessee, with the manager or landlord of such Real Property, the square footage of each premises, the expiry dates of each lease and the minimum rent payable thereunder and the location of such Real Property. Each of the Borrower and any Guarantor (i) owns and has good and marketable title to the Real Property referred to in Part A of Schedule 5.1(bb), subject only to the Permitted Encumbrances, (ii) has valid leasehold interests in the real property referred to in Part B of Schedule 5.1(bb), and enjoys peaceful and undisturbed possession under all leases and such leases are in good standing and no event or circumstance exists which with the passage of time or giving of notice or both could constitute a default thereunder, in each case which could reasonably be expected to have a Material Adverse Effect, and (iii) owns and has good and marketable title to all their other respective Properties and assets which are material to the business of such Person.
- (cc) **Solvency, Etc.** Each of the Borrower, any Guarantor and each of their Subsidiaries is Solvent and, after the execution and delivery of the Loan

Documents and the consummation of the transactions contemplated thereby, will be Solvent. None of the Borrower, any Guarantor or any of their Subsidiaries has (i) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its Property or (ii) made a general assignment for the benefit of itself or any of its creditors.

- (dd) **No Material Adverse Effect.** No event has occurred and no condition exists which could be reasonably expected to have a Material Adverse Effect.
- (ee) **Accuracy of Information Furnished.** Each of the Borrower and any Guarantor has provided to Administrative Agent in writing all material information relating to its financial condition, business and prospects including all Material Contracts. The Loan Documents and the other certificates, statements and information furnished by the Borrower and any Guarantor to Administrative Agent in connection with the Loan Documents and the transactions contemplated thereby, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All projections furnished by each of the Borrower and any Guarantor to the Administrative Agent in connection with the Loan Documents and the transactions contemplated thereby have been based upon assumptions, believed by it at the time and as of the date hereof to be reasonable, and represent, as of their respective dates of presentations and as of the date hereof, such Person's best estimates of the future performance of the Borrower or such Guarantor, as the case may be.
- (ff) **Fiscal Year and Fiscal Quarters.** As of the date of this Agreement, the fiscal year of the Borrower and its Subsidiaries ends on the last Saturday in January of each calendar year, and the Borrower's and its Subsidiaries' fiscal quarters end on the Saturday that is the thirteenth, twenty-sixth, thirty-ninth and fifty-second (or fifty-third) week after the most recently completed fiscal year.
- (gg) **Patriot Act Compliance.** None of the Borrower any Guarantor or any shareholder, partner or any owner of a direct or indirect interest in the Borrower or any Guarantor (a) is listed on any Government Lists, (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (d) is currently under investigation by any Governmental Authority for alleged criminal activity; provided, however, the foregoing sentence shall not be deemed to apply to, include or cover any person, group, governmental authority or entity which is an owner of direct or indirect interest in any Borrower or in any entity affiliated with any Borrower if such interest exists by means of the ownership of stock or other Publicly-Traded Securities.

- (hh) **Confirmation of Security.** The security interests granted by the Borrower in favour of the Administrative Agent, as collateral agent for the benefit of the Lenders, pursuant to the Security Documents continue in full force and effect as continuing security for the due and timely payment and performance of the Obligations.

5.2 Survival of Representations and Warranties

The representations and warranties set out in this Article 5 shall survive the execution and delivery of this Agreement, notwithstanding any investigations or examinations which may be made by any Agent, any Lender or counsel to any of them. The Borrower and any Guarantor shall be deemed to have reaffirmed, for the benefit of the Lenders and each Agent, each representation and warranty contained in Section 5.1 on and as of the last date of each fiscal quarter of the Borrower.

**ARTICLE 6
COVENANTS**

6.1 Affirmative Covenants

Each of the Borrower and any Guarantor covenants and agrees with the Administrative Agent, the Servicing Agent where applicable, and each of the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under any Loan Document remains outstanding:

- (a) **Financial Reporting.** The Borrower shall deliver, or cause to be delivered, to the Administrative Agent and the Servicing Agent, with sufficient original copies for each Lender:
- (i) as soon as available and in no event later than 30 days after the last day of each calendar month of each fiscal year of the Borrower, a copy of the internal monthly financial statements of the Borrower and its Subsidiaries (prepared on a consolidated basis) and consisting of at least a statement of income, a statement of cash flows and a balance sheet for such month;
 - (ii) as soon as available and in no event later than 45 days after the last day of each fiscal quarter of each fiscal year of the Borrower, a copy of the Financial Statements of the Borrower and its Subsidiaries (prepared on a consolidated basis) for such fiscal quarter and for the fiscal year to date certified as true, correct and complete by the Borrower;
 - (iii) for the fiscal year ended January 26, 2008, no later than July 15, 2009, for the fiscal year ended January 31, 2009, no later than August 15, 2009, and for each fiscal year thereafter, as soon as available and in no event later than 105 days after the close of each fiscal year of the Borrower, (A) copies of the audited Financial Statements of the Borrower and its Subsidiaries (prepared on a consolidated basis) for such year, audited by independent certified public accountants of recognized national standing

acceptable to the Lenders, (B) copies of the opinions (which opinions and the Financial Statements to which such opinions relate shall not contain any qualification which is in the nature of a limitation on scope or ability to audit or of a going concern or similar nature) and, to the extent delivered, management letters delivered by such accountants in connection with all such Financial Statements and (C) certificates of such accountants to the Lenders stating that in making the examination necessary for their opinion they have reviewed this Agreement and have obtained no knowledge of any Default which has occurred, or if, in the opinion of such accountants, a Default has occurred, a statement as to the nature thereof;

- (iv) together with the Financial Statements delivered pursuant to Sections 6.1(a)(ii) and 6.1(a)(iii), a certificate of the Chief Financial Officer of the Borrower to the effect that the information contained in such statements is prepared and presented in accordance with GAAP and in a manner consistent with the past practices of the Borrower and that such Financial Statements are true and correct in all material respects, subject to normal year-end audit adjustments in the case of unaudited Financial Statements, and present fairly the results of operations and changes in the financial position of the Borrower as of and to the date of such Financial Statements, stating that the Borrower is in compliance with the covenants set forth in Article 6 including, without limitation, those financial covenants set forth in Section 6.3 and, in respect of such financial covenants providing detailed calculations evidencing compliance therewith, that each of the representations and warranties of the Borrower set forth in Section 5.1 is true and correct by reference to the facts and circumstances existing on the date of such certificate (or specifying inaccuracies therein), that no Default or Event of Default has occurred (or specifying such non-compliance or Default or Event of Default and stating what action, if any, the Borrower or a Guarantor is taking in connection therewith); and
 - (v) such other financial information as the Administrative Agent or the Servicing Agent may request from time to time, acting reasonably.
- (b) **Corporate Status.** Subject to Section 9.1, the Borrower and any Guarantor shall remain a corporation duly incorporated or amalgamated, as applicable, and validly subsisting under the laws of Canada or a province thereof and the Borrower and any Guarantor shall cause each of its Subsidiaries to remain duly incorporated, formed or organized and validly subsisting under the laws of its existing jurisdiction of incorporation or formation, as the case may be, or the laws of Canada or any other province thereof and, in each case, registered or otherwise qualified in all material respects to carry on business in each jurisdiction where necessary to conduct its business.
- (c) **Conduct of Business.** The Borrower and any Guarantor shall, and shall cause each of its Subsidiaries to (i) preserve and maintain all of its rights, privileges and

franchises reasonably necessary to the conduct of its business, (ii) conduct its business activities in compliance with Applicable Law (including Environmental Laws) and contractual obligations applicable to such Person or such Person's Property, and (iii) keep all Property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted (including removing any Hazardous Materials Released on such Property in exceedance of Environmental Laws), except, in each case, where any failure could not be reasonably expected to have a Material Adverse Effect.

(d) **Insurance.** The Borrower and any Guarantor shall, and shall cause each of its Subsidiaries to:

- (i) carry and maintain insurance with insurers acceptable to the Administrative Agent, acting reasonably, in at least such amounts, of such character and against such risks as is maintained by such Person on the date of this Agreement and described in the certificates of insurance delivered to the Administrative Agent pursuant to Section 4.1 or, if such insurance is not available on a commercially reasonable basis, with the prior written consent of the Required Lenders, insurance with insurers acceptable to the Administrative Agent, acting reasonably, in such amounts, of such character and against such risks customarily carried from time to time during the term of this Agreement by comparable businesses engaged in substantially the same business as such Person and operating in the same geographic area as such Person, including but not limited to, fire and extended coverage, public liability, property damage, workers' compensation, business interruption, flood and such other coverage as the Required Lenders may reasonably request;
- (ii) obtain and maintain the endorsements described in Section 4.1(e) for all such insurance; and
- (iii) deliver to the Administrative Agent copies of any insurance certificates evidencing the insurance required to be obtained and maintained hereunder forthwith upon receipt by the Borrower or a Guarantor, as the case may be, of any such certificate.

(e) **Payment of Taxes.** The Borrower and any Guarantor shall, and shall cause each of its Subsidiaries to, pay or cause to be paid, when due, all Taxes, property taxes, business taxes, social security and assistance premiums, health taxes, employment insurance, premiums, Canada pension plan premiums, provincial pension plan premiums, assessments and governmental charges or levies imposed upon it or upon its income, sales, capital or profit or any property belonging to it unless any such Tax, social security premiums, assessment, charge or levy is contested by it in good faith by proper proceedings with adequate cash reserves being set aside, and to collect and remit when due all payroll deductions and withholding taxes.

- (f) **Performance of Contractual Obligations.** Each of the Borrower and any Guarantor shall perform all of its contractual obligations to be performed by it in a timely manner and shall pay all amounts thereunder when due except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.
- (g) **Keeping of Books.** The Borrower and any Guarantor shall, and shall cause each of its Subsidiaries to, keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower, any Guarantor and each of their Subsidiaries in accordance with GAAP.
- (h) **Notice of Event of Default.** Each of the Borrower and any Guarantor shall deliver to the Administrative Agent and the Servicing Agent, forthwith upon becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default together with a statement of an officer of the Borrower or the Guarantor, as the case may be, setting forth details of such Default or Event of Default and the action which has been, or is proposed to be, taken with respect thereto.
- (i) **Other Notifications.** Each of the Borrower and any Guarantor shall promptly notify the Administrative Agent and the Servicing Agent of:
 - (i) any change in the name or jurisdiction of incorporation or organization of the Borrower or any of its Subsidiaries and of any change in the location of the registered office or chief executive office of any of them which are subject to a Lien in favour of the Administrative Agent not less than 30 days prior to any such change;
 - (ii) the Borrower's or Guarantor's opening a bank account or securities account (including all information related thereto) at least 30 days prior to depositing any cash or Cash Equivalents in such account;
 - (iii) any proposal to operate any of its retail outlets under a trade name other than "Tip Top Tailors", "Mr. Big & Tall", "George Richards Big & Tall", "Grafton & Co.", "Stonehouse" "Kingsport" and "Kingsport Clothier" or any derivation thereof not less than 30 days prior to any such proposed change;
 - (iv) any proposal to acquire any Real Property not less than 30 days prior to any such proposed acquisition and any proposal to carry on business in Quebec, any of the territories of Canada or any jurisdiction outside of Canada;
 - (v) any notices of default received by the Borrower and any of its Subsidiaries under any Material Contracts, Permits or Leases;

- (vi) any action, suit, proceeding, complaint, notice, order or Environmental Claim of which the Borrower or the Guarantor or any of their Subsidiaries becomes aware (and which has not been disclosed in Schedule 5.1(i)) which is pending or issued against or, to the best of its information, knowledge and belief, could affect the Borrower, any Guarantor or any of their Subsidiaries or any of their undertaking, property and assets at law, in equity or before any arbitrator or before or by any Governmental Authority in respect of which the Borrower determines in good faith that there is a reasonable possibility of a determination adverse to the Borrower, any Guarantor or any of their Subsidiaries which could, if determined adversely, have a Material Adverse Effect;
- (vii) any action, suit or proceeding claiming payment (whether by way of an amount owing, damages or otherwise) of an amount exceeding \$500,000 in respect of any one matter or \$1,000,000 in the aggregate;
- (viii) any environmental site assessment or audit report or similar environmental document required to be submitted to any Governmental Authority with respect to any operations or Real Property currently or formerly owned, leased or operated by the Borrower, any Guarantor or any Subsidiary of the Borrower or any Guarantor, and the Borrower and any Guarantor shall make a copy of such report available to the Lenders. If any such report sets out compliance or remedial action that is to be undertaken by the Borrower, any Guarantor or any of their Subsidiaries and the cost of such actions are estimated to exceed \$500,000, the Borrower and any Guarantor shall provide evidence satisfactory to the Lenders of expenditures made from time to time to effect such remedial or compliance action within such time as may be prescribed by (or undertaken with notice to) the Governmental Authority;
- (ix) the issuance by the Borrower or any Guarantor, or any of their Subsidiaries of any equity or Indebtedness, other than drawdowns under the Revolving Credit Facility and any issuances of equity by the Borrower, a Guarantor or of its Subsidiaries to the Borrower or any of its wholly-owned Subsidiaries, including details thereof and gross proceeds and costs and expenses of issue;
- (x) any trade account of the Borrower, a Guarantor or any of their Subsidiaries becoming secured by way of a bank letter or guarantee, with the notice including a statement that such security shall be assigned by the Borrower and/or the applicable Guarantor, as applicable, in favour of the Administrative Agent, if the Administrative Agent so requests; and
- (xi) the results of any report providing an actuarial valuation or other assessment of any Pension Plan of the Borrower or any of its Subsidiaries, upon any such report being made available to the Borrower.

- (j) **Compliance with Applicable Laws.** The Borrower and any Guarantor shall, and shall cause each of their Subsidiaries to, comply with all Applicable Laws, including Environmental Laws, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and the Borrower and any Guarantor shall, and shall cause each of their Subsidiaries to, comply with the terms of and maintain all consents, licences, franchises, certificates, consents, rights, approvals, authorizations, registrations, orders or permits from, and make such filings with, any Governmental Authority and to comply with such Applicable Laws as may be necessary to carry on its respective businesses, to own, lease and operate its properties and to enable the Borrower and any Guarantor to enter into and perform their obligations under Loan Documents or to render this Agreement or the Security Documents legal, valid, binding or enforceable.
- (k) **New Subsidiaries.** Each of the Borrower and any Guarantor shall, at its own expense, promptly, and in any event at least 15 Banking Days prior to the formation or acquisition of a new Subsidiary of the Borrower or a Guarantor after the Closing Date (i) notify the Lenders of such event, (ii) cause the Security Documents to be amended as appropriate in light of such event to pledge the Stock of any such Person that is a wholly-owned Subsidiary to the Lenders and execute and deliver all documents or instruments required thereunder or appropriate to perfect the Liens created thereby, (iii) deliver to the Administrative Agent, all stock certificates, if any, and other instruments added to the Collateral thereby free and clear of all Liens other than Liens referred to in paragraph (a) of the definition of Permitted Encumbrances, accompanied by undated stock powers or other instruments of transfer executed in blank, the Lenders have a first priority perfected Liens in such securities, (iv) cause each Person that becomes a wholly-owned Subsidiary of the Borrower or a Guarantor after the date hereof to become a party to the Guarantee pursuant to an assumption agreement in the form annexed to the Guarantee or otherwise pursuant to documentation which is in form and substance satisfactory to the Lenders, acting reasonably, (v) cause each Person that becomes a wholly-owned Subsidiary of the Borrower or a Guarantor after the date hereof to execute each other Guarantors' Security Document and other documents (including each financing statement) reasonably requested by the Required Lenders to be filed, registered or recorded in order to create in favour of the Lenders a valid, legal and perfected Liens on the Collateral subject to the Security Documents to be so filed, registered or recorded and evidence thereof delivered to the Lenders, (vi) deliver to the Administrative Agent certified copies of the new Subsidiary's constating documents and borrowing by-laws (if any), a resolution authorizing the Guarantee and other Security Documents entered into by such new Subsidiary, the incumbency of the officers of the Guarantor signing such agreements and any other documents or instruments to be provided pursuant to the provisions thereof and the provisions of this Agreement and a certificate of status, good standing or like certificate with respect to such Guarantor issued by appropriate government officials of its jurisdiction of incorporation, and (vii) provide the Administrative Agent with such legal opinions with respect to such

new Guarantor as it may reasonably require in connection with the matters referred to herein.

- (l) **Visitation Rights.** Each of the Borrower and any Guarantor shall, at the Borrower's or Guarantor's, as the case may be, sole cost and expense, permit the Administrative Agent and the Servicing Agent and each Lender, at any reasonable time or times, within normal business hours, following two Business Days' notice to the Borrower and any Guarantor, to visit the properties and offices of and examine and make copies of and abstracts from the books and records of the Borrower, any Guarantor and their Subsidiaries and to meet with the Borrower's and the Guarantor's employees, officers and auditors at the Borrower's or the relevant Guarantor's properties and offices, provided that (i) until the occurrence of an Event of Default which is continuing, any such visits that are made more frequently than once per fiscal quarter shall be at the Administrative Agent's, the Servicing Agent's or relevant Lender's, as the case may be, sole cost and expense, and (ii) after the occurrence of an Event of Default which is continuing, the Administrative Agent, the Servicing Agent and the Lenders shall be entitled to visit the properties and offices of and examine and make copies of and abstracts from the books and records of the Borrower, any Guarantor and their Subsidiaries and to meet with the Borrower's and the Guarantor's employees, officers and auditors at the Borrower's or the relevant Guarantor's properties and offices, without prior notice to, and at the sole cost and expense of, the Borrower and any Guarantor.
- (m) **Compliance with Material Leases, Contracts and Other Agreements.** Each of the Borrower and any Guarantor shall, and shall cause each of their Subsidiaries to, comply and perform its obligations under all Leases, contracts and other agreements to which it is a party or by which it is bound if the non-compliance or non-performance of obligations thereunder could reasonably be expected to have a Material Adverse Effect.
- (n) **Registrations.** Each of the Borrower and any Guarantor shall, and shall cause each of their Subsidiaries to, maintain all such registrations, filings and recordings as are necessary to preserve, protect and perfect the charges and security interest created, or intended to be created, by the Security Documents.
- (o) **Budget.** The Borrower shall deliver to the Administrative Agent and the Servicing Agent as soon as practicable, and in any event not later than 60 days after the commencement of each fiscal year of Borrower, projected financial statements for the following fiscal year, including in each case, projected balance sheets, statements of income and retained earnings and statements of cash flow of the Borrower, any Guarantor and each of their Subsidiaries, all in reasonable detail and in any event to include projected Capital Expenditures.
- (p) **Revolving Credit Facility.** The Borrower and any Guarantor shall ensure that (A) the principal amount of the loan under the Revolving Credit Facility, (B) the mark to market value under any hedge agreements between the Borrower or its

Affiliates and the Revolving Lender and its Affiliates, and (C) any payments to any Affiliates of the Revolving Lender in respect of cash management services provided to the Borrower or its Affiliates that are not being applied on account of the loan under the Revolving Credit Agreement, shall not exceed at any time \$35,000,000.

- (q) **Stonehouse Subordinated Note.** The Borrower and any Guarantor shall ensure that the principal amount of the Stonehouse Subordinated Note shall not at any time exceed \$12,000,000, as the same may be increased as a result of the capitalization of interest in accordance with the Subordination Amendment Agreement.
- (r) **Change in GAAP.** If there is any change during any fiscal year of the Borrower (each, a "Modified Financial Reporting Fiscal Year") from the accounting policies, practices and calculation methods used by the Borrower in preparing its audited financial statements (as a result of changes in GAAP) which would materially change the results of the calculation of EBITDA, the Consolidated Leverage Ratio or Cumulative Free Cash Flow, the Borrower shall provide the Lenders with all information that the Administrative Agent or the Servicing Agent reasonably requires to ensure that reports on such calculations provided to the Lenders after any such change are comparable to previous reports and the parties shall negotiate appropriate amendments to Sections 2.8(b) and 6.3 to reflect such changes as soon as possible, pending which all such calculations shall continue to be made based on the accounting policies, practices and calculation methods that were used in preparing the audited financial statements for the Borrower for its fiscal year ended January 31, 2007 (or, if applicable, the most recent Modified Financial Reporting Fiscal Year for which appropriate amendments were made to Sections 2.8(b) and 6.3 to reflect the changed accounting policies, practices and calculation methods applied in such Modified Financial Reporting Fiscal Year) if the changed policies, practices and methods would affect the results of those calculations.
- (s) **Delivery of Documents.** The Borrower shall deliver to the Administrative Agent or the Servicing Agent forthwith upon request any such additional evidence, documents or undertakings as the Administrative Agent or the Servicing Agent may reasonably request in connection with this Agreement or any of the other Loan Documents, including such other documents as the Administrative Agent may require to give effect to, register and perfect the security interests created by the Security Documents in the jurisdiction where such charged assets are located.
- (t) **Patriot Act Compliance.** The Borrower shall use its good faith and commercially reasonable efforts to comply and to cause its Subsidiaries to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and the Collateral, including those relating to money laundering and terrorism. The Administrative Agent, the Servicing Agent and each Lender shall have the right to audit the compliance of the Borrower and its Subsidiaries with the Patriot Act and all applicable requirements

of Governmental Authorities having jurisdiction over the Borrower, its Subsidiaries and the Collateral, including those relating to money laundering and terrorism if it has a reasonable basis for believing that the Borrower or any of its Subsidiaries may not be in compliance. In the event that the Borrower or any of its Subsidiaries fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Administrative Agent, the Servicing Agent or any Lender may, at its option, cause the Borrower to comply therewith and any and all reasonable costs and expenses incurred by the Administrative Agent, the Servicing Agent, or such Lender in connection therewith shall be secured by the Security and the Loan Documents and shall be immediately due and payable.

6.2 Negative Covenants

The Borrower and any Guarantor covenants and agrees with the Administrative Agent and the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under any Loan Document remains outstanding:

- (a) **Restriction on Indebtedness.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, create, incur, assume or otherwise become liable upon or suffer to exist (after knowledge of the existence thereof) any Indebtedness other than Permitted Indebtedness, provided that, if no Default or Event of Default shall have occurred and be continuing at the time or as a consequence of the incurrence of such Indebtedness, the Borrower or any Guarantor may incur Indebtedness-if both before and after giving effect to the incurrence of such Indebtedness and the receipt and application of proceeds thereof, the Borrower's Consolidated Leverage Ratio is less than 3.25 to 1 on a *pro forma* basis.
- (b) **Restriction on Issuance of Disqualified Capital Stock.** The Borrower and any Guarantor shall not create, incur, assume or otherwise become liable upon or suffer to exist (after knowledge of the existence thereof) any Disqualified Capital Stock, provided that, if no Default or Event of Default shall have occurred and be continuing at the time or as a consequence, of the issuance of such Disqualified Capital Stock, the Borrower or any Guarantor may issue Disqualified Capital Stock if both before and after giving effect to such issuance and the receipt and application of proceeds thereof, the Borrower's Consolidated Leverage Ratio is less than 3.25 to 1 on a *pro forma* basis after giving effect to the issuance of such Disqualified Capital Stock.
- (c) **No Merger, Amalgamation, etc.** The Borrower and any Guarantor shall not, directly or indirectly, sell, lease, transfer, assign, convey or otherwise dispose of all or a material part of its property and assets (including pursuant to a Sale and Lease-Back Transaction), and will not merge or amalgamate or effect any reorganization pursuant to any plan of arrangement pursuant to statutory authority or otherwise with any other Person except upon compliance with Article 9.

- (d) **Limitation on Asset Sales.** The Borrower and any Guarantor shall not consummate an Asset Sale unless:
- (i) the Borrower, the Guarantor or such Subsidiary, as the case may be, receives consideration at the time of such sale or other disposition at least equal to the fair market value of the assets sold or otherwise disposed of; and
 - (ii) not less than 85% of the consideration received by the Borrower, such Guarantor or such Subsidiary, as the case may be, is in the form of cash or Cash Equivalents except to the extent such Asset Sale constitutes a Permitted Asset Sale.

In the event of the transfer of substantially all of the property and assets of the Borrower, a Guarantor or a Subsidiary of the Borrower or a Guarantor as an entirety to a Person in a transaction permitted under Section 9.1, the successor Person shall be deemed to have sold the properties and assets of the Borrower, such Guarantor or such Subsidiary not so transferred for purposes of this Section 6.2(d), and shall comply with the provisions of this Section 6.2(d) with respect to such deemed sale as if it were an Asset Sale.

- (e) **Limitation on Sale and Lease-Back Transactions.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, enter into any Sale and Lease-Back Transaction; provided that the Borrower, a Guarantor or any of their Subsidiaries may enter into a Sale and Lease-Back Transaction if:
- (i) the Borrower, such Guarantor or such Subsidiary, as applicable, could have incurred Indebtedness (other than Permitted Indebtedness) in an amount equal to the Attributable Indebtedness relating to such Sale and Lease-Back Transaction under Section 6.2(a) and incurred a Lien to secure such Indebtedness pursuant to Section 6.2(j);
 - (ii) the gross cash proceeds of that Sale and Lease-Back Transaction are at least equal to the fair market value of the Property sold; and
 - (iii) the transfer of assets in that Sale and Lease-Back Transaction is permitted by, and the Borrower, such Guarantor or such Subsidiary, as the case may be, applies the proceeds of such transaction in compliance with Section 6.2(d).
- (f) **Limitation on Restrictive Agreements.** The Borrower and any Guarantor shall not, and shall not permit any their Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual Lien or restriction on the ability of the Borrower, any Guarantor or any of their Subsidiaries to: (i) pay dividends or make any other distributions to the Borrower, a Guarantor or any of their Subsidiaries on its Stock or with respect to any other interest or participation in, or measured by, its profits; (ii) repay the Advance; (iii) make loans or advances or capital contributions to the Borrower, a Guarantor or any of their Subsidiaries; or (iv) transfer any of its Property to the

Borrower, a Guarantor or any of their Subsidiaries, except in respect of any of (i) through (iv) above for: (A) Liens or restrictions existing on the Closing Date to the extent and in the manner such encumbrances and restrictions are in effect on the Closing Date; (B) encumbrances or restrictions existing under or by reason of this Agreement and the Guarantees; (C) encumbrances or restrictions existing under or by reason of Applicable Law; (D) any encumbrance or restriction existing under Senior Indebtedness on the Closing Date, as amended on or prior to the Effective Date; (E) encumbrances or restrictions existing under or by reason of any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the Property of any Person, other than the Person, or the Property of the Person (including any Subsidiary of the Person), so acquired; (F) encumbrances or restrictions existing under or by reason of customary non-assignment provisions in leases or other agreements entered into in the ordinary course of business; (G) encumbrances or restrictions existing under or by reason of Refinancing Indebtedness, provided that such restrictions are no more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; (H) customary restrictions in security agreements or mortgages securing Indebtedness of the Borrower or a Guarantor or other Subsidiary of the Borrower to the extent such restrictions restrict the transfer of the property subject to such security agreements and mortgages; (I) in the case of clause (J) only, any encumbrance or restriction pursuant to an agreement for Permitted Purchase Money Security Interests; or (K) customary restrictions with respect to a Guarantor or other Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Stock or Property of such Guarantor or other Subsidiary of the Borrower.

- (g) **Limitation on Capital Expenditures.** The Borrower shall not make or commit to make, or permit any Guarantor or any Subsidiary of the Borrower or a Guarantor to make or commit to make, in any fiscal year (or part thereof) of the Borrower, any Capital Expenditure in excess of:
- (i) for the year ended January 30, 2010, \$2.25 million;
 - (ii) for the year ended January 29, 2011, \$2.50 million; and
 - (iii) for each of the years ended January 28, 2012 and January 26, 2013, \$3.50 million;

provided that, notwithstanding the maximum amounts set forth above, the Borrower and any Guarantor shall be permitted to make or commit to make up to a maximum aggregate amount of \$6,000,000 of Capital Expenditures per fiscal year from and after the first fiscal quarter following the Effective Date in which the ratio of Senior Indebtedness to LTM EBITDA is equal to or less than 3.5:1 on an actual and *pro forma* basis, giving effect to any proposed Capital Expenditure to be made during such quarter as if it had occurred on the last day of such fiscal quarter, and provided further that the Borrower and any Guarantors are otherwise

in compliance with this Agreement and the other Loan Documents and will continue to be in compliance with this Agreement and the other Loan Documents after making any proposed Capital Expenditure.

- (h) **Limitations on Restricted Payments.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, directly or indirectly, make any Restricted Payment; provided that the provisions of this Section 6.2(h) shall not prohibit:
- (i) the repurchase, redemption or other acquisition or retirement of any shares of Stock of the Borrower or Indebtedness subordinated to the Facility by conversion into, or by or in exchange for, shares of Stock of the Borrower (other than Disqualified Capital Stock) or out of the Net Proceeds of the substantially concurrent sale (other than to a Subsidiary of the Borrower) of other shares of Capital Stock of the Borrower (other than Disqualified Capital Stock);
 - (ii) the repurchase, redemption, repayment, retirement, defeasance or other acquisition for value of Indebtedness of the Borrower subordinated to the Facility in exchange for, by conversion into, or out of the Net Proceeds of a substantially concurrent sale or incurrence of, Indebtedness of the Borrower (other than any Indebtedness owned to a Subsidiary of the Borrower) that is Refinancing Indebtedness;
 - (iii) the retirement of any shares of Disqualified Capital Stock of the Borrower by conversion into, or by exchange for, shares of Disqualified Capital Stock of the Borrower, or out of the Net Proceeds of the substantially concurrent sale (other than to a Subsidiary of the Borrower) of other shares of Disqualified Capital Stock of the Borrower;
 - (iv) provided that (i) with respect to the payment of Management Fees, there is no Default that is continuing, (ii) with respect to the payment of interest under the Stonehouse Subordinated Note, there is no Event of Default that is continuing, and (iii) in each case, the ratio of Senior Indebtedness to LTM EBITDA, measured as of the last day of the immediately preceding fiscal quarter of the Borrower, is equal to or less than 3.5:1 on an actual and *pro forma* basis, giving effect to the proposed payment as if it had been made on the last day of such fiscal quarter, the payment of Management Fees to GB Merchant Partners LLC up to a maximum of \$150,000 per fiscal quarter or the payment of interest under the Stonehouse Subordinated Note. If the payment of any Management Fees is prohibited pursuant to this Section 6.2, such fees shall, notwithstanding that they may continue to accrue, not be paid until such time as this Agreement ceases to be in effect and all of the Obligations have been indefeasibly paid and satisfied in full by the Borrower. If the payment of any interest on the Stonehouse Subordinated Note is prohibited pursuant to this Section 6.2, such interest shall, in lieu of being paid in cash, be

capitalized and added to the principal amount of the Stonehouse Subordinated Note; or

- (v) the purchase for cancellation or redemption by the Borrower and any Guarantor of any Stock in the capital of the Borrower or the Guarantor, as the case may be, from its respective employees up to a maximum aggregate amount of \$375,000 or the purchase for cancellation or redemption by the Borrower of any Stock in the capital of the Borrower from the estate of a senior executive of the Borrower up to a maximum aggregate amount of \$2,500,000, provided that any such purchase of stock from the estate of a senior executive shall be made only using proceeds of life insurance policies that the Borrower has obtained with respect to such senior executive.

- (i) **Limitation on Transactions with Affiliates.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, directly or indirectly, (i) enter into, amend or suffer to exist any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) with any Affiliate (each, an "Affiliate Transaction") or (ii) extend, renew, waive or otherwise modify in any material respect the terms of any Affiliate Transaction entered into prior to or on the Closing Date unless: (a) such Affiliate Transaction is between or among the Borrower and one or more of its wholly-owned Subsidiaries that are also Guarantors; or (b) the terms of such Affiliate Transaction are at fair market value and on terms that could reasonably be expected to be obtained by the Borrower or such Guarantor, as the case may be, in a comparable transaction made on an Arm's Length basis between unaffiliated parties and such transaction otherwise complies with the terms of this Agreement and the other Loan Documents. The foregoing restrictions on Affiliate Transactions shall not apply to:

- (i) any Restricted Payment that is not prohibited by the provisions described in Section 6.2(h);
- (ii) any transaction pursuant to an agreement, arrangement or understanding existing on the Closing Date and described in Schedule 5.1(z);
- (iii) reasonable fees and compensation paid to, and any indemnity provided to or on behalf of, any officers, directors or employees of the Borrower, the Guarantor or any Affiliate of the Borrower or of such officers, directors or employees as determined in good faith by the Borrower's or the Guarantor's board of directors or senior management thereof;
- (iv) any transaction between the Borrower or any Guarantor and their Affiliates involving ordinary course investment banking, commercial banking or related activities;

- (v) any transaction with any Affiliate solely in its capacity as a holder of Indebtedness or Stock of the Borrower or any of its Subsidiaries where the Affiliate is treated no more favourably than holders of Indebtedness or such Stock generally; and
- (vi) any transaction permitted by the provisions described in Section 9.1.
- (j) **No Liens.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, create, incur, assume or permit to exist any Lien, other than Permitted Encumbrances, on any of its Property, undertaking or assets now owned or hereafter acquired.
- (k) **Negative Pledge.** The Borrower and any Guarantor shall not enter into any agreement prohibiting the creation or assumption of any Lien upon its Property or other assets, whether now owned or hereafter acquired, except pursuant to:
 - (i) this Agreement or any other Loan Document;
 - (ii) the Revolving Credit Facility; and
 - (iii) Leases of Real Property entered into by the Borrower or any Guarantor in the ordinary course of business, provided such Leases do not limit the Liens in favour of the Lenders created under any Loan Document.
- (l) **Fundamental Changes.** Neither the Borrower nor any Guarantor will engage in any business which is material when considered against the consolidated business of the Borrower, other than Business.
- (m) **Fiscal Year.** Neither the Borrower nor any Guarantor will change its fiscal year end or fiscal quarter ends.
- (n) **Restriction on Subsidiaries.** The Borrower and any Guarantor shall not permit any of its Subsidiaries (other than 644562 Ontario Limited, the assets of which are comprised solely of 100% of the issued and outstanding shares in the capital of 720064 Ontario Limited) to own, lease, license or otherwise hold any Property (including, for greater certainty, any Intellectual Property), to engage in any business whatsoever, including entering into any Agreements or other arrangements with third parties or Affiliates and incurring any Indebtedness, unless the Borrower or the Guarantor (i) delivers not less than 30 days' written notice of its intention to cause such Subsidiary to own, lease, license or otherwise hold Property or to engage in such business; and (ii) such Subsidiary enters into the Guarantors' Security Documents prior the time when it commences owning, leasing, licensing or otherwise holding Property or engaging in such business, as the case may be.
- (o) **No Pension Plans.** The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, become or agree to become a party to any Pension Plan or incur any Indebtedness, liabilities, obligations under, arising

from, relating to or in connection with any Pension Plan without the prior written consent of the Administrative Agent, acting reasonably.

6.3 Financial Covenants

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under the other Loan Documents remains outstanding, the Borrower and any Guarantor:

- (a) shall not, as of each fiscal quarter end of the Borrower set forth below, permit the LTM EBITDA to be less than the amount set forth below:

<u>For the Fiscal Quarter Ended:</u>	<u>Minimum LTM EBITDA:</u>
January 30, 2010	\$9.75 million
May 1, 2010	\$10.1 million
July 31, 2010	\$10.5 million
October 30, 2010	\$10.5 million
January 29, 2011	\$11.0 million
All fiscal quarters ending from and including April 30, 2011 to the Maturity Date	\$11.5 million

- (b) shall not, as of each fiscal quarter end set forth below, permit the Consolidated Leverage Ratio to exceed the ratio set forth below:

<u>For the Fiscal Quarter Ended:</u>	<u>Ratio:</u>
January 30, 2010	5.85:1
May 1, 2010	5.85:1
July 31, 2010	5.50:1
October 30, 2010	5.50:1
January 29, 2011	5.00:1
April 30, 2011	5.10:1

July 30, 2011	4.80:1
October 29, 2011	4.80:1
All fiscal quarters ending from and including January 28, 2012 to the Maturity Date	4.60:1

- (c) For the purposes of the calculation of Senior Indebtedness and Consolidated Leverage Ratio under this Section 6.3, Indebtedness under the Revolving Credit Facility shall be the average daily revolver balance for the 90 day period immediately prior to the date of determination of the financial covenants.

ARTICLE 7
SECURITY

7.1 Borrower's Security Documents

As security for the Advance made to it and as security for all its Obligations and other liability or indebtedness, both present and future, hereunder, the Borrower has granted (the "Borrower's Security") in favour of the Administrative Agent as agent for itself and each Lender, (i) a first priority perfected security interest mortgage and charge in all of its present and after-acquired personal property, other than its accounts receivable and inventory; (ii) a second priority perfected security interest in its accounts receivable and inventory; and (iii) a security interest over its leasehold interests in the Headquarters and Warehouse, and shall deliver, or cause to be delivered to the Administrative Agent, any of the following documents (collectively called the "Borrower's Security Documents") not previously delivered to the Administrative Agent, all in form and substance satisfactory to the each Lender, duly executed by the Borrower:

- (i) a general security agreement of the Borrower;
- (ii) a collateral assignment of rights with respect to the Borrower's rights under the Stock Purchase Agreement, in form and substance satisfactory to the Administrative Agent;
- (iii) the Intercreditor Agreement;
- (iv) specific assignment agreements in registrable form with respect to any patents, trademarks, and copyrights owned or licensed by the Borrower; and
- (v) such other documents as the Administrative Agent and each Lender may now or hereafter require to give effect to, register and perfect the security interests created by the Borrower's Security Documents in the jurisdiction where such charged assets are located.

7.2 Guarantors' Security Documents

Forthwith after such time as the Borrower delivers notice under Section 6.2(n) of its intention to have any Subsidiary commence owning, leasing, licensing or otherwise holding Property or engage in any business whatsoever as described in Section 6.2(n), as security for the Advance made to the Borrower and as security for all of the other liability or indebtedness of the Borrower hereunder, any such Subsidiary (each such Subsidiary, a "Guarantor") shall assign, by way of security (the "Guarantors' Security") in favour of the Administrative Agent as agent for itself and each Lender, (i) a first priority perfected security interest mortgage and charge in all of its present and after-acquired Real Property and personal property, other than its accounts receivable and inventory; (ii) a second priority perfected security interest in its accounts receivable and inventory, and shall deliver, or cause to be delivered, the following documents (collectively called the "Guarantors' Security Documents") all in form and substance satisfactory to the Administrative Agent and each Lender, duly executed by the Guarantor:

- (a) the Guarantee;
- (b) the Intercreditor Agreement;
- (c) a general security agreement of the Guarantor;
- (d) specific assignment agreements in registrable form with respect to any patents, trademarks, and copyrights owned or licensed by the Guarantor;
- (e) a general assignment of leases with respect to any Real Property owned by the Guarantor;
- (f) deeds of trust and mortgage of the Guarantor creating a fixed specific mortgage lien in favour of Administrative Agent over its interest in any Real Property owned by the Guarantor;
- (g) the share certificates representing all of the outstanding shares of the Guarantor held by the Borrower and its Subsidiaries, together with signed and undated stock transfer powers in respect thereof and resolutions of the directors or shareholders of such Guarantor authorizing the transfer of such shares to the Administrative Agent or to any Person that the Administrative Agent may direct upon the pledge of such Shares; and
- (h) such other documents as the Administrative Agent and each Lender may now or hereafter require to give effect to, register and perfect the security interests created by the Guarantors' Security Documents in the jurisdiction where such charged assets are located.

ARTICLE 8
DEFAULT AND ACCELERATION

8.1 **Events of Default**

The occurrence of any one or more of the following events (each such event and the expiry of the cure period, if any, provided in connection therewith, being herein referred to as an "Event of Default") shall constitute an event of default under this Agreement:

- (a) if the Borrower shall fail to pay the principal of any Advance as and when the same becomes due and payable;
- (b) if the Borrower shall fail to pay interest on any Advance or to pay any fee, premium or other amount due hereunder within three Banking Days following the due date therefor;
- (c) if the Borrower shall, or shall permit any Guarantor or any other Subsidiary of the Borrower to, default applicable to it in the observance or performance of any agreement, covenant or condition contained in Section 6.1(i), 6.2 or 6.3;
- (d) if the Borrower, any Guarantor or any other Subsidiary of the Borrower shall default in the observance or performance of any agreement, covenant or condition contained in this Agreement or any other Loan Document (other than a covenant or condition whose breach or default in performance is elsewhere in this Section 8.1 specifically dealt with) and such default shall not be remedied, if capable of remedy, within a period of 30 days after such Default shall occur;
- (e) if the Borrower, any Guarantor or any other Subsidiary of the Borrower shall default in the observance or performance of its covenants under the Revolving Credit Facility and there shall occur any event of default (however described or designated) thereunder, whether or not waived;
- (f) if any one or more of the Borrower, any Guarantor or any other Subsidiary of the Borrower shall fail to pay the principal of, or premium or interest or other amounts on, any Indebtedness outstanding in a principal or notional amount which, when aggregated with the principal or notional amount of all other Indebtedness in respect of which any of them has failed to pay the principal of, or premium or interest or other amounts on, exceeds \$1,000,000 (excluding Indebtedness due to the Lenders hereunder when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, whether or not such default has been waived by the applicable creditor, or any other event of default or early termination event (howsoever described or designated) shall occur or condition shall exist, and shall continue after the applicable grace period, if any, specified in any agreement or instrument relating to any such Indebtedness, whether or not such default has been waived by

the other party to such agreement or instrument, and the effect of such event is to accelerate, or permit the acceleration of, Indebtedness of either of them;

- (g) the Borrower or any Guarantor, or any of their Subsidiaries:
- (i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it or any class of its creditors;
 - (ii) commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or under analogous foreign law, or makes an assignment of its property for the general benefit of its creditors under such Act or under analogous foreign law, or makes a proposal (or files a notice of its intention to do so) under such Act or under analogous foreign law;
 - (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of its or its debts or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;
 - (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
 - (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 8.1(g) or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manners in defence thereof;
- (h) any petition is filed, application made or other proceeding instituted against or in respect of the Borrower or any Guarantor or any of their Subsidiaries:
- (i) seeking to adjudicate it an insolvent;
 - (ii) seeking a receiving order against it under the *Bankruptcy and Insolvency Act* (Canada) or under analogous foreign law;

- (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable corporations legislation or at common law or in equity; or
- (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of 30 days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Person thereunder in the interim, such grace period will cease to apply, and provided further that if such Person files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

- (i) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either Sections 8.1(g) or 8.1(h) and if the event is equivalent to the event referred to in (h) the 30 day grace period will apply as set out in (h);
- (j) if any judgment or order or series of judgments or orders (whether or not related) for the payment of money in an aggregate amount in excess of \$1,000,000 (or the Equivalent Amount in any other currency), shall be rendered against any one or more of the Borrower, any Guarantor and their Subsidiaries and (i) such judgment or order or series of judgments and/or orders are final with no further right of appeal and the Borrower has not satisfied the Required Lenders, acting reasonably, that the Borrower or the relevant Guarantor or Subsidiary of the Borrower is able to satisfy such judgment or order or series of judgments and/or orders; or (ii) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or series of judgments and/or orders, as the case may be; or (iii) there shall be any period of 20 consecutive days during which a stay of enforcement of such judgment or order or series of judgments and/or orders, as the case may be, by reason of a pending appeal or otherwise, shall not be in effect;
- (k) if any representation or warranty made or deemed to be made by the Borrower or any Guarantor in any of the Loan Documents shall prove to have been incorrect or misleading when made or deemed to be made;

- (l) if the Borrower, any Guarantor or any other Subsidiary of the Borrower shall be the subject of any proceeding or investigation pertaining to the discovery of any Hazardous Material on any property or the Release by such entity of any Hazardous Material or any violation of any Environmental Law shall occur which, in each case, could reasonably be expected to have a Material Adverse Effect;
- (m) if the obligations of the Borrower or any Guarantor or StonehouseCo hereunder or under any other Loan Document shall cease to constitute the legal, valid and binding obligations of the Borrower or any Guarantor or StonehouseCo or shall cease to be in full force and effect or the Borrower or any Guarantor shall have contested the validity of any of the Loan Documents or denied that it had any liability under any of the Loan Documents; or
- (n) if any of the Security shall cease to be a valid and perfected first priority security interest (or, with respect to accounts receivable and inventory, a valid and perfected second priority security interest) relative to third parties (subject to Permitted Encumbrances) except as a direct result of any acts or omissions of the Lenders.

8.2 Acceleration

(a) Upon the occurrence of an Event of Default and at any time thereafter while an Event of Default is continuing, the Administrative Agent may, or if so directed by the Required Lenders shall, by written notice to the Borrower declare the Advance made to the Borrower to be immediately due and payable (whereupon the same shall become so payable together with accrued interest thereon and any other sums then owed by the Borrower hereunder) or declare the Advance to be due and payable on demand of the Required Lenders. If, pursuant to this Section 8.2, the Administrative Agent declares the Advance made to the Borrower to be due and payable on demand, then, and at any time thereafter; the Administrative Agent may by written notice to the Borrower call for repayment of Advance on such date or dates as it may specify in such notice (whereupon the same shall become due and payable on such date together with accrued interest thereon and any other sums then owed by the Borrower hereunder and the provisions of Section 8.4 shall apply) or withdraw its declaration with effect from such date as it may specify in such notice.

(b) Upon the occurrence or existence of any Event of Default referred to at Section 8.1(g), (h) or (i) immediately and without notice, all outstanding Obligations payable by Borrower hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Loan Documents to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Administrative Agent may exercise any other right, power or remedy available to it under any of the Loan Documents or otherwise by law, either by suit in equity or by action at law, or both.

8.3 Remedies Cumulative and Waivers

It is expressly understood and agreed that the rights and remedies of the Administrative Agent, the Servicing Agent and the Lenders hereunder or under any other instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Administrative Agent, the Servicing Agent or any Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Administrative Agent, the Servicing Agent or any Lender may be lawfully entitled for such default or breach. Any waiver by the Administrative Agent, the Servicing Agent and the Lenders of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any indulgence granted, either expressly or by course of conduct, by the Administrative Agent, the Servicing Agent and the Lenders shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Administrative Agent, the Servicing Agent or any Lender under this Agreement as a result of any other default or breach hereunder or thereunder.

8.4 Suspension of Lenders' Obligations

Without prejudice to the rights which arise out of this Agreement or by law, the occurrence of a Default or Event of Default shall, while such Default or Event of Default shall be continuing, relieve the Lenders and the Servicing Agent of all obligations to accept or comply with any Interest Determination Notice and all Interest Periods expiring during such period shall be deemed to be reset at one month.

8.5 Application of Payments After an Event of Default

If any Event of Default shall occur and be continuing, all payments made by the Borrower hereunder shall be applied in the following order:

- (a) to amounts due hereunder as costs and expenses of the Lenders and the Agents;
- (b) to amounts due hereunder as fees to the Agents or the Lenders;
- (c) to any premium and other amounts (other than amounts in respect of interest or principal) due hereunder;
- (d) to amounts due hereunder as interest;
- (e) rateably to amounts due hereunder as principal; and
- (f) any balance to the Borrower or as a court of competent jurisdiction shall determine.

ARTICLE 9
SUCCESSOR COMPANIES

9.1 **Certain Requirements in Respect of Merger, Etc.**

The Borrower and any Guarantor shall not, and shall not permit any of their Subsidiaries to, enter into any transaction (whether by way of reconstruction, reorganization, consolidation, amalgamation, merger, plan of arrangement, transfer, sale or otherwise), whereby all or substantially all of its undertaking, property and assets would become the property of any other Person or, in the case of any such amalgamation, of the continuing company (collectively, a "Reorganization") resulting therefrom, or whereby the obligation of the Borrower or a Guarantor to pay amounts under this Agreement would become subject to novation or assumed or undertaken by any other such Person or continuing company, provided that (i) this Section 9.1 is not applicable to a Reorganization involving the Borrower or a Guarantor and one or more wholly-owned Subsidiaries of the Borrower; provided, however, in the event of such a Reorganization of the Borrower or a Guarantor and one or more wholly-owned Subsidiaries of the Borrower, the Successor Corporation shall be required to execute and deliver the supplemental agreement and opinion referred to in Section 9.1(a) and take such other actions and deliver such other documents and agreements as may be reasonably necessary to ensure that the perfection and priority of the Security is not impaired; and (ii) it may do so and such Person or continuing company (the "Successor Corporation") shall become a party to this Agreement if:

- (a) the Successor Corporation shall execute and/or deliver to the Administrative Agent and the Servicing Agent an agreement supplemental hereto in form reasonably satisfactory to the Administrative Agent and the Servicing Agent and the Lenders and execute and/or deliver such other instruments, if any, which to the reasonable satisfaction of the Lenders and in the opinion of Counsel to the Borrower addressed to the Agents and the Lenders, are necessary to evidence the agreement of the Successor Corporation to observe and perform all the covenants and obligations of the Borrower under this Agreement and any other Loan Document and to be bound by all the terms of this Agreement and any other Loan Document so far as they relate to the Borrower, which instruments, if any, shall be in form reasonably satisfactory to the Agents and the Lenders;
- (b) such transaction shall, to the reasonable satisfaction of the Administrative Agent, the Servicing Agent and the Lenders, be upon such terms as to preserve and not to impair any of the rights and powers of the Administrative Agent, the Servicing Agent and the Lenders and will not result in a Material Adverse Effect;
- (c) the perfection and priority of the Security shall not be impaired;
- (d) all Other Taxes payable as a result of such transaction have been paid by such Successor Corporation;
- (e) such transaction will not result in any Tax being levied on or payable by the Administrative Agent, the Servicing Agent or any Lender (except for Taxes on

the overall net income of the Administrative Agent or any Lender provided there is no increase in such Taxes as a result of such transaction);

- (f) such transaction will not cause, or have the result of the Administrative Agent, the Servicing Agent or any Lender being in default under, non-compliance with, or violation of, any Applicable Law;
- (g) an opinion of counsel to the Successor Corporation substantially in the form and as to matters addressed in the opinion of Counsel to the Borrower delivered pursuant to Section 4.1 shall have been delivered to the Administrative Agent and the Lenders;
- (h) the creditworthiness of the Successor Corporation (as determined by the Administrative Agent, the Servicing Agent and each Lender in its sole discretion) shall not be less than the creditworthiness of the Borrower or the relevant Guarantor immediately prior to giving effect to such transaction; and
- (i) no Default or Event of Default shall have occurred and be continuing or will occur as a result of such transaction.

9.2 Vesting of Powers in Successor

Except in the case of an amalgamation or other transaction pursuant to which the Successor Corporation is liable for all of the obligations of the Borrower by operation of law, whenever the conditions of Section 9.1 above have been duly observed and performed, the Administrative Agent and the Servicing Agent and each Lender shall execute and deliver the supplemental agreement provided for in Section 9.1(a) and thereupon:

- (a) the Successor Corporation shall possess and from time to time may exercise each and every right and power of the Borrower under this Agreement in its own name or in the name of the Borrower or otherwise and any act or proceeding by any provision of this Agreement or the Security Documents required to be done and performed with like force and effect by the like directors or officers of the Successor Corporation; and
- (b) at the request of the Borrower, the Borrower shall be released from its liability and obligations under this Agreement and the Lenders, at the request and at the expense of the Borrower, shall execute and deliver to the Borrower such instruments as shall reasonably be requisite to evidence such release.

ARTICLE 10 COSTS, EXPENSES AND INDEMNIFICATION

10.1 Costs and Expenses

The Borrower shall pay promptly, upon request by the Administrative Agent, the Servicing Agent or a Lender, all reasonable costs and expenses in connection with its due diligence relating to the Facility and the Collateral, including, without limitation, the reasonable

fees and out-of-pocket expenses of the counsel to the Administrative Agent, the Servicing Agent or a Lender and the reasonable fees and out-of-pocket expenses of each Agent with respect thereto. The Borrower further agrees to pay all reasonable costs and expenses (including reasonable fees and expenses of counsel, accountants and other experts) in connection with the preparation, negotiation, interpretation, administration, preservation or enforcement of rights of the Administrative Agent, the Servicing Agent and each Lender under this Agreement and the other Loan Documents and all amendments, modifications, waivers of, or consents with respect to, any of the Loan Documents, including, without limitation, all costs and expenses sustained by them as a result of any failure by the Borrower or any Guarantor to perform or observe their obligations contained in this Agreement and all costs incurred in connection with obtaining any required consents, approvals or authorizations required in connection herewith and otherwise in enforcing and realizing upon the Security.

10.2 Indemnification by the Borrower

In addition to any liability of the Borrower to the Administrative Agent, the Servicing Agent and each Lender under any other provision hereof, the Borrower shall indemnify the Administrative Agent, the Servicing Agent and each Lender and hold the Administrative Agent, the Servicing Agent and each Lender harmless against any reasonable costs or expenses incurred by the Administrative Agent, the Servicing Agent or any Lender as a result (i) of any failure by the Borrower or any Guarantor to fulfil any of its obligations hereunder in the manner provided herein including, without limitation, any cost or expense incurred by reason of the liquidation or re-employment in whole or in part of deposits or other funds required by the Administrative Agent, the Servicing Agent or any Lender to fund or maintain the Advance as a result of the failure of the Borrower to complete the Drawdown or to make any repayment or other payment on the date required hereunder or specified by it in any notice given hereunder (but excluding costs arising solely out of loss of anticipated profits); or (ii) of the failure of the Borrower to pay any other amount including, without limitation, any interest or fee due hereunder on its due date; or (iii) of the prepayment or repayment by the Borrower of any Advance prior to its date of maturity or the last day of the then current Interest Period for such Advance, including, without limiting the generality of the foregoing, any repayment or prepayment resulting from the circumstances referred to in Section 2.10(e).

10.3 Funds

Each amount advanced, made available, disbursed or paid hereunder shall be advanced, made available, disbursed or paid, as the case may be, in immediately available funds or, after notice from the Administrative Agent or the Servicing Agent, in such other form of funds as may from time to time be customarily used in Toronto, Ontario in the settlement of banking transactions similar to the banking transactions required to give effect to the provisions of this Agreement on the day such advance, disbursement or payment is to be made.

10.4 General Indemnity

(a) **Indemnity.** Subject to paragraph (b) below, the Borrower and each of any Guarantor jointly and severally agree to indemnify and save harmless the Administrative Agent and the Servicing Agent and each Lender and each of their respective officers, directors,

employees, agents, advisors, representatives and affiliates (collectively, the "Indemnitees" and individually, an "Indemnitee") from and against any and all liabilities, costs, claims, damages, penalties, losses and expenses (including reasonable legal fees and disbursements of counsel) (collectively, the "Losses") as a result of any claims, actions or proceedings ("Claims") asserted against an Indemnitee in connection with the agreement of the Administrative Agent, the Servicing Agent and each Lender to provide the Facility, the commitment of the Lenders to establish the Facility and the Advances made by the Lenders including, without limitation: (i) the costs of defending and/or counterclaiming or claiming over against any Person in respect of any Claim; and (ii) any Losses arising out of a settlement of any Claim made by the Indemnitees.

(b) **Limitations to Indemnity.** The foregoing obligations of indemnification shall not apply to any Losses suffered by an Indemnitee or to any Claim asserted against an Indemnitee or any of them to the extent such Loss or Claim is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) The obligations of the Borrower and any Guarantors under this Section 10.4 shall survive the repayment of all outstanding Advances hereunder and the termination of the Facility.

10.5 Environmental Claims

(a) **Indemnity.** Subject to paragraph (b) below, the Borrower and any Guarantor jointly and severally agrees to indemnify and save harmless each of the Indemnitees from and against any and all Losses as a result of any Claims asserted against an Indemnitee with respect to any presence or the Release of any Hazardous Material on, into, onto, under or from any property which at any time was owned, leased, used, occupied, operated or under the control of any of the Borrower, any Guarantor or any of the Subsidiaries of any of the foregoing or which arises out of or in connection with any action of, or failure to act by, the Borrower, a Guarantor or any other Subsidiary of the Borrower or any predecessor or successor thereof in contravention of any Environmental Laws including, without limitation: (i) the costs of defending and/or counterclaiming or claiming over against third parties in respect of any Claim; and (ii) any Losses arising out of a settlement of any Claim made by the Indemnitees.

(b) **Limitations to Indemnity.** The foregoing obligations of indemnification shall not apply to any Losses suffered by an Indemnitee or to any Claim asserted against an Indemnitee or any of them to the extent such Loss or Claim is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee.

(c) The obligations of the Borrower and any Guarantors under this Section 10.5 shall survive the repayment of all outstanding Advances hereunder and the termination of the Facility.

ARTICLE 11
THE AGENTS

11.1 **The Agents**

(a) **The Administrative Agent.** Each Lender hereby irrevocably appoints the Administrative Agent to act as its Administrative Agent in connection with this Agreement, the Loan Documents, and any matter contemplated hereunder, and authorizes irrevocably the Administrative Agent to exercise such rights, powers and discretions as are delegated to the Administrative Agent pursuant to this Agreement, the Loan Documents, and any matter contemplated thereunder, together with all such rights, powers and discretions as are incidental hereto or thereto. The Borrower may in all respects assume that the Administrative Agent has obtained all necessary authorities from the Lenders and is acting in full conformity with this Article 11 at all times. The Administrative Agent shall have only those duties and responsibilities which are expressly specified in this Agreement, and it may perform such duties by or through its agents or employees. This Agreement shall not place the Administrative Agent under any fiduciary duties in respect of any Lender, Borrower, Guarantor, the Servicing Agent or any other Person.

(b) **The Servicing Agent.** Each Lender and the Administrative Agent hereby irrevocably appoints the Servicing Agent to act as its Servicing Agent in connection with this Agreement, the Loan Documents, and any matter contemplated hereunder, and authorizes irrevocably the Servicing Agent to exercise such rights, powers and discretions as are delegated to the Servicing Agent pursuant to this Agreement, the Loan Documents, and any matter contemplated thereunder, together with all such rights, powers and discretions as are incidental hereto or thereto. The Borrower may in all respects assume that the Servicing Agent has obtained all necessary authorities from the Lenders and is acting in full conformity with this Article 11 at all times. The Servicing Agent shall have only those duties and responsibilities which are expressly specified in this Agreement, and it may perform such duties by or through its agents or employees. This Agreement shall not place the Servicing Agent under any fiduciary duties in respect of the Administrative Agent, any Lender, Borrower, any Guarantor or any other Person.

11.2 **The Agents' Responsibilities**

Each Agent may:

- (a) assume that:
 - (i) any representation made by the Borrower in or in connection with any of this Agreement or an Interest Determination Notice is true;
 - (ii) no Event of Default has occurred; and
 - (iii) the Borrower is not in breach of or in default under its obligations under any of this Agreement;

and each Agent may also:

- (b) unless it has actual knowledge or actual notice to the contrary, assume that each Lender's address is that identified with its signature below until it has received from such Lender a notice designating some other office of such Lender as its address and act upon any such notice until the same is superseded by a further such notice;
- (c) engage and pay for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
- (d) unless it has actual knowledge or actual notice to the contrary, rely as to matters of fact which might reasonably be expected to be within the knowledge of the Borrower upon a statement signed by or on behalf of the Borrower;
- (e) unless it has actual knowledge or actual notice to the contrary, rely upon any communication or document believed by it to be genuine;
- (f) refrain from exercising right, power or discretion vested in it under this Agreement unless and until instructed by the Required Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised;
- (g) refrain from exercising any right, power or discretion vested in it which would or might in its opinion be contrary to any law of any jurisdiction or any directive or otherwise render it liable to any Person, and may do anything which is in its opinion necessary to comply with any such law or directive;
- (h) retain for its own benefit, and without liability to account for, any fee or other sum receivable by it for its own account;
- (i) accept deposits from, lend money to, provide any advisory or other services to or engage in any kind of banking or other business with any party (including any Affiliate thereof) to this Agreement; and
- (j) refrain from acting in accordance with any instructions of the Required Lenders to begin any legal action or proceeding arising out of or in connection with any of this Agreement until it shall have received such security as it may require (whether by way of payment in advance or otherwise) against all costs, claims, expenses (including legal fees) and liabilities which it will or may expend or incur in complying with such instruction.

11.3

Agents' Duties

- (a) The Administrative Agent shall:
 - (i) promptly upon receipt of any notice, document, request or other information received by it in its capacity as Administrative Agent hereunder from the Borrower, as applicable, provide such notice,

document, request or other information received to the Servicing Agent in order for the Servicing Agent to timely carry out its duties and obligations pursuant to this Agreement;

- (ii) promptly notify each Lender and the Servicing Agent of the occurrence of any Event of Default or any default by the Borrower in the due performance of its obligations under this Agreement or any document incidental thereto to which it is expressed to be a party and of which the Administrative Agent has actual knowledge or actual notice;
 - (iii) subject to the foregoing provisions of Section 11.2 and this Section 11.3, act in accordance with any instructions given to it by the Required Lenders; and
 - (iv) each time the Borrower requests the prior written consent of the Required Lenders, promptly inform the Servicing Agent of such request and of the Administrative Agent's instruction and/or drafts, as applicable, with respect thereto in order for the Servicing Agent to carry out its duties and obligations pursuant to Section 11.3(b)(iv) in a reasonable and timely manner having due regard to the nature and circumstances of the request;
 - (v) if so instructed by the Required Lenders, refrain from exercising any right, power or discretion vested in it under this Agreement or any document incidental thereto.
- (b) The Servicing Agent shall:
- (i) promptly upon receipt thereof, provide each Lender and the Administrative Agent with a copy of, or inform each Lender and the Administrative Agent of the contents of, any notice, document, request or other information received by it in its capacity as Servicing Agent hereunder from the Borrower or the Administrative Agent;
 - (ii) promptly notify each Lender and the Administrative Agent of the occurrence of any Event of Default or any default by the Borrower in the due performance of its obligations under this Agreement or any document incidental thereto to which it is expressed to be a party and of which the Servicing Agent has actual knowledge or actual notice;
 - (iii) subject to the foregoing provisions of Section 11.2 and this Section 11.3, act in accordance with any instructions given to it by the Required Lenders or the Administrative Agent;
 - (iv) each time the Borrower requests the prior written consent of the Required Lenders, use its best efforts to act in accordance with the Administrative Agent's instruction and/or drafts, as applicable, with respect thereto and obtain and communicate to the Borrower the response of the Required

Lenders in a reasonable and timely manner having due regard to the nature and circumstances of the request;

- (v) subject to the foregoing provisions of Section 11.2 and this Section 11.3, if so instructed by the Required Lenders or the Administrative Agent, refrain from exercising any right, power or discretion vested in it under this Agreement or any document incidental thereto; and
- (vi) in the event that the Servicing Agent is at any time given instructions by both the Administrative Agent and the Required Lenders which it reasonably deems to be in conflict, follow the instructions given to it by the Required Lenders.

11.4 Protection of Agents

Notwithstanding anything to the contrary expressed or implied herein, the Agents shall not:

- (a) be bound to enquire as to:
 - (i) whether any representation made by the Borrower in or in connection with this Agreement or any document incidental thereto is true;
 - (ii) the occurrence of any Event of Default;
 - (iii) the performance by the Borrower of its obligations under any of this Agreement or any document incidental thereto;
 - (iv) any breach of or default by the Borrower of or under its obligations under this Agreement or any document incidental thereto; or
 - (v) the use or application by the Borrower of any of the proceeds of the Facility;
- (b) be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any Person any information relating to the Borrower if such disclosure would or might in its opinion constitute a breach of any law or regulation or be otherwise actionable at the suit of any Person; or
- (d) accept any responsibility for the accuracy and/or completeness of any information supplied in connection herewith or for the legality, validity, effectiveness, adequacy or enforceability of this Agreement or any document incidental hereto or thereto and the Administrative Agent and the Servicing Agent shall not be under any liability to any Lender as a result of taking or omitting to take any action in relation to the Agreement or any document incidental hereto or thereto save in the case of gross negligence or wilful misconduct, and each of the Lenders

agrees that it will not assert or seek to assert against any director, officer, employee or agent of the Administrative Agent or the Servicing Agent any claim it might have against any of them in respect of the matters referred to in this Section 11.4.

11.5 Indemnification of Agents

Each Lender agrees to indemnify, on demand by the Administrative Agent or the Servicing Agent, rateably (according to the amount of each such Lender's Participation as of the date of such demand in proportion to the aggregate outstanding Advance) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent or the Servicing Agent in any way relating to or arising out of any of the Loan Documents or any other document contemplated thereby or any action taken or omitted by the Administrative Agent or the Servicing Agent under any of the Loan Documents or any document contemplated thereby, regardless of whether the same would or should have entitled such indemnitee to indemnification from the Borrower, any Guarantor or any other Person, except that no Lender shall be liable to the Administrative Agent or the Servicing Agent, as applicable, for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence or wilful misconduct of the Administrative Agent or the Servicing Agent, as applicable. Without limiting the generality of the foregoing, each Lender agrees to reimburse each of the Administrative Agent and the Servicing Agent promptly upon demand for its rateable share as above described of out-of-pocket expenses (including legal fees and disbursements on a full indemnity basis) incurred by the Administrative Agent or the Servicing Agent, as applicable, in connection with the determination or preservation of any rights of the Administrative Agent, the Servicing Agent or the Lenders under, or the enforcement of, or legal advice in respect of rights or responsibilities under, the Loan Documents or any other instruments and agreements referred to in them, to the extent that the Administrative Agent or the Servicing Agent may refrain from exercising any right, power or discretion or taking any action to protect or enforce the rights of the Administrative Agent, the Servicing Agent or any Lender under the Loan Documents or any other instruments and agreements referred to in them until it has been indemnified or secured to its satisfaction against any and all costs, losses, expenses or liabilities (including legal fees and disbursements) which it would or might sustain or incur as a result of such exercise or action. The obligations of the Lenders under this Section 11.5 shall survive the repayment of all outstanding Advances hereunder and the termination of the Facility.

11.6 Termination or Resignation of an Agent

(a) Notwithstanding the irrevocable appointment of the Administrative Agent and the Servicing Agent, the Required Lenders may (with the consent of the Borrower not to be unreasonably withheld), upon giving the applicable Agent 90 days' prior written notice to such effect, terminate such Agent's appointment hereunder provided that a successor Administrative Agent or Servicing Agent as applicable has been appointed at or prior to expiry of such notice.

(b) Either Agent may resign its appointment hereunder at any time without assigning any reason therefor by giving written notice to such effect to each of the other parties hereto.

The resignation of the Administrative Agent shall not be effective until a successor Administrative Agent has been appointed. With respect to the Servicing Agent, if no such successor shall have been appointed by the Required Lenders and shall have accepted such appointment within 60 days after the Servicing Agent gives notice of its resignation, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Servicing Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, as applicable and (ii) all payments, communications and determinations provided to be made by, to or through such Servicing Agent shall instead be made by, to or through Administrative Agent until such time as the Required Lenders appoint a successor Servicing Agent.

(c) In the event of any such termination or resignation, the Required Lenders shall appoint a successor Administrative Agent or Servicing Agent, as applicable, acceptable to the Borrower, deliver copies of the Accounts to such successor and the retiring Agent shall be discharged from any further obligation hereunder but shall remain entitled to the benefit of the provisions of Sections 10.2, 10.4, 10.5 and this Article 11 and the Agent's successor and each of the other parties hereto shall have the same rights and obligations among themselves as they would have had if such successor originally had been a party hereto as Administrative Agent or Servicing Agent, as applicable.

11.7 Rights of Administrative Agent as Lender

With respect to its portion of the Advance and its Participation, the Administrative Agent shall have the same rights and powers under this Agreement as any other Lender, and it may exercise such rights and powers as though it were not performing the duties and functions delegated to it as Administrative Agent hereunder, and the term "Lender" or any other similar term shall, unless the context otherwise requires, include the Administrative Agent in its capacity as a Lender.

11.8 Authorized Waivers, Variations and Omissions

If so authorized in writing by the Required Lenders, the Administrative Agent may grant waivers, consents, vary the terms of this Agreement and do or omit to do all such acts and things in connection herewith or therewith. Except with the prior written agreement of all the Lenders, nothing in this Section 11.8 shall authorize (i) any decrease in the Interest Rate, (ii) any extension of the date for, or alteration in the amount, currency or mode of calculation or computation of any payment of principal or interest or other amount, (iii) any increase in the Advance of a Lender, (iv) any extension of the Maturity Date, (v) any change in the terms of Article 7, Article 10 or Article 11, (vi) any change in the definition of Required Lenders (vii) the release of the Borrower or any Guarantor from its obligations under any Loan Document except as otherwise expressly permitted under the Loan Documents or (viii) any amendments to this Section 11.8.

11.9 Financial Information Concerning Borrower

Subject to Section 11.3(a)(i), neither Agent shall have any duty or responsibility either initially or on a continuing basis to provide any Lender with any credit or other information with respect to the financial condition and affairs of the Borrower.

11.10 Knowledge of Financial Situation of Borrower

Each of the Lenders represents and warrants to the Agents that it has made its own independent investigation of the financial condition and affairs of the Borrower in connection with the making and continuation of its Participation in this Agreement and that it has not relied on any information provided to it by the Agents in connection herewith or therewith, and each Lender represents and warrants to the Agents that it shall continue to make its own appraisal of the creditworthiness of the Borrower from time to time.

11.11 Legal Proceedings

The Agents shall not be obligated to take any legal proceedings against the Borrower or any other Person for the recovery of any amount due under this Agreement. No Lender shall bring legal proceedings against the Borrower or any other Person hereunder or in connection herewith, or exercise any right arising hereunder or in connection herewith over the property and assets of the Borrower or any other Person without the prior written consent of the Required Lenders.

11.12 Capacity as Agent

In performing its functions and duties under this Agreement, each Agent shall act solely as the Administrative Agent or Servicing Agent, as applicable, of the Lenders and shall not assume, and shall not be deemed to have assumed, any obligation as agent or trustee for the Borrower or any other Person. Neither Agent shall be under any liability or responsibility of any kind to the Borrower, the Lenders, or to any other Person arising out of or in relation to any failure or delay in performance or breach by any Lender or Lenders or, as the case may be, by the Borrower or any other Person pursuant to or in any way in connection with this Agreement.

11.13 Capacity as Lead Arranger

The Borrower and the Lenders hereby agree and confirm that the Administrative Agent has performed its functions and duties in connection with the arrangement of the Facility and shall not be under any liability or responsibility of any kind to the Borrower, the Lenders, the Administrative Agent or any of them arising out of or in relation to the arrangement of the Facility or this Agreement.

11.14 Deposits or Loans Respecting the Borrower

Each Agent and each of the Lenders may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower without liability to account to either Agent or any Lender.

ARTICLE 12
GENERAL

12.1 **Term**

The Facility shall expire on the Maturity Date.

12.2 **Acknowledgment and Waiver of Events of Default**

The Borrower acknowledges and agrees that (a) as of the Effective Date: (i) the Borrower's LTM EBITDA is less than \$11,500,000, in violation of Section 6.3(a) of the Existing Credit Agreement; (ii) the Consolidated Leverage Ratio exceeds 4.60:1.0, in violation of Section 6.3(b) of the Existing Credit Agreement; (iii) the Borrower is in default of certain of its covenants under the Revolving Credit Facility and an event of default thereunder has occurred, in violation of Section 6.1(m) of the Existing Credit Agreement; and (iv) the Borrower has not delivered to the Administrative Agent the audited Financial Statements and other deliverables required pursuant to Section 6.1(b)(iii) of the Existing Credit Agreement in respect of the fiscal years ended January 26, 2008 and January 31, 2009; and (b) as a result of the circumstances referred to at (i) through (iv) above (collectively, the "Existing Defaults"), an Event of Default under Section 8.1(c) and Section 8.1(e) of the Existing Credit Agreement has occurred and is continuing. The Administrative Agent and the Lenders hereby waive the Existing Defaults, and the Borrower acknowledges such waiver. The waiver given by the Lenders under this Section 12.2 is given pursuant to the provisions of Section 12.5 of the Existing Credit Agreement, is solely with respect to the Existing Defaults and shall not be construed as having created a custom in any way or manner or to have modified or waived any other obligation of the Borrower hereunder, including any obligation of the Borrower to pay interest or to repay the principal amount of the Facility strictly in accordance with the provisions of Article 2.

12.3 **Survival**

All covenants, agreements, representations and warranties made herein or in certificates delivered in connection herewith by or on behalf of the Borrower, any Guarantor or any other Subsidiary of the Borrower shall survive the execution and delivery of this Agreement and the making of the Drawdown hereunder and shall continue in full force and effect so long as there is any obligation of the Borrower to any Lender hereunder, the Administrative Agent or the Servicing Agent.

12.4 **Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Borrower and the successors and permitted assigns of the Lenders and the Agents.

12.5 **Notices**

All notices, requests, demands or other communications to or from the parties hereto shall be in writing and shall be given by overnight delivery service, by hand delivery or by telecopy to the addressee as follows:

(i) If to the Borrower or any Guarantor:

Grafton-Fraser Inc.
44 Apex Road
Toronto, Ontario
M6A 2V2

Attention: Treasurer
Facsimile: (416) 780-2159

with a copy to:

Osler Hoskin & Harcourt LLP
Suite 6100, P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Dale Seymour
Facsimile: (416) 862-6666

(ii) If to the Administrative Agent:

BTD CP Holdings LP
280 Park Avenue
11th Floor, Building East
New York, New York, 10017

Attention: David Clayton and Louis Salvatore
Facsimile: (212) 503-6921

with a copy to:

Davies Ward Phillips & Vineberg LLP
1 First Canadian Place
44th Floor
Toronto, Ontario
M5X 1B1

Attention: Scott R. Hyman
Facsimile: (416) 863-0871

(iii) If to a Lender:

To the address set forth next to its signature on the signature page of this Agreement

(iv) If to the Servicing Agent:

OFS AGENCY SERVICES, LLC
2850 West Golf Road, Suite 520
Rolling Meadows, IL 60008

Attention: Sean Kelley/Alisa Filstead
Telecopier: (847) 731-7911

With a copy to:

Goldberg Kohn
55 East Monroe, Suite 3300
Chicago, Illinois 60603

Attention: Keith G. Radner
Telecopier: (312) 863-7445

or at such other address or to such other individual as the Borrower may designate by notice to the Servicing Agent, or the Administrative Agent or the Servicing Agent may designate by notice to the Borrower. If any notice, request, demand or other communication is delivered or transmitted on a day other than a Banking Day or after 3:00 p.m. on any Banking Day, the same shall be deemed to have been effectively given and received on the next following Banking Day.

12.6 Amendment and Waiver

This Agreement and documents collateral hereto may be modified or amended and a waiver of any breach of any term or provision of this Agreement shall be effective only if the Borrower and the Administrative Agent and the Required Lenders or each Lender, as the case may be, so agree in writing; provided that no modification, amendment or waiver shall, unless in writing and signed by the Servicing Agent in addition to the parties required above, affect the rights or duties of the Servicing Agent under this Agreement or any other document. A waiver of any breach of any term or provision of this Agreement shall be limited to the specific breach waived.

12.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the Administrative Agent, the Servicing Agent, the Lenders and the Borrower agree that any legal suit, action or proceeding arising out of this Agreement may be instituted in the courts of Ontario, and each of the Administrative Agent, the Servicing Agent, the Lenders and the Borrower hereby accepts and irrevocably submits to the non-exclusive jurisdiction of said courts and acknowledges their competence and agrees to be bound by any judgment thereof.

12.8 Further Assurances

The Borrower, at its expense, will promptly execute and deliver, or cause to be executed and delivered, to the Agents and the Lenders, upon request, all such other and further

documents, agreements, certificates and instruments in compliance with, or accomplishment of the covenants and agreements of the Borrower and any Guarantor hereunder or under the Loan Documents or more fully to state the obligations of the Borrower and any Guarantor as set out herein or therein or to make any recording, file any notice or obtain any consents, all as may be necessary or appropriate in connection therewith.

12.9 Enforcement and Waiver by the Lenders

The Agents and the Lenders shall have the right at all times to enforce the provisions of this Agreement and agreements to be delivered pursuant hereto in strict accordance with the terms hereof and thereof, notwithstanding any conduct or custom on the part of the Agents and Lenders in refraining from so doing at any time or times. The failure of the Agents and the Lenders at any time or times to enforce its rights under such provisions, strictly in accordance with the same, shall not be construed as having created a custom or in any way or manner modified or waived the same. All rights and remedies of the Agents and the Lenders are cumulative and concurrent and the exercise of one right or remedy shall not be deemed a waiver or release of any other right or remedy.

12.10 Counterparts and Facsimile Signature

This Agreement may be executed by the parties in separate counterparts (by original or facsimile signature) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

12.11 Assignment by the Borrower

The rights and obligations of the Borrower under this Agreement are not assignable to any other Person, except in accordance with Article 9, without the prior written consent of the Administrative Agent, the Lenders and the Servicing Agent in their sole discretion.

12.12 Assignments and Transfers by the Lenders

(a) Any Lender may, at any time, assign all or any of its rights and benefits hereunder or transfer in accordance with Section 12.12(b) all or any of its rights, benefits and obligations hereunder to one or more financial institutions or other Persons (the "Transferee"); provided that: (i) unless a Default or an Event of Default has occurred and is continuing, each such financial institution or other Person shall be acceptable to the Borrower, acting reasonably; and (ii) unless a Default or an Event of Default has occurred and is continuing, in no event shall any such assignment or participation be made to any financial institution or other Person that is designated in Schedule 12.12 as a "disqualified lender". Notwithstanding the foregoing, the acceptance of the Borrower is not required in connection with the assignment or transfer of all or any of the rights, benefits and obligations hereunder to (i) any Subsidiary or Affiliate of a Lender, provided that, in either case, any such assignment or transfer does not give rise to a claim for increased costs pursuant to Article 3.

(b) If a Lender (for the purposes of this Section 12.12(b), a "Transferor") assigns all or any of its rights and benefits hereunder in accordance with Section 12.12(a), then, unless and until the Transferee has executed a Transfer Agreement substantially in the form of Exhibit C hereto (or such other form as may be agreed to by the Lenders and the Borrower) that the Transferee shall be bound by the same obligations of the Transferor as the Transferee would have been under if the Transferee had been an original party hereto, the Borrower shall not be obliged to recognize such Transferee as having the rights against the Borrower which the Transferee would have had if the Transferee had been such a party hereto, provided that upon delivery by the Transferee to the Borrower and the Lenders of a transfer agreement substantially in the form of Exhibit C hereto, the Transferor shall be released from its obligations hereunder that have been assumed by the Transferee.

(c) A Lender may participate all or any part of its interest hereunder, provided that any such participation does not give rise to a claim for increased costs pursuant to Article 3. Any payment to a participant by a Lender in connection with the sale of a participation shall not be or be deemed to be a repayment by Borrower or a new Advance. The Borrower shall not be obligated to deal with any participant and shall be entitled to deal solely with the Lender and the Lender shall not be released from any of its obligations to the Borrower or any Guarantor as a result of such participation except to the extent that the participant has fulfilled such obligations. Such participants shall be bound to the same confidentiality provisions with respect to the Facility and the Borrower and any Guarantor as are applicable to the Lender.

(d) Any such assignment, transfer or participation shall only be effective upon delivery by the applicable Lender(s) to the Administrative Agent and the Servicing Agent of written notice of such assignment, transfer or participation, and in connection therewith the applicable Lender(s) shall provide the Agents with such administrative details and other information and documentation (including without limitation tax related information and documentation) as either Agent may reasonably require.

12.13 Set-Off

If an Event of Default has occurred and is continuing, each Lender and each of its Affiliates shall have the right to set off against any accounts, credits or balances maintained by the Borrower or any Guarantor with the Lender or any such Affiliate any amount due hereunder. Except for payments to a Lender from the Administrative Agent or the Servicing Agent which were received by the Administrative Agent or the Servicing Agent for the account of such Lender in accordance with the provisions of this Agreement, if any Lender shall at any time receive payment or satisfaction of all or a part of any amounts payable hereunder, whether by set-off or otherwise, in a proportion which, in relation to any amounts received by any other Lender or Lenders at the same time, represents more than its *pro rata* Participation, then such Lender shall notify the Administrative Agent and the Servicing Agent thereof and pay to the Servicing Agent for the account of the other Lenders such amount as will ensure that each Lender will receive a proportion of such payment equal to such Lender's *pro rata* Participation. In the event that at any time any Lender shall be required to refund any amount which has been paid to or received by it by set-off or otherwise on account of any part of the Advance, interest thereon or any other amount payable hereunder and which has been paid to any other Lender pursuant to this Section 12.13, such other Lender shall repay a proportionate amount of the

amounts so refunded without interest. If a Lender is required to make any payment to any other Lender pursuant to this Section 12.13, then, subject to the foregoing sentence, the liability of the Borrower to the Lender making such payment under this Agreement shall be treated as not having been reduced by the amount of such payment and the liability of the Borrower to any Lender receiving such payment shall be treated as having been reduced by the amount of the payment received by such Lender.

12.14 Time of the Essence

Time shall be of the essence in this Agreement.

12.15 Equal Ranking of Lenders

The Lenders, and to the extent necessary, the Borrower, agree as between themselves that any indebtedness of the Borrower towards any Lender hereunder, in respect of any Advance, or otherwise hereunder shall at all times rank equally and without preference or distinction with the indebtedness of the Borrower towards any other Lender hereunder.

12.16 Sharing of Information

The Borrower hereby agrees that the Agents and the Lenders may share amongst themselves any information which any of them may possess concerning the Borrower in respect of the Borrower's undertakings, obligations or indebtedness towards any Lender pursuant to this Agreement and any Advance, as well as any payment received from the Borrower by any Lender.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

by _____

Name:

Title:

**BTD CP HOLDINGS LP (F/K/A GSO
CP HOLDINGS LP), as Administrative
Agent and Lead Arranger**

By: BTD LLC, its General Partner

by _____

Name: George Fan

Title: Authorized Signatory

Address:

**280 Park Avenue
11th Floor, Building East
New York, New York, 10017**

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

**By: GSO Capital Partners LP, its
collateral manager**

by _____

Name:

Title:

Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO OFFSHORE
MULTICURRENCY FACILITY
(LUXEMBOURG) S.A.R.L., as Lender**

**By: GSO Capital Partners LP, its
portfolio manager**

by _____

Name:

Title:

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

**By: Orchard First Source Capital, Inc.,
its attorney in fact**

by _____

Name:

Title:

EXHIBIT A

FORM OF DRAWDOWN NOTICE

To: GSO Special Situations Fund LP, as Administrative Agent

And To: The Lenders party to the Credit Agreement referred to below

Attention: Louis Salvatore and Matthew Bass

This Drawdown Notice is being delivered pursuant to the credit agreement made as of May 24, 2007 (the "Credit Agreement") made between the Borrower, the Guarantors that may become parties thereto from time to time, the Administrative Agent and the Lenders parties thereto from time to time. Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

We hereby request an Advance in the amount of \$ _____ and having an Interest Period of _____ months.

Payment instructions: _____

The representations and warranties set forth in Section 5.1 of the Credit Agreement are, *mutatis mutandis*, true and correct on and as of the date hereof, both before and after giving effect to the Drawdown of the requested Advance and to the application of proceeds therefrom.

No Default or Event of Default has occurred and is continuing, nor shall any such event occur as a result of making the requested Advance or the application of proceeds therefrom.

DATED this _____ day of _____, _____.

GF ACQUISITION CORP.

by _____
Name:
Title:

by _____
Name:
Title:

EXHIBIT B

FORM OF INTEREST DETERMINATION NOTICE

TO: [NAME OF LENDERS]

ATTENTION: ■

This Interest Determination Notice is being delivered pursuant to the amended and restated credit agreement dated as of June 16, 2009 (the "Credit Agreement") between Grafton-Fraser Inc., as borrower, the guarantors that may become from time to time parties thereto, BTD CP Holdings LP, as administrative agent, OFS Agency Services, LLC, as servicing agent and the lenders from time to time parties thereto. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Credit Agreement.

We hereby request that the Interest Period in respect of the Advance commencing on _____ be _____ months.

No Default or Event of Default has occurred and is continuing, nor shall any such event occur as a result of making the requested Advance or the application of proceeds therefrom.

DATED this _____ day of _____, _____.

GRAFTON-FRASER INC.

by _____
Name:
Title:

EXHIBIT C

FORM OF TRANSFER AGREEMENT

TO: GRAFTON-FRASER INC.

WHEREAS GF Acquisition Corp., predecessor to Grafton-Fraser Inc. (the "Borrower") entered into an amended and restated credit agreement dated June 16, 2009 (the "Amended and Restated Credit Agreement") with the Administrative Agent and the Servicing Agent, the Guarantors that may become parties thereto from time to time and the Lenders parties thereto from time to time whereby the Lenders agreed to provide the Borrower with a credit facility in an aggregate principal amount of \$50,000,000;

AND WHEREAS pursuant to and in accordance with Section 12.12 of the Amended and Restated Credit Agreement, any Lender may, with the prior written consent of the Borrower, assign or transfer all or any of its rights, benefits and obligations under the Amended and Restated Credit Agreement by duly completing, executing and delivering to the Borrower this Transfer Certificate and providing notice to the Agents;

AND WHEREAS any Lender (the "Transferor") wishes to assign or transfer to _____ (the "Transferee") the rights, benefits and obligations of the Transferor under the Amended and Restated Credit Agreement specified herein;

AND WHEREAS the Borrower has consented in writing to such assignment or transfer;

NOW THEREFORE in consideration of the foregoing and of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, the signatories hereto agree as follows:

1. All capitalized terms defined in the Amended and Restated Credit Agreement and not otherwise defined herein have the same meaning as in the Amended and Restated Credit Agreement.

2. The Transferor assigns and transfers to the Transferee the following rights, benefits and obligations (the "Transfer"):

[description of the transferred rights, benefits and obligations, indicating retained interest or fees, if applicable, and Transferee's commitment and Participation]

(the "Transferred Rights", the "Transferred Benefits", the "Transferred Obligations", as applicable, and collectively the "Transferred Rights, Benefits and Obligations").

3. The Transferee accepts the Transfer and (if applicable) assumes the Transferred Obligations (the "Assumption").

4. The Transferee agrees with the Borrower that it shall be bound by the same obligations of the Lenders as the Transferee would have been under if the Transferee had been an original party to the Amended and Restated Credit Agreement.

5. The Transfer and the Assumption are governed by and subject to Section 12.12 of the Amended and Restated Credit Agreement.

6. The Transferee acknowledges and confirms that it has not relied upon and that the Transferor has not made any representation or warranty whatsoever as to the due execution, legality, effectiveness, validity or enforceability of the Amended and Restated Credit Agreement or any other documentation or information delivered by the Transferor to the Transferee in connection therewith or for the performance thereof by any party thereto or for the performance of any Guarantee by any Guarantor or for the financial condition of the Borrower or of any Guarantor. All representations, warranties and conditions expressed or implied by law or otherwise are hereby excluded.

7. The Transferee represents and warrants that it [is/is not] a non-resident within the meaning of the *Income Tax Act* (Canada) and that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Borrower and has not relied and will not hereafter rely on the Transferor to appraise or keep under review on its behalf the financial condition, creditworthiness, affairs, status or nature of the Borrower.

8. Each of the Transferor and the Transferee represents and warrants to the Borrower and the Guarantors that it has the capacity and power to enter into the Transfer and the Assumption in accordance with the terms hereof and to perform its obligations arising therefrom, and all action required to authorize the execution and delivery hereof and the performance of such obligations has been duly taken.

9. This Transfer Certificate shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada.

DATED this _____ day of _____, 200__.

[TRANSFEROR]

by _____
Name:
Title:

[TRANSFEREE]

by _____
Name:
Title:

GRAFTON-FRASER INC.

by _____
Name:
Title:

SCHEDULE 1.1(A)

LENDERS AND COMMITMENTS

Name of Lender	Commitment
GSO Domestic Capital Funding (Luxembourg) S.A.R.L.	\$21,693,740
GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.	\$28,306,260

SCHEDULE 1.1(C)

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means the following types of Encumbrances:

- (a) liens in respect of: (i) Taxes, assessments or governmental charges or claims the payment of which is not, at the time, overdue and (ii) Taxes, the payment of which are being contested in good faith by proper proceedings and for which adequate cash reserves are being maintained;
- (b) common law liens of landlords with respect to rights of distress, statutory liens of banks and rights of set-off, statutory liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other liens imposed by law, in each case incurred in the ordinary course of business and not involving (i) in any individual case an amount in excess of \$200,000, or (ii) in the aggregate at any time outstanding an amount in excess of \$500,000 (in either case to the extent such amount is not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) for amounts not yet overdue or for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by generally accepted accounting principles as applied in Canada shall have been made for any such contested amounts, and (2) in the case of a lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such lien;
- (c) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;
- (d) any attachment or judgment lien not involving (i) in any individual case an amount in excess of \$250,000, or (ii) in the aggregate at any time outstanding an amount in excess of \$500,000 (in either case to the extent such amount is not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) so long as the same is being contested diligently in good faith by proper proceedings and for which adequate cash reserves are being maintained ;
- (e) leases or subleases granted to third parties which do not, individually and in the aggregate, interfere in any material respect with the ordinary conduct of the

business of the Borrower or any of its subsidiaries or result in a material diminution in the value of any of the Collateral;

- (f) easements, rights-of-way, restrictions, encroachments, reservations from title, zoning and private deed restrictions, site plan agreements, development agreements, operating agreements, cross-easement agreements and other defects or irregularities in title, in each case which do not and will not, individually and in the aggregate, interfere in any material respect with the ordinary conduct of the business of the Borrower or any of its subsidiaries or result in a material diminution in the value of any of the Collateral;
- (g) any (a) interest or title of a lessor or sublessor under any operating lease in respect of which the Borrower or any of its subsidiaries shall be, or become liable whether directly or by assignment or as a guarantor or other surety for the obligations of the lessee under any such operating lease, to the extent that the aggregate annual rental payments of the Borrower and its subsidiaries in respect of all such operating leases shall not exceed \$250,000, (b) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to, or (c) subordination of the interest of the lessee or sublessee under such lease to any restriction or encumbrance referred to in the preceding clause (b), so long as the holder of such restriction or encumbrance agrees to recognize the rights of such lessee or sublessee under such lease;
- (h) liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (i) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any Real Property;
- (j) liens against owners' or sublessors' interest in any leasehold property used or occupied by the Borrower or any of its subsidiaries;
- (k) liens securing obligations (other than obligations representing indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower or any of its subsidiaries;
- (l) Permitted Purchase Money Security Interests not exceeding an aggregate of \$2,500,000 outstanding at any time;
- (m) liens granted to secure the Indebtedness under the Loan Documents, the Revolving Credit Facility and the Stonehouse Subordinated Note;
- (n) liens granted in connection with Capital Leases and mortgages on Real Property if the Borrower's Consolidated Leverage Ratio is less than 3.25:1.0 on a *pro forma* basis after giving effect to such Capital Lease or mortgage; and

- (o) Encumbrances arising under agreements with credit card processors of the type described in such agreements provided to the Lender prior to the Closing Date (i.e. Global Payments agreements).

SCHEDULE 5.1(G)
ITEMS NOT TREATED CONSISTENTLY

For the fiscal year 2009, there will be a required accounting change to cost value of inventory and cost of sales. The Borrower's current accounting policy is to value inventory at the lower of cost or net realizable value, less normal profit margins. This means that the Borrower will write-down the cost of an inventory unit at the time it takes a retail price markdown as opposed to when it actually sells the item at the marked down price. The new policy removes the clause regarding "normal profit margins". Thus, the Borrower will no longer reflect a charge or write-down on its income statement when it takes a "retail" markdown, unless the retail is marked down very close to or below its original cost. The new policy will generally reflect inventory at the lower of cost or market, which is consistent with U.S. GAAP.

SCHEDULE 5.1(H)

PERMITTED AFFILIATE TRANSACTIONS

1. management fees paid to Affiliates of Borrower (not to exceed \$600,000 annually);
2. transaction fees paid to GBMP and its affiliates (not to exceed \$1,000,000)

SCHEDULE 5.1(i)

LITIGATION

Consent agreement dated July 26, 2006 between the Commissioner of Competition, Grafton-Fraser Inc. and Glenn Stonehouse registered under section 74.12 of the *Competition Act* (Canada).

SCHEDULE 5.1(x)

INSURANCE

Class of Insurance	Policy Period		Insurer & Policy	Limit
	From	To		
Property & all Risks	4/1/2009	4/1/2010	Affiliated FM Insurance Company Policy No. RW065	Limits: \$50,000,000
Boiler and Machinery	4/1/2009	4/1/2010	Aviva Insurance Company of Canada Policy No. 81345098	Limits: \$3,550,000
Commercial General Liability	4/1/2009	4/1/2010	Continental Casualty Company Policy No. MPR2825150	Bodily Injury and Property Damage Liability: \$1,000,000 Products & Completed Operations Aggregate: \$1,000,000
Umbrella Liability	4/1/2009	4/1/2010	Continental Casualty Company	Excess of \$1,000,000 Primary Commercial General Liability and Automobile Liability Policies: \$10,000,000

SCHEDULE 5.1(Z)

**CAPITALIZATION AND SUBSIDIARIES
PART A**

I. Jurisdiction of Organization, Location of Chief Executive Office and Places of Business

<u>Entity</u>	<u>Jurisdiction of Organization</u>	<u>Location of Chief Executive Office</u>	<u>Places of Business</u>
Grafton-Fraser Inc.	Ontario	44 Apex Road, Toronto , Ontario	Ontario, Alberta, Saskatchewan, Manitoba, British Columbia, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland
644562 Ontario Limited	Ontario	44 Apex Road, Toronto , Ontario	None (inactive)
720064 Ontario Limited	Ontario	44 Apex Road, Toronto , Ontario	None (inactive)
Gailwood Investments Limited	Ontario	44 Apex Road, Toronto , Ontario	None (inactive)

II. Capitalization

<u>Entity</u>	<u>Authorized Capital</u>	<u>Issued and Outstanding</u>
Grafton-Fraser Inc. (post amalgamation)	<ul style="list-style-type: none">-unlimited number of Class A Common Shares-unlimited number of Class B Common Shares-unlimited number of Class C Common Shares-unlimited number of Class A Preferred Shares-unlimited number of Class B Preferred Shares	<ul style="list-style-type: none">- 1,996, 085 Class A Common Shares registered in the name of 1903 Equity Fund, L.P - 17,964,763 Class A Preferred Shares registered in the name of 1903 Equity Fund, L.P - 94,915 Class A Common Shares registered in the name of 1903 Co-Investor, L.P - 854,237 Class A Preferred Shares registered in the name of 1903 Co-Investor, L.P - 29,000 Class A Common Shares registered in the name of HEP North America Investments, L.P. - 261,000 Class A Preferred Shares registered in the name of HEP North America Investments, L.P. - 530,000 Class B Common Shares registered in the name of Stonehouse Group Inc. - 4,770,000 Class B Preferred Shares registered in the name of Stonehouse Group Inc.
644562 Ontario Limited ("644562")	-unlimited number of shares	<ul style="list-style-type: none">-one common share issued and outstanding -registered in the name of Pre-Amalco GFI

(ii) Material Contracts

Please see attached.

(iii) Indebtedness

Indebtedness under the Revolving Credit Facility, the Stonehouse Subordinated Note and the Credit Agreement (and not more than \$12 million of outstanding Indebtedness under the Revolving Credit Facility).

SCHEDULE 5.1(BB)

REAL PROPERTY

PART A REAL PROPERTY OWNED

Nil

PART B REAL PROPERTY LEASED

The Borrower is a party to each Leases listed in the table on the attached pages.

**SCHEDULE 12.12
DISQUALIFIED LENDERS**

Nil

FIRST AMENDMENT TO THE AMENDED AND RESTATED CREDIT AGREEMENT

**GRAFTON-FRASER INC.,
AS BORROWER**

- and -

**THE GUARANTORS THAT MAY BECOME FROM TIME TO TIME
PARTIES HERETO**

- and -

**OFS AGENCY SERVICES, LLC,
as Servicing Agent**

- and -

**BTD CP HOLDINGS LP,
as Administrative Agent and
Lead Arranger**

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO**

Credit Agreement

**Made as of May 24, 2007, as amended and
restated as of September 10, 2008 and as
further amended and restated as of June
16, 2009 and further amended as of April
12, 2010**

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the Province
of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT MAY BECOME FROM
TIME TO TIME PARTIES HERETO,**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS FROM TIME TO TIME PARTIES
HERETO,**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws of the
State of Delaware, as Servicing Agent for the
Lenders

(hereinafter referred to as the "Servicing Agent")

BTD CP HOLDINGS LP,
a limited partnership formed under the laws of the State of
Delaware, as Administrative Agent and Lead
Arranger (formerly known as GSO Capital Partners
LP and GSO CP Holdings LP),

(hereinafter referred to in its own capacity as "GSO LP"
and in its capacity as administrative agent on behalf
of the Lenders, as the "Administrative Agent"),

WHEREAS GE Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement");

AND WHEREAS the original lenders party to the Original Credit Agreement subsequently assigned their Participations (as such term is hereinafter defined) in the aggregate Outstanding Advance (as such term is hereinafter defined) to the Lenders;

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTDC CP Holdings (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, the parties entered into a further amended and restated credit agreement (the "Existing Credit Agreement") to, among other things, amend certain covenants of the Borrower set forth in the Existing Credit Agreement and the interest rate payable on the advance;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

- 1.1 All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2 **AMENDMENTS**

- 2.1 Article 1 of the Existing Credit Agreement is hereby amended as follows:
- (a) by deleting the following in the definition of "EBITDA" (section a) immediately after "(iii) for purposes of any determination hereunder for and including all periods commencing on the beginning of fiscal 2009 to the fiscal period ending July 31, 2010, Termination and Discontinued Store Costs":

“not to exceed \$500,000 in the aggregate;”

- (b) and by adding the following in the definition of “EBITDA” (section a) immediately after “(iii) for purposes of any determination hereunder for and including all periods commencing on the beginning of fiscal 2009 to the fiscal period ending July 31, 2010, Termination and Discontinued Store Costs”:

“and (iv) previously agreed upon consulting fees and related expenses incurred in 2009 as part of the Grayson consulting project not to exceed \$186,000.”

ARTICLE 3

CONSENT

- 3.1 The parties hereto hereby consent to the assignment by BTD CP Holding LP of all of its rights and obligations as Administrative Agent to GSO Capital Partners LP.

ARTICLE 4

MISCELLANEOUS

- 4.1 The Borrower hereby represents and warrant to the Lenders and the Agents that (a) all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and (b) hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).
- 4.2 This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.
- 4.3 This Amendment may be executed by the parties in separate counterparts (by original or otherwise) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**GRAFTON-FRASER INC., AS
BORROWER**

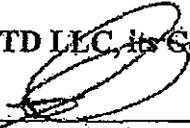
by

Name: Brian Reel

Title: Chief Financial Officer

**BTD CP HOLDINGS LP, AS
ADMINISTRATIVE AGENT AND
LEAD ARRANGER**

BY: BTD LLC, its General Partner



Name: George Fan

Title: ... Authorized Signatory

by

Name:

Title:

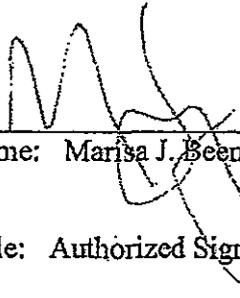
Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., AS
LENDER**

**BY: GSO CAPITAL PARTNERS LP,
ITS COLLATERAL MANAGER**

by



Name: Marisa J. Beene

Title: Authorized Signatory

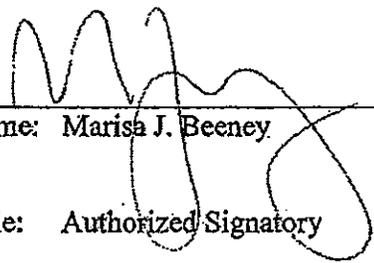
Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO OFFSHORE
MULTICURRENCY FACILITY
(LUXEMBOURG) S.A.R.L., AS
LENDER**

**BY: GSO CAPITAL PARTNERS LP,
ITS PORTFOLIO MANAGER**

by


Name: Marisa J. Beeney

Title: Authorized Signatory

**OFS AGENCY SERVICES, LLC, AS
SERVICING AGENT**

**BY: ORCHARD FIRST SOURCE
CAPITAL, INC., ITS
ATTORNEY IN FACT**

by

Name:

Title:

**SECOND AMENDMENT TO THE AMENDED AND RESTATED CREDIT
AGREEMENT**

**GRAFTON-FRASER INC.,
As Borrower**

- and -

**THE GUARANTORS THAT MAY BECOME FROM TIME TO TIME
PARTIES HERETO**

- and -

**OFS AGENCY SERVICES, LLC,
as Servicing Agent**

- and -

**GSO CAPITAL PARTNERS LP
as Administrative Agent and
Lead Arranger**

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO**

Credit Agreement

**made as of May 24, 2007, as amended and
restated as of September 10, 2008 and as
further amended and restated as of June
16, 2009, April 12, 2010 and June 11, 2010**

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the Province
of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT MAY BECOME FROM
TIME TO TIME PARTIES HERETO,**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS FROM TIME TO TIME PARTIES
HERETO,**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws
of the State of Delaware, as Servicing Agent for the
Lenders

(hereinafter referred to as the "Servicing Agent")

GSO CAPITAL PARTNERS LP,
a limited partnership formed under the laws of the State of
Delaware, as Administrative Agent and Lead
Arranger,

(hereinafter referred to in its own capacity as "GSO LP"
and in its capacity as administrative agent on behalf
of the Lenders, as the "Administrative Agent"),

WHEREAS on September 10, 2008, the parties to this Amendment amended and restated the credit agreement originally made by and among GF Acquisition Corp., (a predecessor of the Borrower), and GSO Special Situations Fund LP, as administrative agent and certain guarantors party thereto dated as of May 24, 2007 (the "**Original Credit Agreement**") such that GSO Special Situations Fund LP resigned as and was replaced as administrative agent and lead arranger by BTM CP Holdings, and OFS Agency Services, LLC was appointed as Servicing Agent;

AND WHEREAS on each of June 16, 2009, and on April 12, 2010 the parties to this Amendment made further amendments to the Original Credit Agreement to amend certain covenants of the Borrower set forth in the Original Credit Agreement, the interest rate payable on the advance, certain changes to the definitions of the Original Credit Agreement, and the Lenders thereunder consented to the assignment by BTM CP Holdings of its rights and obligations to GSO Capital Partners LP (the Original Credit Agreement and all such amendments collectively referred to herein as the "**Existing Credit Agreement**");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions in connection with a capital reorganization and repayment of indebtedness;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement and the term "**Effective Date**" has the meaning given to that term in Section 3.1 of this Amendment.

All dollar amounts referred to in this Amendment are denominated in Canadian (CAD) currency.

1.2 Incorporation into Existing Credit Agreement

The Existing Credit Agreement and this Amendment shall henceforth be read together and shall have the effect as if all the provisions of such agreements were contained in one agreement (the Existing Credit Agreement, as amended by this amendment, the "**Amended Credit Agreement**").

ARTICLE 2
AMENDMENTS

2.1 **Amendments to Section 1.1 - Definitions**

On and after the Effective Date, Section 1.1 of the Existing Credit Agreement is hereby amended by inserting the following definition immediately after the definition of Management Fees:

Master Framework Agreement means the agreement made on June 11, 2010 between 1903 Co-Investor, L.P., 1903 Equity Fund, L.P., GB Merchant Partners, LLC, HEP North America Investments, L.P., Stonehouse Group, Inc., Glenn Stonehouse and Grafton-Fraser Inc. that contemplates: (i) a new CAD \$7.0 million equity investment in Grafton-Fraser Inc. by the Borrower's existing shareholders in the form of preferred stock; and (ii) the purchase and cancellation of the Stonehouse Subordinated Note.

On and after the Effective Date, the definition of EBITDA in Section 1.1 of the Existing Credit Agreement is hereby amended and restated as follows:

"EBITDA" means, for the Borrower on a consolidated basis and for any period, without duplication, the amount equal to Net Income less interest income, income tax recoveries and any non-cash income included in Net Income and:

- (a) plus, to the extent deducted from Net Income, and without duplication, (i) interest expense, income tax expenses, depreciation expense, amortization expense and other non-cash expenses (including any non-cash straight line rent adjustments); (ii) up to \$300,000 per annum of Management Fees paid or accrued by the Borrower to GB Merchant Partners LLC, (iii) for purposes of any determination hereunder for and including all periods commencing on the beginning of fiscal 2009 to the fiscal period ending on January 28, 2012, Termination and Discontinued Store Costs (which for the avoidance of doubt shall include store-related severance, lease termination costs and cash losses from discontinued stores); (iv) previously agreed upon consulting fees and related expenses incurred in 2009 as part of the Grayson consulting project not to exceed \$186,000; (v) salary compensation and related benefits paid to Glenn Stonehouse and Stonehouse Group, Inc. in 2009 and 2010 in connection with his role as Chief Executive Officer of Grafton-Fraser, Inc. upon the effectiveness of his resignation; (vi) non-store, executive severance incurred in 2009, 2010 and 2011, not to exceed \$600,000 on a trailing twelve month basis; (vii) third-party management consultant fees incurred in the fiscal year ended January 29, 2011 and the fiscal year ended January 28, 2012, not to exceed \$400,000 on a trailing twelve month basis; (viii) reasonable legal fees and other expenses incurred in connection with the Master Framework Agreement, this Amendment and any related documentation in connection therewith;
- (b) less, to the extent added to Net Income, and without duplication, year-end accounting adjustments done in accordance with GAAP;

provided that foreign exchange gains or losses, including gains or losses on the disposition of assets outside the ordinary course of business and restructuring charges, shall not be included in EBITDA.

On and after the Effective Date, the definition of Maturity Date in Section 1.1 of the Existing Credit Agreement is hereby amended and restated as follows:

“Maturity Date” means November 2, 2013.

On and after the Effective Date, the definition of Cumulative Free Cash Flow in Section 1.1 of the Existing Credit Agreement is hereby amended and restated as follows:

“Cumulative Free Cash Flow” means, at any date, pre-tax income for the prior fiscal year (determined in accordance with GAAP Net Income plus income tax expenses) plus, to the extent deducted from pre-tax income, and without duplication, (i) non-cash interest expense, depreciation expense, amortization expense and other non-cash expenses (including any non-cash straight line rent adjustments), less (ii) Capital Expenditures and cash Taxes actually paid by the Borrower or any Subsidiary of the Borrower during each of the Borrower’s fiscal years.

2.2 Amendments to The Facility (Article 2)

On and after the Effective Date, Section 2.8 of the Existing Credit Agreement is hereby amended by inserting the following clause immediately after clause (d):

(e) Notwithstanding the requirement for a payment on or before April 15, 2011, as set out in Section 2.8(b)(ii) above, in connection with the fiscal year ended January 29, 2011, a portion of the outstanding advance equal to 25% of Cumulative Free Cash Flow, calculated as of the last day of the immediately preceding fiscal year of the Borrower, shall become due and payable and the Borrower shall prepay such amount at a redemption price equal to 100% of such portion.

2.3 Amendments to Covenants (Article 6)

On and after the Effective Date, Section 6.1(a)– Financial Reporting in the Existing Credit Agreement is hereby amended by deleting the number “105” in the fourth line of section (iii) thereof and replacing it with the number “135”.

On and after the Effective Date, Section 6.2(g)(ii) and Section 6.2(g)(iii) – Limitations on Capital Expenditures in the Existing Credit Agreement are hereby deleted and replaced as follows:

(ii) for the year ended January 29, 2011, \$3.00 million; and

(iii) for each of the years ended January 28, 2012, January 26, 2013 and January 25, 2014, \$4.00 million.

On and after the Effective Date, Section 6.3 - Financial Covenants, is hereby amended and restated as follows:

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under the other Loan Documents remains outstanding, the Borrower and any Guarantor: (a) shall not, as of each fiscal quarter end of the Borrower set forth below, permit the LTM EBITDA to be less than the amount set forth below:

<u>For the Fiscal Quarter Ended on or About:</u>	<u>Minimum LTM EBITDA:</u>
January 30, 2010 (Q4)	\$9.75 million
May 1, 2010 (Q1)	\$9.75 million
July 31, 2010 (Q2)	\$9.75 million
October 30, 2010 (Q3)	\$9.75 million
January 29, 2011 (Q4)	\$10.0 million
April 30, 2011 (Q1)	\$10.0 million
July 30, 2011 (Q2)	\$10.5 million
October 29, 2011 (Q3)	\$10.5 million
January 28, 2012 (Q4)	\$11.0 million
April 28, 2012 (Q1)	\$11.0 million
All fiscal quarters ending from and including July 28, 2012 to the Maturity Date	\$11.5 million

(b) shall not, as of each fiscal quarter end set forth below, permit the Consolidated Leverage Ratio to exceed the ratio set forth below:

<u>For the Fiscal Quarter Ended on or About:</u>	<u>Consolidated Leverage Ratio:</u>
January 30, 2010 (Q4)	5.85x
May 1, 2010 (Q1)	5.85x
July 31, 2010 (Q2)	5.65x

October 30, 2010 (Q3)	5.65x
January 29, 2011 (Q4)	5.15x
April 30, 2011 (Q1)	5.25x
July 30, 2011 (Q2)	4.95x
October 29, 2011 (Q3)	4.95x
January 28, 2012 (Q4)	4.75x
April 28, 2012 (Q1)	4.75x
July 28, 2012 (Q2)	4.70x
October 27, 2012 (Q3)	4.70x
All fiscal quarters ending from and including January 26, 2013 to the Maturity Date	4.60x

~~(c) For the purposes of the calculation of Senior Indebtedness and Consolidated Leverage Ratio under this Section 6.3, Indebtedness under the Revolving Credit Facility shall be the average daily revolver balance for the 90 day period immediately prior to the date of determination of the financial covenants.~~

For the fiscal quarters ended May 2010 and July 2010 set out in Section 6.3(b) above, the leverage test will be calculated after giving full effect to any reduction of Senior Indebtedness made with new equity capital from existing shareholders as contemplated in Section 3.1 of the Amendment made as of June 11, 2010.

ARTICLE 3 **CONDITIONS PRECEDENT**

3.1 Conditions to Effectiveness

This Amendment shall become effective upon the satisfaction of the following conditions precedent by the Borrower (the date on which such satisfaction occurs, the "Effective Date"):

- (a) the Administrative Agent shall have received this Amendment duly executed and delivered by the Administrative Agent, the Lenders, the Borrower and the Servicing Agent;
- (b) the representations and warranties set forth in Section 5.1 of the Existing Credit Agreement shall be true and correct as of the Effective Date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date);

- (c) no Default or Event of Default shall be in existence or would occur after giving effect to any of the transactions contemplated hereby;
- (d) all of the closing conditions of the Master Framework Agreement dated June 11, 2010 (the "Master Framework Agreement") shall have been satisfied or waived by the applicable parties thereto, including the delivery and surrender of the Stonehouse Subordinated Note to the Company for cancellation and the termination of the Subordination Agreement, the Subordination Amendment Agreement, the Stonehouse General Security Agreement dated as of May 24, 2007 between Stonehouse Holdco and GF Acquisition Corp. and related confirmation and agreement given by the Borrower to Stonehouse Holdco on May 24, 2007 (the "Stonehouse GSA") and the discharge of any personal property security registrations made in respect thereof;
- (e) in accordance with the Master Framework Agreement, the Borrower's existing shareholders shall have made an equity investment of \$7,000,000.00 in the Company, of which \$5,500,000.00 of the proceeds thereof shall have been paid to the Servicing Agent, for the account of the Lenders to reduce the outstanding borrowings under the Existing Credit Facility, and of which at least \$1,200,000.00 of the proceeds thereof shall have been used to repay outstanding borrowings owed to the Revolving Lender;
- (f) any legal expenses incurred in connection with the Master Framework Agreement or this Amendment shall have been paid;
- (g) GP Merchant Partners LP shall have confirmed to the Borrower in writing that it has written off and forgiven all Management Fees previously accrued that were unpaid as of the date hereof; and
- (h) the Administrative Agent shall have received such additional evidence, documents or undertakings as the Lenders may reasonably request to confirm the consummation of the transactions contemplated in the Master Framework Agreement.

ARTICLE 4

EXTINGUISHMENT OF OUTSTANDING DEBT AND THE STONEHOUSE SUBORDINATED NOTE

4.1 Extinguishment of aggregate outstanding advance to the Lender

On and after the Effective Date, the Lender agrees that if each of the conditions in Section 3.1 are met, it will permanently reduce the aggregate amount of the Borrower's outstanding Advance to the Lender in an additional amount equal to \$638.30 for every multiple of \$10,000.00 of proceeds it receives from the Borrower as a result of the equity investment contemplated in the Master Framework Agreement and in Section 3.1(d) above. For the avoidance of doubt, this discount and extinguishment of debt will be available to the Borrower only on the Effective Date and only as it relates to any proceeds received as a result of the equity

investment described in Section 3.1(d). As of the Effective Date, the aggregate amount of the Borrower's outstanding Advance (include accrued but unpaid interest) is \$44,185,643.88 and after giving effect to the equity investment and subsequent repayments described in Section 3.1(d), the aggregate amount of the Borrower's outstanding Advance will be \$38,334,578.88.

4.2 Extinguishment of the Stonehouse Subordinated Note

On and after the Effective Date, each of the Stonehouse Subordinated Note, the Subordination Agreement, the Subordination Amendment Agreement, and the Stonehouse GSA and any other documents executed in connection therewith shall be terminated and of no further force and effect and any obligations described therein shall be deemed to be repaid in full, performed or extinguished.

**ARTICLE 5
MISCELLANEOUS**

5.1 Representations and Warranties

On and after the Effective Date, the Borrower hereby represents and warrant to the Lenders and the Administrative Agent and the Servicing Agent that (a) all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained; (b) the execution and delivery of this Amendment are within its corporate power, have been duly authorized by all necessary corporate action, and do not and will not contravene or conflict with any provision of law applicable to it, the certificate of incorporation, by-laws or other applicable organizational documents it; (c) this Amendment is a legal, valid and binding obligation of it, enforceable against it in accordance with their terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium and other laws relating to the enforcement of creditors' rights and by general principles of equity, whether considered at law or in equity; and (d) No Default or Event of Default has occurred and is existing or will occur after giving effect to the transactions contemplated by this Amendment.

5.2 Consent and Acknowledgement Regarding Master Framework Agreement Transactions

On and after the Effective Date, the Administrative Agent, the Servicing Agent and the Lenders hereby consent to the transactions contemplated in the Master Framework Agreement, including the purchase and cancellation of the Stonehouse Subordinated Note and the issuance and sale of Purchased Shares to the Purchasers (as such term is defined in the Master Framework Agreement) (the "Master Framework Agreement Transactions") and acknowledge notice of the Master Framework Agreement Transactions in accordance with s.6.1(i)(ix).

5.3 No other Amendments, Waivers or Consents

On and after the Effective Date, this Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect now and following the transactions

contemplated by this Amendment. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. Except as provided herein, the execution, delivery and performance by the parties hereto does not in any way constitute a waiver of, consent to, modification of, forbearance of or other indulgence with respect to any term or condition under the Existing Credit Agreement and shall not be deemed to prejudice any right or rights which Agent or Lenders may now have or may have in the future under or in connection with the Existing Credit Agreement.

5.4 Governing Law

This Amendment is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

5.5 Loan Document

This Amendment constitutes a Loan Document.

5.6 Counterparts

This Amendment may be executed by the parties in separate counterparts (by original or otherwise) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Amendment.

GRAFTON-FRASER INC., as Borrower

By

Name:

Title:

**GSO CAPITAL PARTNERS LP, as
Administrative Agent and Lead
Arranger**

by

Name:

Title:

by

Name:

Title:

Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

**By: GSO Capital Partners LP, its
collateral manager**

by

Name:

Title:

Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO OFFSHORE
MULTICURRENCY FACILITY
(LUXEMBOURG) S.A.R.L., as Lender**

**By: GSO Capital Partners LP, its
portfolio manager**

by

Name:

Title:

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

**By: Orchard First Source Capital, Inc.,
its attorney in fact**

by

Name:

Title:

THIRD AMENDMENT TO THE AMENDED AND RESTATED CREDIT AGREEMENT

**GRAFTON-FRASER INC.,
As Borrower**

- and -

**THE GUARANTORS THAT MAY BECOME FROM TIME TO TIME
PARTIES HERETO**

- and -

**OFS AGENCY SERVICES, LLC,
as Servicing Agent**

- and -

**GSO CAPITAL PARTNERS LP
as Administrative Agent and
Lead Arranger**

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO**

Credit Agreement

**made as of May 24, 2007, as amended and
restated as of September 10, 2008 and as
further amended and restated as of June
16, 2009, April 12, 2010, June 11, 2010 and
March 18, 2011**

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the Province
of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT MAY BECOME FROM
TIME TO TIME PARTIES HERETO,**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS FROM TIME TO TIME PARTIES
HERETO,**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws
of the State of Delaware, as Servicing Agent for the
Lenders

(hereinafter referred to as the "Servicing Agent")

GSO CAPITAL PARTNERS LP,
a limited partnership formed under the laws of the State of
Delaware, as Administrative Agent and Lead
Arranger,

(hereinafter referred to in its own capacity as "GSO LP"
and in its capacity as administrative agent on behalf
of the Lenders, as the "Administrative Agent"),

WHEREAS on September 10, 2008, the parties to this Amendment amended and restated the credit agreement originally made by and among GF Acquisition Corp., (a predecessor of the Borrower), and GSO Special Situations Fund LP, as administrative agent and certain guarantors party thereto dated as of May 24, 2007 (the "Original Credit Agreement") such that GSO Special Situations Fund LP resigned as and was replaced as administrative agent and lead arranger by BTM CP Holdings, and OFS Agency Services, LLC was appointed as Servicing Agent;

AND WHEREAS on each of June 16, 2009, April 12, 2010 and on June 11, 2010 the parties to this Amendment made further amendments to the Original Credit Agreement to amend certain covenants of the Borrower set forth in the Original Credit Agreement, the interest rate payable on the advance as well as certain changes to the definitions, terms and conditions in connection with a capital reorganization and repayment of indebtedness on June 11, 2010, and the Lenders thereunder consented to the assignment by BTM CP Holdings of its rights and obligations to GSO Capital Partners LP (the Original Credit Agreement and all such amendments collectively referred to herein as the "Existing Credit Agreement");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to further amend certain definitions;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

All dollar amounts referred to in this Amendment are denominated in Canadian (CAD) currency.

ARTICLE 2 AMENDMENTS

2.1 Amendments to Section 1.1 - Definitions

The definition of EBITDA in Section 1.1 of the Existing Credit Agreement is hereby further amended as follows:

In Section 1.1 (vi) "non-store, executive severance incurred in 2009, 2010 and 2011, not to exceed \$600,000 on a trailing twelve month basis;" shall be replaced

with "non-store, executive severance incurred in 2009, 2010 and 2011, not to exceed \$1,200,000 on a trailing twelve month basis;"

In Section 1.1 (vii) "third-party management consultant fees incurred in the fiscal year ended January 29, 2011 and the fiscal year ended January 28, 2012 , not to exceed \$400,000 on a trailing twelve month basis;" shall be replaced with "third-party management consultant fees incurred in the fiscal year ended January 29, 2011 and the fiscal year ended January 28, 2012 , not to exceed \$800,000 on a trailing twelve month basis;"

IN WITNESS WHEREOF the parties hereto have executed this Amendment.

GRAFTON-FRASER INC., as Borrower

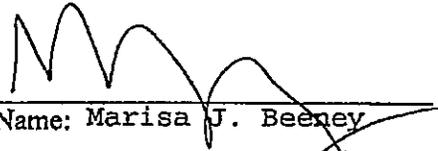
By

Name:

Title:

**GSO CAPITAL PARTNERS LP, as
Administrative Agent and Lead
Arranger**

by



Name: Marisa J. Beene

Title: Authorized Signatory

by

Name:

Title:

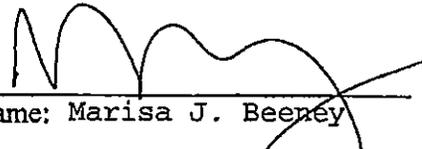
Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

By: GSO Capital Partners LP, its
collateral manager

by



Name: Marisa J. Beene

Title: Authorized Signatory

Address:

280 Park Avenue
11th Floor, Building East
New York, New York, 10017

**GSO OFFSHORE
MULTICURRENCY FACILITY
(LUXEMBOURG) S.A.R.L., as Lender**

By: GSO Capital Partners LP, its
portfolio manager

by



Name: Marisa J. Beeney

Title: Authorized Signatory

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

By: Orchard First Source Capital, Inc.,
its attorney in fact

by

Name:

Title:

**FOURTH AMENDMENT TO THE AMENDED AND RESTATED CREDIT
AGREEMENT**

**GRAFTON-FRASER INC.,
As Borrower**

- and -

**THE GUARANTORS THAT MAY BECOME FROM TIME TO TIME
PARTIES HERETO**

- and -

**OFS AGENCY SERVICES, LLC,
as Servicing Agent**

- and -

**GSO CAPITAL PARTNERS LP
as Administrative Agent and
Lead Arranger**

- and -

**THE LENDERS FROM TIME TO TIME
PARTIES HERETO**

Credit Agreement

**Made as of May 24, 2007, as amended and
restated as of September 10, 2008 and as
further amended and restated as of June
16, 2009 and further amended as of April
12, 2010, June 11, 2010, March 18, 2011
and December 31, 2012**

BETWEEN:

GRAFTON-FRASER INC., a corporation amalgamated
under the laws of the Province of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS DEFINED
BELOW),**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS DEFINED
BELOW),**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC, a limited liability
company formed under the laws of the State of Delaware,
as Servicing Agent for the Lenders

(hereinafter referred to as the "Servicing Agent")

- and -

GSO CAPITAL PARTNERS, LP, a limited partnership
formed under the laws of the State of Delaware, as
Administrative Agent and Lead-Arranger,

(hereinafter referred to in its own capacity as "GSO LP"
and in its capacity as administrative agent on behalf of the
Lenders, as the "Administrative Agent"),

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement");

AND WHEREAS the original lenders party to the Original Credit Agreement subsequently assigned their Participations (as such term is hereinafter defined) in the aggregate Outstanding Advance (as such term is hereinafter defined) to the Lenders;

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTDCP Holdings (formerly know as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, April 12, 2010, June 11, 2010 and March 18, 2011 the parties to this Amendment made further amendments to the amended and restated credit agreement to, among other things, amend certain covenants of the Borrower set forth in the Original Credit Agreement, the interest rate payable on the advance and make certain changes to the definitions, terms and conditions in connection with the capital reorganization and repayment of indebtedness on June 11, 2010, and the Lenders thereunder consented to the assignment by BTDCP Holdings of its rights and obligations to GSO Capital Partner LP (the Original Credit Agreement and all such amendments collectively referred to herein as the "Existing Credit Agreement");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions in connection with a repayment of indebtedness;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2
AMENDMENTS

2.1 **Amendments to Definitions (Section 1.1)**

The definition of "Maturity Date" in Section 1.1 of the Existing Credit Agreement is hereby amended by changing "November 2, 2013" to "November 3, 2014"

2.2 **Amendments to Facility (Article 2)**

Section 2.8 of the Existing Credit Agreement is hereby amended by inserting the following clause immediately after clause (e) in Section 2.8 - Mandatory Prepayments:

"(f) Notwithstanding Section 2.8(b)(ii) above, a portion of the outstanding Advance equal to 50% of the Cumulative Free Cash Flow for the fiscal year ended February 2, 2013, calculated as of such date, shall not become due and payable on April 15, 2013 and the Borrower shall not be required to such amount on such date, but such portion of the outstanding Advance shall become due and payable instead on September ____, 2013 and the Borrower shall prepay such amount at a redemption price equal to 100% of such portion on such date."

2.3 **Amendments to Covenants (Article 6)**

Article 6 (Covenants) of the Existing Credit Agreement is further amended as follows:

- (a) In all instances where the term "fiscal year ended January 26, 2013" is used, it shall be deleted and replaced with "fiscal year ended February 2, 2013" to reflect the Borrower's correct fiscal year end; and
- (b) Section 6.2(g)(iii) - Limitations on Capital Expenditures in the Existing Credit Agreement is hereby amended by changing "(iii) for each of the years ended January 28, 2012, January 26, 2013 and January 25, 2014, \$4.00 million" to "(iii) for each of the years ended January 28, 2012, February 2, 2013, January 25, 2014 and January 31, 2015, \$4.00 million"

ARTICLE 3
CONDITIONS PRECEDENT

3.1 **Conditions to Effectiveness**

This Agreement shall not be effective until the date on which each of the following conditions is satisfied by the Borrower:

- (a) on or before December 31, 2012, the Borrower shall prepay \$3,000,000 of the outstanding Advance at a redemption price equal to 100% of the principal amount of the Commitments being prepaid;
- (b) the Revolving Lender shall have agreed to amend the maturity date of the Revolving Credit Facility from October 4, 2013 to October 3, 2014;
- (c) the representations and warranties set forth in Article 5 (Section 5.1) of the Existing Credit Agreement shall be true and correct as of the date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date); and
- (d) no Default or Event of Default shall have occurred and be continuing.

ARTICLE 4
MISCELLANEOUS

- 4.1 The Borrower hereby represents and warrant to the Lenders and the Agents that (a) all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and (b) hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).
- 4.2 This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.
- 4.3 This Amendment may be executed by the parties in separate counterparts (by original or otherwise) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

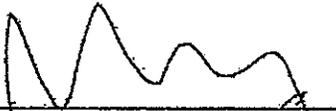
By

Name:

Title:

**GSO CAPITAL PARTNERS LP, as
Administrative Agent and Lead
Arranger**

by



Name:

**MARISA J. BEENEV
AUTHORIZED SIGNATORY**

Title:

by

Name:

Title:

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

By: **GSO Capital Partners LP, its
collateral manager**

by



Name:

**MARISA J. BEENEV
AUTHORIZED SIGNATORY**

Title:

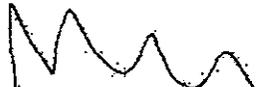
Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE
MULTICURRENCY FACILITY
(LUXEMBOURG) S.A.R.L., as Lender**

**By: GSO Capital Partners LP, its
portfolio manager**

by



Name: **MARISA J. BEENEY**
AUTHORIZED SIGNATORY
Title:

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

**By: Orchard First Source Capital, Inc.,
its attorney in fact**

by

Name:

Title:

AMENDING AGREEMENT

THIS AGREEMENT made as of June 17, 2014,

BETWEEN:

GRAFTON-FRASER INC., a corporation amalgamated
under the laws of the Province of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS DEFINED
BELOW),**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS DEFINED
BELOW),**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC, a limited liability
company formed under the laws of the State of Delaware,
as Servicing Agent for the Lenders

(hereinafter referred to as the "Servicing Agent")

- and -

GSO CAPITAL PARTNERS, LP, a limited partnership
formed under the laws of the State of Delaware, as
Administrative Agent and Lead Arranger,

(hereinafter referred to in its own capacity as "GSO LP"
and in its capacity as administrative agent on behalf of the
Lenders, as the "Administrative Agent").

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement");

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD CP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement (the "Second Amended and Restated Credit Agreement") to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, the parties to this Amendment entered into an amended and restated credit agreement (the "Third Amended and Restated Credit Agreement") to amend certain covenants of the Borrower, and on April 12, 2010, June 11, 2010, March 18, 2011 and December 31, 2012, the parties to the Third Amended and Restated Credit Agreement made further amendments to the Third Amended and Restated Credit Agreement to, among other things, amend certain covenants of the Borrower set forth in the Third Amended and Restated Credit Agreement, the interest rate payable on the Advance, make certain changes to the definitions, terms and conditions in connection with the capital reorganization and repayment of indebtedness on June 11, 2010 and extend the Maturity Date to November 3, 2014 and make certain other changes to the definitions, terms and conditions in connection with a repayment of indebtedness on December 31, 2012, and the Lenders thereunder consented to the assignment by BTD CP Holdings LP of its rights and obligations to GSO Capital Partner, LP (the Third Amended and Restated Credit Agreement and all such amendments collectively referred to herein as the "Existing Credit Agreement");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions in connection with a repayment of indebtedness;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2
AMENDMENTS

2.1 Amendments to Definitions (Section 1.1)

On the Effective Date, Section 1.1 of the Existing Credit Agreement shall be amended as follows:

- (a) The definition of "EBITDA" in Section 1.1 of the Existing Credit Agreement shall be amended by adding the following at the end of paragraph (a) thereof:

"; plus (ix) inventory liquidation costs incurred between February 2, 2014 and April 5, 2014, not to exceed \$2,400,000, less an inventory reserve of \$900,000";

- (b) The definition of "Interest Rate" in Section 1.1 of the Existing Credit Agreement shall be amended by adding the following at the end thereof:

"; subject to adjustment pursuant to Section 2.10(b)"; and

- (c) the definition of "Maturity Date" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

"“Maturity Date” means October 4, 2015”.

2.2 Amendments to Interest on Advance (Section 2.10)

On the Effective Date, Section 2.10 of the Existing Credit Agreement shall be amended by inserting the following paragraph immediately after paragraph (b) thereof:

"If the Advance has not been repaid in full on or before October 4, 2014 (the "First Interest Increase Date"), the Interest Rate shall be increased by (i) 2% (200 basis points) per annum if the Borrower elects to pay such additional interest in kind or (ii) 1.75% (175 basis points) per annum if the Borrower elects to pay such additional interest in cash (the "First Interest Increase"). The Borrower shall elect to pay the First Interest Increase in kind or in cash by written notice to the Administrative Agent on or before the First Interest Increase Date. If the Borrower fails to deliver such notice to the Administrative Agent on or before the First Interest Increase Date, the Borrower shall be deemed to have elected to pay the First Interest Increase in cash.

If the Advance has not been repaid in full on or before December 31, 2014 (the "Second Interest Increase Date"), the Interest Rate shall be increased again by (i) 1.5% (150 basis points) per annum if the Borrower elects to pay such additional interest in kind or (ii) 1.25% (125 basis points) per annum if the Borrower elects to pay such additional interest in cash (the "Second Interest Increase"). The Borrower shall elect to pay the Second Interest Increase in kind or in cash by written notice to the Administrative Agent on or before the Second Interest Increase Date. If the Borrower fails to deliver such notice to the

Administrative Agent on or before the Second Interest Increase Date, the Borrower shall be deemed to have elected to pay the Second Interest Increase in cash.

If the Borrower elects to pay the First Interest Increase and/or the Second Interest Increase in kind in accordance with this Section 2.10(b), such portion of the Interest Rate shall be capitalized and added on each applicable Interest Payment Date to the principal amount of the outstanding Advance and shall not be payable in cash. Any interest capitalized in accordance with this Section 2.10(b) shall form part of the principal amount of the outstanding Advance and shall thereafter bear interest at the Interest Rate."

2.3 Amendments to Financial Covenants (Section 6.3)

On the Effective Date, Section 6.3 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

"The Borrower covenants and agrees with the Administrative Agent and the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under the other Loan Documents remains outstanding, the Borrower and the Guarantors:

(a) shall not, for each period set forth below, permit the EBIDTA to be less than the amount set forth below:

<u>Period:</u>	<u>Minimum EBITDA</u>
From February 2, 2014 to May 3, 2014	\$0.1 million
From February 2, 2014 to August 2, 2014	\$5.3 million
From February 2, 2014 to November 1, 2014	\$7.2 million
From February 2, 2014 to January 31, 2015	\$11.5 million
From May 4, 2014 to May 2, 2015	\$11.5 million
From August 2, 2014 to August 1, 2015	\$11.5 million

(b) shall not, as of each fiscal quarter end commencing with the fiscal quarter ending January 31, 2015, permit the Consolidated Leverage Ratio to exceed 4.60x.

For the purposes of the calculation of Senior Indebtedness and Consolidated Leverage Ratio under this Section 6.3, Indebtedness under the Revolving Credit Facility shall be the average daily revolver balance for the 90 day period immediately prior to the date of determination of the financial covenants."

ARTICLE 3
CONDITIONS PRECEDENT

3.1 Conditions to Effectiveness

This Agreement shall become effective upon satisfaction of the following conditions precedent by the Borrower (the date on which satisfaction occurs, the "Effective Date"):

- (a) the Borrower shall have paid to the Administrative Agent an amendment fee in an amount of \$87,872;
- (b) the representations and warranties set forth in Section 5.1 of the Existing Credit Agreement shall be true and correct as of the date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date); and
- (c) no Default or Event of Default shall have occurred and be continuing.

ARTICLE 4
MISCELLANEOUS

4.1 Representations and Warranties

The Borrower hereby represents and warrant to the Lenders and the Agents that all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).

4.2 No other Amendments, Waivers or Consents

This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.

4.3 Counterparts

This Amendment may be executed by the parties in separate counterparts (by original or otherwise) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

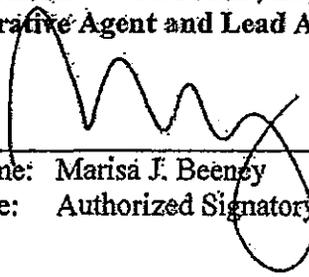
By

Name:

Title:

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by



Name: Marisa J. Beene

Title: Authorized Signatory

by

Name:

Title:

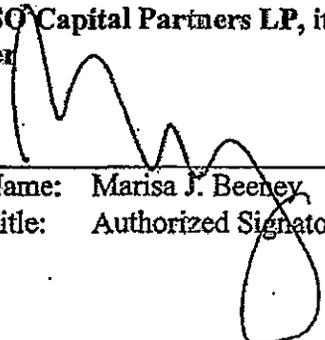
Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

By: GSO Capital Partners LP, its collateral
manager

by



Name: Marisa J. Beene

Title: Authorized Signatory

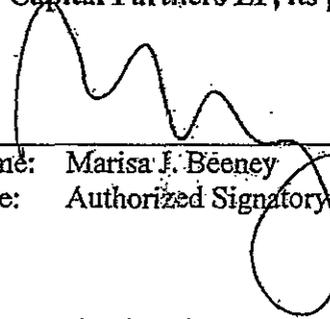
Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

**By: GSO Capital Partners LP, its portfolio
manager**

by



Name: Marisa J. Beene
Title: Authorized Signatory

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

**By: Orchard First Source Capital, Inc., its
attorney in fact**

by

Name:
Title:

AMENDING AGREEMENT

THIS AGREEMENT made as of July 7th, 2015,

BETWEEN:

GRAFTON-FRASER INC., a corporation amalgamated under the laws of the Province of Ontario, as borrower

(hereinafter referred to as the "**Borrower**"),

- and -

THE GUARANTORS THAT ARE PARTIES TO THE EXISTING CREDIT AGREEMENT (AS DEFINED BELOW),

(hereinafter referred to as the "**Guarantors**"),

- and -

THE LENDERS THAT ARE PARTIES TO THE EXISTING CREDIT AGREEMENT (AS DEFINED BELOW),

(hereinafter referred to as the "**Lenders**"),

- and -

OFS AGENCY SERVICES, LLC, a limited liability company formed under the laws of the State of Delaware, as Servicing Agent for the Lenders

(hereinafter referred to as the "**Servicing Agent**"),

- and -

GSO CAPITAL PARTNERS, LP, a limited partnership formed under the laws of the State of Delaware, as Administrative Agent and Lead Arranger,

(hereinafter referred to in its own capacity as "**GSO LP**" and in its capacity as administrative agent on behalf of the Lenders, as the "**Administrative Agent**").

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "**Original Credit Agreement**");

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD CP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement (the "**Second Amended and Restated Credit Agreement**") to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, the parties to this Amendment entered into an amended and restated credit agreement (the "**Third Amended and Restated Credit Agreement**") to amend certain covenants of the Borrower, and on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012 and June 17, 2014, the parties to the Third Amended and Restated Credit Agreement made further amendments to the Third Amended and Restated Credit Agreement (the Third Amended and Restated Credit Agreement and all such amendments collectively referred to herein as the "**Existing Credit Agreement**");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions in connection with a repayment of indebtedness;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Capitalized Terms**

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2
AMENDMENTS

2.1 **Amendments to Definitions (Section 1.1)**

On the Effective Date, Section 1.1 of the Existing Credit Agreement shall be amended as follows:

- (a) The definition of "Interest Rate" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

""Interest Rate" means 15% per annum"; and

- (b) the definition of "Maturity Date" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

""Maturity Date" means October 4, 2016".

2.2 Amendments to Financial Covenants (Section 6.3)

On the Effective Date, Section 6.3 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

"The Borrower covenants and agrees with the Administrative Agent and the Lenders that, unless the Administrative Agent and the Required Lenders otherwise consent in writing, so long as any Obligation hereunder or under the other Loan Documents remains outstanding, the Borrower and the Guarantors:

(a) shall not, as of each fiscal quarter end, permit the EBIDTA for such fiscal quarter and previous three fiscal quarters to be less than \$10.5 million; and

(b) shall not, as of each fiscal quarter end, permit the Consolidated Leverage Ratio to exceed 4.60x.

For the purposes of the calculation of Senior Indebtedness and Consolidated Leverage Ratio under this Section 6.3, Indebtedness under the Revolving Credit Facility shall be the average daily revolver balance for the 90 day period immediately prior to the date of determination of the financial covenants."

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Conditions to Effectiveness

This Agreement shall become effective upon satisfaction of the following conditions precedent by the Borrower (the date on which satisfaction occurs, the "Effective Date"):

- (a) the representations and warranties set forth in Section 5.1 of the Existing Credit Agreement shall be true and correct as of the date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date); and
- (b) no Default or Event of Default shall have occurred and be continuing.

ARTICLE 4
MISCELLANEOUS

4.1 Representations and Warranties

The Borrower hereby represents and warrant to the Lenders and the Agents that all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).

4.2 No other Amendments, Waivers or Consents

This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.

4.3 Counterparts

This Amendment may be executed by the parties in separate counterparts (by original or otherwise) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

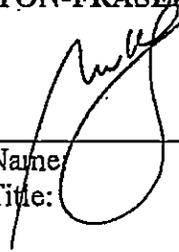
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IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

By

Name:
Title:



Mark Sun
VP and CFO

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by _____

Name:
Title:

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by _____

Name:
Title: A Manager

by _____

Name:
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by _____

Name:
Title: A Manager

by _____

Name:
Title: B Manager

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

**By: Orchard First Source Capital, Inc., its
attorney in fact**

by

Name:

Title:

AMENDING AGREEMENT

THIS AGREEMENT made as of July 23, 2015,

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the
Province of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS
DEFINED BELOW),**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS THAT ARE PARTIES TO THE
EXISTING CREDIT AGREEMENT (AS
DEFINED BELOW),**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws
of the State of Delaware, as Servicing Agent for the
Lenders

(hereinafter referred to as the "Servicing Agent")

GSO CAPITAL PARTNERS, LP
a limited partnership formed under the laws of the
State of Delaware, as Administrative Agent and
Lead Arranger,

(hereinafter referred to in its own capacity as "GSO
LP" and in its capacity as administrative agent on
behalf of the Lenders, as the "Administrative
Agent"),

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement");

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTDCP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement (the "Second Amended and Restated Credit Agreement") to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, the parties to this Amendment entered into an amended and restated credit agreement (the "Third Amended and Restated Credit Agreement") to amend certain covenants of the Borrower, and on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014 and July 7, 2015, the parties to the Third Amended and Restated Credit Agreement made further amendments to the Third Amended and Restated Credit Agreement (the Third Amended and Restated Credit Agreement and all such amendments collectively referred to herein as the "Existing Credit Agreement");

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2 **WAIVER AND AMENDMENT**

2.1 Amendment to Definitions (Section 1.1)

On the Effective Date, Section 1.1 of the Existing Credit Agreement shall be amended as follows:

- a) The following definition shall be added immediately after the definition of "Investments" in Section 1.1 of the Existing Credit Agreement:

""JNY Subsidiary" means 2473304 Ontario Inc. and its successors and assigns";
and

- b) The definition of "Subsidiary" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following

""Subsidiary" means, with respect to any Person, any corporation more than 50% of the Voting Securities of which at the time of determination are beneficially owned, directly or indirectly, by such Person or any corporation, joint venture, partnership or other entity which is subject to the direct or indirect Control of such Person; provided, however, that, for the purposes of this Agreement, the term "Subsidiary" shall not include the JNY Subsidiary, or any Person which is subject to the direct or indirect Control of the JNY Subsidiary".

2.2

Confirmation re: JNY Subsidiary

As of the Effective Date, the Administrative Agent, the Servicing Agent and the Lenders hereby confirm and agree that:

- a) the JNY Subsidiary is not and shall not be required, at any time, to become a Guarantor pursuant to the terms of the Existing Credit Agreement and that the representations and warranties set out in Section 5.1 of the Existing Credit Agreement and the covenants set out in Sections 6.1 and 6.2 of the Existing Credit Agreement shall not apply to the JNY Subsidiary; and
- b) unless (i) a Default or Event of Default shall have occurred and be continuing or (ii) a default or event of default under any Indebtedness of the JNY Subsidiary in the aggregate principal amount in excess of \$1,000,000 shall have occurred and be continuing, the Borrower shall have the right to make or commit to make any advance, loan, extension of credit or capital contribution to or any investment in or guarantee of, the JNY Subsidiary, or make any payments in respect thereof, up to a maximum aggregate amount of \$250,000.

2.3

Exclusion of JNY Subsidiary from Ratios

As of the Effective Date, the Administrative Agent, the Servicing Agent and the Lenders hereby confirm and agree that the Existing Credit Agreement shall be qualified as follows:

- a) For the purposes of calculating the Consolidated Leverage Ratio in Sections 6.2(a), 6.2(b) and 6.3 of the Existing Credit Agreement, the LTM EBITDA shall not include the JNY Subsidiary in its determination of EBITDA on a consolidated basis; and

- b) For the purposes of calculating the ratio of Senior Indebtedness to LTM EBITDA in Sections 6.2(g) and 6.2(h)(iv) of the Existing Credit Agreement, the JNY Subsidiary shall be excluded from the calculation of the LTM EBITDA.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 **Conditions to Effectiveness**

This Amendment shall become effective upon satisfaction of the following conditions precedent by the Borrower (the date on which such satisfaction occurs, the "Effective Date"):

- (a) the representations and warranties set forth in Section 5.1 of the Existing Credit Agreement shall be true and correct as of the date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date); and
- (b) no Default or Event of Default shall have occurred and be continuing.

ARTICLE 4
MISCELLANEOUS

4.1 **Representations and Warranties**

The Borrower hereby represents and warrant to the Lenders and the Agents that all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).

4.2 **No other Amendments, Waivers or Consents**

This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.

4.3 **Counterparts**

This Amendment may be executed by the parties in separate counterparts (by original or facsimile signature) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

By

Name:

Title:

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by _____
Name:
Title:

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by _____
Name:
Title: A Manager

by _____
Name:
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by _____
Name:
Title: A Manager

by _____
Name:
Title: B Manager

**OFS AGENCY SERVICES, LLC, as
Servicing Agent**

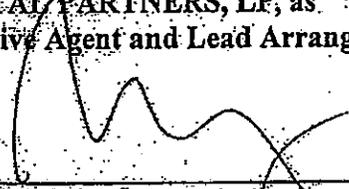
**By: Orchard First Source Capital, Inc.,
its attorney in fact**

by

Name:
Title:

GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger

by


Name: MARISA BEENEY
Title: AUTHORIZED SIGNATORY

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender

by


Name: EMMA S. FLEMING
Title: A Manager

by

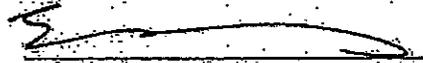
Name:
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender

by


Name: EMMA S. FLEMING
Title: A Manager

by

Name:
Title: B Manager

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by

Name:
Title:

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by

Name:
Title: A Manager

by

Name: **Jean-Claude Koch**
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by

Name:
Title: A Manager

by

Name: **Jean-Claude Koch**
Title: B Manager

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

By

Name:
Title:



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

AMENDING AGREEMENT

THIS AGREEMENT made as of February 12, 2016,

BETWEEN:

GRAFTON-FRASER INC.,
a corporation amalgamated under the laws of the
Province of Ontario, as borrower

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT ARE PARTIES
TO THE EXISTING CREDIT AGREEMENT
(AS DEFINED BELOW),**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS THAT ARE PARTIES TO
THE EXISTING CREDIT AGREEMENT (AS
DEFINED BELOW),**

(hereinafter referred to as the "Lenders"),

- and -

OFS AGENCY SERVICES, LLC,
a limited liability company formed under the laws
of the State of Delaware, as Servicing Agent for the
Lenders,

(hereinafter referred to as the "Servicing Agent")

- and -

GSO CAPITAL PARTNERS, LP
a limited partnership formed under the laws of the
State of Delaware, as Administrative Agent and
Lead Arranger,

(hereinafter referred to in its own capacity as “**GSO LP**” and in its capacity as administrative agent on behalf of the Lenders, as the “**Administrative Agent**”),

WHEREAS GF Acquisition Corp., the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the “**Original Credit Agreement**”);

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD CP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, the Servicing Agent was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

AND WHEREAS on September 10, 2008, the parties entered into an amended and restated credit agreement (the “**Second Amended and Restated Credit Agreement**”) to reflect the resignation and appointments referred to above and certain other amendments set forth therein;

AND WHEREAS on June 16, 2009, the parties to this Amendment entered into an amended and restated credit agreement (the “**Third Amended and Restated Credit Agreement**”) to amend certain covenants of the Borrower, and on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015 and July 23, 2015, the parties to the Third Amended and Restated Credit Agreement made further amendments to the Third Amended and Restated Credit Agreement (the Third Amended and Restated Credit Agreement and all such amendments collectively referred to herein as the “**Existing Credit Agreement**”);

AND WHEREAS the parties now wish to amend the Existing Credit Agreement to amend certain definitions, terms and conditions;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Capitalized Terms**

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

ARTICLE 2
WAIVER AND AMENDMENT

2.1 **Additional Guarantor**

As of the Effective Date, Section 2.2 of the Amending Agreement dated as of July 23, 2015 among the Borrower, the Guarantors, the Lenders and the Administrative Agent shall be deleted in its entirety and no longer be of any force or effect and the JNY Subsidiary shall become a Guarantor in accordance with the terms of the Existing Credit Agreement.

2.2 **Inclusion of JNY Subsidiary in Ratios**

As of the Effective Date, the Administrative Agent and the Lenders hereby confirm and agree as follows in respect of the Existing Credit Agreement:

- (a) for the purposes of calculating the Consolidated Leverage Ratio in Sections 6.2(a), 6.2(b) and 6.3 of the Existing Credit Agreement, the LTM EBITDA shall include the JNY Subsidiary in its determination of EBITDA on a consolidated basis; and
- (b) for the purposes of calculating the ratio of Senior Indebtedness to LTM EBITDA in Sections 6.2(g) and 6.2(h)(iv) of the Existing Credit Agreement, the JNY Subsidiary shall be included from the calculation of the LTM EBITDA.

2.3 **Quebec Security**

As of the Effective Date, Borrower, the Administrative Agent and the Lenders hereby confirm and agree that the Existing Credit Agreement is amended by adding the following provision as a new Section 12.17:

"12.17 Quebec Security

For greater certainty, and without limiting the powers of the Administrative Agent or any other Person acting as an agent or mandatary for the Administrative Agent hereunder or under any of the other Loan Documents, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by the Borrower or any Guarantor, each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent and, to the extent necessary, ratifies the appointment and authorization of the Administrative Agent,

to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the "Attorney"), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Administrative Agent *mutatis mutandis*, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders. Any person who becomes a Lender shall be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Administrative Agent pursuant to the provisions of this Agreement also constitute the substitution of the Attorney.

2.4 Waiver

Effective as of the Effective Date, the Administrative Agent and the Lenders hereby confirm their waiver of the requirement to comply with Section 6.3(b) of the Existing Credit Agreement (Consolidated Leverage Ratio) for the fiscal quarters ending on August 1st, 2015, October 31st, 2015 and January 30th, 2016.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Conditions to Effectiveness

This Amendment shall become effective upon satisfaction of the following conditions precedent by the Borrower (the date on which such satisfaction occurs, the "Effective Date"):

- (a) the JNY Subsidiary shall have executed and delivered a Guarantee in form and substance acceptable to the Administrative Agreement;
- (b) subject to Section 3.2, delivery of the documents contemplated by Section 7.2 of the Credit Agreement;
- (c) the representations and warranties set forth in Section 5.1 of the Existing Credit Agreement shall be true and correct as of the date of this Amendment (except to the extent such representation or warranty expressly relates to an earlier date); and
- (d) no Default or Event of Default shall have occurred and be continuing.

3.2 Post-Closing Deliveries

The Borrower agrees to cause the Guarantor to execute and deliver, within 15 Business Days of the date hereof, a deed of hypothec in form and substance satisfactory to the Administrative Agent, sufficient to create a first-ranking hypothec on all of the Guarantor's moveable property and to take all action necessary to register such hypothec in the Register of Personal and Moveable Real Rights or any other applicable public registry. In connection with the delivery of the foregoing, the Borrower will cause the Guarantor to deliver a legal opinion from counsel to the Guarantor addressed to the Administrative Agent and the Lenders, confirming the enforceability of the hypothec, the proper registration thereof and all other customary matters relating thereto, in form and substance satisfactory to the Administrative Agent, acting reasonably.

ARTICLE 4
MISCELLANEOUS

4.1 Representations and Warranties

The Borrower hereby represents and warrant to the Lenders and the Agents that all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Amendment have been obtained and hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date).

4.2 No other Amendments, Waivers or Consents

This Amendment is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.

4.3 Counterparts

This Amendment may be executed by the parties in separate counterparts (by original or facsimile signature) each of which when so executed and delivered shall be an original, but all of which, when taken together, shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

By

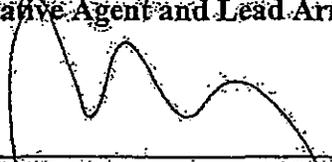
Name:
Title:



MARCO SON
VP & CFO

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by


Name: MARISA BEEENEV
Title: AUTHORIZED SIGNATORY

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by

Name:
Title: A Manager

by

Name:
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by

Name:
Title: A Manager

by

Name:
Title: B Manager

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by _____

Name:
Title:

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by _____

Name: *Don's Lee-Silvestri*
Title: A Manager

by _____

Name:
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by _____

Name: *Don's Lee-Silvestri*
Title: A Manager

by _____

Name:
Title: B Manager

**GSO CAPITAL PARTNERS, LP, as
Administrative Agent and Lead Arranger**

by _____

Name:
Title:

Address:

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31st Floor
New York, New York, 10154

**GSO DOMESTIC CAPITAL FUNDING
(LUXEMBOURG) S.A.R.L., as Lender**

by _____

Name:
Title: A Manager

by _____

Name: **Jean-Claude Koch**
Title: B Manager

Address:

345 Park Avenue
31st Floor
New York, New York, 10154

**GSO OFFSHORE MULTICURRENCY
FACILITY (LUXEMBOURG) S.A.R.L., as
Lender**

by _____

Name:
Title: A Manager

by _____

Name: **Jean-Claude Koch**
Title: B Manager

OFS AGENCY SERVICES, LLC, as
Servicing Agent

By: Orchard First Source Capital, Inc., its
attorney in fact

by



Name: **SEAN C. KELLEY**
Title: **DIRECTOR**