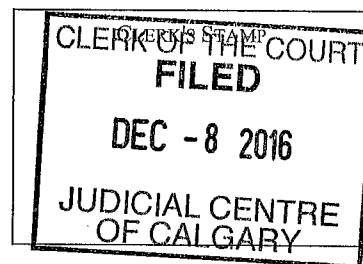


# RICHTER



COURT FILE NUMBER	1601-05249
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	BANK OF MONTREAL
RESPONDENT	GRAF CANADA LTD.
DOCUMENT	<b>FIRST REPORT OF RICHTER ADVISORY GROUP INC., IN ITS CAPACITY AS RECEIVER OF GRAF CANADA LTD. dated December 8, 2016</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>BENNETT JONES LLP</b> Barristers and Solicitors 4500, 855 – 2 <sup>nd</sup> Street S.W. Calgary, Alberta T2P 4K7 Attention: Jennie A. Buchanan Telephone No.: 403-298-3130 Fax No.: 403-265-7219 Client File No.: 75202.2

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- APPENDIX "C" -- SUMMARY OF FEES AND DISBURSEMENTS OF THE RECEIVER'S COUNSEL, INCLUDING INVOICES RENDERED THROUGH NOVEMBER 18, 2016

## I. INTRODUCTION

1. Richter Advisory Group Inc. ("**Richter**"), was appointed as receiver and manager (the "**Receiver**"), without security, of all of the assets, properties and undertakings (the "**Property**") of Graf Canada Ltd. ("**Graf**" or the "**Company**"), pursuant to an order (the "**Receivership Order**") of the Honourable Mr. Justice Jeffrey of the Court of Queen's Bench of Alberta (the "**Court**") dated April 27, 2016 (the "**Date of Appointment**"). A copy of the Receivership Order is attached hereto as **Appendix "A"**.

## II. PURPOSE OF REPORT

2. The purpose of this first report of the Receiver (the "**First Report**") is to:
  - a) Provide this Court with certain information pertaining to the receivership, including:
    - (i) The activities of the Receiver since the Date of Appointment;
    - (ii) The realization process (the "**Realization Process**") undertaken by the Receiver in respect of the Company's Property, and the results thereof;
    - (iii) The Receiver's review of the security held by Bank of Montreal as lender ("**BMO**" or the "**Lender**") in respect of the Property;
    - (iv) The Receivers' statements of receipts and disbursements from the Date of Appointment to December 5, 2016; and
    - (v) The Receiver's estimate of accrued and unpaid obligations as of the date of this First Report (together, the "**Accrued Obligations**") and the Receiver's estimate of professional fees and disbursements, including those of its counsel, and administrative costs required to complete these receivership proceedings (the "**Remaining Costs**").
  - b) Recommend that this Court make an order(s):
    - (i) Approving this First Report including the actions and activities of the Receiver set out herein;
    - (ii) Approving the Receivers' statements of receipts and disbursements from the Date of Appointment to December 5, 2016;
    - (iii) Authorizing and directing the Receiver to make an interim distribution to BMO in respect of its secured claim against the Property in the amount of \$1,000,000;
    - (iv) Authorizing the Receiver to make such subsequent distributions to BMO as the Receiver determines appropriate, without further order of this Court, provided the aggregate distributions to BMO do not exceed

- the amount of its secured claim against Graf, and the Receiver maintains sufficient reserves to satisfy the Accrued Obligations and the Remaining Costs (collectively, the "**Outstanding Disbursements**");
- (v) Authorizing the Receiver to pay the Outstanding Disbursements from the available cash on hand, and any subsequent cash receipts, without further approval of this Court;
  - (vi) Approving the accounts of the Receiver and its counsel, as set out in this First Report;
  - (vii) Discharging the Receiver upon completion of the Remaining Matters (as hereinafter defined), and terminating the Receiver's Charge and the Receiver's Borrowing Charge, as provided for in the Receivership Order, and subject to the Receiver filing a discharge certificate (the "**Certificate of Discharge**") confirming the same with the Court; and
  - (viii) Ordering and declaring that, effective upon its discharge as Receiver, Richter has duly and properly discharged its duties, responsibilities and obligations as the Receiver of Graf, and discharging and releasing Richter from any and all further obligations as Receiver of Graf and any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting as Receiver, save and except for the Receiver's gross negligence or willful misconduct.

### III. QUALIFICATIONS

3. In preparing this First Report, Richter has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "**Information**"). Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. Richter has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the Canadian Institute of Chartered Accountants Handbook has not been performed. Future-oriented financial information reported on or relied upon in this First Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.
4. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars ("**CAD**").

#### IV. BACKGROUND AND EVENTS LEADING TO THE APPOINTMENT OF THE RECEIVER

5. While this First Report summarizes some of the information set out in the affidavit of Hugh Devlin sworn April 20, 2016 (the "**Devlin Affidavit**") in support of the appointment of the Receiver, for a more detailed explanation of the Company's background and events leading to the appointment of the Receiver, readers are directed to the Devlin Affidavit. A copy of the Devlin Affidavit is posted on the Receiver's website at <http://www.richter.ca/en/folder/insolvency-cases/g/graf-canada-ltd> (the "**Receiver's Website**").

##### Company Overview & Corporate Structure

6. Graf is a privately-owned Alberta corporation which designed, manufactured, and distributed hockey and certain figure skating equipment and accessories, under license (the "**License Agreement**") in North America, with exceptions made for certain equipment sales to European Union countries and Russia, from Graf Skates AG ("**Graf AG**" or the "**Licensor**"). Graf's products were sold primarily through retail networks in Canada and in the United States.
7. Graf operated from leased premises located at 2308 Portland Street S.E., Calgary, Alberta (the "**Premises**").

##### Causes of Insolvency

8. The Licensor worked closely with the Company's management over the last couple of years leading up to the Date of Appointment, providing concessions with regards to payment of the outstanding royalties owed by Graf and also providing a unsecured note in the amount of up to \$2 million with an annual coupon rate of 5% (the "**Licensor Loan**").
9. Subsequent to defaults in financial covenants under the Credit Agreement (as hereinafter defined) with BMO, Graf and the Lender entered into a forbearance agreement on January 8, 2016 (the "**Initial Forbearance Agreement**") which required, among other things, that the Company not exceed a threshold margin deficiency on its borrowing calculation requiring the Licensor Loan to be fully drawn, and provide a revised forecast for the 2016 calendar year (the "**2016 Forecast**") based on known customer booking orders (the "**Booking Orders**"), by February 15, 2016.
10. In early February 2016, it became apparent that the Company did not expect to receive sufficient visibility on Booking Orders in order to complete the 2016 Forecast by the February 15, 2016 deadline set per the terms of the Initial Forbearance Agreement. In order to allow time for sufficient Booking Orders to be received, an amending agreement to the Initial Forbearance Agreement was executed on February 24, 2016 (together with the Initial Forbearance Agreement, the "**Forbearance Agreement**") between the Company and BMO, which extended the forbearance period to April 29, 2016.
11. On April 14, 2016, the Company advised BMO that the Booking Orders received were well below the required level to operate within the margin deficiency permitted under the Forbearance Agreement, representing a material adverse

change to Graf's business. Additionally, the Company noted that it would be unable to continue business unless the Lender wrote off a significant portion of its outstanding loan balance given the debt leverage created by the historical and expected sales results. In light of these events, on April 15, 2016, BMO issued to Graf a notice of default under the Forbearance Agreement, a demand notice on the outstanding loan under the Credit Agreement (as hereinafter defined), notice of its intention to apply the cash collateral held by BMO as per the terms of a pledge agreement in place with the Company, and notice of its intention to enforce its security pursuant to section 244 of the BIA.

12. As a result of the Company's continued financial problems and in advance of the receivership application the Licensor terminated the License Agreement on April 26, 2016.

13. Graf had been experiencing financial difficulties in recent years ultimately culminating in a liquidity crisis due to a number of factors, including:

- a) Significant operating losses in recent years, primarily due to soft sales performance, excessive inventory purchases and weakening product lines relative to larger industry players;
- b) Booking Orders which significantly underperformed the Company's expectations, in part owing to a softness in the retail hockey industry, which would have resulted in significant projected operating losses throughout 2016;
- c) No other viable sources of capital were available to the Company given the current debt leverage;
- d) Termination of the License Agreement on April 26, 2016; and
- e) The sale of the business was not readily available without the authorization and support of the Licensor.

14. As a result of the above, absent continued support from the Lender and Licensor, Graf would have been unable to continue to carry on its business. As previously outlined in this First Report, on April 27, 2016, BMO sought and obtained the Receivership Order pursuant to which, among other things, Richer was appointed as Receiver, and authorized to realize on the Company's Property.

## **V. RECEIVER'S ACTIVITIES SINCE THE DATE OF APPOINTMENT**

15. Since the Date of Appointment, the Receiver's activities have included:

- a) Taking possession of and securing the Premises;
- b) Contacting the Company's alarm service provider to delete existing alarm codes and set up new alarm codes for the Receiver;
- c) Taking possession of and reviewing the Company's books and records to obtain a better understanding of the Company's financial position and the Property;

- d) Freezing the Company's bank accounts with BMO and opening new bank accounts in the name of the Receiver;
- e) Reviewing Graf's existing insurance coverage and contacting the Company's insurance broker to request that the Receiver be listed as named insured and loss payee on the Company's insurance policies;
- f) Reviewing and administering written demands received from certain creditors for repossession of goods pursuant to section 81.1 of the BIA (the "**30-Day Goods Claims**"), segregating inventory in respect of these claims, and corresponding with claimants, as described in a later section to this First Report;
- g) Meeting with the Company's former employees (the "**Former Employees**") to advise of, among other things, the Receiver's appointment and the termination of their employment, as per the terms of the Receivership Order. The Receiver also informed the Former Employees of their rights and entitlements under the provisions of the *Wage Earner Protection Program Act* ("**WEPPA**") and the limited priority granted to employee claims for wage arrears in accordance with section 81.4 of the BIA. It should be noted that, with the cooperation of the Lender, the Company paid all outstanding wages and/or vacation pay to which the Former Employees were entitled up to the Date of Appointment. Accordingly, the Receiver is not aware of any amounts owing to the Former Employees that would have priority over the Lender pursuant to section 81.4 of the BIA;
- h) Communicating with the Company's IT service provider to terminate systems access for the Former Employees;
- i) Arranging for the continuation of all essential services, including utilities for the Premises. Subsequently, arranging for the cancellation of these same services when the Receiver ceased to use the Premises;
- j) Undertaking a review of the Company's inventory, equipment and other assets, including the identification of property that may be subject to property claims pursuant to section 81(1) of the BIA;
- k) Arranging for the pick-up and removal from the Premises of third party property, and property repossessed by secured creditors in respect of their secured claims on same;
- l) Contacting Canada Revenue Agency ("**CRA**") to set up a new account (GST/HST) in the name of the Receiver;
- m) Retaining certain of the Former Employees as independent contractors, on a temporary basis, to assist in completing various receivership activities, including assisting the Receiver to realize on the Property;
- n) Completing and filing the Company's 2015 corporate tax return with CRA, and compiling the books and records in support of the 2016 corporate tax return;

- o) Negotiating a settlement with the Landlord and its counsel with respect to the security deposit on the Premises lease;
- p) Planning and implementation of the Realization Process, as described in a later section to this First Report;
- q) Negotiating and executing the Auction Agreement (as hereinafter defined) for liquidation of the Company's fixed assets through public auction, and communications with the liquidator in connection with same;
- r) Realizing on the Company's accounts receivable;
- s) Mailing, on May 6, 2016, a copy of the notice and statement of the Receiver pursuant to sections 245(1) and 246(1) of the BIA to the Office of the Superintendent of Bankruptcy (the "OSB") and the Company's known creditors;
- t) Preparing and filing with the OSB, on October 27, 2016, the first interim report of the Receiver pursuant to section 246(2) of the BIA;
- u) Responding to calls and enquiries from the Company's creditors, including Former Employees, suppliers and other stakeholders regarding the receivership proceedings;
- v) Return of the Company's books and records, not required by the Receiver, to Graf's director;
- w) Communicating with BMO and its counsel in connection with various aspects of the receivership;
- x) Establishing a website <http://www.richter.ca/en/folder/insolvency-cases/g/graf-canada-ltd>, where all materials filed with the Official Receiver and the Court in connection with the receivership proceedings are available in electronic format; and
- y) Preparing this First Report.

## VI. 30-DAY GOODS CLAIMS

16. The Receiver received and reviewed the following 30-Day Goods Claims, potentially ranking in priority to the Lender's security:

- a) On April 27, 2016, a written demand for repossession of goods from Sakurai Sports Manufacturing Co. Ltd. ("Sakurai") for certain finished goods ("FG") and components ("Components") inventories, in the amounts of approximately \$217,000 USD and \$44,000 USD, respectively, received by the Company in the 30 days prior to the Date of Appointment;
- b) On May 2, 2016, a written demand for repossession of goods from Textile Manufacturing Co. Ltd. ("Textile") for certain components inventory received by the Company in the 30 days prior to the Date of Appointment in the amount of approximately \$1,200 (excluding HST); and



- c) On May 5, 2016, a written demand for repossession of goods from Win Win Win Infinity Corp. ("WWW Infinity") for certain finished goods inventory in the amount of approximately \$48,000 USD.

17. The aforementioned claims were determined as follows:

- a) Based on a review of the supporting documentation, the 30-Day Goods Claims made by Sakurai was dealt with as follows:
  - (i) The majority of the FG inventory was subject to existing sale agreements fulfilled by the Receiver as part of its Realization Process and this portion of the claim was denied by the Receiver. The Receiver determined that the remaining balance of the FG inventory claim was valid, and entered into a settlement agreement (the "Settlement Agreement") with Sakurai for the Receiver to pay 50% of the net proceeds (before excise taxes) from its realization on this respective inventory, payable the later of the agreement execution date, or the date net proceeds were received by the Receiver. As at the date of this First Report, the FG inventory was sold for net proceeds of \$89,962 (the "FG Balance"), the funds have been received by the Receiver and as at the date of the First Report the Settlement Agreement amount of \$44,981 has been paid to Sakurai's counsel in trust; and
  - (ii) The claim in respect of the Components was determined to be valid, and subsequently the goods were collected by Sakurai at the supplier's expense.
- b) Based on a review of the supporting documentation, the 30-Day Goods Claim made by Textile was determined to be valid, and subsequently the goods were collected by Textile at the supplier's expense; and
- c) Based on a review of the supporting documentation, the 30-Day Goods Claim made by WWW Infinity was determined not to be valid and was denied by the Receiver, as the goods were delivered more than 30 days before the Date of Appointment. Additionally, the goods required rework performed by Graf and as such were no longer in the same state as delivered.

## VII. REALIZATION PROCESS

- 18. The Receiver, in consultation with BMO, developed the Realization Process as a means of testing the market, gauging interest in the Company's assets, and determining whether a transaction(s) that would result in greater than liquidation value was viable.
- 19. A going concern sale of the business was not feasible given the License Agreement termination and without cooperation from the Licensor and as such the Realization Process was limited to the sale or liquidation of the Company's assets.

## Licensors

20. As the Licensor operates a similar business in Switzerland selling to European Union countries and other international customers, upon appointment, the Receiver first contacted the Licensor to determine its interest in the Company's assets. The Licensor was provided with asset listings (the "**Asset Listings**" namely raw materials/semi-finished and finished goods inventories, accounts receivable, and fixed assets), and a bid deadline of May 4, 2016, in respect of same.
21. In the view of the Receiver, it was likely that recoveries on the Property would be greater should the Graf product continue to be available in the market. To that end, beginning upon its appointment, the Receiver introduced the Licensor to numerous interested parties that had expressed to the Receiver in the license to sell Graf's product. Additionally, the Receiver endeavoured to sell Graf's marketing materials to the Licensor in the event that a license agreement were to continue in North America. Ultimately, the Receiver was unsuccessful in soliciting a response from Graf AG on these matters, however, as at the date of this First Report the Receiver now understands that the North American license will continue with a new company.

## Bid Process

22. In addition to soliciting interest from the Licensor, the Receiver compiled a list of ten (10) liquidators and on or about the Date of Appointment circulated a solicitation of interest and form non-disclosure agreement ("**NDA**") in respect of the Property to each. The solicitation of interest provided liquidators with the opportunity to bid on the inventories, including the option to bid on the accounts receivable and/or fixed assets, and to arrange a site visit prior to the Bid Deadline (hereinafter defined). The Receiver was of the view that soliciting bids from liquidators at this early stage would allow for the determination of a realization price floor, particularly in respect of the inventories, in order to assist in determining what sales, if any, should be made by the Receiver to Graf's customers and/or other retailers to maximize overall recoveries.
23. At the same time, with the assistance of its independent contractors (former management of Graf), the Receiver initially identified and circulated inventory listings to four (4) specialized and bulk retailers (the "**Specialized Retailers**") in the hockey and figure skating sector. The liquidators and the Specialized Retailers were required to submit their bids by May 13, 2016 (the "**Bid Deadline**").
24. Eight (8) liquidators executed the NDA and were provided with the Asset Listings, and the Receiver facilitated due diligence efforts by, among other things, scheduling and supervising a site visit by one party who ultimately submitted a Liquidation Bid (hereinafter defined), and responding to various enquiries.
25. On or before the Bid Deadline, the following bids were received:

- a) Three (3) bids from liquidators (the "**Liquidation Bids**") on the finished goods inventory, on an equity basis, of which two (2) were competitive with one another. Both of these competitive Liquidation Bids excluded accounts receivable, and either excluded or attributed no value to the raw materials/semi-finished inventories or the fixed assets;
- b) Two (2) bulk offers (the "**Bulk Retailer Offers**") from Specialized Retailers, on varying quantities of the inventories. The higher of the Bulk Retailer Offers encompassed sufficient quantity of inventories in order to exceed all Liquidation Bids owing to a significantly higher percentage of realization on cost; and
- c) An offer from the Licensor (the "**Licensor Bid**") on a limited quantity of finished goods inventory, which, at a similar percentage of realization on cost to the Liquidation Bids, was not competitive.

#### **Sale of Inventories**

26. Based on the results of the above Bulk Retailer Offers there would have been a significant quantity of inventory remaining, and in consultation with BMO, the Receiver determined that the highest and best recovery on the inventories would result from fulfilling the current confirmed Booking Orders and other customer orders where possible prior to a bulk sale on the remaining inventory. The Receiver proceeded to reject the Liquidation Bids, Specialized Retailer Bids, and the Licensor Bid in their current form, and proceeded to fulfil fifteen (15) selected customer orders (the "**Customer Orders**"). In order to determine which Customer Orders, if completed, would be advantageous to the estate, the Receiver considered the order size, inventory available to fulfil the order, and payment terms with the customers.
27. At the same time, the Receiver proceeded to negotiate and complete various sale transactions in respect of the inventories which were not subject to the Customer Orders.
28. All sales of inventories were completed on an "as is, where is" basis for aggregate consideration of approximately \$1,310,000 which far exceeded the Bulk Retailer Offers and the Liquidator Bids received. As the aggregate consideration (including the Booking Orders completed in the normal course) was less than the \$2,000,000 threshold outlined in the Receivership Order, no Court approval was sought by the Receiver. Based on the consideration received, BMO is the only creditor with an economic interest in the proceeds, and supported the Realization Process and resulting sales completed.

#### **Furniture, Fixtures, and Equipment**

29. The Liquidation Bids either excluded or attributed no value to the fixed assets, which were namely manufacturing and warehouse equipment and office furniture (the "**FF&E**"). Much of the manufacturing equipment was very out-of-date and cumbersome to relocate, and was specialized to Graf's business. Given the specialized nature of much of the equipment, the Receiver again solicited interest from Licensor following the rejection of the Licensor Bid, to which the Licensor again declined interest. The Receiver also corresponded again with the liquidators who had submitted the

Liquidation Bids (the "**Liquidators**"), and ultimately the bidder who had attended onsite prior to the Bid Deadline, Century Services Corp. jointly with Wayman Services Corp. (together, "**Century**"), was the only Liquidator who expressed interest in the FF&E.

30. The Receiver concluded to pursue an auction of the FF&E together through a liquidator in order to maximize exposure of the assets and the potential realizable value. With the consent of the Lender, an auction agreement was executed with Century (the "**Auction Agreement**"), who was familiar with Graf and had auctioned assets of the Company in the past. The terms of the Auction Agreement contemplated a public auction (the "**Auction**") and included a minimum guarantee on gross proceeds in order to mitigate, at a minimum, the costs of the auction to the Receiver. The Auction was held at the Premises on July 20, 2016 and ultimately resulted in net proceeds to the Receiver of approximately \$50,000. Additionally, a limited number of FF&E pieces were sold by the Receiver prior to the Auction Agreement for approximately \$6,000.
31. Following the completion of the Auction and in preparation for the exit from the Premises, the Receiver communicated with lessors on the removal of leased Property not required by the Receiver to complete its administration. In the course of these communications, it was determined that the lessor of the Company's photocopy machine (the "**Copier**") had not perfected its security interest in said property, and as such the claim of the lessor was unsecured. Due to its anticipated realizable value, the Receiver determined it worthwhile to monetize the Copier, and proceeded to arrange to have it included in a subsequent non-Graf Century auction. The copier was sold by public auction in early October 2016, for net proceeds of \$5,400 to the Receiver.
32. Also following the Auction and the Receiver's exit from the Premises, the Receiver became aware that a claim by Shaw Cable ("**Shaw**") in the amount of \$437.55, representing the outstanding balance on their account with the Company, related to certain equipment used by Graf in connection with its phone service contract purported to belong to Shaw. In response, on October 21, 2016, the Receiver requested from the collection agency acting on behalf of Shaw, specific information about the property, including serial numbers, and proof of ownership by way of a rental agreement or other documentation. The Receiver received the information it requested on or about November 30, 2016 and has confirmed that the equipment was not sold in the Auction. The Receiver had exited the premises at the end of July 2016, and as it was made aware of equipment subject to the claim only in October, is not in possession of any equipment that may or may not have been on the Premises.
33. All fixed assets sales were completed on an "as is, where is" basis, for an aggregate fixed cash price of approximately \$60,000. As the aggregate consideration, including inventories of approximately \$1,370,000 was less than the \$2 million threshold outlined in the Receivership Order, no Court approval was sought by the Receiver. Based on the consideration received, BMO is the only creditor with an economic interest in the proceeds, and supported the Realization Process and the resulting sales completed by the Receiver.

## Accounts Receivable

34. Given the limited interest in the accounts receivable, as evidenced by the Liquidator Bids, the Receiver proceeded to realize on the accounts with the assistance of its independent contractors, and a collections agency, on a commission basis. As at the date of this First Report, the remaining accounts are still in the process of being collected.

## VIII. RECEIVER'S STATEMENTS OF RECEIPTS AND DISBURSEMENTS

35. The Receiver's CAD statement of receipts and disbursements for the period from the Date of Appointment to December 5, 2016 (the "CAD R&D") is summarized as follows:

<b>Graf Canada Ltd.</b>	
<b>Statement of Receipts and Disbursements (Canadian Dollars)</b>	
<b>For the period April 27, 2016 to December 5, 2016</b>	
<b>Receipts</b>	
Receiver's borrowings	\$ 200,000.00
Asset realizations - inventory	1,180,581.27
GST/HST collected	121,125.29
Accounts receivable collections	103,282.80
Asset realizations - fixed assets	61,622.35
Pre-receivership GST/HST refund	40,359.11
Refund of security deposit held by landlord	12,928.36
Other receipts	4,243.61
<b>Total Receipts</b>	<b>\$1,724,142.79</b>
<b>Disbursements</b>	
Repayment of Receiver's borrowings	201,727.05
Professional fees - Receiver	231,788.35
Independent contractor services	149,741.91
Occupation rent	87,738.93
HST remittances	66,304.07
GST/HST paid on disbursements	45,398.52
Settlement Agreement amount	44,981.30
Utilities, storage, & other operating expenses	32,591.10
Insurance	32,963.11
Professional fees - Receiver's counsel	20,773.93
Freight & duty	17,781.33
Credit card fees	7,526.71
Commissions & collection fees on accounts receivable	4,363.49
Bank charges and other fees	1,379.12
<b>Total Disbursements</b>	<b>\$ 945,058.92</b>
<b>Excess Receipts over Disbursements / Cash on Hand</b>	<b>\$ 779,083.87</b>

- a) As detailed in the table above, the Receiver had total CAD receipts of \$1,724,142 between the Date of Appointment and December 5, 2016, the majority of which relate to sales of inventories, collection of accounts receivable and the sales of FF&E. Total CAD disbursements over the same period were \$945,058, the majority of which relate to professional fees, independent contractor costs, occupation rent and other operating expenses and as at December 5, 2016, cash on hand was approximately \$779,083.
36. The Receiver's U.S. dollar statement of receipts and disbursements for the period from the Date of Appointment to December 5, 2016 (the "USD R&D") is summarized as follows:

<b>Graf Canada Ltd.</b>	
<b>Statement of Receipts and Disbursements (U.S. Dollars)</b>	
<b>For the period April 27, 2016 to December 5, 2016</b>	
<b>Receipts</b>	
Receiver's borrowings	
Accounts receivable collections	\$225,855.34
Asset realizations - inventory	48,090.14
Other receipts	290.03
<b>Total Receipts</b>	<b>\$274,235.51</b>
<b>Disbursements</b>	
Freight & duty	10,207.00
Credit card fees	3,737.33
Collection fees on accounts receivable	2,250.50
Bank charges	329.93
GST paid on collection fees	112.53
<b>Total Disbursements</b>	<b>\$ 16,637.29</b>
<b>Excess Receipts over Disbursements / Cash on Hand</b>	<b>\$257,598.22</b>

- a) As detailed in the table above, the Receiver had total USD receipts of \$274,235 between the Date of Appointment and December 5, 2016, the majority of which relate to accounts receivable collections and sales of inventories. Total USD disbursements over the same period were \$16,637, and as at December 5, 2016, cash on hand was approximately \$257,598 USD.
37. The Receiver estimates there remains approximately \$85,000 in Accrued Obligations relating primarily to GST/HST remittances, and professional fees and disbursements incurred up to the date of this First Report as part of these receivership proceedings. In addition, the Receiver estimates Remaining Costs in the amount of approximately \$45,000, including remaining professional fees and disbursements of the Receiver and its counsel (the "Remaining Fees and Disbursements") in the amount of approximately \$35,000 (all excluding GST/HST).
38. The Receiver seeks authority to pay the Outstanding Disbursements from cash on hand without further order of this Court.

39. Upon completion of the Remaining Matters (as hereinafter defined), the Receiver proposes to distribute any residual amounts remaining in its possession, or subsequently collected by the Receiver, to BMO on account of its outstanding secured indebtedness owing by Graf without further order of this Court. As at the date of this First Report, the Receiver anticipates an additional \$150,000 to \$200,000 in net realizations from the remaining accounts receivable and collections of the sales completed by the Receiver on payment terms.

## **IX. CREDITORS**

### **Secured Claims**

40. The Company is party to a security agreement (the "**Security Agreement**") granted in favour of BMO dated October 20, 2006, and a term sheet with BMO dated March 25, 2014 (the "**Credit Agreement**", and together with the Security Agreement, the "**Loan Documents**"), the particulars of which are more fully set out in the Devlin Affidavit. According to the Company's books and records, at the Date of Appointment, the amount owing to BMO in respect of the Loan Documents was approximately \$2.7 million (principal and accrued interest).
41. The Receiver has obtained an independent, written legal opinion from Bennett Jones LLP ("**Bennett Jones**") with respect to the validity and enforceability of the security granted by Graf in favour of BMO under the laws of the Province of Alberta ("**Alberta Law**"). Bennett Jones has reviewed certain security documents and, subject to customary qualifications, assumptions and limitations included therein, is of the opinion that the security granted by Graf in favour of the Lender under Alberta Law is valid and enforceable in accordance with its terms.
42. The Receiver has, through its counsel, obtained relevant personal property search results in Alberta. In addition to registrations in favour of BMO, those searches revealed the following registrations by National Leasing Group Inc. ("**National**");
- a) Registration #12060702272 on all telephone systems as described in lease #2583305. As this registration expired on June 7, 2016, and the Receiver understands the lease was paid in full, this collateral was not repossessed by National, and, having nominal net realizable value, was disposed of upon exit from the Premises; and
  - b) Registration #13120605476 on equipment as described in lease #2643937. This collateral was repossessed by National at its own expense, and the Receiver has executed a release agreement with National in respect of same.

### **Priority Claims**

43. BMO's security is subject to prior charges and security interests or claims in respect of the Property, which include:
- (a) The Receiver's Charge;

- (b) The Receiver's Borrowing Charge;
- (c) Deemed trust claims; and
- (d) Statutory claims pursuant to the BIA (the "**BIA Claims**").

#### Receiver's Charge

44. As at the date of this First Report, pursuant to paragraph 19 of the Receivership Order, the Receiver and its counsel have received payment for certain of their fees and disbursements incurred as part of receivership proceedings. As further discussed below, the accrued and outstanding fees and disbursements of the Receiver for the period ending November 25, 2016 total approximately \$63,500 (excluding HST) and its legal counsel for the period ending November 18, 2016 total approximately \$7,000 (excluding GST). In addition, the Receiver and its counsel have estimated Remaining Fees and Disbursements in the amount of \$35,000 (excluding GST/HST). In order to provide for the Outstanding Disbursements, the Receiver proposes to hold a reserve of approximately \$120,000, subject to the Court granting the order requested by the Receiver as described herein.

#### Receiver's Borrowing Charge

45. Pursuant to paragraph 20 of the Receivership Order, the Receiver was authorized to borrow up to \$500,000, as it considered necessary or desirable. As of the date of this First Report, no borrowings are outstanding.

#### Deemed Trust Claims

46. The Receiver understands Graf made normal course remittances to CRA in connection with source deductions withheld from its employees. Additionally, the Receiver understands that the Company was in a receivable position with respect to sales taxes as at the Date of Appointment. As such, the Receiver is not aware of any amounts that would be subject to a deemed trust in favour of CRA and the Receiver has not been contacted by CRA in connection with same.

#### BIA Claims

47. As previously mentioned in this First Report, the Company paid all outstanding wages and/or vacation pay to which Former Employees were entitled up to the Date of Appointment, immediately prior to the commencement of the receivership proceedings. Accordingly, the Receiver is not aware of any amounts owing to the Former Employees that would have priority over the Lender, pursuant to section 81.4 of the BIA.

48. Similarly, the Receiver understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Receiver is not aware of any amounts owing to Former Employees pursuant to section 81.6 of the BIA.



## Unsecured Claims

49. According to the books and records of the Company, Graf owed its unsecured creditors approximately \$3.56 million at the Date of Appointment (inclusive of the Licensor Loan).

## X. PROPOSED DISTRIBUTION TO BMO

50. Subject to this Court's approval, the following summarizes the funds that will remain in the Receiver's possession after the interim distribution to BMO (the "Interim Distribution") is completed:

<b>Graf Canada Ltd.</b>	
<b>Funds Remaining after Interim Distribution to BMO</b>	
<b>As at December 5, 2016</b>	
Cash on Hand	\$1,120,000.00
Interim Distribution to BMO	(1,000,000.00)
<b>Net Reserve</b>	<b>\$ 120,000.00</b>

- a) Cash on hand in the above table comprises CAD funds, and USD funds converted to CAD at the Bank of Canada noon rate (1.3272) on December 5, 2016; and
- b) Other than the claims described above, the Receiver is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over BMO's security, with respect to the Property or the proceeds therefrom.

51. The Receiver is of the view that, in order to maximize efficiency, it is appropriate, in addition to seeking approval of the Interim Distribution, to seek the Court's approval to make such subsequent distributions to BMO as the Receiver determines are appropriate, subject to the Receiver maintaining sufficient reserves to complete the administration of Graf's receivership proceedings, including payment of any Outstanding Disbursements.

52. The Receiver respectfully requests that the Court authorize the Interim Distribution and such subsequent distributions to BMO as the Receiver determines are appropriate.

## XII. REMAINING MATTERS TO BE COMPLETED IN THESE PROCEEDINGS

53. If this Court grants the order requested herein, the Receiver will have completed its duties, statutory or otherwise, except for the following (the "Remaining Matters"):

- a) Collecting the Company's remaining accounts receivable with the assistance of a third party collection agency, on a commission basis;

- b) Collecting amounts outstanding on sales completed by the Receiver;
- c) Paying the Outstanding Disbursements;
- d) Pursuing the potential recovery of any unclaimed GST/HST paid during these proceedings;
- e) Completing and filing the Company's 2016 corporate tax return with CRA, as it becomes due; and
- f) Attending to other administrative matters incidental to these proceedings such as filing the Receiver's report pursuant to section 246(3) of the BIA.

54. Upon the completion of the Remaining Matters, the Receiver will have realized on the Property and completed its statutory duties as well as those duties set out in the Receivership Order or subsequent orders of this Court. Accordingly, the Receiver is of the view that it is appropriate to seek an order of the Court discharging the Receiver upon the filing of a certificate (the "**Certificate of Discharge**") with this Court certifying that all of the Remaining Matters have been completed.

#### **Request for Approval of Fees**

55. The Receiver and its counsel have maintained detailed records of their professional time and disbursements since the Date of Appointment.
56. The Receiver's professional fees incurred for services rendered from the Date of Appointment to November 25, 2016 amount to \$285,753.28, plus disbursements in the amount of \$9,646.36 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Receiver's professionals is detailed in **Appendix "B"**.
57. The fees of the Receiver's counsel, Bennett Jones, for services rendered from the Date of Appointment to November 18, 2016 total \$26,597.50 plus disbursements in the amount of \$1,155.82 (all excluding GST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Bennett Jones professionals is detailed in **Appendix "C"**.
58. The Receiver has reviewed Bennett Jones' accounts and has determined that the services have been duly authorized and duly rendered and that the charges are reasonable given the circumstances.
59. In addition to the fees incurred by the Receiver and its counsel noted above, and on the assumption that there are no delays, disputes or unforeseen developments in connection with these proceedings, including the within motion, and the performance of the Remaining Matters, the Receiver has estimated Remaining Fees and Disbursements in the amount of \$35,000 as follows: (i) \$25,000 for the Receiver and (ii) \$10,000 for its counsel (all amounts excluding

GST/HST). These amounts represent the Receiver's best estimate of the reasonable professional and legal fees required to complete the administration of these proceedings up to the effective date of discharge.

### **XIII. RECOMMENDATIONS**

60. To the best of the Receiver's knowledge and belief, all duties of the Receiver, as set out in the Receivership Order and subsequent orders of this Court, will be completed upon payment of the Interim Distribution and the Outstanding Disbursements, and completion of the Remaining Matters.

61. Based on the foregoing, the Receiver respectfully recommends that the Court issue an order(s):

- (a) Approving the First Report and the actions, activities and conduct of Receiver set out therein;
- (b) Approving the CAD R&D and the USD R&D;
- (c) Authorizing the Receiver to make the Interim Distribution and authorizing the Receiver, at its discretion, to distribute any residual amounts remaining in its possession to BMO provided the aggregate distributions to BMO do not exceed the amount of its secured claim against Graf, and after the payment of the Outstanding Disbursements;
- (d) Approving the accounts of the Receiver and its counsel, Bennett Jones, including the Remaining Fees and Disbursements, as set out in this First Report;
- (e) Discharging the Receiver upon completion of the Remaining Matters, including terminating the Receiver's Charge and the Receiver's Borrowing Charge, as provided for in the Receivership Order and subject to the Receiver filing the Certificate of Discharge confirming the same with the Court; and
- (f) Ordering and declaring that, effective upon its discharge as Receiver, Richter has duly and properly discharged its duties, responsibilities and obligations as the Receiver of Graf, and discharging and releasing Richter from any and all further obligations as Receiver of Graf and any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting as Receiver, save and except for the Receiver's gross negligence or willful misconduct.

All of which is respectfully submitted on the 8<sup>th</sup> day of December, 2016.

**Richter Advisory Group Inc.**  
**in its capacity as Receiver of Graf Canada Ltd.**  
**and not in its personal capacity**

A handwritten signature in black ink, appearing to read "Clark Lonergan". The signature is written in a cursive, flowing style.

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**Clark Lonergan, CPA, CA, CIRP**  
Senior Vice-President

# TAB A

COURT FILE NUMBER:

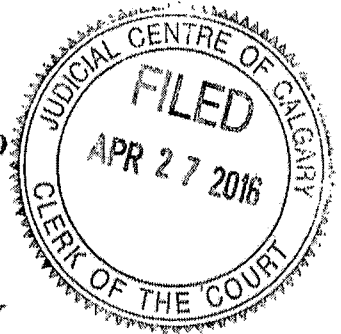
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ALBERTA

JUDICIAL CENTRE OF

Clerk's stamp:

1601-05249

CALGARY



IN THE MATTER OF THE BANKRUPTCY AND  
INSOLVENCY OF GRAF CANADA LTD.

APPLICANT:

**BANK OF MONTREAL**

RESPONDENT(S):

**GRAF CANADA LTD.**

DOCUMENT:

**RECEIVERSHIP ORDER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

**Cassels Brock and Blackwell**  
40 King Street West  
Suite 2100, Scotia Plaza  
Toronto, Ontario  
M5H 3C2

I hereby certify this to be a true copy of  
the original Receivership Order

Dated this 27 day of April, 2016

[Signature]  
for Clerk of the Court

Solicitor: Larry Ellis  
Telephone: 416-869-5406  
Facsimile: 416-640-3004  
Email: [lellis@casselsbrock.com](mailto:lellis@casselsbrock.com)  
File Number: 33336-356

**DATE ON WHICH ORDER WAS PRONOUNCED:** April 27, 2016

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Mr. Justice Jeffrey

**LOCATION OF HEARING:** Calgary, Alberta

UPON the application of Bank of Montreal (the "Bank") in respect of Graf Canada Ltd. (the "Borrower") for an order appointing Richter Advisory Group Inc. as receiver and manager over the assets, undertakings and properties of the Borrower; AND UPON having read the Application, the Affidavit of Hugh Devlin sworn April 20, 2016 (the "Devlin Affidavit"), filed; AND UPON reading the consent of Richter Advisory Group Inc. to act as interim receiver and receiver and manager ("Receiver") of the Debtor, filed; AND UPON review of the Devlin

Affidavit with Exhibits; AND UPON hearing counsel for the Bank; **IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient.

**APPOINTMENT**

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2 Richter Advisory Group Inc. is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part other business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;



- (i) without the approval of this Court in respect of any transaction not exceeding \$2,000,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 shall not be required.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons

in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has

powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. 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 Debtor, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor 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 Receiver, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and

domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

13. All employees of the Debtor are hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act, S.C. 2005, c.47 ("**WEPPA**").
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of

such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:

- A. complies with the order, or
  - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

#### **RECEIVER'S ACCOUNTS**

17. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the

“Receiver’s Charge”) on the Property, as security for such fees and disbursements, incurred both before and after the making of this Order in respect of these proceedings, and the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.

18. The Receiver and its legal counsel shall pass their accounts from time to time.
19. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
21. Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.



22. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
23. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **ALLOCATION**

24. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### **GENERAL**

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
27. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. 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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. The Receiver 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 Receiver 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.
30. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
31. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

#### **FILING**

32. The Receiver shall establish and maintain a website in respect of these proceedings at <http://www.richter.ca/en/folder/insolvency-cases/g/graf-canada-ltd> and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

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Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Order") made in action numbers \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ●.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**TAB B**

Graf Canada Ltd.

## Summary of Receiver's Fees and Disbursements - Richter Advisory Group Inc.

Inv. No.	Invoice Date	Fees	Disbursements	Total Fees & Disbursements	HST	Total
20401012	June 6, 2016	103,002.88	5,325.34	108,328.22	14,082.67	122,410.89
20401134	August 12, 2016	48,845.21	1,339.17	50,184.38	6,523.96	56,708.34
20401184	September 16, 2016	71,178.45	2,097.30	73,275.75	9,525.85	82,801.60
20401355	November 11, 2016	50,467.99	842.62	51,310.61	6,670.38	57,980.99
20401414	December 6, 2016	12,258.75	41.93	12,300.68	1,599.09	13,899.77
	<b>Total</b>	<b>285,753.28</b>	<b>9,646.36</b>	<b>295,399.64</b>	<b>38,401.95</b>	<b>333,801.59</b>

# RICHTER

Richter Advisory Group Inc., Receiver Re: Graf Canada Ltd.  
181 Bay Street, Suite 3320  
Toronto, ON M5J 2T3

Date: 07/06/2016  
Invoice No.: 20401012  
Engagement No.: 2020547  
Payment Terms: Due on Receipt

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Professional services rendered to May 27, 2016		\$ 121,907.50
Disbursements		5,325.34
Less: Courtesy Discount		-25,000.00
		<hr/>
<b>Sub-Total</b>		102,232.84
<b>Administrative Fees</b>		6,095.38
GST/HST #885435842 RT0001		14,082.67
		<hr/>
<b>Total Due</b>	CAD	<b>\$ 122,410.89</b>

T. 416.488.2345

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3  
www.richter.ca

Toronto, Montreal



# RICHTER

Richter Advisory Group Inc., Receiver Re: Graf Canada Ltd.  
181 Bay Street, Suite 3320  
Toronto, ON M5J 2T3

Date: 08/12/2016  
Invoice No.: 20401134  
Engagement No.: 2020547  
Payment Terms: Due on Receipt

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Professional services rendered to June 30, 2016			\$ 46,519.25
Disbursements			1,339.17
			<hr/>
<b>Sub-Total</b>			47,858.42
<b>Administrative Fees</b>			2,325.96
GST/HST #885435842 RT0001			6,523.96
			<hr/>
<b>Total Due</b>		CAD	<b>\$ 56,708.34</b>

T. 416.488.2345

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto ON M5J 2T3  
www.richter.ca

Toronto, Montreal





# RICHTER

Richter Advisory Group Inc., Receiver Re: Graf Canada Ltd.  
181 Bay Street, Suite 3320  
Toronto, ON M5J 2T3

Date: 09/16/2016  
Invoice No.: 20401184  
Engagement No.: 2020547  
Payment Terms: Due on Receipt

Professional services rendered to August 15, 2016	\$ 67,789.00
Disbursements	2,097.30
<b>Sub-Total</b>	<b>69,886.30</b>
<b>Administrative Fees</b>	<b>3,389.45</b>
GST/HST #885435842 RT0001	9,525.85
<b>Total Due</b>	<b>CAD \$ 82,801.60</b>

T. 416.488.2345

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto ON M5J 2T3  
www.richter.ca

Toronto, Montreal



# RICHTER

Attn. Rachel Gillespie

BMO Bank of Montreal  
100 King Street West  
First Canadian Place  
Toronto, ON M5X 1A1

Date: 11/11/2016  
Invoice No.: 20401355  
Engagement No.: 2020547  
Payment Terms: Due on Receipt

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Professional services rendered to October 28, 2016			\$ 48,064.75
Disbursements			842.62
			<hr/>
<b>Sub-Total</b>			48,907.37
<b>Administrative Fees</b>			2,403.24
GST/HST #885435842 RT0001			6,670.38
			<hr/>
<b>Total Due</b>	CAD		<b>\$ 57,980.99</b>

T. 416.488.2345

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto ON M5J 2T3  
www.richter.ca

Toronto, Montreal



# RICHTER

Attn. Rachel Gillespie

BMO Bank of Montreal  
100 King Street West  
First Canadian Place  
Toronto, ON M5X 1A1

Date: 12/06/2016  
Invoice No.: 20401414  
Engagement No.: 2020547  
Payment Terms: Due on Receipt

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Professional services rendered to Nov. 25, 2016		\$ 11,675.00
Disbursements		41.93
	<b>Sub-Total</b>	<hr/> 11,716.93
	<b>Administrative Fees</b>	583.75
	GST/HST #885435842 RT0001	1,599.09
	<b>Total Due</b>	<hr/> CAD <b>\$ 13,899.77</b>

T. 416.488.2345

Richter Advisory Group Inc.  
181 Bay St., Suite 3320  
Bay Wellington Tower  
Toronto ON M5J 2T3  
www.richter.ca

Toronto, Montreal



**TAB C**

**GRAF Canada Ltd.**

Summary of Legal Fees and Disbursements - Bennett Jones LLP

Inv. No.	Invoice Date	Total Fees &				
		Fees	Disbursements	Disbursements	TOTAL	
1132350	July 13, 2016	\$14,202.50	\$303.43	\$14,505.93	\$1,884.87	\$16,390.80
1140151	September 9, 2016	\$5,923.00	\$345.00	\$6,268.00	\$813.93	\$7,081.93
1150019	November 23, 2016	\$6,472.00	\$507.39	\$6,979.39	\$897.67	\$7,877.06
<b>TOTAL</b>		<b>\$26,597.50</b>	<b>\$1,155.82</b>	<b>\$27,753.32</b>	<b>\$3,596.47</b>	<b>\$31,349.79</b>



Bennett Jones LLP  
Suite 3400, 1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

RICHTER ADVISORY GROUP INC.  
181 BAY STREET, SUITE 3320  
TORONTO, ON M5J 2T3

Attention: CLARK LONERGAN

Re: RECEIVERSHIP OF GRAF CANADA LTD.  
Our File Number: 075202.00002

Date: July 13, 2016  
Invoice: 1132350

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**PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:**

Professional Services	\$	14,202.50
Other Charges		183.00
Disbursements		113.43
Disbursements Incurred As Your Agent (Non-taxable)		7.00
Total Due before GST/HST	\$	<u>14,505.93</u>
GST/HST	\$	1,884.87
TOTAL Due in CAD	\$	<u><u>16,390.80</u></u>

Due upon receipt. Bennett Jones LLP reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices after 30 days.  
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by writing our offices in Calgary, Edmonton, Toronto or Ottawa.

GST/HST Number: 119346757



Bennett Jones LLP  
Suite 3400, 1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

RICHTER ADVISORY GROUP INC.  
181 BAY STREET, SUITE 3320  
TORONTO, ON M5J 2T3

Attention: CLARK LONERGAN

Re: RECEIVERSHIP OF GRAF CANADA LTD.  
Our File Number: 075202.00002

Date: September 9, 2016  
Invoice: 1140151

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**PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:**

Professional Services	\$	5,923.00
Other Charges		335.00
Disbursements		3.00
Disbursements Incurred As Your Agent (Non-taxable)		7.00
Total Due before GST/HST	\$	<u>6,268.00</u>
GST/HST	\$	813.93
TOTAL Due in CAD	\$	<u><u>7,081.93</u></u>

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by writing our offices in Calgary, Edmonton, Toronto or Ottawa.

GST/HST Number: 119346757



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RICHTER ADVISORY GROUP INC.  
181 BAY STREET, SUITE 3320  
TORONTO, ON M5J 2T3

Attention: CLARK LONERGAN

Re: RECEIVERSHIP OF GRAF CANADA LTD.  
Our File Number: 075202.00002

Date: November 23, 2016  
Invoice: 1150019

---

**PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:**

Professional Services	\$	6,472.00
Other Charges		403.25
Disbursements		29.92
Disbursements Incurred As Your Agent (Non-taxable)		74.22
Total Due before GST/HST	\$	<u>6,979.39</u>
GST/HST	\$	897.67
TOTAL Due in CAD	\$	<u><u>7,877.06</u></u>

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