

1735825 ONTARIO INC. (FORMERLY KNOWN AS GRAFTON-FRASER INC.)

**FIFTH REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS MONITOR OF
1735825 ONTARIO INC.**

JULY 13, 2017

Table of Contents

Introduction.....	1
Purpose of the Report	5
Terms of Reference.....	5
The Company's Activities	6
The Monitor's Activities	7
Employees.....	8
Escrow Funds.....	9
The Directors' Escrow	9
Expansion of the Monitor's Powers	10
Monitor's Conclusions and Recommendations.....	11

Table of Appendices

Amended and Restated Initial Order	A
Approval and Vesting Order	B
Reasons of the Honourable Mr. Justice Pattillo dated May 2, 2017	C
Assignment Order	D
Distribution and Stay Extension Order	E

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
1735825 ONTARIO INC. (FORMERLY KNOWN AS GRAFTON-FRASER INC.)

FIFTH REPORT OF RICHTER ADVISORY GROUP INC.
In its capacity as Monitor of the Company

July 13, 2017

Introduction

1. On January 25, 2017 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order, as amended and restated at a subsequent Court attendance on January 30, 2017 (the "**Amended and Restated Initial Order**"), granting 1735825 Ontario Inc. (formerly known as Grafton-Fraser Inc.) (the "**Company**") protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**"). The proceedings commenced by the Company under the CCAA are herein referred to as the "**CCAA Proceedings**". A copy of the Amended and Restated Initial Order is attached hereto as **Appendix "A"**.
2. The Amended and Restated Initial Order provided the Company with, *inter alia*, a stay of proceedings until February 23, 2017 (the "**Stay Period**"). The Amended and Restated Initial Order also granted the Company the authority to enter into amended and restated forbearance agreements (the "**Forbearance Agreements**") with its two primary secured creditors, being Canadian Imperial Bank of Commerce ("**CIBC**") as agent and lender, as well as GSO Capital Partners LP ("**GSO**") as agent for the GSO Lenders (as defined in the Amended and Restated Initial Order, and together with CIBC, the "**Secured Lenders**"), pursuant to which CIBC and GSO agreed, among other things, to continue to forbear from exercising their rights and remedies under their respective loan documents. Among other terms, the amended and restated forbearance agreement with CIBC allowed the Company to continue

to borrow under its revolving facility with CIBC (the “**CIBC Facility**”), subject to the terms and conditions contained in that forbearance agreement.

3. The Amended and Restated Initial Order provided for the sum of \$772,597 (the “**Directors’ Escrow**”) to be paid by the Company to the Monitor to hold, in trust, for the Company’s indemnification obligations with respect to post-filing statutory liabilities of its directors and officers (the “**Directors**”).
4. As the Company required financing to pursue its restructuring plan incremental to that provided for under the CIBC Facility, the Amended and Restated Initial Order also granted the Company the authority to enter into an agreement (the “**DIP Agreement**”) with GSO (and certain related entities) for a new non-revolving credit facility in the maximum amount of \$5.5 million (the “**DIP Credit Facility**”) to provide additional funding for the Company’s operations during the CCAA Proceedings.
5. Contemporaneous with the Company’s service of its application for the Amended and Restated Initial Order, the Company served a motion, returnable January 30, 2017, for orders approving, among other things, (i) the proposed sale and investment solicitation process (“**SISP**”) to be carried out by the Company with the Monitor’s assistance, (ii) the execution of an asset purchase agreement dated January 24, 2017, as amended (the “**Sale Agreement**”), between the Company and 1104307 B.C. Ltd. (now GSO GF Acquisition B.C. Ltd., a party related to GSO, and referred to herein as the “**Purchaser**”) to serve as the stalking horse bid under the proposed SISP, and (iii) a liquidation consulting agreement (the “**Liquidation Consulting Agreement**”) dated January 24, 2017, including the sale guidelines (the “**Sale Guidelines**”) in connection with same, between the Company and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the “**Consultant**”), pursuant to which the Consultant was to provide guidance to the Company on the liquidation of inventory and owned furniture, fixtures and equipment at certain underperforming stores.
6. On January 30, 2017, the Court issued an order which, among other things, authorized the Company to enter into the Sale Agreement, approved the SISP, authorized the Company to enter into the Liquidation Consulting Agreement, and approved the Sale Guidelines.

7. Since the SISF did not result in any superior offers, on May 2, 2017, the Court granted an order (the **“Approval and Vesting Order”**) approving the Sale Agreement, and, vesting, upon the closing of the Transaction, all of the rights, title and interest in and to the Purchased Assets (as set out and described in the Sale Agreement), in the Purchaser, free and clear of and from all Claims (as defined in the Approval and Vesting Order, except for those permitted encumbrances, easements and restrictive covenants listed on Schedule “C” to the Approval and Vesting Order). Copies of the Approval and Vesting Order and the reasons of Justice Pattillo are attached hereto as **Appendices “B” and “C”**, respectively.
8. The terms of the Sale Agreement required the Company to use commercially reasonable efforts to obtain consents to the assignment of contracts (the **“Assumed Contracts”**) and leases (the **“Assumed Real Property Leases”**) contemplated in the Sale Agreement to the Purchaser. In the event that such consents could not be obtained, the Company was required to take steps to obtain an order assigning the Company’s rights and obligations under such agreements to the Purchaser, pursuant to section 11.3 of the CCAA. The Purchaser agreed to pay the cure costs required by section 11.3(4) of the CCAA (being those related to monetary defaults only) associated with the Assumed Real Property Leases and Assumed Contracts (the **“Cure Costs”**).
9. Since the Company was unable to obtain the required consents for one Assumed Real Property Lease and one Assumed Contract, the Court issued an order (the **“Assignment Order”**) on June 6, 2017 which among other things, assigned the rights and obligations under those contracts to the Purchaser and vested the Company’s rights, title and interest therein, in the Purchaser as Purchased Assets under the Sale Agreement, provided that upon the closing of the Transaction, the Cure Costs shall be paid by the Purchaser. A copy of the Assignment Order is attached hereto as **Appendix “D”**.
10. On June 6, 2017, the Court also issued an order (the **“Distribution and Stay Extension Order”**) which, among other things:
 - (i) approved certain amendments to the Sale Agreement;
 - (ii) extended the Stay Period to September 15, 2017;
 - (iii) authorized and directed the Company to make a distribution to GSO in partial satisfaction of the amounts owing under the DIP Credit Facility;

- (iv) approved a reduction in the Directors' Escrow to \$172,597 upon delivery of the Monitor's Certificate (as defined in the Approval and Vesting Order) to the Purchaser, and authorized and directed the Monitor to release \$600,000 from the Directors' Escrow to the Purchaser, or as the Purchaser may otherwise direct in writing with the consent of the Monitor and CIBC;
- (v) approved the Monitor's fourth report to the Court dated June 1, 2017 (the "**Fourth Report**") and the activities, actions and conduct of the Monitor set out therein; and
- (vi) approved the fees and expenses of the Monitor and those of its counsel, Cassels Brock & Blackwell LLP, for the periods from April 2, 2017 to May 20, 2017 and from April 1, 2017 to May 22, 2017, respectively.

A copy of the Distribution and Stay Extension Order is attached hereto as **Appendix "E"**.

- 11. The key elements of the Transaction, which was in large part a credit bid, have been outlined in the previously filed reports of the Monitor (the "**Reports**") and, therefore, have not been repeated herein (capitalized terms not otherwise defined herein shall have the meanings ascribed in the Sale Agreement).
- 12. The Transaction was completed on June 28, 2017 (the "**Closing Date**") and the Monitor's Certificate was delivered to the Purchaser on the same date and filed with the Court.
- 13. On the Closing Date, (i) the Monitor understands that GSO, as lender, assigned to the Purchaser certain amounts owing to GSO by the Company (the "**Assigned Debt**") together with any security granted by the Company in favour of GSO in respect of such obligations (the "**Assigned Security**"); (ii) all of the amounts owing by the Company (as well as the Company's wholly-owned subsidiary, 2473304 Ontario Inc.) to CIBC were released, and (iii) the Purchaser released the Company from all of its obligations pursuant to the Assigned Debt and Assigned Security.
- 14. Pursuant to the Approval and Vesting Order, the Company filed articles of reorganization on June 28, 2017 changing its name from Grafton-Fraser Inc. to 1735825 Ontario Inc. Also, in accordance with the Approval and Vesting Order, the Monitor, through its counsel, sent a copy of the Approval and Vesting Order, together with a copy of the articles of reorganization to all parties who were registered as secured parties under the *Personal Property Security Act* (Ontario) or similar provincial legislation against the Company. Such notices were sent out on July 4, 2017.

Purpose of this Report

15. The purpose of this, the Monitor's fifth report (the "**Fifth Report**"), is to provide information to this Honourable Court regarding the following:
- (i) the activities of the Company and the Monitor since the date of the Fourth Report;
 - (ii) the closing of the Transaction;
 - (iii) the Directors' Escrow and other escrow funds;
 - (iv) the motion by the Purchaser seeking an order, for among other things, the expansion of the powers of the Monitor, as set out in the Amended and Restated Initial Order (or any other Order of this Court made in the Company's CCAA Proceedings), to include, *inter alia*, the authorization to take any and all actions and steps and execute any and all documents on behalf of the Company, as appropriate, in order to (i) exercise the Company's rights or perform the Company's obligations under the Sale Agreement and any ancillary agreements in connection therewith, and (ii) perform such functions and duties as the Monitor considers necessary or desirable in order to facilitate or assist the Company in dealing with its wind-down, the CCAA Proceedings or other activities.

Terms of Reference

16. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
17. In preparing this report and conducting its analyses, the Monitor has obtained and relied upon certain unaudited, draft, and/or internal financial information of the Company, the Company's books and records and discussions with various parties, including the Company's employees and certain of its directors (collectively, the "**Information**"). Except as otherwise described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant Canada Handbook and, as such, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

The Company's Activities

18. The Company's activities since the commencement of the CCAA Proceedings to June 1, 2017 are detailed in the previous Reports. Subsequent to the filing of the Fourth Report, the Company's activities have included:
- (i) meeting and communicating with the Company's employees regarding the status of the CCAA Proceedings and the Transaction;
 - (ii) making payments to suppliers for goods and/or services received following the issuance of the Amended and Restated Initial Order;
 - (iii) reporting receipts and disbursements;
 - (iv) preparing weekly financial reports with the assistance of the Monitor for the Secured Lenders (up to the closing of the Transaction);
 - (v) responding to calls and enquiries from creditors and other stakeholders regarding the Transaction and the CCAA Proceedings;
 - (vi) making a distribution to GSO, as authorized by the Distribution and Stay Extension Order;
 - (vii) issuing disclaimer/resiliation notices in connection with twenty (20) agreements pursuant to section 32 of the CCAA;
 - (viii) corresponding with Canada Revenue Agency ("**CRA**") and the Company's tax advisors regarding input tax credits (the "**ITCs**") claimed by the Company on pre-filing liabilities owing as at the Filing Date, which ITCs were disallowed by CRA, including the filing of a notice of objection in connection with CRA's treatment of such ITCs (the "**CRA Objection**");
 - (ix) negotiating and executing amendments to the Sale Agreement including a fifth amendment to the Sale Agreement (the "**5th Amending Agreement**") dated June 26, 2017;
 - (x) communicating with the Purchaser to discuss the status of various deliverables in connection with the Transaction and providing information/documentation to the Purchaser required for the closing of the Transaction;
 - (xi) negotiating and executing the Letter Agreement (as defined below);

- (xii) working with the Monitor to complete certain closing/post-closing deliveries, pursuant to directions (the “**Directions**”) provided by the Purchaser to the Monitor (which Directions were consented to by both the Monitor and CIBC) in connection with the Transaction; and
- (xiii) consulting with the Monitor and its counsel on various matters in connection with the Transaction and the CCAA Proceedings.

The Monitor’s Activities

19. The activities of the Monitor from the commencement of the CCAA Proceedings to June 1, 2017 are detailed in the Reports. Subsequent to the filing of the Fourth Report, the Monitor’s activities have included:

- (i) maintaining a website at <https://richter.ca/en/folder/insolvency-cases/g/grafon-fraser-inc>, where all materials filed with the Court and all orders made by the Court in connection with the CCAA Proceedings are available in electronic format;
- (ii) monitoring the Company’s cash flows, including the reporting of variances to the Company’s cash flow forecast and adherence to covenants under the DIP Agreement and the Forbearance Agreements;
- (iii) monitoring the Company’s sales tax liability position. Pursuant to paragraph 9 of the Amended and Restated Initial Order, the Company has continued to provide funds to the Monitor and, as at the date of the Fifth Report, the Monitor is holding approximately \$1,070,000 in respect of the Company’s projected post-filing sales tax liability. The Monitor will hold such funds and continue to, at the Company’s request, transfer such funds to the Company, as necessary, for payment of such taxes;
- (iv) assisting the Company with the preparation of its weekly financial reports provided to the Secured Lenders (up to the closing of the Transaction);
- (v) assisting the Company and the Purchaser in resolving any concerns of landlords and/or counterparties to the Assumed Real Property Leases and the Assumed Contracts;
- (vi) attending, as necessary, at the Company’s premises and meeting with the Company’s management to discuss the Company’s operations, the CCAA Proceedings and the Transaction;

- (vii) reviewing and approving the disclaimer/resiliation, by the Company, of twenty (20) agreements pursuant to section 32 of the CCAA;
- (viii) corresponding and communicating with the Company, the Purchaser and their respective counsel in connection with the 5th Amending Agreement;
- (ix) completing any tasks required by the Monitor under the Sale Agreement to assist with the closing of the Transaction;
- (x) issuing, on June 28, 2017, the Monitor's Certificate (and filing same with the Court) confirming that the Transaction had been completed to the satisfaction of the Monitor;
- (xi) reducing, as per the Distribution and Stay Extension Order, upon the delivery of the Monitor's Certificate, the amount of the Directors' Escrow to \$172,597 and acting as escrow agent for the distribution of approximately \$600,000 from the Directors' Escrow and other escrow amounts to various parties, as provided for in the Directions and as discussed below;
- (xii) receiving and holding the Wind-Down Amount (as provided for and defined in the Sale Agreement) in the amount of \$200,000. The Wind-Down Amount is to fund to the reasonable costs, fees and disbursements necessary for winding down and completing the Company's CCAA Proceedings (discussed later in this Fifth Report);
- (xiii) corresponding and communicating with the Secured Lenders and their advisors;
- (xiv) responding to calls and enquiries from creditors, employees, former employees and other stakeholders regarding the Transaction and the CCAA Proceedings; and
- (xv) preparing this Fifth Report.

Employees

20. Pursuant to the Sale Agreement, any employees of the Company remaining as employees at the closing of the Transaction were offered employment by the Purchaser and those who did not accept employment with the Purchaser were terminated effective as of the Closing Date.

21. Consequently, on the Closing Date, the Company and Purchaser entered into an agreement (the “**Letter Agreement**”) which, among other things, confirmed that subsequent to the Closing Date the Purchaser would provide the Company and the Monitor with reasonable access to certain Transferred Employees (as defined in the Sale Agreement) who, while employed by the Purchaser, would be permitted for administrative purposes, to assist the Company and the Monitor in carrying out its duties regarding the CCAA Proceedings.
22. There are no remaining officers or employees of the Company to sign documents or take actions on behalf of the Company in order to complete the CCAA Proceedings.

Escrow Funds

23. Pursuant to the Sale Agreement, the Purchaser was required to pay certain amounts upon closing of the Transaction, including but not limited to the Cure Costs, transfer taxes owing to certain provincial taxing authorities (the “**Transfer Taxes**”) and the Wind-Down Amount.
24. In order to facilitate the funding and payment of these closing amounts, certain funds were sent to the Monitor in escrow and pursuant to the Directions. The Monitor, as escrow agent, was directed to pay these escrow funds in accordance with a flow of funds memorandum which had been agreed to by the Company, the Purchaser, CIBC and the Monitor.
25. On or shortly following the Closing Date, the Monitor issued most of the payments, including for the Cure Costs, in accordance with the Directions. It is expected that all payments pursuant to the Direction will be completed by the end of July 2017.
26. It is anticipated that there will be surplus escrow funds to be transferred to the Purchaser, as contemplated by the Directions.

The Directors’ Escrow

27. The Directors Escrow currently contains approximately \$172,597.
28. Counsel to the Directors has advised that at this juncture, the primary concern of the Directors, to which the remaining Directors’ Escrow provides protection, is in respect of any amounts which may be owing by the Company for wages or vacation pay owing to employees who did not accept employment with the Purchaser and other amounts which may be statutory liabilities of the Directors.

29. The Company has advised the Monitor that, in its view, it has paid all amounts owing to those employees that did not accept offers of employment with the Purchaser on account of potential statutory directors' liability amounts including wages, unpaid expenses and vacation pay.
30. The Monitor understands that based on the current circumstances, it is anticipated that the Directors' Escrow will be reduced to \$50,000 at the end of this month.

Expansion of the Monitor's Powers

31. As noted previously in this Fifth Report, following the closing of the Transaction, the Company presently has no remaining employees (or officers) to sign documents or take actions on behalf of the Company. Further, the Monitor has been advised that the Company's directors are considering resigning as directors, but have agreed to remain directors until the return of the Purchaser's motion to expand the Monitor's powers.
32. If and when the Company's directors resign, there will be no Company personnel to direct and authorize the Company's orderly wind-down, which may involve a bankruptcy, or the completion of the CCAA Proceedings.
33. In light of the above, the Purchaser has brought a motion returnable July 18, 2017 seeking to expand the powers of the Monitor.
34. As the Monitor understands there are certain post-closing matters to be administered by the Company, including the resolution of the CRA Objection and completion of the CCAA Proceedings, the expansion of the Monitor's powers will permit the Monitor to, among other things:
 - (i) execute any documents to exercise the Company's rights or perform the Company's obligations under the Sale Agreement or any ancillary agreements in connection with the Transaction;
 - (ii) operate, on behalf of the Company, any of the Company's existing accounts at any financial institution;
 - (iii) take such action in the name of or on behalf of the Company with respect to any tax refunds, tax returns or other tax related documents including without limitation in respect of the CRA Objection and for the purposes of administering the Property or the Business (each as defined in the Amended and Restated Initial order) and completing these proceedings; and

(iv) perform such duties, as necessary, to complete the CCAA Proceedings and the wind-down of the Company.

35. Given the absence of Company management and the need to address certain post-closing matters, the Monitor consents to the proposed expansion of its powers in the CCAA Proceedings. The Monitor is of the view that such relief is the most efficient and cost-effective way to complete the CCAA Proceedings and wind-down of the Company.

36. As similar circumstances exist in 247's CCAA proceedings, the Monitor understands that similar relief is being sought in those proceedings to expand the powers of the monitor to facilitate the wind-down of 247 and the completion of 247's CCAA proceedings.

Monitor's Conclusions and Recommendations

37. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court issue an order granting the relief sought by the Purchaser, as outlined in paragraph 15(iv) of this Fifth Report.

All of which is respectfully submitted this 13th day of July, 2017.

Richter Advisory Group Inc.
in its capacity as Monitor of
1735825 Ontario Inc. (formerly known as Grafton-Fraser Inc.)

Per:



Gilles Benchaya, CPA, CA, CIRP, LIT



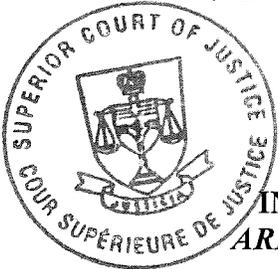
Adam Sherman, MBA, CIRP, LIT

APPENDIX A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE WILTON - SIEGEL)

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



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GRAFTON-FRASER INC.

(the "Applicant")

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of Mark Sun sworn January 25, 2017 and the Exhibits thereto (the "Sun Affidavit"), the report of Richter Advisory Group Inc. ("Richter") as the proposed monitor dated January 25, 2017 (the "Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Richter, in its capacity as the proposed monitor (the "Monitor") of the Applicant in these CCAA proceedings, counsel for the directors of the Applicant, counsel for Canadian Imperial Bank of Commerce ("CIBC"), counsel for GSO Capital Partners LP ("GSO") and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Irene

Artuso sworn January 25, 2017, filed, and on reading the consent of Richter to act as the Monitor.

SERVICE

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

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

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 53 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. 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/grafton-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.



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

JAN 30 2017

PER / PAR: 

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

AMENDED AND RESTATED INITIAL ORDER
(INITIAL CCAA APPLICATION)
(Returnable January 25, 2017)

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Lawyers for the Applicant, Grafton-Fraser Inc.

APPENDIX B

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✓

Court File No. CV-11677-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE PATTILLO

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)
)

THURSDAY, THE 2ND
DAY OF MAY, 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.

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Applicant and GSO GF Acquisition B.C. Ltd. (formerly 1104307 B.C. Ltd.) (the "Purchaser") dated January 24, 2017, as amended by amending agreements on February 16, 2017, March 3, 2017 and March 14, 2017 (as so amended, or as may be further amended in accordance with the provisions of this Order, collectively, the "Sale Agreement") and appended to the Affidavit of Mark Sun dated April 12, 2017 (the "Affidavit"), and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit and the Third Report of Richter Advisory Group Inc., in its capacity as the court appointed monitor of the Applicant (the "Monitor"), dated

April 17, 2017 (the "Report") and on hearing the submissions of counsel for the Applicant, the Monitor, the Purchaser, Canadian Imperial Bank of Commerce, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Irene Artuso sworn April 13, 2017 filed:

1. THIS COURT ORDERS AND DECLARES that any capitalized term used and not defined herein shall have the meaning given to it in the Sale Agreement.
2. THIS COURT ORDERS AND DECLARES that the time for service of notice of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. THIS COURT ORDERS AND DECLARES that
 - (a) with respect to the Purchased Assets, other than the Assumed Real Property Leases, upon the delivery of the Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), all of the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, and
 - (b) with respect to the Assumed Real Property Leases, upon the assignment of the Assumed Real Property Leases to the Purchaser pursuant to a Third Party Consent or CCAA Assignment Order, all of the Applicant's right, title and interest in and to such Assumed Real Property Lease shall be assigned absolutely to the Purchaser,

in each case free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey in these proceedings dated January 25, 2017, as amended and restated by the Order of the Honourable Justice Wilton-Siegel in these proceedings dated January 30, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) subject to paragraph 5, those Claims listed on Schedule B hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets, other than any registrations made at the applicable land registry of the Assumed Real Property Leases forming part of the Purchased Assets and any memorials of lease, summaries of lease, notices of lease, assignments of lease and any amendments or other registrations pertaining to the Assumed Real Property Leases forming part of the Purchased Assets, provided however that, except as may otherwise be agreed to by the applicable landlord to such Assumed Real Property Lease (a "Landlord") and the Purchaser, nothing herein shall affect the rights and remedies of such Landlord against the Purchaser that may exist or arise under or in respect of any Lease that is ultimately assigned to the Purchaser in connection with the Transaction.

5. THIS COURT ORDERS AND DECLARES that the Encumbrances in favour of the ABL Agent that are listed on Schedule B or that are subject of the registrations listed on Schedule B shall be expunged and discharged against the Purchased Assets immediately upon the ABL Agent confirming to the Monitor in writing that (a) all conditions to the effectiveness of the New Revolving Facility have been

satisfied; and (b) the Purchaser has satisfied the obligations assumed by it pursuant to Section 2.3(i) of the Sale Agreement.

6. THIS COURT ORDERS AND DECLARES that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume and be responsible for and honour, perform, discharge and pay as and when due the Assumed Liabilities, as set out in the Sale Agreement.

7. THIS COURT ORDERS AND DECLARES THAT (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of an Assumed Real Property Lease; and (b) none of the Assumed Real Property Leases shall be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order.

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

9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees, including personal information of those employees listed on Schedule "4.1" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

10. THIS COURT ORDERS that, notwithstanding:

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. THIS COURT ORDERS that, in accordance with the terms of the Sale Agreement, and upon the filing of the Monitor's Certificate, the Applicant be and is hereby authorized and directed to execute and file such documents as are required to change the name of the Applicant from "Grafton-Fraser Inc." to "1735825 Ontario Inc.", including, without limitation, filing articles of reorganization substantially in the form attached hereto as Schedule D with the director appointed under the *Business Corporations Act* (Ontario) pursuant to section 186 thereof.

12. THIS COURT ORDERS the Monitor to send a copy of this Order, together with a copy of the articles of reorganization of the Applicant, when filed, to all parties that have filed a registration under the *Personal Property Security Act* (Ontario), or similar provincial legislation, against the Applicant.

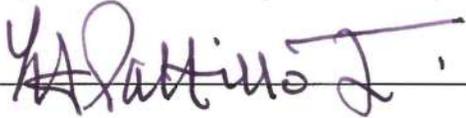
13. THIS COURT ORDERS that, upon the filing of the Monitor's Certificate, the title of these proceedings be and is hereby changed to:

"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 1735825 Ontario Inc. (formerly known as Grafton-Fraser Inc.)"

14. 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 and its 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, as may be necessary or desirable to give effect to this Order or to assist the Applicant and its agents in carrying out the terms of this Order.



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

MAY 10 2017

PER / PAR:



Schedule A – Form of Monitor's Certificate

Court File No. CV-11677-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER of a Plan of Compromise or Arrangement of Grafton-Fraser Inc.

Applicant

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated January 25, 2017, as amended and restated by the Order of the Honourable Justice Wilton-Siegel in these proceedings dated January 30, 2017, the Applicant was granted protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* and Richter Advisory Group Inc. was appointed as the monitor (the "Monitor") of the Applicant.

B. Pursuant to an Order of the Court dated May 2, 2017, the Court approved the agreement of purchase and sale made as of January 24, 2017, as amended by amending agreements on February 16, 2017, March 3, 2017 and March 14, 2017 (as amended, the "Sale Agreement") between the Applicant and GSO GF Acquisition B.C. Ltd. (formerly 1104307 B.C. Ltd.) (the "Purchaser") and provided for the vesting in the Purchaser of the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate

confirming (i) that the conditions to Closing as set out in sections 6.4 and 6.5 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in sections 6.4 and 6.5 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**Richter Advisory Group Inc., in its capacity
as court-appointed monitor of Grafton-
Fraser Inc. and not in its personal capacity**

Per:

Name:

Title:

Schedule B – Encumbrances

PPSA British Columbia

<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1. 673469D	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007 Registration Period: 8 years Expiry Date: May 15, 2023	All of the Applicant's present and after-acquired personal property of the Applicant and, without limitation, all fixtures, crops, and licenses.
2. 006240J	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015 Registration Period: 7 years Expiry Date: December 11, 2022	All of the Applicant's present and after-acquired personal property including without limitation fixtures (and terms used herein that are defined in the Personal Property Security Act of British Columbia or the regulations made thereunder have those defined meanings).

PPSA Alberta

<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1. 15121123969	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015 Registration Period: 7 years Expiry Date: December 11, 2022	All present and after- acquired personal property of the Applicant.
2. 07051518194	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007 Registration Period: 16 years Expiry Date: May 15, 2023	All present and after- acquired personal property of the Applicant. Proceeds: Goods, inventory, chattel paper, documents of title, instruments, money, intangibles, accounts and investment property (all as defined in the Personal Property Security Act (Alberta)) and insurance proceeds.

<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
3. 07051518228	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007 Registration Period: Infinity	Land charge.

PPSA Manitoba

<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1. 201523726507	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015 Registration Period: 7 years Expiry Date: December 11, 2022	The security interest is taken in all of the Applicant's present and after-acquired personal property.
2. 200708558108	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 7, 2007 Registration Period: 16 years Expiry Date: May 15, 2023	The security interest is taken in all of the Applicant's present and after-acquired personal property.

PPSA Ontario

<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1. 712571193	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015 Registration Period: 7 years Expiry Date: December 11, 2022	Inventory, Equipment, Accounts, Other, Motor Vehicle
2. 635312304	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007 Registration Period: 8 years Expiry Date: May 05, 2013	Inventory, Equipment, Accounts, Other, Motor Vehicle Included

PPSA Nova Scotia

	<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1.	25531898	GSO Capital Partners, LP, as Administrative Agent	Registration Date: February 8, 2016 Registration Period: 7 years Expiry Date: February 8, 2023	A security interest is taken in all of the Applicant's present and after-acquired personal property
2.	25333881	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 14, 2015 Registration Period: 7 years Expiry Date: December 14, 2022	A security interest is taken in all of the Applicant's present and after-acquired personal property

1. The following *Bank Act* security:

<u>Type</u>	<u>Registration Name and Address</u>	<u>Date</u>	<u>Expires</u>	<u>Number</u>	<u>Bank</u>
(2)	Grafton-Fraser Inc. 44 Apex Road Toronto ON M6A 2V2	2016/01/25	2021/12/31	01304227	0010 – CANADIAN IMPERIAL BANK OF COMMERCE 00002 – MAIN BRANCH – COMMERCE COURT 199 BAY ST CCW CONCOURSE LEVEL MAIN BRANCH – COMMERCE COURT TORONTO, ON M5L1G9

2. Security interests recorded against all of the Canadian trademarks owned by the Applicant, in favour of:

- GSO Special Situations Fund LP (pursuant to a security agreement placed on file on October 11, 2007);
- GSO CP Holdings LP (pursuant to an amended security agreement placed on file on October 14, 2008); and
- Canadian Imperial Bank of Commerce, as Agent (pursuant to a security agreement placed on file on March 11, 2016).

3. Any claims raised, or which could have been raised, in the action commenced by Tradex Global Inc. against Grafton Fraser Inc. in the Ontario Superior Court of Justice, bearing Court File No. CV-17-568448.

Schedule C – Permitted Encumbrances

PPSA Ontario

	<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
1.	719663706	Canadian Dealer Lease Service Inc. and Bank of Nova Scotia - DLAC	Registration Date: August 16, 2016 Registration Period: 3 years Expiry Date: August 16, 2019	Inventory, Accounts, Other, Motor Vehicle Included 2016 Maza CX09, JM3TCBDY6G0111704 Amount: \$55,145 Date of Maturity: August 11, 2019
2.	675686367	Xerox Canada Ltd.	Registration Date: January 17, 2012 Registration Period: 6 years Expiry Date: January 17, 2018	Equipment, Other

6. The terms and conditions to which the reorganization is made subject by the Order have been complied with.
Les conditions que l'ordonnance impose à la réorganisation ont été respectées.

These articles are submitted under section 186 of the *Business Corporations Act* and are signed in duplicate.
Les présents statuts sont déposés en vertu de l'article 186 de la Loi sur les sociétés par actions. Ils sont signés en double exemplaire.

GRAFTON-FRASER INC.

Name of Corporation / *Dénomination sociale de la société*

By/
Par :

Vice President and Chief Financial Officer

Signature / *Signature*

Description of Office / *Fonction*

Mark G. Sun

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

SALE APPROVAL ORDER

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dchochla@fasken.com

Lawyers for the Applicant, Grafton-Fraser Inc.

APPENDIX C

CITATION: Grafton-Fraser v. Cadillac, 2017 ONSC 2496
DIVISIONAL COURT FILE NO.: CV-17-11677-OOCL
DATE: 20170502

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPARNIES' 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.

BETWEEN:

GRAFTON-FRASER INC.

Applicant

- and -

CADILLAC FAIRVIEW CORPORATION
LIMITED, ET AL.

Respondents

)
)
) *Stuart Brotman and Dylan Chochla, for the*
) *Applicant*

)
)
) *Lily Coodin, for Cadillac Fairview*
) *Corporation Limited*

) *J. Dietrich and M. Sassi, for the Monitor*

) *Gordon Meiklejohn, for Trade & Global Inc.*

) *N. Renner, for the Purchaser and DIP Lender*

) *Linda Galessiere, for Various Landlords*

) *Evan Cobb, for CIBC*

) **HEARD:** April 20, 2017
)

L. A. PATTILLO J.

Introduction

[1] This is an application by Grafton-Fraser Inc. (“Grafton”) for, among other things, an order approving the sale of its assets as set out in an asset purchase agreement dated January 24, 2017 with 1104307 B.C. Ltd. (now GSO GF Acquisition B.C. Ltd.) (the “Purchaser”) pursuant to the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) (the “Transaction”).

[2] The application is supported by the Third Report of Richter Advisory Group Inc in its capacity as monitor for Grafton (the “Monitor”).

[3] The application is either agreed to or unopposed by all of the stakeholders with notice save and except for Tradex Global Inc. (“Tradex”) who is an unsecured creditor and who objects to the Transaction as it affects the unsecured creditors.

[4] For the reasons that follow, I approve the Transaction and grant the relief requested by Grafton. Notwithstanding that the Transaction does not treat all of Grafton’s unsecured creditors equally, in my view, it meets the principles set out in *Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137; 7 C.B.R. (3d) 1 (Ont. C.A.) and s. 36 of the CCAA.

Background

[5] On January 25, 2017, Grafton obtained an order from this court granting it protection pursuant to the CCAA (the “Order”). Among other things, the Order appointed the Monitor and granted Grafton the authority to enter into amended and restated forbearance agreements with its two primary and secured lenders, Canadian Imperial Bank of Commerce (“CIBC”) and GSO Capital Partners LP (“GSO”) as agent for the GSO Lenders.

[6] Grafton is a leading retailer of men’s clothing which, prior to the Order operated 158 stores in Canada under various names including “Tip Top Tailors” and “George Richards Big and Tall”.

[7] On January 30, 2017, the court issued a further order approving, among other things, the proposed sale and investment solicitation process for Grafton’s business and assets to be carried out with the Monitor’s assistance (the “SISP”) and authorizing Grafton to enter into the Agreement which was to serve as the minimum bid under the SISP (the “Stalking Horse APA”). The Purchaser is a party related to GSO.

[8] To protect confidential information, the SISP contemplated a two stage bidding process. During the first stage, potential bidders were given certain coded information. Bidders who submitted a qualified bid in the first stage would be invited to participate in the second stage with access to confidential information.

[9] The Monitor, in consultation with Grafton, compiled a list of 174 potential interested parties who were invited to participate in the SISP. Eight potential interested parties responded. Four signed non-disclosure agreements and were provided access to the data room. With the

exception of the stalking horse bid, no other bids were submitted prior to the stage one bid deadline. The Purchaser was therefore the "successful bidder" under the SISF.

[10] The Transaction is a credit-bid transaction. The Purchaser is acquiring, as a going concern, on an "as is, where is" basis substantially all of Grafton's business and assets (the "Purchased Assets"). The Purchaser will acquire 139 retail stores operated by Grafton as well as its head office. Seven days prior to the closing of the Agreement, the Purchaser will offer employment to no fewer than 1,100 Grafton employees on substantially similar terms and conditions to their existing employment with Grafton. The proposed closing date for the Transaction is on or before May 31, 2017.

[11] The consideration for the Transaction includes, among other things:

- a) The assumption by the Purchaser of the principal, plus accrued interest and fees owing by Grafton to its operating lender, CIBC;
- b) The assumption by the Purchaser of Grafton's secured indebtedness under the DIP Facility (as defined in the Agreement);
- c) The release by GSO and certain of its affiliates of certain of the secured indebtedness owing by Grafton under the GSO Facility (as defined in the Agreement); and
- d) The assumption by the Purchaser of certain of Grafton's obligations, including Supplier Liabilities (as defined in the Agreement, which are pre-filing amounts owed by Grafton to certain suppliers of goods/services to the extent agreements with such suppliers have been entered into with the Purchaser, on terms acceptable to CIBC and the Purchaser, establishing, among other things, the terms of continued supply).

[12] The Purchaser has determined that certain suppliers are critical to the ongoing value and operations of the business and has agreed to assume Grafton's indebtedness to these creditors on terms satisfactory to the Purchaser. At full value, these claims total approximately \$5.2 million.

[13] At the date of the Order, Grafton had aggregate known unsecured liabilities of approximately \$8 million together with contingent claims in excess of \$2 million. In addition, Grafton has or will shortly disclaim a number of lease agreements and terminate the employment of a number of employees which it expects will give rise to significant unsecured claims.

Tradex

[14] Tradex and its affiliated companies provided procurement and quality control services for Grafton's overseas purchases for a number of years pursuant to written agreements. The most recent agreements were mutually terminated on May 5, 2016. Tradex's evidence is that there was an oral agreement with Tradex that it would continue to supply services at the previously agreed prices, that it did so and it received payment for its services as late as October 7, 2016. It has since not been paid and alleges that to the date of the Order it is owed US \$856,660.00 and Cdn. \$383,316.00.

[15] In correspondence between counsel, Grafton has denied that any amounts are owing to Tradex and advised that since the termination of the agreements, it has not engaged Tradex or any of its related parties.

[16] Tradex is not among the suppliers and other creditors whose claims the Purchaser has agreed to assume upon closing of the Transaction.

Position of the Parties

[17] Tradex submits that the Transaction, as structured, should not be approved. Rather, in order to ensure that all unsecured creditors are treated equally, the Purchaser must be required to make the \$5.2 million and any other amounts it has committed to pay to Grafton's unsecured creditors, not just to a select group of unsecured creditors, but *pari passu* to all unsecured creditors.

[18] Grafton has agreed, for the purposes of this motion only, and without admitting any liability, to accept that Tradex has an unsecured claim against it. It submits that the Transaction is beneficial to Grafton's stakeholders as it provides for the continuation of a substantial portion of its business and should be approved. Further, there is no requirement under the CCAA that creditors be treated equally.

Analysis

[19] Section 36 of the CCAA provides that the court may authorize the disposition of assets of a debtor company outside the ordinary course of business. The factors to be considered by the court in approving such a disposition were first set out by our Court of Appeal in *Soundair* and are now largely set out in s. 36(3) of the CCAA which provides:

- s.36(3) In deciding whether to grant the authorization, the court is to consider, among other things,
- a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - b) whether the monitor approved the process leading to the proposed sale or distribution;
 - c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - d) the extent to which the creditors were consulted;
 - e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

Page: 5

- f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[20] Considering the above factors in respect of the Transaction and the events leading up to it, I find the evidence establishes:

- a) the SISP was reasonable in the circumstances and was approved by the court;
- b) the Monitor approved the SISP and assisted Grafton in carrying out its terms;
- c) the Monitor has confirmed in its Third Report that the Transaction would be substantially more beneficial to Grafton's creditors, as compared to the alternatives, which may result in the liquidation of Grafton's assets;
- d) the Monitor and Grafton's two primary secured creditors, CIBC and GSO, are each supportive of the Transaction;
- e) the Monitor is of the view that the Transaction represents the best opportunity to maximize recoveries for creditors of Grafton and provides the greatest benefit to all stakeholders (including landlords, employees, customers, go-forward suppliers, etc.), as it results in the continuation of Grafton's business;
- f) that further marketing of Grafton's assets would not likely result in greater realizations as the market has been fully canvassed and all likely bidders have already been provided the opportunity to bid on the assets;
- g) the Transaction represents the highest and best offer for the Purchased Assets and the short time-frame to closing will eliminate ongoing costs of the CCAA proceeding; and
- h) Grafton's limited liquidity substantially eliminates the opportunity to further market the Purchased Assets for sale without putting the Transaction at risk and impairing recoveries.

[21] There is no question that certain of Grafton's liabilities, including some of its unsecured creditors will not be paid, as a result of the Transaction as it is structured. In support of its submission that in the absence of all the unsecured creditors being treated equally, the Transaction should not be approved, Tradex relies on the decision of Newbould J. in *Re Nortel Networks Corp.*, 2015 ONSC 2987; 27 C.B.R. (6th) 175 (Ont. S.C.J.) and specifically the statement at para. 209 that "It is a fundamental tenet of insolvency law that all debts shall be paid *pari passu* and all unsecured creditors receive equal treatment."

[22] There can be no issue that Newbould J.'s statement is a correct statement of the law. It was made, however, in the context of the issue of how to determine the allocation of liquidation

Page: 6

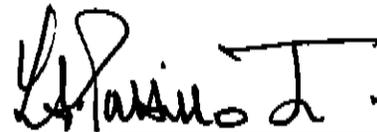
proceeds from *Nortel's* business among its various creditors in multiple jurisdictions. The reasoning in *Nortel* does not apply in this case where the Transaction is a credit bid which gives rise to no proceeds of sale being available for distribution.

[23] I am in agreement with Grafton's submission that, in the context of the sale of a company's business under the CCAA, there is no requirement that creditors be treated equally. That is not to say that their interests are to be ignored. Rather, the effects of the proposed sale on the creditors are one of the factors that must be considered. But they are considered in the larger context of the proposed sale and weighted against the other above noted factors, including the interests of the debtor and the stakeholders generally.

[24] The above principle was applied in *Re Nelson Education Ltd.*, 2015 ONSC 5557, 29 C.B.R. (6th) 140 (Ont. S.C.J.) where Newbould J., in approving a sale of substantially all of Nelson's assets pursuant to a credit bid pursuant to the CCAA, noted at para. 39 that while there were some excluded liabilities and a small amount owing to former employees that would not be paid, the monitor indicated there was no reasonable prospect of any alternative solution that would provide recovery for those creditors.

[25] The Transaction is beneficial to Grafton's stakeholders as it provides for the continuation of a substantial portion of Grafton's business, thereby assuring a customer for go-forward suppliers, a tenant for the landlords of 139 retail stores, employment for a majority of Grafton's employees and an ongoing business for many of its customers. While the Transaction will result in some of the unsecured creditors, including Tradex, not being paid, when weighted against all the other relevant factors, that provision should not prevent approval of the Transaction, particularly when the likely alternative is liquidation which would result in no recovery for the unsecured creditors generally.

[26] For the above reasons, therefore, the Transaction is approved. The relief requested in the Notice of Motion is approved and the draft Approval and Vesting Order at tab 2 of the Motion Record shall issue.



L. A. Pattillo J.

Released: May 2, 2017

CITATION: Grafton-Fraser v. Cadillac, 2017 ONSC 2496
DIVISIONAL COURT FILE NO.: CV-17-11677-OOCL
DATE: 20170502

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPARNIES' 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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

GRAFTON-FRASER INC.

Applicant

– and –

CADILLAC FAIRVIEW CORPORATION LIMITED,
ET AL.

Respondents

REASONS FOR JUDGMENT

L. A. PATILLO J.

APPENDIX D

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

JUSTICE

Partillo

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TUESDAY, THE 6th

DAY OF JUNE, 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.

Applicant

ASSIGNMENT ORDER

THIS MOTION, made by the Applicant for an order assigning the rights and obligations of the Applicant under the Assigned Contracts (as defined below) as contemplated by the agreement of purchase and sale between the Applicant and GSO GF Acquisition B.C. Ltd. (formerly 1104307 B.C. Ltd.) (the "**Purchaser**") dated January 24, 2017, as amended by amending agreements on February 16, 2017, March 3, 2017, March 14, 2017 and June 5, 2017 (as amended, the "**Sale Agreement**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Mark Sun sworn May 30, 2017 and the Fourth Report of Richter Advisory Group Inc., in its capacity as the court appointed monitor of the Applicant (the "**Monitor**"), dated June 1, 2017 and on hearing the submissions of counsel for the Applicant, the Monitor, the Purchaser, Canadian Imperial Bank of Commerce, no one appearing for any other person on the service list, although properly

served as appears from the affidavits of Dylan Chochla and Irene Artuso sworn June 1 and June 2, 2017, respectively, filed:

1. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning given to it in the Sale Agreement.

SERVICE

2. THIS COURT ORDERS that the time for service of notice of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

ASSIGNMENT OF AGREEMENTS

3. THIS COURT ORDERS that upon delivery of the Monitor's Certificate (the "**Monitor's Certificate**") referred to in the Order of Justice Pattillo dated May 2, 2017 (the "**Approval and Vesting Order**"), all of the rights and obligations of the Applicant under the agreements set out in Schedule "A" hereto, including all associated or related agreements, schedules, appendices, addendum, amendments, supplements, restatements or other modifications (each an "**Assigned Contract**" and collectively, the "**Assigned Contracts**") shall be assigned to the Purchaser pursuant to section 11.3 of *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

4. THIS COURT ORDERS that, with respect to the Assigned Contracts that are real property leases (collectively, the "**Real Property Leases**"), upon delivery of the Monitor's Certificate, the Purchaser shall be entitled to all of the rights and benefits and subject to all of the obligations and restrictions as tenant pursuant to the terms of the Real Property Leases and registrations thereof for the period commencing from and after the delivery of such Monitor's Certificate and may enter into and upon and hold and have quiet enjoyment of such premises contemplated by the Real Property Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Leases, without any interruption from the Applicant,

the landlords under the Real Property Leases or any person whomsoever claiming through or under any of the Applicant or the landlords under the Real Property Leases.

5. THIS COURT ORDERS that the assignment to the Purchaser of the rights and obligations of the Applicant under the Assigned Contracts pursuant to the CCAA and this Order is valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction or prohibition contained in any such Assigned Contracts relating to the assignment thereof, including, without limitation, any provision requiring the consent of any party to the assignment.

6. THIS COURT ORDERS that the Applicant's right, title and interest in and to the Assigned Contracts that are not Real Property Leases shall vest absolutely in the Purchaser as Purchased Assets subject to and in accordance with the provisions of the Sale Agreement and the Approval and Vesting Order.

7. THIS COURT ORDERS that the Applicant's right, title and interest in and to the Real Property Leases shall be assigned absolutely to the Purchaser as Purchased Assets further to the provisions of the Sale Agreement and subject to the Approval and Vesting Order.

8. THIS COURT ORDERS that each counterparty to an Assigned Contract is prohibited from exercising any right or remedy as against the Purchaser by reason of any defaults thereunder arising from the assignment of the Assigned Contracts, the insolvency of the Applicant, the commencement of these CCAA proceedings or the Applicant having breached a non-monetary obligation under the Assigned Contract, unless, with respect to any of the Real Property Leases, and notwithstanding any other provision of this Order: (i) any such non-monetary breach arises or continues after the Real Property Lease is assigned to the Purchaser; (ii) such non-monetary default is capable of being cured by the Purchaser; and (iii) the Purchaser has failed to remedy the default after having received notice of such default pursuant to the terms of the applicable Real Property Lease. For clarification, no counterparty shall rely on a notice of default sent to the Applicant to terminate the Assigned Contract as against the Purchaser.

9. THIS COURT ORDERS that the Cure Costs of the contracts listed in Schedule "A" hereto shall be in amounts set out in Schedule "A" hereto and that upon Closing, the Purchaser shall pay the Cure Costs as set out therein with respect to each applicable Assigned Contract, in full and final satisfaction of any Cure Costs owing to the counterparty to the applicable Assigned Contract, by no later than the day that is five (5) business days following delivery of the Monitor's Certificate to the Purchaser.

10. THIS COURT ORDERS that, notwithstanding paragraphs 4 and 9 of this Order, the Purchaser shall remain liable for and obtain the benefit of any monetary obligations pursuant to and in accordance with the terms of any of the Real Property Leases even if such monetary obligations or benefits pertain to periods of time on or before the Closing Date and not included in the Cure Costs amount pertaining to such Real Property Lease.

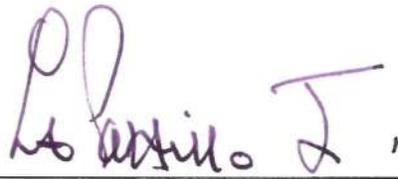
11. THIS COURT DIRECTS the Applicant to send a copy of this Order to all of the counterparties to the Assigned Contracts listed in Schedule "A".

12. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligation of the Purchaser to assume the Assumed Liabilities and perform its obligations in respect of the Assumed Contracts pursuant to the Sale Agreement.

13. THIS COURT ORDERS that the Monitor is hereby authorized to take such actions as it deems necessary or appropriate in the circumstances to assist the Applicant in the assignment and transfer of the Assigned Contracts.

14. 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 and its 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, as may be necessary or desirable to give effect to this Order or to

assist the Applicant and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
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LE / DANS LE REGISTRE NO:

JUN 0 6 2017

PER / PAR: 

SCHEDULE "A"

#	Description of Agreement	Counterparty	Cure Costs (CAD\$)
1.	Vehicle lease agreement and disclosure statement, dated August 11, 2016	Agincourt Mazda	0.00
2.	Lease for store number 16052 at West Landing Centre in Saskatchewan	Westfield University Park Ltd.	1,443.55

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
(ASSIGNMENT ORDER)
(Returnable June 6, 2017)

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Lawyers for the Applicant, Grafton-Fraser Inc.

APPENDIX E

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE *Pattillo*)

TUESDAY, THE 6th
DAY OF JUNE, 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")

ORDER
(DISTRIBUTION & SECOND STAY EXTENSION)

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order, *inter alia*,

- (a) approving certain amendments contained in the fourth amending agreement dated June 5, 2017 (the "**Fourth Amending Agreement**") to the asset purchase agreement between the Company and 1104307 B.C. Ltd. (now GSO GF Acquisition B.C. Ltd.) (the "**Purchaser**") dated January 24, 2017, as amended by a first amending agreement dated February 16, 2017, a second amending agreement dated March 3, 2017 and a third amending agreement dated March 14, 2017 (collectively, the "**Purchase Agreement**"), which was approved by order of the Honourable Mr. Justice Pattillo dated May 2, 2017 (the "**Sale Approval and Vesting Order**"), and authorizing the Company to complete the transaction (the "**Transaction**") contemplated by the Purchase Agreement (as amended by the Fourth Amending Agreement, the "**Amended Purchase Agreement**"), as may be

further amended, in accordance with the terms of the Amended Purchase Agreement and the provisions of the Sale Approval and Vesting Order;

- (b) authorizing and directing the Company to make a distribution to GSO Capital Partners LP (“**GSO**”), in its capacity as administrative agent for itself and the GSO Lenders in partial satisfaction of the Term Obligations under the Term Security Documents;
- (c) extending the Stay Period (as defined in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated January 25, 2017, as amended and restated by Order dated January 30, 2017 (the “**Amended and Restated Initial Order**”)) to and including September 15, 2017;
- (d) upon delivery of the Monitor’s Certificate (as defined in the Sale Approval and Vesting Order) to the Purchaser, reducing the amount of the Directors’ Escrow (as defined in the Amended and Restated Initial Order) to \$172,597 and authorizing and directing Richter Advisory Group Inc., in its capacity as monitor of the Applicant (the “**Monitor**”) to release \$600,000 to the Purchaser, or as otherwise directed by the Purchaser in writing with the consent of the Monitor and Canadian Imperial Bank of Commerce (“**CIBC**”);
- (e) approving the fourth report of the Monitor and the appendices thereto (the “**Fourth Report**”), and approving the activities of the Monitor as described therein; and
- (f) approving the Monitor’s fees and disbursements and those of the Monitor’s counsel, Cassels Brock & Blackwell LLP (“**Cassels**”) as set out in the affidavit of Adam Sherman dated June 1, 2017 (the “**Sherman Affidavit**”) and the affidavit of Jane Dietrich dated May 31, 2017 (the “**Dietrich Affidavit**”), both as attached to the Fourth Report;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Mark Sun sworn May 30, 2017, and the exhibits thereto, the Fourth Report, and the appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for CIBC, counsel for GSO, counsel for the directors of the Applicant, and such other parties as were present, no one else appearing although duly served as appears from the affidavits of service of Dylan Chochla and Irene Artuso sworn June 1 and June 2, 2017, respectively, filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and validated so that the Motion is properly returnable today.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order.

AMENDMENT TO PURCHASE AGREEMENT

3. **THIS COURT ORDERS AND DECLARES** that the execution of the Fourth Amending Agreement by the Applicant be and is hereby authorized, approved and ratified, with such minor amendments as the Applicant may deem necessary, and the Applicant be and is hereby authorized to complete the Transaction contemplated thereby in accordance with the terms of the Amended Purchase Agreement and the provisions of the Sale Approval and Vesting Order and this Order, and, for greater certainty, the intellectual property listed on Schedule 2.1(f) of the Amended Purchase Agreement under the subheading "Bellissimo Trademarks" shall constitute Purchased Assets under the Amended Purchase Agreement and the Sale Approval and Vesting Order.

DISTRIBUTION TO GSO

4. **THIS COURT ORDERS** that the Applicant be and is hereby authorized and directed to distribute the amount of \$15,404 to GSO, in its capacity as administrative agent for itself and the GSO Lenders, in partial satisfaction of the Term Obligations under the Term Security Documents (the "**GSO Distribution**").

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

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

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

STAY EXTENSION

6. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including September 15, 2017.

RELEASE OF FUNDS TO THE APPLICANT

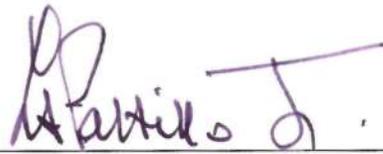
7. **THIS COURT ORDERS** that, upon the delivery of the Monitor's Certificate to the Purchaser, the amount of the Directors' Escrow be and is hereby reduced from \$772,597 to \$172,597, and the Monitor be and is hereby authorized and directed to release to the Purchaser, or as otherwise directed by the Purchaser in writing with the consent of the Monitor and CIBC, an aggregate amount of \$600,000 on account of the reduction in the amount of the Directors' Escrow.

APPROVAL OF MONITOR'S FOURTH REPORT

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

APPROVAL OF FEES AND DISBURSEMENTS

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and of its counsel, Cassels, as set out in the Fourth Report, the Sherman Affidavit and the Dietrich Affidavit, be and are hereby approved.



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JUN 06 2017

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

(the "Applicant")

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

Proceedings commenced in Toronto

**ORDER
(DISTRIBUTION & STAY EXTENSION)
(Returnable June 6, 2017)**

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