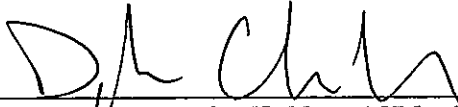


# **EXHIBIT "C"**

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

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*A Commissioner for Taking Affidavits*  
*Dylan Cloche*

**GENERAL SECURITY AGREEMENT**

TO: **GSO SPECIAL SITUATIONS FUND LP**,  
as Administrative Agent for the benefit of itself  
and the lenders from time to time party to the  
Credit Agreement referred to below (the "Lenders"),  
280 Park Avenue, 11th Floor, Building East,  
New York, New York 10017,

(hereinafter the "Administrative Agent")

GRANTED BY: **GF ACQUISITION CORP.**,  
having its principal office at 44 Apex Road,  
Toronto, Ontario M6A 2V2

(hereinafter the "Corporation")

**SECTION 1 GRANT OF SECURITY INTEREST**

**1.1 Security Interest**

As general and continuing security for the payment and performance of any and all indebtedness, obligations and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Corporation to the Administrative Agent and the Lenders or remaining unpaid by the Corporation to the Administrative Agent and the Lenders, wheresoever and howsoever incurred and howsoever evidenced, whether arising from dealings between the Administrative Agent and/or the Lenders and the Corporation or from other dealings or proceedings by which the Corporation may be or become in any manner indebted, obligated or liable to the Administrative Agent and/or the Lenders including, without limitation, under the Credit Agreement (as such term is hereinafter defined) and wherever incurred and in any currency and whether incurred by the Corporation alone or with another or others and whether as principal, guarantor or surety, and all interest, commissions, costs of realization, legal and other costs, charges and expenses (all of the foregoing being herein collectively called the "Obligations"), the Corporation, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to the Administrative Agent a continuing security interest in, and a security interest is taken in, all of the property, assets and undertakings of the Corporation, whether now owned or hereafter-acquired by or on behalf of the Corporation, wherever located (the "Collateral"), including, without limitation, all of the Corporation's present and after acquired personal property and including, without limitation:

**(a) Accounts Receivable**

All debts, book debts, accounts, claims, demands, moneys and choses in action whatsoever including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to the

Corporation or which may hereafter be owned by or become due, owing or accruing due to the Corporation together with all contracts, investment property, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by the Corporation in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which the Corporation now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being herein collectively called the "Accounts Receivable");

**(b) Inventory**

All inventory of whatever kind now or hereafter owned by the Corporation or in which the Corporation now or hereinafter has an interest or right of any kind, and all accessions thereto and products thereof, including, without limitation, all goods, merchandise, raw materials, goods in process, finished goods, packaging and packing material and other tangible personal property now or hereafter held for sale, lease, rental or resale or that are to be furnished or have been furnished under a contract of service or that are to be used or consumed in the business of the Corporation (all of the foregoing being herein collectively called the "Inventory");

**(c) Equipment**

All goods now or hereafter owned by the Corporation which are not inventory or consumer goods as defined in the *Personal Property Security Act* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time (collectively, the "PPSA") including, without limitation, all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including motor vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, and office equipment, as well as all of such types of property leased by the Corporation and all of the Corporation's rights and interests with respect thereto under such leases (including, without limitation, options to purchase); together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto; wherever any of the foregoing is located (all of the foregoing being herein collectively called the "Equipment");

**(d) Chattel Paper, Instruments, Securities etc.**

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, share, stock, security entitlements, warrants, bonds, debentures, debenture stock or other securities or investment property and financial assets now or hereafter owned by the Corporation;

**(e) Intangibles**

All intangibles now or hereafter owned by the Corporation including, without limitation, all goodwill connected with or symbolized by any of such general intangibles; all contract rights, documents, applications, licenses, materials and other matters related to

such general intangibles; all tangible property embodying or incorporating any such general intangibles; and all chattel paper and instruments relating to such general intangibles. The Collateral shall include (i) all patents, and all unpatented or unpatentable inventions; (ii) all trademarks, service marks, and trade names; (iii) all copyrights and literary rights; (iv) all computer software programs; (v) all mask works of semiconductor chip products; (vi) all trade secrets, proprietary information, customer lists, manufacturing, engineering and production plans, drawings, specifications, processes and systems (collectively, the "Intellectual Property" and, together with all of the foregoing, collectively, the "Intangibles").

**(f) Books and Accounts, etc.**

With respect to the personal property described in Paragraphs (a) to (e) inclusive, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof;

**(g) Other Property**

The uncalled capital, money, rights, bills of exchange, negotiable and non negotiable instruments, judgments and securities not otherwise described in Paragraphs (a) to (f) inclusive;

**(h) Replacements, etc.**

With respect to the personal property described in Paragraphs (a) to (g) inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Corporation therein; and

**(i) Proceeds**

With respect to the personal property described in Paragraphs (a) to (h) inclusive, personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds.

**1.2 Definitions and Interpretation**

In this General Security Agreement:

- (a) Terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires;
- (b) Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Credit Agreement (as hereinafter defined);
- (c) Any reference to "Collateral" shall, unless the context otherwise requires, refer to "Collateral or any part thereof";

- (d) Any reference to the "STA" shall refer to the *Securities Transfer Act* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time;
- (e) The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of the Administrative Agent;
- (f) "Credit Agreement" shall mean the credit agreement dated as of the date hereof, between the Administrative Agent, the lenders from time to time party thereto and the Corporation, as the same may be amended, supplemented, revised, replaced or restated from time to time;
- (g) The term "security interest" shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment;
- (h) The term "purchase money security interest" shall mean a purchase money security interest granted by the Corporation under the PPSA to secure all or any part of the indebtedness incurred by the Corporation in connection with the acquisition of property (not in excess of the acquisition price of such property) or any extension or renewal or replacement of such indebtedness provided that the principal amount of such indebtedness is not increased; and
- (i) The term "encumbrance" includes, without limitation, a security interest, lien, hypothec, claim, charge, deemed trust or encumbrance of any kind whatsoever.

### 1.3 Leases

- (a) The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Corporation, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but the Corporation shall stand possessed of such one day remaining, upon trust to assign and dispose of the same as the Administrative Agent or any assignee of such lease, or sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.
- (b) Pursuant to this General Security Agreement:
  - (i) To the extent that the creation of the security interest created hereby would constitute a breach of or default under, or permit the acceleration or termination of any agreement, right, licence or permit of the Corporation which constitutes Collateral (each, a "Restricted Asset"), the security interest created hereunder shall not attach to the Restricted

Asset, but the Corporation shall, subject to paragraph (ii) below, hold its interest in the Restricted Asset in trust for the Lender, provided that, until the security interest created hereby has become enforceable, the Corporation shall be entitled to all proceeds arising under or in connection with the Restricted Asset.

- (ii) To the extent that the creation of the trust in paragraph (i) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of the Lender pursuant to which the Corporation shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for the Lender, provided that until the security interest created hereby has become enforceable, the Corporation shall be entitled to receive all such proceeds.

#### 1.4 Corporation Remains Liable

Notwithstanding anything herein to the contrary:

- (a) the Corporation shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this General Security Agreement had not been executed;
- (b) the exercise by the Administrative Agent of any of the rights or remedies hereunder shall not release the Corporation from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) the Administrative Agent shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this General Security Agreement, nor shall the Administrative Agent be obligated to perform any of the obligations or duties of the Corporation thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

#### 1.5 Attachment

The Corporation acknowledges that the security interests that arise under this General Security Agreement attach upon the execution of this General Security Agreement and that value has been given. A security interest in any after acquired property included in the Collateral attaches to that property on acquisition of any rights therein by the Corporation.

## **SECTION 2 REPRESENTATIONS AND WARRANTIES**

The Corporation represents and warrants to and in favour of the Administrative Agent on the Closing Date and on the last date of each fiscal quarter of the Corporation:

### **2.1 Enforceability**

This General Security Agreement constitutes a valid and legally binding obligation of the Corporation enforceable against the Corporation in accordance with its terms, subject to:

- (a) applicable bankruptcy, insolvency, reorganization, limitations, moratorium and other laws generally affecting creditors' rights; and
- (b) equitable remedies such as injunction and specific performance which remedies are available in the discretion of a court of competent jurisdiction.

### **2.2 Locations of Collateral**

The tangible Collateral, except where it is in transit to and from the locations herein described and for Equipment out for repair, is located at the location specified above as the Corporation's principal office or place of business (and its chief place of business and chief executive office) and at such additional addresses as provided for in the Credit Agreement. The location at which all records of the Corporation pertaining to Accounts Receivable (and all chattel paper which evidences Accounts Receivable) and contract rights are kept at the location specified above or such other locations as are provided for in the Credit Agreement.

### **2.3 Survival**

All representations and warranties of the Corporation made herein or in any certificate or other document delivered by or on behalf of the Corporation to the Administrative Agent are material, shall be deemed to have been relied upon by the Administrative Agent notwithstanding any investigation heretofore or hereafter made by or on behalf of the Administrative Agent, shall survive the execution and delivery of this General Security Agreement and shall continue in full force and effect without time limit.

### **2.4 Credit Agreement**

The Corporation acknowledges and has reviewed the representations and warranties made by it in the Credit Agreement and all such representations and warranties are true and correct when made.

## **SECTION 3 COVENANTS OF THE CORPORATION**

The Corporation covenants and agrees with the Administrative Agent that so long as there shall remain any Obligations of or affecting any party to this General Security Agreement:



### 3.1 Payment

The Corporation will pay duly and punctually all sums of money due by it to the Administrative Agent and Lenders under this General Security Agreement at the times and places and in the manner provided for herein and the Credit Agreement, as applicable, and at the times and places and in the manner provided for therein and under any other agreements forming part of the Obligations.

### 3.2 Credit Agreement

The Corporation acknowledges having reviewed its covenants contained in the Credit Agreement and agrees to observe and perform all such covenants provided for in the Credit Agreement.

### 3.3 Notice Regarding Change of Address, etc.

The Corporation shall notify the Administrative Agent in writing:

- (a) At least 30 days prior to any change of name of the Corporation;
- (b) At least 30 days prior to any transfer of the Corporation's interest in any part of the Collateral not expressly permitted hereunder or under the Credit Agreement;
- (c) Promptly of any significant loss of or damage to Collateral;
- (d) At least 30 days prior to any change in the location(s) of the Collateral and any records relating thereto other than Equipment out for repair; and
- (e) Forthwith upon becoming aware of the existence of any condition or event which could cause or which, with the passage of time or notice, or both, constitute a Default, give the Administrative Agent written notice thereof specifying the nature and duration thereof and the action being taken or proposed to be taken with respect thereto.

### 3.4 Other Financing Statements or Control

Except as otherwise permitted under the Loan Documents, the Corporation shall not (a) file, or authorize to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Administrative Agent is not named as the sole secured party, or (b) cause or permit any Person other than the Administrative Agent to have "control" (as defined in the STA) of any financial asset or investment property constituting part of the Collateral, other than "control" in favour of any depositary bank or securities intermediary which has subordinated its lien to the lien of the Administrative Agent pursuant to documentation in form and substance satisfactory to the Administrative Agent. For greater certainty, to the extent the Loan Documents permit the granting or existence of a security interest in any Collateral, the filing of a financing statement or like instrument in respect thereof is also permitted. Immediately upon having knowledge that a financing statement or like instrument is or is reasonably likely to be on file in any jurisdiction with respect to any Collateral, the Corporation shall (i) immediately give written notice to the Administrative Agent of such filing or proposed filing; and (ii) take such steps as may be requested by the Administrative Agent,

having regard to the Permitted Encumbrances under the Credit Agreement, with respect to such filing.

### **3.5 Special Provisions Relating to Pledged Securities.**

(a) The Corporation will cause any and all Collateral that is a security, including the securities listed at Schedule 3.5(a) hereof (collectively, the "Pledged Securities"), to constitute at all times 100% of the total number of shares that are owned by the Corporation in such relevant issuer.

(b) So long as no Event of Default shall have occurred and be continuing, the Corporation shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Securities for all purposes not inconsistent with the terms of this Agreement, the Loan Documents or any other instrument or agreement referred to herein or therein, provided that the Corporation agrees that it will not vote the Pledged Securities in any manner that is inconsistent with the terms of this Agreement, the Loan Documents or any such other instrument or agreement. The Administrative Agent shall promptly upon the request of the Corporation execute and deliver to the Corporation or cause to be executed and delivered to the Corporation all such proxies and powers of attorney and all such instruments, without recourse, as the Corporation may reasonably request for the purpose of enabling the Corporation to exercise the rights and powers that it is entitled to exercise pursuant to this Section 3.5(b).

(c) Unless and until an Event of Default shall have occurred and be continuing, the Corporation shall be entitled to receive and retain any dividends, distributions or proceeds on the Pledged Securities (whether paid or distributed in cash, securities or other property).

(d) If an Event of Default shall have occurred and be continuing, whether or not the Administrative Agent exercises any available right to declare any Obligations due and payable or seeks or pursues any other relief or remedy available to it under applicable law or under this General Security Agreement, the Loan Documents or any other agreement relating to such Obligation, upon notice to the Corporation, all dividends and other distributions on the Pledged Securities shall be paid directly to the Administrative Agent and retained by it as part of the Collateral, subject to the terms of this Agreement, and, if the Administrative Agent shall so request in writing, the Corporation agrees to execute and deliver to the Administrative Agent any instruments or other documents necessary or desirable to ensure that the Pledged Securities shall be paid directly to the Administrative Agent, provided that if such Event of Default is cured, any such dividend or distribution theretofore paid to the Administrative Agent shall, promptly upon request of the Corporation (except to the extent theretofore applied to the Obligations), be returned by the Administrative Agent to the Corporation.

## SECTION 4 COLLECTION OF PROCEEDS

### 4.1 Payments to the Administrative Agent

Upon the occurrence of a Default (as defined below), the Corporation shall:

- (a) Collect and enforce payment of all Accounts Receivable (except as provided for in Section 4.2 or the Credit Agreement) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in the Corporation's business;
- (b) Receive and hold in trust for the Administrative Agent, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which the Corporation now has or may hereafter acquire to enforce payment of Collateral and all rights in the nature of a security interest whereby the Corporation may satisfy any Collateral out of property, and all non cash proceeds of any such collection, disposition or realization of any of the Collateral shall be subject to the security interest hereby created;
- (c) Endorse to the Administrative Agent and forthwith deliver to it all such payments and instruments in the form received by the Corporation; and
- (d) Forthwith deliver to the Administrative Agent all property in the Corporation's possession or hereafter coming into its possession through enforcement of any such rights.

### 4.2 Account Debtor

Following the occurrence of a Default, the Administrative Agent may at any time notify or require the Corporation to notify an account debtor or debtor under any Accounts Receivable, investment property, chattel paper or Intangible of the assignment of such Accounts Receivable, investment property, chattel paper or Intangible to the Administrative Agent and require such Person to make payment to the Administrative Agent in respect of any of the Accounts Receivable, investment property, chattel paper or Intangible, and the Administrative Agent may hold all amounts acquired or received from any such account debtors or obligors (and if any such amounts are received by the Corporation, they shall be held in trust by the Corporation for the benefit of the Administrative Agent and as promptly as possible remitted or delivered to the Administrative Agent for application as provided herein), together with income on such amounts, as part of the Collateral and as security for the Obligations.

## SECTION 5 DEFAULT

### 5.1 Default

Without in any way limiting the demand nature of the Obligations or any of them, the Obligations secured hereby shall, in relation to the Credit Agreement in accordance with this General Security Agreement, become immediately due and payable and the security interests hereby constituted shall become enforceable in each and every of the following events (herein called a "Default"):

- (a) if the Corporation fails to make any payment of any of the Obligations when due (following the expiry of any applicable cure period as set out in the Credit Agreement); and
- (b) upon the occurrence and during the continuance of any other Event of Default, as defined in the Credit Agreement, that has not been waived by the Administrative Agent.

## **5.2 Demand Nature of Obligations**

The Corporation agrees that the provision of defaults in Section 5.1 hereof shall not derogate from any demand nature of the Obligations as provided in the Credit Agreement as at any time without restriction, whether or not the Corporation has complied with the provisions of this General Security Agreement or any other agreement or instrument between it and the Lenders or the Administrative Agent. The Corporation agrees that upon the occurrence and during the continuance of a Default under Section 5.1 hereof the security interests hereby constituted shall become enforceable and the Administrative Agent shall be entitled to exercise and enforce any or all of the remedies herein provided or which may otherwise be available to the Administrative Agent by statute at law or in equity and all amounts secured hereby shall immediately be paid to the Administrative Agent by the Corporation.

## **SECTION 6 REMEDIES ON DEFAULT**

If the security interests hereby constituted become enforceable, the Administrative Agent shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the Civil Code of Quebec (the "CCQ") or the Uniform Commercial Code (the "Code") (whether or not the CCQ or the Code applies to the affected Collateral) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted, including the right, to the fullest extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Administrative Agent were the sole and absolute owner thereof (and the Corporation agrees to take all such action as may be appropriate to give effect to such right), the following rights, remedies and powers:

### **6.1 Power of Entry**

The Corporation shall forthwith upon demand assemble and deliver to the Administrative Agent possession of all of the Collateral at such place or places as may be specified by the Administrative Agent. The Administrative Agent may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, the Corporation agrees that the Administrative Agent, its servants or agents or Receiver (as hereinafter defined) may, at any time, during the day or night, enter upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of the Administrative Agent taking possession of the Collateral, or any part thereof, the Administrative Agent shall have the right to maintain the same upon the premises on which the Collateral may then be situate. The Administrative Agent may take such action or do such things as to render any Equipment unusable.

## 6.2 Power of Sale

The Administrative Agent may sell, lease or otherwise dispose of all or any part of the Collateral, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by applicable law, with or without advertising and without any other formality, all of which are hereby waived by the Corporation. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as the Administrative Agent, in its sole discretion, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, the Administrative Agent need only credit against the Obligations the actual cash received at the time of the sale. Any payments made pursuant to any credit granted at the time of the sale shall be credited against the Obligations as they are received. The Administrative Agent may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss occasioned thereby. Any such sale, lease or disposition may take place whether or not the Administrative Agent has taken possession of the Collateral. The Administrative Agent may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to the Corporation by the Administrative Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Administrative Agent on the Obligations or any part thereof and shall be secured by this General Security Agreement.

## 6.3 Validity of Sale

No person dealing with the Administrative Agent or its servants shall be concerned to inquire whether the security hereby constituted has become enforceable, whether the powers which the Administrative Agent is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by the Administrative Agent with the Collateral or to see to the application of any money paid to the Administrative Agent. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such person, to be within the powers hereby conferred and to be valid and effective accordingly.

## 6.4 Receiver-Manager

The Administrative Agent may, in addition to any other rights it may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a "Receiver") of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Administrative Agent has under this General Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law, act as and for all purposes shall be deemed to be the agent of the Corporation and the Administrative Agent shall not be responsible for any act or default of any such Receiver. The Administrative Agent may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed

may be an officer or employee of the Administrative Agent. A court need not appoint, ratify the appointment by the Administrative Agent of or otherwise supervise in any manner the actions of any Receiver. Upon the Corporation receiving notice from the Administrative Agent of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of the Corporation with respect to the Collateral shall cease, unless specifically continued by the written consent of the Administrative Agent.

#### **6.5 Carrying on Business**

The Administrative Agent may carry on, or concur in the carrying on of, all or any part of the business or undertaking of the Corporation, may, to the exclusion of all others, including the Corporation, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by the Corporation and may use all or any of the tools, machinery, equipment and intangibles of the Corporation for such time as the Administrative Agent sees fit, free of charge, to carry on the business of the Corporation and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

#### **6.6 Dealing with Collateral**

(a) The Administrative Agent may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to the Corporation except as otherwise required by any applicable law. The Administrative Agent may, but shall not be obligated to, in its name or in the name of the Corporation or otherwise, demand, sue for, collect and receive any Collateral and with or without notice to the Corporation, give such receipts, discharges and extensions of time and make such compromises or settlements deemed desirable with respect to any of the Collateral. The Administrative Agent may charge on its own behalf and pay to others, sums for costs and expenses incurred including, without limitation, legal fees and expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and in connection with the protection and enforcement of the rights of the Administrative Agent hereunder including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to the Corporation by the Administrative Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Administrative Agent on the Obligations or any part thereof and shall be secured by this General Security Agreement.

(b) Without limitation to the foregoing, the Administrative Agent may require the Corporation to cause any Collateral that is investment property to be transferred of record into the name of the Administrative Agent or its nominee (and the Administrative Agent agrees that if any such investment property is transferred into its name or the name of its nominee, the Administrative Agent will thereafter promptly give to the Corporation copies of any notices and communications received by it with respect to investment property). The Administrative Agent may exercise any and all rights, privileges, entitlements and options pertaining to any Collateral

that is investment property as if the Administrative Agent were the absolute owner of such investment property.

(c) To the extent that applicable law imposes duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, and without prejudice to the ability of the Administrative Agent to dispose of the Collateral in any such manner, the Corporation acknowledges and agrees that it is not commercially unreasonable for the Administrative Agent (i) to incur expenses reasonably deemed significant by the Administrative Agent to prepare the Collateral for disposition, (ii) to fail to obtain third party consents for access to the Collateral to be disposed of, (iii) to fail to exercise collection remedies against account debtors obligated on the Collateral or to remove Liens against the Collateral, (iv) to exercise collection remedies against the Corporation directly or through the use of collection agencies, (v) to dispose of Collateral by way of public auction, public tender or private contract, with or without advertising and without any other formality, (vi) to contact other Persons, whether or not in the same business of the Corporation, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of the Collateral, whether or not the Collateral is of a specialized nature or an upset or reserve bid or price is established, and (viii) to dispose of Collateral in whole or in part.

(d) The Administrative Agent is authorized, in connection with any offer or sale of any Pledged Securities or any Collateral that is a security entitlement ("Security Entitlements"), to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Pledged Securities or Security Entitlements. The Corporation further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Administrative Agent will not be liable or accountable to the Corporation for any discount allowed by reason of the fact that such Pledged Securities or Security Entitlements are sold in compliance with any such limitation or restriction. If the Administrative Agent chooses to exercise its right to sell any or all Pledged Securities or Security Entitlements, upon written request, the Corporation will cause each applicable issuer to furnish to the Administrative Agent all such information as the Administrative Agent may request in order to determine the number of shares and other instruments included in the Collateral which may be sold by the Administrative Agent in exempt transactions under any laws governing securities, and the rules and regulations of any applicable securities regulatory thereunder, as the same are from time to time in effect.

(e) The Corporation agrees that to the extent the Administrative Agent is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, fifteen (15) days' notice shall be deemed to constitute reasonable prior notice.

## 6.7 Right to Use

(a) To the extent not expressly prohibited by any agreement to which the Corporation is a party, the Corporation hereby grants to the Administrative Agent an

irrevocable, non exclusive license (exercisable without payment of royalty or other compensation to the Corporation) (each a "Granted Licence") to use, assign, license or sublicense all of the Corporation's present and future property, whether real or personal, including, without limitation, labels, Intellectual Property and advertising matter, or any other property of any nature or of a similar nature, and reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof, as it pertains to the Collateral, in completing production of, advertising for sale, and selling of any Collateral and the Corporation's rights under all licenses and all franchise agreements shall inure to the Administrative Agent.

(b) To the extent that the Corporation is expressly prohibited by any agreement to which it is a party from granting a Granted Licence, the Corporation shall hold its interest in the right to use, assign, license or sublicense the property in respect of which the grant of a Granted Licence is expressly prohibited, in trust for the Lender.

#### **6.8 Retention of Collateral**

Upon notice to the Corporation and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, the Lenders or the Administrative Agent may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

#### **6.9 Pay Encumbrances**

The Administrative Agent may pay any encumbrance that may exist or be threatened against the Collateral. In addition, the Administrative Agent may borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business or undertaking of the Corporation and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to the Corporation by the Administrative Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Administrative Agent on the Obligations or any part thereof and shall be secured by this General Security Agreement.

#### **6.10 Application of Payments Against Obligations**

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral may be applied to such part or parts of the Obligations as the Administrative Agent may see fit. The Administrative Agent shall, at all times and from time to time, have the right to change any appropriation as it may see fit. Any insurance monies received by the Administrative Agent pursuant to this General Security Agreement may, at the option of the Administrative Agent, be applied to rebuilding or repairing the Collateral or be applied against the Obligations in accordance with the provisions of this Section.

#### **6.11 Set-Off**

The Obligations will be paid by the Corporation without regard to any equities between the Corporation and the Administrative Agent or any Lender or any right of set-off or cross-claim.



Any indebtedness owing by the Administrative Agent or any Lender to the Corporation may be set off and applied by the Administrative Agent against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

#### **6.12 Deficiency**

If the proceeds of the realization of the Collateral are insufficient to repay the Administrative Agent and the Lenders all monies due to them, the Corporation shall forthwith pay or cause to be paid to the Administrative Agent and the Lenders such deficiency.

#### **6.13 Administrative Agent Not Liable**

Neither the Administrative Agent nor any Lender shall be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Administrative Agent or any Lender, the Corporation or any other Person in respect of the Collateral nor shall any of the Administrative Agent or any Lender be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, including, without limitation, any loss, cost or damage resulting from the negligence of the Administrative Agent or any Lender or any of their officers, servants, partners, employees, agents, solicitors, attorneys, Receivers or otherwise but excluding any loss, cost or damage resulting from the gross negligence or wilful misconduct of the Administrative Agent or any Lender. Neither the Administrative Agent or any Lender nor any of their partners, officers, employees, servants, agents, or Receivers shall be liable by reason of any entry into possession of the Collateral or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence (other than gross negligence) in the carrying on or occupation of the business or undertaking of the Corporation as provided in Section 6.5 or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence, except for any such actions, omissions or negligence that constitute gross negligence or wilful misconduct.

#### **6.14 Extensions of Time**

The Administrative Agent may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with the Corporation, Subsidiaries of the Corporation, guarantors, sureties and others and with the Collateral and other securities as the Administrative Agent may see fit, all without prejudice to the liability of the Corporation to the Administrative Agent or any Lender or the Administrative Agent's rights and powers of the Administrative Agent or any Lender under this General Security Agreement.

#### **6.15 Rights in Addition**

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers the Administrative Agent or any Lender may have from time to time under this General Security Agreement or under applicable law. The Administrative Agent may proceed by way of any action, suit, remedy or other proceeding at law

or in equity and no such remedy for the enforcement of the rights of the Administrative Agent shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination. The Corporation recognizes that if it fails to perform or observe its obligations hereunder, no remedy at law will provide adequate relief to the Administrative Agent, and the Corporation agrees that the Administrative Agent shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving irreparable harm.

## **SECTION 7 DEALING WITH COLLATERAL BY THE CORPORATION**

### **7.1 Sale of Inventory**

Prior to the occurrence of a Default that is continuing, the Corporation shall be entitled to deal with the Collateral in the ordinary course of business, provided that no such action shall be taken which would impair the validity, effectiveness, perfection or priority of the security interest created by this General Security Agreement or which would result in a Default. For greater certainty, the Corporation may, in the ordinary course of its business and on customary trade terms, lease or sell items of Inventory, so that the purchaser thereof takes title clear of the security interest hereby created. If such sale or lease results in an Account Receivable, such Account Receivable shall be subject to the security interest hereby created.

## **SECTION 8 GENERAL**

### **8.1 Security in Addition**

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by the Administrative Agent and the Corporation. The taking of any action or proceedings or refraining from so doing, or any other dealing with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this General Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by the Administrative Agent for the repayment of or performance of the Obligations.

### **8.2 Waiver**

Any waiver of a breach by the Corporation of any of the terms or provisions of this General Security Agreement or of a Default under Section 5.1 hereof must be in writing to be effective against and bind the Administrative Agent. No such waiver by the Administrative Agent shall extend to or be taken in any manner to affect any subsequent breach or Default or the rights of the Administrative Agent arising therefrom.

### 8.3 Further Assurances

The Corporation shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as the Administrative Agent may reasonably require in order to give effect to the provisions and purposes of this General Security Agreement including, without limitation, in respect of the Administrative Agent's enforcement of the security and its realization on the Collateral, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of the Administrative Agent in the Collateral pursuant to this General Security Agreement. Effective upon the occurrence and during the continuance of a Default, the Corporation hereby constitutes and appoints any officer of the Administrative Agent at its above address, or any Receiver appointed by the court or the Administrative Agent as provided herein, the true and lawful attorney of the Corporation irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things with the right to use the name of the Corporation whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this General Security Agreement. Without limiting the generality of the foregoing, so long as the Administrative Agent shall be entitled under Section 6 to make collections in respect of the Collateral, the Administrative Agent shall have the right and power to receive, endorse and collect all cheques payable to the order of the Corporation representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same. The Corporation hereby authorizes the Administrative Agent to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to the Corporation.

Without limiting the generality of the foregoing, the Corporation:

- (a) shall mark conspicuously each item of chattel paper and each related contract and, at the request of the Administrative Agent, each of its records pertaining to the Collateral with a legend, in form and substance satisfactory to the Administrative Agent, indicating that such chattel paper, related contract or Collateral is subject to the security interest granted hereby;
- (b) shall, if any Accounts Receivable shall be evidenced by a promissory note or other instrument or chattel paper, deliver and pledge to the Lender hereunder such note, instrument or chattel paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Lender;
- (c) shall give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements, consents, or other papers or amendments thereto, and other such instruments or notices, as may be necessary or desirable, or as the Administrative Agent may request, in order to create, preserve, perfect, maintain the perfection of or validate the security interest granted or purported to be granted hereby, or to enable the Administrative Agent to exercise and enforce its rights hereunder with respect to such security interest and, without limiting the foregoing, shall:

- (i) deliver and pledge to the Administrative Agent any and all chattel paper representing Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Administrative Agent;
- (ii) deliver to the Administrative Agent any and all certificates representing Collateral that is a certificated security (the "Pledged Certificated Securities") and other materials as may be required from time to time to provide the Administrative Agent with control over all Pledged Certificated Securities in the manner provided under Section 23 of the STA, and at the request of the Administrative Agent, will cause all Pledged Certificated Securities to be registered in the name of the Administrative Agent or its nominee;
- (iii) deliver to the Administrative Agent any and all such documents, agreements and other materials as may be required from time to time to provide the Administrative Agent with control over all Collateral that is an uncertificated security in the manner provided under Section 24 of the STA;
- (iv) deliver to the Administrative Agent any and all such documents, agreements and other materials as may be required from time to time to provide the Administrative Agent with control over all Collateral that is a security entitlement in the manner provided under Section 25 or 26 of the STA;
- (v) deliver to the Administrative Agent any and all such documents, agreements and other materials as may be required from time to time to provide the Administrative Agent with control over all Collateral that is a futures contract in the manner provided under subsection 1(2) of the PPSA;
- (vi) promptly from time to time upon request by the Administrative Agent enter into such control agreements, each in form and substance reasonably acceptable to the Administrative Agent, as may be required to perfect the security interest created hereby in any and all investment property, and will promptly furnish to the Administrative Agent true and complete copies thereof;
- (vii) promptly from time to time upon the request of the Administrative Agent, execute and deliver such short-form security agreements as the Administrative Agent may reasonably deem necessary or desirable to protect the interests of the Administrative Agent in respect of that portion of the Collateral consisting of Intellectual Property;
- (viii) promptly upon request of the Administrative Agent, with respect to any securities issued by an issuer that is organized outside of Canada, cause to be delivered to the Administrative Agent a securities pledge agreement covering such securities; and

- (ix) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as the Administrative Agent may reasonably require in order to reflect the security interests granted by this Agreement.
- (d) hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Corporation, where permitted by law; and
- (e) shall furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may request, all in reasonable detail.

#### 8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Corporation to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

#### 8.5 Notices

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

- (i) If to the Corporation:

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

Attention: Brian Reel, Senior Vice President and Chief Financial Officer

Facsimile: (416) 780-2159

with a copy to:

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

Attention: Dale Seymour

Facsimile: (416) 862-6666

(ii) If to the Administrative Agent:

GSO Special Situations Fund LP  
280 Park Avenue, 11<sup>th</sup> Floor  
Building East  
New York, New York 10017

Attention: Louis Salvatore and Matthew Bass  
Facsimile: (212) 503-6921

with a copy to:

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

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

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

#### **8.6 Continuing Security Interest and Discharge**

This General Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment and performance in full of the Obligations and the termination of the Credit Agreement, notwithstanding any dealing between the Administrative Agent and the Corporation in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provision of any security held for the Obligations.

If the Corporation pays to the Lenders and the Administrative Agent the Obligations secured by this General Security Agreement and otherwise observes and performs the terms and conditions hereof, then the Administrative Agent shall at the request and at the expense of the Corporation release and discharge the security interest created hereby and execute and deliver to the Corporation such deeds and other instruments as shall be requisite therefor.

#### **8.7 Governing Law**

This General Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the Province of Ontario.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE COURTS OF THE PROVINCE OF ONTARIO OR OF THE FEDERAL COURTS OF CANADA THEREIN, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE CORPORATION CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE CORPORATION IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION OR ANY OTHER JURISDICTION SELECTED BY THE LENDER IN RESPECT OF THIS AGREEMENT. THE CORPORATION WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF ONTARIO.

The parties hereto hereby waive trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity with respect to, in connection with, or arising out of this General Security Agreement, other financing agreements, the obligations of the Borrowers and the Corporation, the Collateral, or any instrument, document or guarantee delivered pursuant hereto or to any of the foregoing, or the validity, protection, interpretation, administration, collection or enforcement hereof or thereof, or any other claim or dispute hereunder or thereunder. The Corporation agrees that it will not assert against the Administrative Agent any claim for consequential, incidental, special, or punitive damages in connection with this General Security Agreement or the transactions contemplated hereby or thereby. No officer of the Administrative Agent has authority to waive, condition, or modify this provision.

#### **8.8 Security Interest Effective Immediately**

Neither the execution or registration of this General Security Agreement or any partial advances by the Administrative Agent shall bind the Administrative Agent to advance any other amounts to the Corporation. The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this General Security Agreement by the Corporation and the Corporation acknowledges that value has been given and that the Corporation has rights in the Collateral.

#### **8.9 No Collateral Warranties**

There is no representation, warranty or collateral agreement affecting this General Security Agreement or the Collateral, other than as expressed herein in writing.

#### **8.10 Joint and Several Liability**

If more than one Person executes this General Security Agreement as guarantor, their obligations under this General Security Agreement shall be joint and several.

#### **8.11 Provisions Reasonable**

The Corporation expressly acknowledges and agrees that the provisions of this General Security Agreement and, in particular, those respecting remedies and powers of the Lenders and the

Administrative Agent against the Corporation, its business and the Collateral upon default, are commercially reasonable and not manifestly unreasonable.

#### **8.12 Number and Gender**

In this General Security Agreement, words importing the singular number include the plural and vice-versa and words importing gender include all genders.

#### **8.13 Invalidity**

In the event that any term or provision of this General Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this General Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### **8.14 Precedence**

In the event that any provisions of this General Security Agreement contradict, are inconsistent with and are otherwise incapable of being construed in conjunction with the provisions (including any rights, remedies and covenants therein) of the Credit Agreement, the provisions of the Credit Agreement, as applicable, shall take precedence over those contained in this General Security Agreement and, in particular, if any act of the Corporation is expressly permitted under the Credit Agreement but is prohibited under this General Security Agreement, any such act shall be deemed to be permitted under this General Security Agreement.

#### **8.15 Judgement Currency**

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Corporation agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Corporation agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss. The term "rate of exchange" in this Section 8.15 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.



**8.16 Sections and Headings**

The division of this General Security Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

**8.17 Receipt of Copy**

The Corporation acknowledges receipt of an executed copy of this General Security Agreement.

**8.18 Assignment**

The obligations of the Corporation under this General Security Agreement are not assignable to any other Person without the prior written consent of the Administrative Agent. The Administrative Agent may, at any time, assign or transfer all or any of its rights and benefits hereunder to one or more Persons without the prior written consent of, but on notice to, the Corporation.

**8.19 Binding Effect**

All rights of the Lenders and the Administrative Agent hereunder shall enure to the benefit of its successors and assigns and all obligations of the Corporation hereunder shall bind the Corporation and its successors and permitted assigns.

**8.20 Intercreditor Agreement**

The Administrative Agent and the Corporation acknowledge that the exercise of certain of the Administrative Agent's rights and remedies and the Corporation's obligations hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement.

*The remainder of this page is intentionally left blank*

The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language.

Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.

IN WITNESS WHEREOF the Corporation has duly executed this General Security Agreement as of this 24<sup>th</sup> day of May, 2007.

**GF ACQUISITION CORP.**

Per: 

Name: JAMES M. DWORKIN

Title: PRESIDENT, SECRETARY AND TREASURER

Per: \_\_\_\_\_

Name:

Title:

**GSO SPECIAL SITUATIONS FUND LP**

By: GSO Capital Partners LP, as investment advisor

Per: \_\_\_\_\_

Name:

Title:

The parties hereto acknowledge that they have requested and are satisfied that the foregoing, as well as all notices, actions and legal proceedings be drawn up in the English language.

Les parties à cette convention reconnaissent qu'elles ont exigé que ce qui précède ainsi que tous avis, actions et procédures légales soient rédigés et exécutés en anglais et s'en déclarent satisfaites.

IN WITNESS WHEREOF the Corporation has duly executed this General Security Agreement as of this 24<sup>th</sup> day of May, 2007.

**GF ACQUISITION CORP.**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

**GSO SPECIAL SITUATIONS FUND LP**

By: GSO Capital Partners LP, as investment advisor

Per: \_\_\_\_\_

Name: George Fan

Title: Authorized Signature

**SCHEDULE 3.5(A)**  
**PLEDGED SECURITIES**

Nil.

# **EXHIBIT "D"**

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

---

***A Commissioner for Taking Affidavits***

AMENDING AGREEMENT

THIS AGREEMENT made as of December 23, 2016,

BETWEEN:

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

(hereinafter referred to as the "Borrower"),

- and -

**THE GUARANTORS THAT ARE PARTIES  
TO THE EXISTING CREDIT AGREEMENT  
(AS DEFINED BELOW),**

(hereinafter referred to as the "Guarantors"),

- and -

**THE LENDERS THAT ARE PARTIES TO  
THE EXISTING CREDIT AGREEMENT (AS  
DEFINED BELOW),**

(hereinafter referred to as the "Lenders"),

- and -

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION,**  
a National Banking Association formed under the  
laws of the United States, as Servicing Agent for the  
Lenders,

(hereinafter referred to as the "Servicing Agent")

- and -

**GSO CAPITAL PARTNERS, LP**  
a limited partnership formed under the laws of the  
State of Delaware, as Administrative Agent and  
Lead Arranger,

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

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

AND WHEREAS on September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD CP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions;

AND WHEREAS on September 10, 2008, OFS Agency Services, LLC ("**OFS**") was appointed the servicing agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent;

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

AND WHEREAS on June 16, 2009, the parties to this Agreement entered into an amended and restated credit agreement (the "**Third Amended and Restated Credit Agreement**") to amend certain covenants of the Borrower, and on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015 and July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016, November 29, 2016 and December 15, 2016, the parties to the Third Amended and Restated Credit Agreement made further amendments to the Third Amended and Restated Credit Agreement (the Third Amended and Restated Credit Agreement and all such amendments collectively referred to herein as the "**Existing Credit Agreement**");

AND WHEREAS on August 3, 2016, the Servicing Agent, OFS, the Borrower, the Lenders and the Administrative Agent entered into a succession servicing agent agreement whereby OFS resigned as the servicing agent and the Servicing Agent was appointed;

AND WHEREAS pursuant to the Existing Credit Agreement the Lenders made available to the Borrower a non-revolving credit facility in the aggregate principal amount of \$50,000,000 (the "**Facility**"), which is fully drawn;

AND WHEREAS the Borrower has requested the Lenders, and the Lenders have agreed, to increase the Facility by \$2,500,000 to facilitate the Borrower's ongoing working capital needs;



AND WHEREAS the parties wish to amend the Existing Credit Agreement on the terms and conditions set out herein;

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

## ARTICLE 1 INTERPRETATION

### 1.1 Capitalized Terms

All capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed in the Existing Credit Agreement.

### 1.2 Currency

All monetary amounts in this Agreement refer to Canadian Dollars.

### 1.3 References to Agreements

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

## ARTICLE 2 ACKNOWLEDGEMENT AND AGREEMENT

### 2.1 Acknowledgement of Obligations

The Borrower confirms, acknowledges and agrees that the principal amount of the outstanding Obligations existing as at December 27, 2016 is in the amount of \$36,025,316 plus accrued interest, fees and expenses and other amounts payable under the Loan Documents.

### 2.2 Additional Advance

Upon the terms and subject to the conditions of the Existing Credit Agreement, as amended pursuant to this Agreement, each of the Lenders hereby severally agree to make an amount equal to \$2,500,000 (the "Additional Advance") available to the Borrower in the amount of its Participation.

**ARTICLE 3**  
**AMENDMENTS TO EXISTING CREDIT AGREEMENT**

**3.1**            **Amendments to Section 1.1 – Definitions**

(a)     The following definitions shall be inserted following the definition of Acquired Indebtedness in Section 1.1 of the Existing Credit Agreement:

**"Additional Advance"** means the \$2,500,000 advanced by the Lenders to the Borrower pursuant to Section 2.3(b) hereof, as such amount may be reduced from time to time in the event of any prepayments made by the Borrower pursuant to Section 2.6 or Section 2.8;

**"Additional Advance Date"** means the date (which shall be a Banking Day), on which a Drawdown of the Additional Advance is made by the Borrower pursuant to a Drawdown Notice;"

(b)     The definition of "Advance" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced with the following:

**"Advance"** means collectively, the Initial Advance and the Additional Advance;"

(c)     The definition of "Facility" in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced with the following:

**"Facility"** means the non-revolving credit facility in an aggregate principal amount of \$52,500,000 made available to the Borrower by the Lenders as set forth in Article 2;"

(d)     The following definition shall be inserted following the definition of Indemnitee in Section 1.1 of the Existing Credit Agreement:

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

**3.2**            **Amendments to Article 2**

(a)     Section 2.1 of the Existing Credit Agreement is hereby amended by deleting the first sentence and replacing it with the following:

    "Upon the terms and subject to the conditions hereof, each of the Lenders hereby severally agrees to continue the outstanding Initial Advance and make the

Additional Advance available to the Borrower on the terms and conditions set forth herein and in the amount of its Participation."

(b) Section 2.2 of the Existing Credit Agreement is hereby amended by adding the following words after Stock Purchase Agreement on the last line thereof:

"and to fund the ongoing working capital needs of the Borrower."

(c) Section 2.3 of the Existing Credit Agreement is hereby replaced with the following:

"2.3 Availability

(a) The Borrower made a Drawdown on the Closing Date in an amount equal to the Initial Advance pursuant to an irrevocable Drawdown Notice given to the Administrative Agent on the Closing Date. The Borrower acknowledges having received the Initial Advance and agrees that no further monies shall be advanced to the Borrower on account of the Initial Advance. The amount of the Initial Advance shall be reduced upon prepayment of any portion thereof pursuant to the terms of this Article 2 and increased on such Interest Payment Date in accordance with Section 2.10(b).

(b) The Borrower may request the Additional Advance on not less than two days' prior notice given not later than 11:00 a.m. (Toronto time) by the Borrower to the Administrative Agent and the Lenders. The notice shall be substantially in the form of the Drawdown Notice and shall be irrevocable and binding on the Borrower once given by it to the Administrative Agent. The Additional Advance shall only be available in a single Drawdown of \$2,500,000. Upon receipt by the Administrative Agent of funds from the Lenders, the Administrative Agent will make such funds available to the Borrower in accordance with this Article 2. The amount of the Additional Advance shall be reduced upon prepayment of any portion thereof pursuant to the terms of this Article 2 and increased on such Interest Payment Date in accordance with Section 2.10(b)."

(d) The defined term "Advance" in Section 2.12 shall be deleted and replaced with the defined term "Initial Advance".

3.3 Amendments to Article 5

The first paragraph of Section 5.1 of the Existing Credit Agreement shall be amended by deleting the language after the words "each of the Administrative Agent and each Lender acknowledges and confirms that" and replacing it with the following language:

"it is relying upon such representations and warranties in having made and continuing the outstanding Initial Advance and making the Additional Advance hereunder, provided that in the case of the Additional Advance, the Administrative Agent and the Lenders acknowledge and agree that such

representations and warranties shall not apply to the Guarantor and the representations and warranties made in subparagraphs 5.1(m), (o), (aa), (cc) and (dd) and the representations and warranties that refer to a schedule to this Agreement which contains information that has been updated and provided to the Administrative Agent prior to the Additional Advance Date shall not apply to the Borrower."

**3.4            Replacement of Schedule 1.1(a)**

Schedule 1.1(a) shall be replaced with Schedule 1.1(a) attached hereto.

**3.5            Replacement of Exhibit A**

Exhibit A shall be replaced with Exhibit A attached hereto.

**ARTICLE 4**  
**CONDITIONS PRECEDENT**

**4.1            Conditions to Effectiveness**

This Agreement shall become effective upon satisfaction of the following conditions precedent by the Borrower (the date on which such satisfaction occurs, the "**Effective Date**"):

- (a) the Administrative Agent shall have received this Agreement duly executed and delivered by the Administrative Agent, the Lenders, the Borrower and the Servicing Agent;
- (b) the Administrative Agent shall have received written evidence that subparagraph (ii)(B) of the definition of "Borrowing Base" in the Revolving Credit Facility is amended for the period from the Effective Date until the earlier of (a) institution of proceedings by the Borrower for protection under the *Companies' Creditors Arrangement Act* (the "CCAA"), and (b) the expiration of the forbearance agreement dated June 6, 2016, as amended, between the Borrower, the Guarantor and the Revolving Lender (the "**Forbearance Agreement**"), or (c) the occurrence of any "Terminating Event" within the meaning of and pursuant to the Forbearance Agreement, excluding those Terminating Events that were expressly waived pursuant to Article 3 of the Amendment and Waiver Agreement among the Borrower, the Guarantor, Revolving Lender and the agent under the Revolving Credit Facility, dated August 12, 2016, with the result that the Borrowing Base is calculated on the basis of 95% of the appraised net orderly liquidation value of all Eligible Inventory and without duplication, all L/C Inventory (each as defined in the Revolving Credit Facility) for such period;
- (c) the Borrower, the Revolving Lender and the Administrative Agent shall have duly executed a letter setting out their collective understanding and support for the restructuring of the Borrower under the CCAA, substantially in the form of the letter attached hereto as Appendix A;

- (d) the Revolving Lender shall have consented to the terms of this Agreement in accordance with the terms of the Intercreditor Agreement and the Revolving Credit Facility and acknowledged that the Additional Advance shall constitute part of the Term Obligation, as that term is defined in the Intercreditor Agreement.

## **ARTICLE 5** **MISCELLANEOUS**

### **5.1           Consent**

The Required Lenders hereby consent to the Additional Advance for the purposes of Section 11.8 of the Existing Credit Agreement.

### **5.2           Representations and Warranties**

The Borrower hereby represents and warrant to the Lenders, the Servicing Agent and the Administrative Agent, solely with respect to the Borrower, that all consents, approvals and authorizations necessary for the Borrower's execution, delivery and performance of this Agreement have been obtained and hereby reaffirms the representations and warranties set forth in the Existing Credit Agreement as of the date hereof (except to the extent such representation or warranty expressly relates to an earlier date or as set out in or amended pursuant to the terms of this Agreement).

### **5.3           Loan Document**

This Agreement constitutes a Loan Document.

### **5.4           Confirmation of Security**

The security interests granted by the Borrower in favour of the Administrative Agent, as collateral agent for the benefit of the Lenders, pursuant to the Security Documents continue in full force and effect as continuing security for the due and timely payment and performance of the Obligations, notwithstanding any amendment to the Existing Credit Agreement resulting from this Agreement.

### **5.5           Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

### **5.6           Entire Agreement**

The Existing Credit Agreement, this Agreement and the other Loan Documents, constitute the entire agreement between the parties pertaining to the subject matter of the Existing Credit Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter of this Agreement or

the Existing Credit Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, or the other Loan Documents.

**5.7                    No other Amendments, Waivers or Consents**

This Agreement is made in amendment and modification of, but not in extinguishment of, the obligations set forth in the Existing Credit Agreement and, except as specifically modified pursuant to the terms hereof, the terms and conditions of the Existing Credit Agreement remain in full force and effect. Nothing herein shall limit in any way the rights and remedies of the Lenders under the Existing Credit Agreement. The execution, delivery and performance by the parties hereto does not in any way constitute a waiver, forbearance or other indulgence with respect to any default or event of default under the Existing Credit Agreement.

**5.8                    Counterparts**

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

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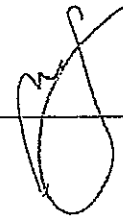
IN WITNESS WHEREOF the parties hereto have executed this Agreement.

GRAFTON-FRASER INC., as Borrower

By

Name:

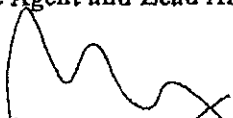
Title:



Mark G. Sun  
Vice President & CFO  
Grafton-Fraser Inc.

**GSO CAPITAL PARTNERS, LP, as  
Administrative Agent and Lead Arranger**

by

  
\_\_\_\_\_  
Name: MARISA BEENEY  
Title: AUTHORIZED SIGNATORY

by

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

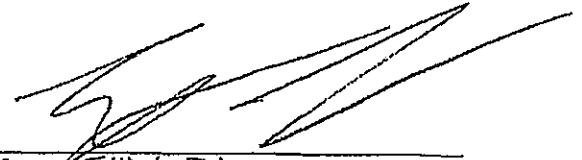


Address:

345 Park Avenue  
31st Floor  
New York, New York, 10154

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

by



Name: Elliot Eisenberger  
Title: A Manager

by

Name:  
Title: B Manager

Address:

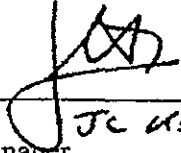
345 Park Avenue  
31st Floor  
New York, New York, 10154

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

by

\_\_\_\_\_  
Name:  
Title: A Manager

by


\_\_\_\_\_  
Name:   
Title: B Manager

Address:

345 Park Avenue  
31st Floor  
New York, New York, 10154

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

by



Name: Elliot Eisenberger  
Title: A Manager

by

Name: \_\_\_\_\_  
Title: B Manager

Address:

345 Park Avenue  
31st Floor  
New York, New York, 10154

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

by

\_\_\_\_\_  
Name:  
Title: A Manager

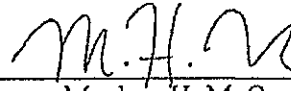
by

\_\_\_\_\_  
Name: JC Koch  
Title: B Manager

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Servicing Agent

By:

by



Name: Meghan H. McCauley  
Title: Assistant Vice President

SCHEDULE 1.1(A)

LENDERS AND COMMITMENTS

Name of Lender	Initial Advance	Additional Advance	Total Commitment
GSO Domestic Capital Funding (Luxembourg) S.A.R.L.	\$21,693,740	\$1,084,687	\$22,778,427
GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.	\$28,306,260	\$1,415,313	\$29,721,573
Total	\$50,000,000	\$2,500,000	\$52,500,000

**EXHIBIT A**  
**FORM OF DRAWDOWN NOTICE**

To: GSO Capital Partners LP, as Administrative Agent  
And To: Wilmington Trust, National Association, as Servicing Agent  
And To: The Lenders party to the Credit Agreement referred to below  
Attention: Louis Salvatore and Marc Baliotti

This Drawdown Notice is being delivered pursuant to the amended and restated credit agreement made as of June 16, 2009 and further amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015 and July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016 and November 29, 2016, December 15, 2016 and December 23, 2016 (as amended, the "**Credit Agreement**") made between the Borrower, the Guarantors that may become parties thereto from time to time, the Administrative Agent, the Servicing Agent and the Lenders parties thereto from time to time. Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

We hereby request the Additional Advance in the amount of \$2,500,000 and having an Interest Period of one month.

Payment instructions: \_\_\_\_\_  
\_\_\_\_\_

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

Other than the Events of Default identified in Schedule 3 of the forbearance agreement made as of June 6, 2016 and further amended on September 26, 2016, November 29, 2016 and December 15, 2016 made between the Borrower, the Guarantor, the Administrative Agent and the Lenders, no Default or Event of Default has occurred and is continuing, nor shall any such event occur as a result of making the requested Additional Advance or the application of proceeds therefrom.

DATED this \_\_\_\_\_ day of December, 2016.

**GRAFTON-FRASER INC.**

by

\_\_\_\_\_  
Name:

Title:



## APPENDIX A

December 23, 2017

Canadian Imperial Bank of Commerce  
199 Bay Street, 4<sup>th</sup> Floor  
Toronto, ON M5L 1A2

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

### Restructuring Transaction

This letter outlines our understanding of our collective support for restructuring Grafton-Fraser Inc. ("GFI") by means of supporting a filing pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA").

It is currently contemplated that GFI will initiate a CCAA proceeding for the purposes of running a sales and investor solicitation process against a stalking horse credit bid (the "**Stalking Horse Process**"). It is currently expected that the date of the initial CCAA application will be on or about January 16, 2017.

The stalking horse credit bid will be provided by the existing GSO lenders to GFI ("GSO") and be implemented pursuant to the terms of an asset purchase agreement to be negotiated (the "**Credit Bid**"). We also all understand that the Credit Bid will only be made if there will be continued availability, on closing, of the existing CIBC credit facility on terms acceptable to GSO. In that regard, we understand that CIBC is working and will continue to work in good faith, including through the continued review (together with its financial advisors) of the proposed business plan for GFI, towards being able to provide a firm commitment for such financing prior to the date of GFI's initial CCAA application.

In addition, during CCAA proceedings conducted to implement the Stalking Horse Process described above:

- a) CIBC expects to continue providing GFI with working capital financing under the existing CIBC credit facility in accordance with a mutually agreed to 13 week cash flow budget (the "**Budget**"), subject to CIBC's satisfaction with the terms of the (i) Stalking Horse Process, (ii) Orders granted in the CCAA proceedings, and (iii) the DIP Facility Loan Agreement described below;
- b) GSO expects to provide \$5.5 million of DIP financing pursuant to a DIP Facility Loan Agreement to be negotiated (the "**DIP**"), and GSO acknowledges that the DIP financing and any charge securing the DIP obligations will be consistent with the existing intercreditor agreement between, among others, GSO and CIBC; and

- c) GFI will conduct its affairs in accordance with the terms set out in the Credit Bid and DIP and any orders of the court made in the CCAA proceedings.

We also understand that GFI will require \$2.5 million of additional liquidity on or before January 1, 2017 in order to continue to meet its operating expenses prior to the date on which it should have all of the necessary documentation in place to make its initial CCAA application on the basis outlined above. Given the foregoing understandings, GSO is working and will continue to work in good faith to provide this \$2.5 million of additional liquidity by way of an amending agreement to its existing loan agreement.

We look forward to continuing to cooperate with you in mutual support of implementing the restructuring of GFI on the broad bases outlined above. In that regard, we would appreciate your concurrence to the foregoing by signing back an acknowledgement of this letter so that we all know that our broad expectations are aligned.

Yours very truly,

**GSO CAPITAL PARTNERS LP**

by

\_\_\_\_\_  
Name:

Title:

Acknowledged and consented to this \_\_\_\_ day of December, 2016.

**GRAFTON-FRASER INC.**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

by

\_\_\_\_\_  
Name:

Title:


by

\_\_\_\_\_  
Name:

Title:

# **EXHIBIT "E"**

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

  
\_\_\_\_\_  
***A Commissioner for Taking Affidavits***  
Dylan Choehla

**AMENDED AND RESTATED FORBEARANCE AGREEMENT**

**AMONG**

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

**- and -**

**2473304 ONTARIO INC.,  
as Guarantor**

**- and -**

**THE LENDERS THAT ARE PARTIES TO THE EXISTING CREDIT AGREEMENT,  
as the Lenders**

**- and -**

**GSO CAPITAL PARTNERS, LP,  
as Administrative Agent**

**DATED AS OF JANUARY 24, 2017**

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SCHEDULE 1 - FORM OF ABL FORBEARANCE AGREEMENT
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SCHEDULE 5 - EXISTING SECURITY

**AMENDED AND RESTATED FORBEARANCE AGREEMENT**

THIS AGREEMENT is dated as of January 24, 2017.

**A M O N G :**

**GRAFTON-FRASER INC.**

(hereinafter referred to as the "Borrower")

- and -

**2473304 ONTARIO INC.,**

(hereinafter referred to as the "Guarantor")

- and -

**THE LENDERS THAT ARE PARTIES TO THE EXISTING  
CREDIT AGREEMENT,**

(hereinafter referred to as the "Lenders")

- and -

**GSO CAPITAL PARTNERS, LP, as Administrative Agent and Lead  
Arranger, (hereinafter referred to in its capacity as administrative agent on  
behalf of the Lenders, as the "Administrative Agent")**

**CONTEXT:**

- A. GF Acquisition Corp. the predecessor by amalgamation to the Borrower, and GSO Special Situations Fund LP were parties to a credit agreement dated as of May 24, 2007 with the guarantors that may become from time to time parties thereto and the lenders that may become from time to time parties thereto (the "Original Credit Agreement").
- B. On September 10, 2008, GSO Special Situations Fund LP resigned as administrative agent and lead arranger under the Original Credit Agreement and BTD CP Holdings LP (formerly known as GSO Capital Partners LP and GSO CP Holdings LP) was appointed to such positions.
- C. On September 10, 2008, the Servicing Agent was appointed the Servicing Agent and agreed to assume certain responsibilities previously under the responsibility of the administrative agent.
- D. On September 10, 2008, the parties entered into an amended and restated credit agreement (the "Second Amended and Restated Credit Agreement") to reflect the resignation and appointments referred to above and certain other amendments set forth therein.



- E. On June 16, 2009, the parties entered into an amended and restated credit agreement (the "Third Amended and Restated Credit Agreement") as amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015 and February 12, 2016 (as may be further amended, restated, supplemented or otherwise modified from time to time, collectively the "Existing Credit Agreement").
- F. As of the date of this Agreement, the Borrower and the Guarantor are in default under the Existing Credit Agreement and the other Loan Documents.
- G. On June 7, 2016, the Guarantor commenced proceedings (the "JNY CCAA Proceedings") under the *Companies' Creditors Arrangement Act* (the "CCAA") and obtained from the Ontario Superior Court of Justice (Commercial List) (the "CCAA Court") an initial order (as amended, restated, supplemented or otherwise modified from time to time, the "JNY Initial Order") under the CCAA.
- H. The primary purpose of the JNY CCAA Proceedings was to give effect to a transaction for the orderly liquidation of the assets and undertaking of the Guarantor, the closing of stores of the Guarantor and the orderly distribution of the proceeds thereof (the "JNY Liquidation").
- I. The Borrower and the Guarantor requested and the Administrative Agent and the Lenders agreed, subject to the terms and conditions of a Forbearance Agreement between the Borrower, the Guarantor, the Administrative Agent and the Lenders, dated June 6, 2016 (the "Existing Forbearance Agreement") that the Administrative Agent and the Lenders would forbear from exercising the Administrative Agent's and Lenders' rights as a result of the Existing Defaults and the commencement and existence of the JNY CCAA Proceedings, to permit, *inter alia*, the Guarantor to give effect to the JNY Liquidation. The Forbearance Agreement was approved pursuant to the terms of the JNY Initial Order.
- J. The ABL Agent and the ABL Lenders under the ABL Credit Agreement also agreed to forbear from exercising their respective rights and remedies under the ABL Credit Agreement and security and other documents relating thereto, as amended by a forbearance agreement dated June 6, 2016 (the "Existing ABL Forbearance Agreement").
- K. The Existing Forbearance Agreement was subsequently amended pursuant to (a) an Amendment and Waiver Agreement dated August 12, 2016 (the "First Forbearance Amendment"), (b) a Second Amendment dated September 26, 2016 (the "Second Forbearance Amendment"), (c) a Third Amendment dated November 29, 2016 (the "Third Amendment"), and (d) a Fourth Amendment dated December 15, 2016 (the "Fourth Amendment").
- L. The Existing ABL Forbearance was also amended pursuant to (a) an Amendment and Waiver Agreement dated August 12, 2016, (b) a Second Amendment dated September 26, 2016, (c) a Third Amendment dated November 29, 2016, and (d) a Fourth Amendment dated December 15, 2016.

- M. The JNY Liquidation is now complete and the Guarantor is in the final stages of winding down its remaining activities and concluding the JNY CCAA Proceedings.
- N. The Borrower intends to apply to the CCAA Court for an initial order (the “GFI Initial Order”) granting it protection under the CCAA (such proceedings being the “GFI CCAA Proceedings”) and approving the debtor-in-possession facility loan agreement between the Lenders, the Administrative Agent, the Borrower and Wilmington Trust, National Association as servicing agent (the “DIP Agreement”), the other DIP Credit Documents and the DIP Lenders’ Charge (each as defined in the DIP Agreement). The primary purpose of the GFI CCAA Proceedings is to give effect to a sale and investment solicitation process (the “SISP”).
- O. The Borrower and an affiliate of the Administrative Agent (the “Purchaser”) propose to enter into an Asset Purchase Agreement (the “Stalking Horse APA”), pursuant to which the Purchaser would acquire the business of the Borrower on the terms set out in the Stalking Horse APA.
- P. The outside termination date under both the Existing ABL Forbearance Agreement and the Existing Forbearance Agreement, each as amended, is January 20, 2017 (the “Termination Date”).
- Q. The ABL Agent and the ABL lenders have agreed to amend and restate the Existing ABL Forbearance Agreement (as amended and restated, the “ABL Forbearance Agreement”) to, among other things, amend the Termination Date.
- R. The Administrative Agent and the Lenders also wish to amend and restate the Existing Forbearance Agreement on the terms set out herein to amend the Termination Date, to among other things (i) permit the completion of the JNY CCAA Proceedings and the wind-down of the Guarantor’s business, and (ii) allow for the commencement and existence of the GFI CCAA Proceedings.

THEREFORE, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Existing Credit Agreement and the Intercreditor Agreement, as applicable.

### 1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- 1.2.1 “ABL Forbearance Agreement” is defined under “Context” above.

- 1.2.2 “**Additional Default**” means: (i) a default or failure by the Borrower to comply with any of the terms, covenants or conditions under this Agreement, or (ii) a Default or an Event of Default of the Borrower (other than the Existing Defaults) under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement.
- 1.2.3 “**Agreement**” means this agreement, including all Schedules and Exhibits, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.4 “**Anticipated Defaults**” means any Events of Default arising or caused solely as a result of (i) the commencement or continuation of the GFI CCAA Proceedings or any acknowledgement of insolvency made in connection therewith, (ii) a sale and/or the orderly liquidation of the Borrower’s assets and undertaking, the closing of the stores and the orderly distribution of the proceeds thereof, pursuant to and resulting from the SISF, the Consulting Agreement or the Stalking Horse APA, or (iii) a bankruptcy of the Guarantor with the consent of the Administrative Agent, such consent not to be unreasonably withheld
- 1.2.5 “**Approved Cash Flow**” means the rolling 13-week period detailed cash flow forecast of the Borrower as attached as Schedule 2 hereto, as such cash flow may be amended, supplemented or replaced from time to time and at any time in accordance with the provisions of this Agreement and the DIP Agreement and in form and substance acceptable to the Administrative Agent and the Majority Lenders, acting reasonably.
- 1.2.6 “**BIA**” means the *Bankruptcy and Insolvency Act* (Canada).
- 1.2.7 “**Cash Flow Variance Report**” is defined under Section 4.1.8.
- 1.2.8 “**CCAA**” is defined under “Context” above.
- 1.2.9 “**CCAA Court**” is defined under “Context” above.
- 1.2.10 “**Claims**” and “**Claim**” are defined in Section 8.3.1.
- 1.2.11 “**Communication**” means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- 1.2.12 “**Consultant**” is defined in Section 2.3.7.
- 1.2.13 “**Consulting Agreement**” means that certain consulting agreement to be entered into by the Borrower and a joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC providing for the conduct of a liquidation or stores closing sale and other matters contemplated therein, approved by an Order of the CCAA Court.
- 1.2.14 “**Court Order**” means an order of the CCAA Court.

- 1.2.15 **“Credit Agreement”** means the Existing Credit Agreement as modified and amended by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.16 **“DIP Agreement”** is defined under “Context” above.
- 1.2.17 **“DIP Credit Documents”** is defined in the DIP Agreement.
- 1.2.18 **“DIP Facility”** is defined in the DIP Agreement.
- 1.2.19 **“Existing ABL Forbearance Agreement”** is defined under “Context” above.
- 1.2.20 **“Existing Credit Agreement”** is defined under “Context” above.
- 1.2.21 **“Existing Defaults”** means the Defaults or Events of Default under the Existing Credit Agreement as specified in Schedule 3 attached hereto, and the Anticipated Defaults.
- 1.2.22 **“Existing Forbearance Agreement”** is defined under “Context” above.
- 1.2.23 **“Existing Indebtedness”** means the outstanding Obligations existing as at the date hereof as more particularly described in Section 2.1.
- 1.2.24 **“Existing Security”** is defined in Section 2.4.
- 1.2.25 **“Extension Date”** is defined in Section 3.1.1.1.
- 1.2.26 **“First Forbearance Amendment”** is defined under “Context” above.
- 1.2.27 **“Fletcher Claim”** means the claim of 9148655 Canada Inc. as evidenced by the statement of claim dated May 27, 2016 and having Court File No. CV-16-553615.
- 1.2.28 **“Forbearance Agreement”** means the Existing Forbearance Agreement as amended and restated by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.29 **“Forbearance Period”** is defined in Section 3.1.1.
- 1.2.30 **“Fourth Forbearance Amendment”** is defined under “Context” above.
- 1.2.31 **“GFI CCAA Proceedings”** is defined under “Context” above.
- 1.2.32 **“GFI Initial Order”** is defined in the “Context” above.
- 1.2.33 **“JNY CCAA Proceedings”** is defined under “Context” above.
- 1.2.34 **“JNY Initial Order”** is defined in the “Context” above.
- 1.2.35 **“JNY Liquidation”** is defined in the “Context” above.

- 1.2.36 “**Loan Documents**” has the meaning given thereto in the Existing Credit Agreement and includes, without limitation, this Agreement.
- 1.2.37 “**Majority Lenders**” means, at any time, the Lenders whose outstanding commitments represent more than 50% of the sum of the total Advance.
- 1.2.38 “**Monitor**” is defined in Section 2.3.8.
- 1.2.39 “**Obligors**” or “**Obligor**” means the Borrower and the Guarantor or either of them.
- 1.2.40 “**Original Credit Agreement**” is defined under “**Context**” above.
- 1.2.41 “**Parties**” means, collectively, the Borrower, the Guarantor, the Administrative Agent and the Lenders; and “**Party**” means any one of them.
- 1.2.42 “**Purchaser**” is defined under “**Context**” above.
- 1.2.43 “**Releasees**” and “**Releasee**” are defined in Section 8.3.1.
- 1.2.44 “**Second Amended and Restated Credit Agreement**” is defined under “**Context**” above.
- 1.2.45 “**Second Forbearance Amendment**” is defined under “**Context**” above.
- 1.2.46 “**SISP**” is defined under “**Context**” above.
- 1.2.47 “**Specified Priority Payables**” means HST, sales Tax and any amount payable or accrued by the Borrower which is secured by a Lien which ranks or is capable of ranking prior to or *pari passu* with the Liens created in connection with the Existing Indebtedness, (other than the Permitted Encumbrances and the Administration Charge (each as defined in the Stalking Horse APA)) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Liens created in connection with the Existing Indebtedness.
- 1.2.48 “**Stalking Horse APA**” is defined under “**Context**” above.
- 1.2.49 “**Stalking Horse and SISP Order**” is defined under Section 3.1.2.
- 1.2.50 “**Successful Bid**” is defined in the SISP.
- 1.2.51 “**Terminating Event**” is defined in Section 6.5.
- 1.2.52 “**Third Amended and Restated Credit Agreement**” is defined under “**Context**” above.
- 1.2.53 “**Third Forbearance Amendment**” is defined under “**Context**” above.
- 1.2.54 “**Updated Cash Flow**” is defined under Section 4.1.8.

### **1.3 Entire Agreement**

This Agreement, together with the Existing Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

### **1.4 Amendment and Restatement**

This Agreement is and shall for all purposes be an amendment and restatement of the provisions of the Existing Forbearance Agreement, as amended by the First Forbearance Amendment, the Second Forbearance Amendment, the Third Forbearance Amendment and the Fourth Forbearance Amendment. This Agreement supersedes the Existing Forbearance Agreement, as amended, insofar as it, together with the Existing Credit Agreement, constitutes the entire agreement between the parties concerning the subject matter of this Agreement.

### **1.5 Business Day**

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

### **1.6 Certain Rules of Interpretation**

- 1.6.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- 1.6.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.6.3 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- 1.6.4 Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- 1.6.5 Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- 1.6.6 Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

**1.7 Schedules and Exhibits**

The following is a list of the Schedules and Exhibits attached hereto:

<b>Schedule</b>	<b>Subject Matter</b>	<b>Section Reference</b>
Schedule 1	Form of ABL Forbearance Agreement	1.2.1
Schedule 2	Approved Cash Flow	1.2.5
Schedule 3	Existing Defaults	1.2.21
Schedule 4	ABL Obligations	2.3.15
Schedule 5	Existing Security	1.2.24
Schedule 6	Minimum Receipt and Maximum Disbursement Covenant Levels	6.5.2

**ARTICLE 2  
ACKNOWLEDGMENT**

**2.1 Acknowledgement of Obligations**

Each Obligor confirms, acknowledges and agrees that the principal amount of the Existing Indebtedness as at January 20, 2017 is in the aggregate amount of \$39,121,915.35 plus accrued interest, fees and expenses and other amounts payable under the Loan Documents.

**2.2 Continuing Effect of Amendments**

The Parties hereto each acknowledge, confirm and agree that the Existing Credit Agreement remains in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Existing Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

## 2.3 Other Confirmations and Acknowledgements

Each Obligor confirms, acknowledges and agrees that:

- 2.3.1 each of the recitals in the "Context" is true and correct;
- 2.3.2 subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable upon demand by the Administrative Agent and that the Administrative Agent has the presently exercisable right to demand immediate payment from the Obligors of the outstanding Obligations under the Existing Credit Agreement;
- 2.3.3 the Existing Defaults (other than the Anticipated Defaults) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults (other than the Anticipated Defaults), exists under the Existing Credit Agreement or any other Loan Documents;
- 2.3.4 the Administrative Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- 2.3.5 interest and fees continue to accrue on the Existing Indebtedness under the Existing Credit Agreement and the other Loan Documents in accordance with the Existing Credit Agreement and the other Loan Documents and, subject to Section 3.3.1 of this Agreement, at the rates applicable to the Existing Indebtedness, which includes, without limitation, the interest accruing and payable under Section 2.15 of the Existing Credit Agreement;
- 2.3.6 each Obligor consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Administrative Agent and the Lenders under the Existing Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Administrative Agent and the Lenders (including, without limitation, the immediate appointment of a receiver, interim receiver or receiver and manager) upon the expiry of the Forbearance Period, subject to the Intercreditor Agreement;
- 2.3.7 Richter Consulting Canada Inc. has been retained by, or on behalf of, the Borrower, and has been appointed as the financial consultant (the "Consultant") to the Borrower in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations and the Administrative Agent is entitled to appoint any other consultants, as the Administrative Agent may require at the cost of the Obligors;
- 2.3.8 Richter Advisory Group Inc. (the "Monitor") is the proposed monitor under the GFI Initial Order in the GFI CCAA Proceedings and has consented to act in such capacity;
- 2.3.9 each Obligor will grant all access and provide, on two Business Days' notice and during normal business hours, all information and documentation to, and cause management thereof to otherwise fully cooperate with the Administrative Agent and the Lenders, and pay all reasonable fees and disbursements of each consultant appointed by the Administrative Agent as the Administrative Agent may require, and pay, in accordance



with the Approved Cash Flow, as the case may be, all reasonable fees and disbursements of the Monitor and the Monitor's counsel. The Borrower will also cause the Monitor to grant full access and provide all information and documentation to, and to otherwise cooperate fully with, the Administrative Agent and the Lenders;

- 2.3.10 the Borrower has made all deductions and paid its obligations for Priority Payables (as defined in the Existing Credit Agreement) as required by Applicable Law and is not in arrears in respect of these obligations;
- 2.3.11 the Administrative Agent has and will continue to have valid, enforceable and perfected first (in the case of Term Priority Collateral) or second (in the case of ABL Priority Collateral) ranking Liens, subject to Permitted Encumbrances, over and in respect of the Collateral granted to or held by the Administrative Agent from time to time as continuing and collateral security for the payment and performance of the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, subject to any court-ordered charge(s) approved by the Administrative Agent and the Majority Lenders and granted by the CCAA Court in the GFI CCAA Proceedings or JNY CCAA Proceedings, which may have priority over such Administrative Agent's Liens, including, in the case of the GFI CCAA Proceedings the Administration Charge, the ABL Lender's DIP Charge (solely in respect of ABL Priority Collateral) and Liens granted to the ABL Secured Parties (solely in respect of ABL Priority Collateral) and the Term DIP Lender's Charge each as defined in the GFI Initial Order;
- 2.3.12 the Existing Credit Agreement, the other Loan Documents to which each Obligor is a party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Obligor, enforceable against each such Obligor in accordance with their respective terms;
- 2.3.13 the Obligors do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Administrative Agent and the Lenders and if there are any such claims, then each Obligor hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- 2.3.14 the Administrative Agent and the Lenders are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- 2.3.15 the ABL Obligations owing by the Obligors is as set out in Schedule 4 attached hereto;
- 2.3.16 the Approved Cash Flow existing as at the date hereof covers the period from January 21, 2017 to May 28, 2017 and shall be the Approved Cash Flow referred to in, attached as Schedule "C" to, the DIP Agreement; and
- 2.3.17 this Agreement constitutes a Loan Document for all purposes of the Existing Credit Agreement and the other Loan Documents.

## 2.4 Security

The Obligors acknowledge and agree that the Security Documents delivered to, and Liens granted therein to, the Administrative Agent (including, without limitation, each Guarantee delivered by each such Obligor) as listed in Schedule 5 attached hereto (collectively, the "Existing Security") shall stand as security for the payment and performance of each and every one of the Obligors' obligations and indebtedness to the Administrative Agent and the Lenders including without limitation, the obligations under this Agreement and, in the case of the Borrower, subject to the CCAA Court issuing the GFI Initial Order, its obligations and indebtedness under the DIP Credit Documents.

### ARTICLE 3

#### FORBEARANCE IN RESPECT OF CERTAIN EVENTS OF DEFAULT

##### 3.1 Forbearance

3.1.1 In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Obligors contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Administrative Agent and the Lenders agree to forbear from exercising their rights and remedies under the Existing Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the "Forbearance Period") commencing on the date of this Agreement and ending on the earlier of:

3.1.1.1 subject to Section 3.1.2 and Section 3.1.3, the earlier of (a) January 30, 2017, or (b) the date upon which the Borrower obtains the GFI Initial Order, in form and substance satisfactory to the Majority Lenders and Administrative Agent (such date being, the "Extension Date"); and

3.1.1.2 the occurrence or existence of any Terminating Event.

3.1.2 Subject to Section 3.1.3, if the Borrower obtains the Initial Order on or before January 30, 2017 and the GFI Initial Order is not under appeal (other than an appeal that is frivolous and is being diligently contested by the Borrower), the Extension Date shall be the earlier of (a) February 7, 2017, or (b) the date the Borrower obtains an order of the CCAA Court (the "Stalking Horse and SISP Order"), among other things, (i) authorizing the Borrower to enter into the Stalking Horse APA, (ii) approving the SISP, and (iii) approving the Stalking Horse APA for the purpose of being the stalking horse bid under the SISP, in form and substance satisfactory to the Majority Lenders and Administrative Agent.

3.1.3 If the Borrower obtains the Stalking Horse and SISP Order on or before February 7, 2017, and such Order is not under appeal (other than an appeal that is frivolous and is being diligently contested by the Borrower), the Extension Date shall be June 15, 2017.

3.1.4 On the last day of the Forbearance Period, the obligation of the Administrative Agent and the Lenders under Section 3.1.1 to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the Administrative Agent and the Lenders to immediately, but subject to the Intercreditor Agreement, exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Obligors), including without limitation:

3.1.4.1 to set-off or consolidate or to accelerate or demand immediate payment of all of the Obligations or give other notices and, subject to providing five Business Days prior written notice, and enforce all of the Administrative Agent's and the Lenders' rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and

3.1.4.2 subject to providing five Business Days prior written notice, to appoint a receiver, interim receiver or receiver and manager or trustee in bankruptcy of any of the Obligors pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

### **3.2 No Other Waivers; Reservation of Rights**

The Administrative Agent and the Lenders have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Administrative Agent and the Lenders have not agreed to forbear with respect to any of their rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred prior to or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Administrative Agent and the Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

### **3.3 Fees, Interest and Other Amounts**

3.3.1 Notwithstanding Section 2.3.5 or any other provision of this Agreement or any provision within the Existing Credit Agreement or any other Loan Document, interest that is capitalized in accordance with Section 2.10(b) of the Existing Credit Agreement, as amended herein, shall bear interest from and after June 6, 2016 at the interest rate of 17% per annum.

**ARTICLE 4**  
**OBLIGATIONS OF THE OBLIGORS DURING FORBEARANCE PERIOD**

**4.1 Covenants of the Obligors**

During the Forbearance Period, the Borrower covenants and agrees as follows:

- 4.1.1 Subject to the provisions of any Court Order (including the GFI Initial Order) in each case that are not otherwise inconsistent with the terms of this Agreement and subject to the Stalking Horse APA, in all material respects, preserve current relations with, and the current goodwill of, customers, suppliers, employees, landlords, other stakeholders, any Governmental Authority and all other Persons having material business relationships with the Borrower;
- 4.1.2 to strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents and, subject to the CCAA Court issuing the GFI Initial Order, the DIP Credit Documents including, without limitation, terms requiring prompt payment to the Administrative Agent and the Lenders of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Administrative Agent;
- 4.1.3 the Borrower will obtain the prior written consent of the Majority Lenders prior to disseminating general written communications to any customer, supplier or employee group, landlords and other stakeholders in respect of the Stalking Horse APA or the CCAA Proceeding;
- 4.1.4 notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document and without the prior written consent of the Majority Lenders:
  - 4.1.4.1 except for a sale pursuant to a Successful Bid, the Consulting Agreement or the Stalking Horse APA, the Borrower will not sell, assign, lease, convey or otherwise dispose of all or any part of its property, assets or undertaking, except for the sales of Inventory in the ordinary course of the Borrower's business, or enter into any agreement to do so;
  - 4.1.4.2 make any payments outside the ordinary course of the Borrower's business, subject to the obligation to comply with the Approved Cash Flow in all material respects;
  - 4.1.4.3 notwithstanding the GFI Initial Order, disclaim any contract that is material to the Borrower's business except as otherwise contemplated or required under the Consulting Agreement or the Stalking Horse APA and approved by the Monitor;

- 4.1.4.4 notwithstanding the GFI Initial Order, amend or renew, extend the term, disclaim or accept the surrender of any real property lease except as otherwise contemplated or required under the Consulting Agreement or the Stalking Horse APA and approved by the Monitor;
- 4.1.4.5 except as otherwise contemplated in the GFI Initial Order or any other Court Order, establish or make any retention or bonus payments or amend the terms of the KERP (as defined in the GFI Initial Order);
- 4.1.5 the Borrower will forthwith provide to the Administrative Agent (at the cost of the Borrower):
  - 4.1.5.1 Deliver to the Agent: (i) within one Business Day of delivery thereof to the Monitor, copies of all daily sales and margin reports, monthly internal financial statements, liquidity and updates to the Approved Cash Flow that are reported weekly, together with any related or supporting information, provided to the Monitor; (ii) within one Business Day of receipt from the Monitor, any final, written reports, commentary or analysis received by the Borrower from the Monitor regarding the financial position of the Borrower or otherwise; and (iii) concurrent with the delivery of each weekly update to the Approved Cash Flow a report of invoiced and estimated accrued amounts owing to professionals who have the benefit of the Administration Charge (as defined in the GFI Initial Order);
  - 4.1.5.2 drafts of any Court Orders which are being sought by the Borrower to be confirmed in advance to be satisfactory to the Majority Lenders and the Administrative Agent, acting reasonably, subject to any amendments that are required by the Court or the Borrower that are acceptable to the Majority Lenders and the Administrative Agent, acting reasonably;
  - 4.1.5.3 for the period from the date of this Agreement until the GFI Initial Order has been issued by the CCAA Court, the following reporting information certified by the respective Chief Financial Officer (unless otherwise specified) of the Borrower and in form and detail satisfactory to the Administrative Agent:
    - 4.1.5.3.1 promptly after the Borrower learns of the receipt or occurrence thereof, a certificate of the Borrower, signed by a senior officer of the Borrower, specifying:
      - (a) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against the Borrower which could reasonably be expected to have a Material Adverse Effect;
      - (b) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any

Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual Property Rights of the Borrower which could reasonably be expected to have a Material Adverse Effect;

- (c) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
- (d) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of the Borrower with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action the Borrower is taking or proposes to take with respect thereto; and
- (e) any other event, development or condition which could reasonably be expected to have a Material Adverse Effect;

4.1.5.3.2 promptly, after receipt by the Borrower, a copy of any notice received by the Borrower in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of the Borrower; and

4.1.5.3.3 promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Administrative Agent from time to time.

4.1.6 **Security:** The Borrower will from time to time execute and deliver additional security documents and such supplements, amendments or additions as may be requested by the Administrative Agent to any of the existing Liens held by the Administrative Agent (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.

4.1.7 **Further Assurances:** The Borrower will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents and subject to the CCAA Court issuing the GFI Initial Order, the DIP Credit Documents or otherwise, that the Administrative Agent may require to ensure that the Administrative Agent has and continues to have full and complete Guarantees from each Obligor, a first ranking Lien on Term Priority Collateral and a second ranking Lien on ABL Priority Collateral, subject to Permitted Encumbrances and the Administration Charge, the ABL Lender's DIP Charge (solely in respect of ABL Priority Collateral) and Liens granted to the ABL Secured Parties (solely in respect of ABL Priority Collateral) and the Term DIP Lender's Charge each as defined in the GFI Initial Order, (including all

amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Administrative Agent).

- 4.1.8 **Approved Cash Flow:** On Thursday of each week, the Borrower, with the assistance of the Monitor, shall provide the Administrative Agent with a variance report (the “**Cash Flow Variance Report**”) certified by the Chief Financial Officer of the Borrower showing on a line-by-line basis actual receipts and disbursements and the total available liquidity for the last day of the prior week for the cumulative period since the commencement of the GFI CCAA Proceeding and for a rolling cumulative four-week period once the GFI CCAA Proceeding have been pending for four weeks and noting therein all variances on a line-by-line basis from the amounts in the Approved Cash Flow and shall include explanations for all material variances. The first Cash Flow Variance Report shall be delivered on February 16, 2017. The Borrower, with the assistance of the Monitor, may from time to time present the Administrative Agent with a revised 13-week detailed budget substantially in the form of the current Approved Cash Flow (the “**Updated Cash Flow**”). The Majority Lenders may agree to substitute the revised cash flow for the then current Approved Cash Flow, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Approved Cash Flow for the purposes hereof.
- 4.1.9 **Sale or Investment Solicitation Process:** The Borrower agrees, subject to CCAA Court approval thereof, to undertake and comply with the SISP and agrees that the Stalking Horse and SISP Order must be in form and substance satisfactory to the Majority Lenders and the Administrative Agent, acting reasonably.
- 4.1.10 **Consulting Agreement:** The Consulting Agreement shall be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably and the Borrower shall not amend the Consulting Agreement or enforce or decline to enforce its rights and remedies under the Consulting Agreement, without the prior written consent of the Majority Lenders.

**4.2 Covenants in the Existing Credit Agreement and the other Loan Documents**

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Obligors in the Existing Credit Agreement and the other Loan Documents or the DIP Credit Documents.

**ARTICLE 5  
AMENDMENTS TO EXISTING CREDIT AGREEMENT**

**5.1 Amendments to Existing Credit Agreement**

- 5.1.1 On the Effective Date, the definition of “Maturity Date” in Section 1.1 of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

““Maturity Date” means June 15, 2017.”; and

5.1.1.1 Section 2.10(b) of the Existing Credit Agreement shall be deleted in its entirety and replaced by the following:

““ (b) Interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed (including the first day of each Interest Period but excluding the last date thereof) and divided by 360. From April 30, 2016 to the earlier of the Maturity Date and the date of the occurrence of a Terminating Event, interest due and owing on the Interest Payment Date at the end of each Interest Period will, unless the Borrower elects to pay it in cash, be capitalized and added to principal on the applicable Interest Payment Date to the amounts owing under this Agreement in lieu of being paid by the Borrower in cash. The interest that is capitalized in accordance with this Section 2.10(b) shall form part of the principal amount of the outstanding Advance and shall bear interest at the Interest Rate plus 2% until paid in full to the Lenders. Notwithstanding the foregoing, the Borrower shall be entitled to notify the Administrative Agent prior to the expiry of an Interest Period that the interest due and owing on the Interest Payment Date for such Interest Period will, instead of being capitalized, be paid, in whole or in part, in cash by delivering to the Administrative Agent a cash interest notice, and upon delivery of such notice, such interest shall be due and owing in cash. Any interest occurring from and after the date of the occurrence of a Terminating Event shall be payable in cash in Canadian Dollars on demand.”

## ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

Each of the Obligors represents, warrants and covenants with and to the Administrative Agent and the Lenders as follows:

### 6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Borrower to the Administrative Agent and the Lenders in the Existing Credit Agreement or any of the other Loan Documents is, in all material respects, true and correct on the date of this Agreement.

### 6.2 Full Effect of Documents

This Agreement, the Existing Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.



**6.3 No Conflict**

The execution and delivery and performance of this Agreement by each Obligor will not violate any requirement of Applicable Law or any Material Contract of the Borrower, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

**6.4 The Administrative Agent May Pursue Rights and Remedies**

Nothing in this Agreement will prejudice the Administrative Agent and the Lenders' rights to pursue any of their rights or remedies including, without limitation, subject to the Intercreditor Agreement, from enforcing their rights under any of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

**6.5 Terminating Events**

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Administrative Agent, the occurrence of any of the following events (other than any such event that constitutes or gives rise to an Existing Default) will constitute a "Terminating Event" under this Agreement if such event is not cured within two Business Days of the Borrower receiving notice of the Terminating Event (to the extent such Terminating Event is capable of being cured):

6.5.1 if any Additional Default occurs;

6.5.2 if, on a cumulative basis tested weekly, in any given week, the actual Receipts (as described in the Approved Cash Flow) of the Borrower are less than their respective Minimum Cumulative Receipts amounts as shown on Schedule 6 hereto, or the aggregate amount of the actual Operating Disbursements and Non-Operating Disbursements (each as described in the Approved Cash Flow) of the Borrower are greater than their Maximum Cumulative Disbursements in amounts as shown on Schedule 6 hereto

6.5.3 if any Terminating Event (as defined in the ABL Forbearance Agreement as it exists as at the date of this Agreement) occurs;

6.5.4 if any Event of Default (as defined in the DIP Agreement) occurs, unless the Agent, the Lender and the Term Lenders mutually agree to waive such Event of Default;

6.5.5 if (a) the Borrower creates, incurs, assumes or permits to exist any Lien on any of its Property, undertaking or assets now owned or hereafter acquired, or (b) the CCAA Court makes any order declaring that all or part of the Borrower's Property is subject to a Lien in favour of any party other than the Administrative Agent and such court ordered charge purports to rank in any manner whatsoever in priority to any claim of the Administrative Agent under its Liens in the Security Documents, other than Permitted Encumbrances and any court-ordered charge(s) approved by the Majority Lenders and granted by the CCAA Court in the GFI CCAA Proceedings.

- 6.5.6 if any representation, warranty or other statement made or deemed to be made by the Borrower in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Administrative Agent and the Lenders as contemplated by this Agreement is untrue in any material respect;
- 6.5.7 if, other than the GFI CCAA Proceedings, any action is taken by or against or consented to by the Borrower to institute proceedings to be liquidated, adjudicated a bankrupt or insolvent or consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against the Borrower, or file a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws unless, in the case of any action taken against the Borrower in connection with any of the foregoing, such petition, application or proceeding is contested by the Borrower and is dismissed or stayed within 10 Business Days after the institution thereof (and in the case of a stay, such stay is continuing);
- 6.5.8 if any of the Obligors contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Existing Credit Agreement, any of the other Loan Documents or, to the extent that the CCAA Court has issued the GFI Initial Order, the DIP Credit Documents, or any liabilities and obligations to the Administrative Agent or the Lenders under or relating to this Agreement, the Existing Credit Agreement, any of the other Loan Documents or, to the extent that the CCAA Court has issued the GFI Initial Order, the DIP Credit Documents;
- 6.5.9 if any step is taken or event occurs that would materially prejudice or jeopardize the Administrative Agent's or the Lenders' priority rights with respect to the Term Priority Collateral or the ABL Priority Collateral under this Agreement, the Credit Agreement, the other Loan Documents or, to the extent that the CCAA Court has issued the GFI Initial Order, the DIP Credit Documents.

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Obligor or any other action whatsoever by the Administrative Agent, subject to Applicable Law.

## ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

### 7.1 Conditions Precedent

- 7.1.1 The forbearance and other accommodations granted by the Administrative Agent and the Lenders hereunder shall only be granted by the Administrative Agent and the Lenders if the following conditions precedent (the "Conditions Precedent") have been complied with in a manner satisfactory to the Administrative Agent on or before 3:00 p.m. (EDT) on January 25, 2017, or such other time or date as specified below:
- 7.1.1.1 the Administrative Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Obligors and

each of the Obligors undertakes to deliver an original executed copy of this Agreement to the Administrative Agent as soon as reasonably possible thereafter;

- 7.1.1.2 the payment of all fees, disbursements and taxes of Administrative Agent's legal counsel due and owing to Administrative Agent's legal counsel at such time, whether accrued in relation to the matters herein contemplated or otherwise in relation to the Existing Credit Agreement pursuant to a delivered invoice;
- 7.1.1.3 the Administrative Agent shall have confirmed to the Borrower that the Approved Cash Flow prepared by the Borrower to be filed with its CCAA materials are satisfactory to the Administrative Agent and Majority Lenders;
- 7.1.1.4 the Administrative Agent shall have received drafts of the GFI Initial Order, the Consulting Agreement, the Stalking Horse and SISP Order and the SISP and drafts of all supporting affidavits and reports to be filed in the GFI CCAA Proceedings, the list of creditors and the Approved Cash Flow and such materials shall be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- 7.1.1.5 the GFI Initial Order shall be in form and substance satisfactory to the Administrative Agent and the Lenders and shall, *inter alia*, provide that:
  - 7.1.1.5.1 each of the Administrative Agent and the Lenders shall at all times be treated as an "unaffected creditor" in the GFI CCAA Proceedings and in any plan of compromise or arrangement filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the Borrower thereafter including, without limitation, proceedings under the CCAA or the BIA and any stay of proceedings ordered by the CCAA Court in the GFI CCAA Proceedings shall not apply to the Administrative Agent and the Lenders, provided that if there are funds available under the DIP Facility, the Administrative Agent shall, to the extent of the funds available only, for a period of not less than five Business Days following notice of any Terminating Event or Event of Default (as defined in the DIP Agreement) continue to fund only the payment of 50% of the Specified Priority Payables (excluding HST and all sales Taxes) (and the ABL Lenders shall also fund 50% of the Specified Priority Payables (excluding HST and all sales Taxes)); and
  - 7.1.1.5.2 except as may be expressly consented to by the Administrative Agent, at no time on and at any time after the date of the GFI Initial Order shall all or part of the Borrower's property constituting Term Priority Collateral or ABL Priority Collateral be the subject of a court ordered security or charge in favour of any party where such security or charge is purported to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Administrative Agent or the Lenders in

respect of the Liens under the Security Documents, other than the Administration Charge, the ABL Lender's DIP Charge (solely in respect of ABL Priority Collateral) and Liens granted to the ABL Secured Parties (solely in respect of ABL Priority Collateral) each as defined in the GFI Initial Order.

- 7.1.1.6 the Administrative Agent shall have received satisfactory evidence that the ABL Agent has agreed to forbear from exercising any rights or remedies under the ABL Documents as a result of any default or event of default of the Obligors existing thereunder arising from the JNY CCAA Proceedings, the GFI CCAA Proceedings or otherwise, and delivery of an executed copy of the ABL Forbearance Agreement shall be satisfactory evidence thereof as well as shall constitute the consent by the Administrative Agent and the Lenders to the changes to the ABL Documents and other agreements contemplated thereby; and
- 7.1.1.7 all other documentation reasonably required by the Administrative Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Administrative Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Administrative Agent in its sole discretion.

The Conditions Precedent are for the sole benefit of the Administrative Agent and the Lenders and may be waived only by the Administrative Agent in writing. If the conditions precedent are not complied with to the satisfaction of the Administrative Agent as provided for above, and the Administrative Agent will not waive satisfaction thereof at its sole discretion, then the forbearance and other accommodations granted by the Administrative Agent hereunder shall be terminated.

## **ARTICLE 8 GENERAL**

### **8.1 Effect of this Agreement**

Except as modified by this Agreement, no other changes or modifications to the Existing Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Existing Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Obligors.

### **8.2 Costs and Expenses**

The Obligors hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Administrative Agent, on demand by the Administrative Agent at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Monitor, the Consultant, all counsel to the Administrative Agent, the Servicing Agent, the Lenders, any financial advisor retained by the Administrative Agent, the Servicing

Agent, the Lenders, all other consultants to and agents of the Administrative Agent, the Servicing Agent, the Lenders and all other expenses incurred by the Administrative Agent, the Servicing Agent, the Lenders in connection with this Agreement, the Existing Credit Agreement and the other Loan Documents including without limitation: (a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Existing Credit Agreement and the other Loan Documents and the administration of this Agreement, the Existing Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Administrative Agent, the Servicing Agent, the Lenders (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Obligor; in each of the foregoing events whether under the laws of Canada, Ontario or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law.

### 8.3 Release

- 8.3.1 In consideration of this Agreement and for other good and valuable consideration, each Obligor, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Administrative Agent, the Servicing Agent and the Lenders, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a "Claim" and collectively, "Claims") known or unknown, both at law or in equity, that such Obligor or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (a) this Agreement, the Existing Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Existing Credit Agreement or any of the other Loan Documents; (b) any and all proposed refinancings of the Borrower by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between the Lenders and the Borrower;
- 8.3.2 each Obligor understands, acknowledges and agrees that the release set out in Section 8.3.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and

- 8.3.3 each Obligor agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3.1.

#### **8.4 Survival of Representations and Warranties**

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Administrative Agent or the Lenders or any closing will affect the representations and warranties or the right of the Administrative Agent, the Servicing Agent or the Lenders to rely upon them.

#### **8.5 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada effective therein.

#### **8.6 Reviewed by Legal Counsel**

Each Obligor represents and warrants to the Administrative Agent and the Lenders that it:

- 8.6.1 understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- 8.6.2 has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Obligor may wish; and
- 8.6.3 has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

#### **8.7 Submission to Jurisdiction**

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto to determine all issues, *whether at law or in equity arising from this Agreement*. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that country, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to

enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

**8.8 Mutual Waiver of Jury Trial**

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Administrative Agent, the Servicing Agent, the Lenders and any Obligor, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Existing Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

**8.9 Time of Essence**

Time is of the essence in all respects of this Agreement.

**8.10 Unaffected Creditor Status of the Administrative Agent, the Servicing Agent and the Lenders**

The Administrative Agent, the Servicing Agent and the Lenders shall at all times be treated as an "unaffected creditor" in the GFI CCAA Proceedings and in any plan filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the Borrower thereafter including, without limitation, proceedings under the CCAA. The Borrower acknowledges that the Administrative Agent, the Servicing Agent and the Lenders have relied to their detriment on this covenant in entering into this Agreement.

**8.11 Notices**

Any Communication or notice delivered under this Agreement to the Obligors, the Administrative Agent, the Servicing Agent or the Lenders must be in writing and delivered in accordance with the Existing Credit Agreement.

**8.12 Further Assurances**

Each Obligor will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Administrative Agent to give effect to this Agreement and, without limiting the

generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

#### **8.13 Confirmation of Documents and Terms**

Each of the Obligors hereby agrees to the terms of this Agreement and confirms to and agrees with the Administrative Agent, the Servicing Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Advance and accommodations provided for or contemplated in the Existing Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

#### **8.14 No Merger or Novation**

All Security Documents, other Loan Documents and other documents and instruments provided to the Administrative Agent and the Lenders or otherwise entered into by the Obligors prior to the date hereof were and are in connection with the Advance and accommodations provided for or contemplated in the Existing Credit Agreement, there being no novation or merger of the Existing Credit Agreement (as amended pursuant to this Agreement), any of the Administrative Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Existing Credit Agreement (as amended by this Agreement) and the other Loan Documents.

#### **8.15 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

#### **8.16 Assignment and Enurement**

No Obligor will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Administrative Agent and the Lenders. The Administrative Agent and the Lenders may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Obligor. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.



### **8.17 Severability**

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

8.17.1.1 the legality, validity or enforceability of the remaining provisions of this Agreement; or

8.17.1.2 the legality, validity or enforceability of that provision in any other jurisdiction.

### **8.18 Counterparts**

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

### **8.19 Electronic Signatures**

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

### **8.20 Confidentiality**

All information provided to the Administrative Agent and the Lenders (or its officers, directors, employees, agents, representatives, advisors and legal counsel) pursuant to this Agreement shall be kept by the receiving party in the strictest confidence and shall not be disclosed to any third party or used by the receiving party except for the purpose hereunder. For greater certainty, the Administrative Agent and the Lenders shall keep such terms confidential and shall not disclose the same to anyone except (a) the Administrative Agent's and the Lenders' agents, employees, professional advisors or bankers on a "need to know" basis in connection herewith and then only on the basis that such persons also keep such terms confidential; (b) to the extent requested by any rating agency, regulatory authority, or other Governmental Authority, or their legal counsel; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which event, the disclosing party will promptly notify the Borrower of such requirement and if applicable law so permits, allow the Borrower to seek a protective order with respect thereto); (d) to any other Party to this Agreement; (e) in connection with the exercise of any action remedies under any Loan Document or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section 8.20 to (i) any actual or prospective assignee of or participant (or such assignee's or participant's advisors) in any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (g) to their auditors in connection with any audit; (h) to any financial institution, credit reporting agency or

credit bureau; (i) to any Person with whom the Borrower or the Guarantor may have or proposes to have financial dealings; or (j) with the consent of the Borrower. The confidentiality obligations in this Section 8.20 do not apply to any information which is or becomes generally available to the public, or was known to the receiving party (not being subject to any obligation of confidentiality) prior to receipt of information from the Borrower, the Guarantor, the Consultant or their advisors or which such party obtained from an independent third party who obtained the information lawfully and was under no obligation of confidentiality with respect to such information.

**8.21 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Existing Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail. To the extent that the CCAA Court has issued the GFI Initial Order, in the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the DIP Agreement or any other DIP Credit Document, the provisions of the DIP Agreement and DIP Credit Documents shall prevail.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**


Each of the Parties has executed and delivered this Agreement effective as of the 20<sup>th</sup> day of January, 2017.

GRAFTON-FRASER INC., as Borrower

Per: \_\_\_\_\_

Name:

Title:


  
**Mark G. Sun**  
Vice President & CFO  
Grafton-Fraser Inc.

2473304 ONTARIO INC., as Guarantor

Per:

Name:

Title:



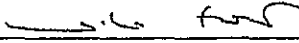
Mark Sun  
VP and CFO

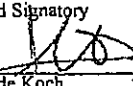
GSO CAPITAL PARTNERS, LP, as  
Administrative Agent and Lead Arranger

Per: \_\_\_\_\_

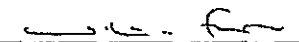
Name: *Daria Lee-Silveri*  
Title: *Authorized Person*

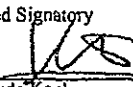
**GSO DOMESTIC CAPITAL FUNDING  
(LUXEMBOURG) S.A.R.L., as Lender**

Per:   
Name: William Foot  
Title: Authorized Signatory

Per:   
Name: Jean-Claude Koch  
Title: Authorized Signatory

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

Per:   
Name: William Foot  
Title: Authorized Signatory

Per:   
Name: Jean-Claude Koch  
Title: Authorized Signatory

**SCHEDULE 1**  
**FORM OF ABL FORBEARANCE AGREEMENT**

SEE ATTACHED

**AMENDED AND RESTATED FORBEARANCE AGREEMENT**

**AMONG**

**GRAFTON-FRASER INC. AND 2473304 ONTARIO INC.,  
as Borrowers**

**-- and --**

**CANADIAN IMPERIAL BANK OF COMMERCE,  
as the Lender and as the Agent**

**DATED AS OF JANUARY 24, 2017**



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**AMENDED AND RESTATED FORBEARANCE AGREEMENT**

THIS AGREEMENT is dated as of January 24, 2017.

**A M O N G :**

**GRAFTON-FRASER INC. and 2473304  
ONTARIO INC.** (each as Borrowers and  
Guarantors)

- and -

**CANADIAN IMPERIAL BANK OF  
COMMERCE**  
(as the Lender and as the Agent)

**CONTEXT:**

- A. The Agent and the Lender provided certain financing arrangements under a Credit Agreement dated as of February 12, 2016 among the Agent, the Lender, and Grafton-Fraser Inc. ("Grafton-Fraser") and 2473304 Ontario Inc. ("2473304"), as borrowers (as amended, restated or replaced, from time to time to the date hereof, the "Existing Credit Agreement").
- B. As of the date of this Agreement, the Borrowers are in default under the Existing Credit Agreement and the other Loan Documents, which defaults constitute one or more events of default thereunder as stipulated in Schedule "6" hereto;
- C. 2473304 applied to the Ontario Superior Court of Justice (Commercial List) (the "CCAA Court") for an initial order under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") on or about June 7, 2016 (the "JNY CCAA Proceedings"), and the Obligors requested the ongoing support of the Agent and the Lender during the JNY CCAA Proceedings. The primary purpose of the JNY CCAA Proceedings was to give effect to a transaction for the orderly liquidation of the assets and undertaking of 2473304, the closing of stores of 2473304 and the orderly distribution of the proceeds thereof (the "JNY Liquidation").
- D. The Borrowers requested that the Agent and the Lender continue to make available to the Borrowers certain credit facilities to meet their working capital requirements during the JNY CCAA Proceedings and to forbear from exercising the Agent's and Lender's rights as a result of the Existing Defaults that were present at that time and the commencement and existence of the JNY CCAA Proceedings, and that the Agent and the Lender extend credit and make advances to the Borrowers despite those Existing Defaults in order to support the ongoing working capital needs of Grafton-Fraser and 2473304 and, in particular, to permit 2473304 to give effect to the JNY Liquidation.
- E. The Agent and the Lender were willing to forbear from exercising their rights and remedies and to provide certain loans to the Borrowers during the JNY Liquidation on the

terms and conditions set out in a Forbearance Agreement dated June 6, 2016 (as amended from time to time, the "JNY Forbearance Agreement").

- F. The JNY Liquidation is now complete.
- G. Grafton-Fraser is applying to the CCAA Court for an initial order (as amended, restated, supplemented or otherwise modified from time to time, the "GFI Initial Order") under the CCAA on or about January 23, 2017 (the "GFI CCAA Filing Date") (such proceedings being the "GFI CCAA Proceedings"), and Grafton-Fraser requested the ongoing support of the Agent and the Lender during the GFI CCAA Proceedings. The primary purpose of the GFI CCAA Proceedings is to give effect to a sale and investment solicitation process, as more fully described hereinbelow (the "SISP").
- H. Grafton-Fraser requires funding to implement the SISP and has concluded that the Agent and the Lender and the lenders under the Term Loan Agreement are the most cost effective and timely sources of working capital funds that is available and appropriate in the circumstances for Grafton-Fraser in the GFI CCAA Proceedings.
- I. Grafton-Fraser has requested that the Agent and the Lender continue to make available to Grafton-Fraser certain credit facilities (collectively, the "Loans") to fund a portion of their working capital requirements during the GFI CCAA Proceedings as needed to permit Grafton-Fraser to give effect to the SISP.
- J. Grafton-Fraser has further requested that the Agent and the Lender forbear from exercising the Agent's and Lender's rights as a result of: (i) the Existing Defaults, (ii) the commencement and existence of the GFI CCAA Proceedings and the JNY CCAA Proceedings, and (iii) the cessation of the operations of 2473304, in each case to permit Grafton-Fraser to give effect to the SISP.
- K. Grafton-Fraser and 1104307 B.C. Ltd., an affiliate of the Term Administrative Agent, (the "Stalking Horse Purchaser") propose to enter into an Asset Purchase Agreement (the "Stalking Horse APA"), a form of which is attached hereto as Schedule 10, that will serve as a 'stalking horse' agreement in the SISP, pursuant to which the Stalking Horse Purchaser would acquire the business of Grafton-Fraser on the terms set out in the Stalking Horse APA.
- L. Canadian Imperial Bank of Commerce has provided the Stalking Horse Purchaser with a commitment letter (the "Exit Commitment") setting out the terms and conditions subject to which Canadian Imperial Bank of Commerce would propose to provide a credit facility to the the Stalking Horse Purchaser following closing of the transaction contemplated by the Stalking Horse APA.
- M. The Term Administrative Agent and the lenders under the Term Loan Agreement have agreed to provide up to \$5,500,000 in additional working capital financing during the SISP pursuant to a DIP Facility Loan Agreement dated as of January 24, 2017 in the form attached as Schedule 7 hereto being entered into contemporaneously with the execution and delivery hereof (the "Term DIP Agreement").

- N. The Term Administrative Agent and the lenders under the Term Loan Agreement have also agreed to forbear from exercising their respective rights and remedies under the Term Loan Agreement and security and other documents relating thereto, as amended and restated by a forbearance agreement of even date herewith in the form attached as Schedule 8 hereto being entered into contemporaneously with the execution and delivery hereof (the "Term Forbearance Agreement").
- O. The Agent and the Lender are willing to forbear from exercising their rights and remedies and to provide certain Loans to Grafton-Fraser during the Forbearance Period on the terms and conditions set out in this Agreement.
- P. This Amended and Restated Forbearance Agreement amends and restates in its entirety the JNY Forbearance Agreement and on the effective date of this Agreement (i) the rights and obligations of the parties under the JNY Forbearance Agreement shall be governed by this Amended and Restated Forbearance Agreement, and (ii) the loans outstanding in connection with the JNY Forbearance Agreement shall be included as Loans hereunder .

THEREFORE, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Existing Credit Agreement.

### 1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- 1.2.1 "ABL DIP Priority Charge" is defined in Section 7.1.1.5.2.
- 1.2.2 "Additional Default" means: (i) Grafton-Fraser's default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) a Default by Grafton-Fraser or an Event of Default of Grafton-Fraser (other than the Existing Defaults) under the Credit Agreement or any other Loan Document prior to or on or after the date of this Agreement.
- 1.2.3 "Agreement" means this agreement, including all Schedules and Exhibits, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.4 "Anticipated Defaults" means any Events of Default arising or caused solely as a result of (i) the commencement or continuation of the GFI CCAA Proceedings or any

acknowledgement of insolvency made in connection therewith, (ii) a sale and/or orderly liquidation of the Borrower's assets and undertaking, the closing of the stores and the orderly distribution of the proceeds thereof, pursuant to and resulting from the SISP, the Consulting Agreement or the Stalking Horse APA; (iii) entry into the Term Forbearance Agreement or the Term DIP Agreement; or (iv) a bankruptcy of 2473304 with the consent of the Agent, such consent not to be unreasonably withheld.

- 1.2.5 "Approved Cash Flow" means the rolling 13-week period detailed cash flow forecast of Grafton-Fraser as attached as Schedule 2 hereto, as such cash flow may be amended, supplemented or replaced from time to time and at any time in accordance with the provisions of this Agreement and the Term DIP Agreement and in form and substance acceptable to the Agent and the Lender.
- 1.2.6 "BIA" means the *Bankruptcy and Insolvency Act* (Canada).
- 1.2.7 "Cash Flow Variance Report" is defined under Section 4.1.13.
- 1.2.8 "CCAA" is defined under "Context", above.
- 1.2.9 "CCAA Court" is defined under "Context", above.
- 1.2.10 "Claims" and "Claim" are defined in Section 8.4.1.
- 1.2.11 "Communication" means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- 1.2.12 "Consultant" is defined in Section 2.3.7.
- 1.2.13 "Consulting Agreement" means that consulting agreement to be entered into by Grafton-Fraser and a joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC providing for the conduct of a liquidation or stores closing sale and other matters contemplated therein, approved by Order of the CCAA Court.
- 1.2.14 "Court Order" means an order of the CCAA Court.
- 1.2.15 "Credit Agreement" means the Existing Credit Agreement as modified and amended by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.16 "Extension Date" is defined in Section 3.1.1.1.
- 1.2.17 "Existing Credit Agreement" is defined under "Context" above.
- 1.2.18 "Existing Defaults" means the Defaults or Events of Default under the Existing Credit Agreement set out in Schedule 6 attached hereto, and the Anticipated Defaults.

- 1.2.19 "Existing Indebtedness" means the outstanding Obligations existing as at the date hereof as more particularly described in Section 2.1.
- 1.2.20 "Existing Security" is defined in Section 2.4.
- 1.2.21 "Forbearance Period" is defined in Section 3.1.1.
- 1.2.22 "GFI CCAA Filing Date" is defined under "Context" above.
- 1.2.23 "GFI CCAA Proceedings" is defined under "Context" above.
- 1.2.24 "GFI Initial Order" is defined in the "Context" above.
- 1.2.25 "JNY CCAA Proceedings" is defined in "Context" above.
- 1.2.26 "JNY Initial Order" is defined in "Context" above.
- 1.2.27 "JNY Liquidation" is defined in "Context" above.
- 1.2.28 "Loan Documents" has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- 1.2.29 "Loans" is defined under "Context" above.
- 1.2.30 "Monitor" is defined in Section 2.3.8.
- 1.2.31 "Non-Lender Accounts" is defined in Section 4.1.8.
- 1.2.32 "Obligors" or "Obligor" means the Borrowers or any of them.
- 1.2.33 "Parties" means, collectively, the Obligors, the Agent and the Lender; and "Party" means any one of them.
- 1.2.34 "Specified Priority Payables" means HST, all sales Taxes and any amount payable or accrued by Grafton-Fraser which is secured by a Lien which ranks or is capable of ranking prior to or pari passu with the Liens created in connection with the ABL DIP Priority Charge or the Existing Security (other than the Permitted Liens and the Administration Charge) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions and other statutory or other claims that have or may have priority over, or rank pari passu with, the Liens created in connection with the ABL Priority Charge or the Existing Security.
- 1.2.35 "Releasees" and "Releasee" are defined in Section 8.4.1.
- 1.2.36 "SISP" is defined under "Context" above.
- 1.2.37 "Stalking Horse APA" is defined under "Context" above.

- 1.2.38 "Stalking Horse Purchaser" is defined under "Context" above.
- 1.2.39 "Stalking Horse and SISP Order" is defined under Section 3.1.2.
- 1.2.40 "Successful Bid" is defined in the SISP.
- 1.2.41 "Term DIP Account" is defined in Section 4.1.8.
- 1.2.42 "Term DIP Agreement" is defined under "Context" above.
- 1.2.43 "Term Forbearance Agreement" is defined under "Context" above.
- 1.2.44 "Terminating Event" is defined in Section 6.5.
- 1.2.45 "Updated Cash Flow" is defined under Section 4.1.13.

### 1.3 Entire Agreement

This Agreement, together with the Existing Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

### 1.4 Amendment and Restatement

This Agreement is and shall for all purposes be an amendment and restatement of the provisions of the JNY Forbearance Agreement, as amended from time to time. This Agreement supersedes the JNY Forbearance Agreement, as amended, insofar as it, together with the Credit Agreement, constitutes the entire agreement between the parties concerning the subject matter of this Agreement.

### 1.5 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.



**1.6 Certain Rules of Interpretation**

- 1.6.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- 1.6.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.6.3 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- 1.6.4 Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- 1.6.5 Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- 1.6.6 Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

**1.7 Schedules and Exhibits**

The following is a list of the Schedules and Exhibits attached hereto:

<b>Schedule</b>	<b>Subject Matter</b>
Schedule 1	[Intentionally Deleted]
Schedule 2	Approved Cash Flow
Schedule 3	Existing Security
Schedule 4	Non-Lender Accounts
Schedule 5	Term DIP Account

<b>Schedule</b>	<b>Subject Matter</b>
Schedule 6	Existing Defaults
Schedule 7	Form of Term DIP Agreement
Schedule 8	Form of Term Forbearance Agreement
Schedule 9	SISP Timeline
Schedule 10	Stalking Horse APA
Schedule 11	Minimum Receipt and Maximum Disbursement Covenant Levels

## **ARTICLE 2 ACKNOWLEDGMENT**

### **2.1 Acknowledgement of Obligations**

Each Obligor confirms, acknowledges and agrees that the principal amount of the Existing Indebtedness as at January 24, 2017 is as follows: \$13,011,611.14 in respect of Borrowings by Grafton-Fraser and \$1,422,988.76 in respect of Borrowings by 2473304.

### **2.2 Continuing Effect of Amendments**

The Parties hereto each acknowledge, confirm and agree that the Existing Credit Agreement remains in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Existing Credit Agreement shall henceforth be read and construed in conjunction with this Agreement. For greater certainty, any amendments to the Existing Credit Agreement contained in the JNY Forbearance Agreement (as amended from time to time) shall no longer be effective.

### **2.3 Other Confirmations and Acknowledgements**

Each Obligor confirms, acknowledges and agrees that:

- 2.3.1 each of the recitals in the "Context" is true and correct;
- 2.3.2 subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable upon demand by the Agent and that the Agent has the presently exercisable right to demand immediate payment from the Obligors of the outstanding Obligations

- 2.3.2 subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable upon demand by the Agent and that the Agent has the presently exercisable right to demand immediate payment from the Obligors of the outstanding Obligations and to immediately terminate the credit facilities provided under the Existing Credit Agreement (the "Credit Facilities");
- 2.3.3 the Existing Defaults (other than the Anticipated Defaults) have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults (other than the Anticipated Defaults), exists under the Existing Credit Agreement or any other Loan Document;
- 2.3.4 the Agent and the Lender have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver, and the Obligors acknowledge, confirm and agree that notwithstanding any provision of the Credit Agreement to the contrary, the Agent and the Lender shall be under no obligation to continue the Commitment to Grafton-Fraser following the Forbearance Period;
- 2.3.5 interest and fees continue to accrue on the Existing Indebtedness under the Existing Credit Agreement and the other Loan Documents in accordance with the Existing Credit Agreement and the other Loan Documents and, subject to Section 3.3.3 of this Agreement, at the rates applicable to the Existing Indebtedness;
- 2.3.6 each Obligor consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Agent and the Lender under the Existing Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Agent and the Lender (including, without limitation, the immediate appointment of a receiver, interim receiver or receiver and manager) upon the expiry of the Forbearance Period, subject to the Intercreditor Agreement;
- 2.3.7 Richter Consulting Canada Inc. has been retained by, or on behalf of, Grafton-Fraser, and has been appointed as the financial consultant (the "Consultant") to Grafton-Fraser in respect of, *inter alia*, this Agreement, the Credit Agreement, the other Loan Documents and the outstanding Obligations and the Agent is entitled to appoint any other consultants as the Agent may require at the cost of the Obligors;
- 2.3.8 Richter Advisory Group Inc. (the "Monitor") is the proposed monitor under the GFI Initial Order in the GFI CCAA Proceedings and has consented to act in such capacity;
- 2.3.9 each Obligor will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and cause management thereof to otherwise cooperate fully with the Agent and the Lender, and pay all reasonable fees and disbursements of each consultant appointed by the Agent as the Agent may require, and pay, in accordance with the Approved Cash Flow, as the case may be, all reasonable fees and disbursements of the Monitor and the Monitor's counsel. Grafton-Fraser will also cause the Consultant and the Monitor to grant full access and provide all information and documentation to, and to otherwise co-operate fully with,

the Agent and the Lender. All such information and documentation provided to the Agent and the Lender shall be subject to Section 9.12 of the Credit Agreement;

- 2.3.10 Grafton-Fraser has made all deductions and paid its obligations for Specified Priority Payables as required by Applicable Law and is not in arrears in respect of these obligations;
- 2.3.11 the Agent has and will continue to have valid, enforceable and perfected first (in the case of ABL Priority Collateral (as defined in the Intercreditor Agreement)) or second (in the case of Term Priority Collateral (as defined in the Intercreditor Agreement)) ranking Liens, subject to Permitted Liens over and in respect of the Collateral granted to or held by the Agent from time to time as continuing and collateral security for the payment and performance of the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, subject to any court-ordered charge(s) approved by the Agent and the Lender and granted by the CCAA Court in the GFI CCAA Proceedings, which may have priority over such Agent's Liens, including, in the case of the GFI CCAA Proceedings, the Administration Charge, the Term Lenders' DIP Charge (solely in respect of the Term Priority Collateral) and Liens granted to the Term Lenders (solely in respect of the Term Priority Collateral), each as defined in the GFI Initial Order;
- 2.3.12 the Existing Credit Agreement, the other Loan Documents to which each Obligor is party and this Agreement are in full force and effect and constitute legal, valid and binding obligations of each Obligor, enforceable against each such Obligor in accordance with their respective terms;
- 2.3.13 the Obligors do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Agent and the Lender and if there are any such claims, then each Obligor hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- 2.3.14 the Agent and the Lender are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- 2.3.15 *Permitted Term Debt* owing by the Obligors as at January 20, 2017 is in an aggregate amount of \$39,121,915.35;
- 2.3.16 the Approved Cash Flow existing as at the date hereof covers the period from January 21, 2017 to May 28, 2017; and
- 2.3.17 this Agreement constitutes a Loan Document for all purposes of the Existing Credit Agreement and the other Loan Documents.

## 2.4 Security

In addition to the security created pursuant to the ABL DIP Priority Charge, the Obligors acknowledge and agree that the Security Documents delivered to, and Liens granted therein to, the Agent (including, without limitation, each Guarantee delivered by each such Obligor) as listed in Schedule 3 attached hereto (collectively, the "Existing Security") shall stand as security for the payment and performance of each and every one of the Obligors' obligations and indebtedness to the Agent and the Lender including without limitation, the Borrowings of Grafton-Fraser under the Credit Agreement, as amended hereby, and all other outstanding Obligations.

## ARTICLE 3 FORBEARANCE IN RESPECT OF CERTAIN EVENTS OF DEFAULT

### 3.1 Forbearance

3.1.1 In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Obligors contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Agent and the Lender agree to forbear from exercising their rights and remedies under the Existing Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the "Forbearance Period") commencing on the date of this Agreement and ending on the earlier of:

3.1.1.1 Subject to Section 3.1.2 and Section 3.1.3, the earlier of (a) January 30, 2017, or (b) the date upon which Grafton-Fraser obtains the GFI Initial Order, in form and substance satisfactory to the Agent and the Lender (such date being, the "Extension Date");

3.1.1.2 the implementation date of any plan of compromise and/or arrangement under the GFI CCAA Proceedings or the consummation of a sale or investment transaction for the business of Grafton-Fraser pursuant to the SISP, including the transaction contemplated by the Stalking Horse APA; or

3.1.1.3 the occurrence or existence of any Terminating Event.

3.1.2 Subject to Section 3.1.3, if Grafton-Fraser obtains the GFI Initial Order in form and substance satisfactory to the Agent and the Lender on or before January 30, 2017 and the GFI Initial Order is not under appeal (other than an appeal that is frivolous and that is being diligently contested by Grafton-Fraser) and all conditions necessary to permit Grafton-Fraser to obtain advances under the Term DIP Agreement have been

satisfied or waived by all parties to the Term DIP Agreement, the Extension Date shall be the earlier of (a) February 7, 2017, or (b) the date Grafton-Fraser obtains an order of the CCAA Court (the "Stalking Horse and SISP Order"), among other things, (i) authorizing Grafton-Fraser to enter into the Stalking Horse APA, (ii) approving the SISP, and (iii) approving the Stalking Horse APA for the purpose of being the stalking horse bid under the SISP, in form and substance satisfactory to the Agent and the Lender.

3.1.3 If Grafton-Fraser obtains the Stalking Horse and SISP Order on or before February 7, 2017, and such Order is not under appeal (other than an appeal that is frivolous and that is being diligently contested by Grafton-Fraser), the Extension Date shall be June 15, 2017.

3.1.4 On the last day of the Forbearance Period, the agreement of the Agent and the Lender to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the Agent and the Lender to immediately, but subject to the Intercreditor Agreement, exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Obligors), including without limitation:

3.1.4.1 to immediately terminate the Credit Facility and cease to make any further Loans, upon which no further credit will be available thereunder;

3.1.4.2 to set-off or consolidate or to accelerate or demand immediate payment of all of the Obligations or give other notices and, subject to providing five (5) Business Days prior written notice, enforce all of the Agent's and the Lender's rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and

3.1.4.3 subject to providing five (5) Business Days prior written notice, to appoint a receiver, interim receiver or receiver and manager or trustee in bankruptcy of any of the Obligors pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

### 3.2 No Other Waivers; Reservation of Rights

The Agent and the Lender have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Agent and the Lender have not agreed to forbear with respect to any of their rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Agent and the Lender have not waived any of such rights or remedies,

and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

3.3.1 In consideration of the agreements set out in this Agreement, Grafton-Fraser agrees to pay to the Agent, for the benefit of the Lender, an amendment and forbearance fee in the amount of \$125,000 which shall be fully earned as at the date of this Agreement and is to be paid immediately upon the execution and delivery of this Agreement (the "Forbearance Fee").

3.3.2 The Forbearance Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Existing Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrowers maintained by the Lender. The Forbearance Fee will be fully earned by the Agent and the Lender despite any failure by any Obligor to comply with any other term of this Agreement.

3.3.3 Notwithstanding Section 2.3.5 or any other provision of this Agreement or any provision within the Existing Credit Agreement or any other Loan Document:

3.3.3.1 Canadian Prime Loans and Base Rate Loans to Grafton-Fraser shall be made at the Canadian Prime Rate plus 3.00% per annum or the Base Rate plus 3.00% per annum, as applicable, with interest accruing from day to day from the date of each such Borrowing; and

3.3.3.2 Grafton-Fraser shall pay to the Agent for the account of the Lender, an Unused Line Fee for the period commencing on the GFI CCAA Filing Date in relation to its portion of the Credit Facility and at all times thereafter until its Obligations have been permanently and irrevocably repaid in full and the Credit Facility has been permanently and irrevocably reduced to nil, computed at a rate of 0.50% per annum on the average daily excess amount of Grafton-Fraser's Commitment (as amended pursuant to Article 5) over its Exposure (but excluding, solely for the purpose of this Section 3.3.3.2, any F/X Exposure of Grafton-Fraser), which Unused Line Fee shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Credit Facility terminates) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Credit Facility terminates, as the case may be) with the Unused Line Fee being computed on the basis of a year of 365 or 366 days, as the case may be, and payable for the actual number of days elapsed (including the first day but excluding the last day); and

- 3.3.3.3 the Letter of Credit Fee, for the purposes of this Agreement and the Credit Agreement, is increased to: (a) in respect of documentary Letters of Credit, 1.75% per annum, and (b) in respect of standby Letters of Credit, 2.50% per annum; in each case, on the face amount of each Letter of Credit issued by the Issuing Bank to Grafton-Fraser.

#### ARTICLE 4 OBLIGATIONS OF THE OBLIGORS DURING FORBEARANCE PERIOD

##### 4.1 Covenants of the Obligors

During the Forbearance Period, Grafton-Fraser covenants and agrees as follows:

- 4.1.1 subject to the provisions of any Court Order (including the GFI Initial Order) in each case that are not otherwise inconsistent with the terms of this Agreement and subject to the Stalking Horse APA, Grafton-Fraser will in all material respects, preserve current relations with, and the current goodwill of, customers, suppliers, employees, landlords, other stakeholders, any Governmental Authority and all other Persons having material business relationships with Grafton-Fraser;
- 4.1.2 subject to the GFI Initial Order, Grafton-Fraser will pay all applicable Taxes that are Specified Priority Payables, permitting and license fees and rents and other amounts necessary to preserve the Collateral and to avoid any Lien thereon and pay all amounts due under any utility contracts;
- 4.1.3 Grafton-Fraser will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents and, subject to the CCAA Court issuing the GFI Initial Order, the Term DIP Agreement and the other Term DIP Credit Documents (as defined in the GFI Initial Order), including, without limitation, terms requiring prompt payment to the Agent and the Lender of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement, or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Agent;
- 4.1.4 Grafton-Fraser will obtain the prior written consent of the Agent prior to disseminating general written communications to any customer, supplier or employee group, landlords and other stakeholders in respect of the Stalking Horse APA or the CCAA Proceeding;
- 4.1.5 All motions, orders and other pleadings and related documents filed or submitted to the CCAA Court by Grafton-Fraser shall be consistent with the terms hereof and all Court Orders shall not be inconsistent with or have an adverse impact in any material



respect on the rights, remedies or interests of the Agent or the Lender unless otherwise agreed to by the Agent and the Lender;

4.1.6 notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document, and unless otherwise consented to in writing by the Lender and the Agent:

4.1.6.1 except for a sale pursuant to a Successful Bid, the Consulting Agreement or the Stalking Horse APA, Grafton-Fraser will not sell, assign, lease, convey or otherwise dispose of all or any part of its property, assets or undertaking, except for the sales of Inventory in the ordinary course of Grafton-Fraser's business, or enter into any agreement to do so;

4.1.6.2 Grafton-Fraser will not make any payments outside the ordinary course of its business, subject to the obligation to comply with the Approved Cash Flow in all material respects;

4.1.6.3 Notwithstanding the GFI Initial Order, Grafton-Fraser will not disclaim any contract that is material to Grafton-Fraser's business except as otherwise contemplated or required under the Consulting Agreement or the Stalking Horse APA or any Successful Bid and approved by the Monitor on prior notice to the Agent; and

4.1.6.4 Grafton-Fraser will not amend or renew, extend the term, disclaim or accept the surrender of any real property lease except as otherwise contemplated or required under or in connection with the Consulting Agreement, the Stalking Horse APA or any Successful Bid and approved by the Monitor and on prior notice to the Agent.

4.1.7 Grafton-Fraser will forthwith provide to the Agent (at the cost of Grafton-Fraser):

4.1.7.1 (i) within one Business Day of delivery thereof to the Monitor, copies of all daily sales and margin reports, monthly internal financial statements and updates to the Approved Cash Flow that are reported weekly, together with any supporting information provided to the Monitor; (ii) within one Business Day of receipt from the Monitor, any final written reports, commentary or analysis received by Grafton-Fraser from the Monitor regarding the financial position of Grafton-Fraser or otherwise; and (iii) concurrent with the delivery of each weekly update to the Approved Cash Flow a report of invoiced and estimated accrued amounts owing to professionals who have the benefit of the Administration Charge;

4.1.7.2 drafts of any Court Orders which are being sought by Grafton-Fraser to be confirmed in advance to be satisfactory to the Agent and the Lender, acting reasonably, subject to any amendments that are required by the Court or Grafton-Fraser that are acceptable to the Agent and the Lender, acting reasonably;

4.1.7.3 the following reporting information certified by the Chief Financial Officer (unless otherwise specified) of Grafton-Fraser and in form and detail satisfactory to the Agent:

4.1.7.3.1 the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof), including, without limitation, effective immediately, (a) the financial information pursuant to Section 5.1(b) of the Credit Agreement, and (ii) a Borrowing Base Report for Grafton-Fraser (it being also acknowledged and agreed by the Obligors that the Weekly Reporting Trigger Period has commenced and is continuing);

4.1.7.3.2 promptly after Grafton-Fraser learns of the receipt or occurrence thereof, a certificate Grafton-Fraser, signed by a senior officer of Grafton-Fraser, specifying:

- (a) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against Grafton-Fraser Obligor which could reasonably be expected to have a Material Adverse Effect;
- (b) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or Intellectual Property Rights of Grafton-Fraser which could reasonably be expected to have a Material Adverse Effect;
- (c) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default;
- (d) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of Grafton-Fraser with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default

and what action Grafton-Fraser is taking or proposes to take with respect thereto; and

- (e) any other event, development or condition which could reasonably be expected to have a Material Adverse Effect;

4.1.7.3.3 promptly:

- (a) after receipt by Grafton-Fraser, a copy of any notice received by Grafton-Fraser in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of Grafton-Fraser,
- (b) provide the Agent and the Lender with any written restructuring, liquidation or sale proposal that is received by Grafton-Fraser, the Monitor, the Consultant or their respective advisors, which written proposals shall be subject to the SISP and Section 9.12 of the Credit Agreement; and

4.1.7.3.4 promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement, the Term DIP Agreement or any other Loan Document or as may be otherwise reasonably required by the Agent from time to time.

4.1.8 **Use of Non-Lender Accounts:** Grafton-Fraser agrees that at all times all of its deposit accounts shall be Blocked Accounts maintained with the Agent save and except for the deposit accounts listed on Schedule 4 hereto (the "Non-Lender Accounts") and the account listed on Schedule 5 hereto (the "Term DIP Account"). The full amount of all credit balances in the Non-Lender Accounts shall be transferred each Business Day to a Grafton-Fraser Blocked Account held at a branch of the Agent which continues to be used in the ordinary course for such deposits and transfers. Each of the Non-Lender Accounts shall only be used for receiving deposits from retail store locations where no branch of the Agent is reasonably proximate to such location for the purpose of such deposits and shall only be used for deposits in the ordinary course of business of Grafton-Fraser in respect of such applicable retail location.

4.1.9 **Use of Term DIP Account:** The Term DIP Account shall only be used for receiving and holding advances under the Term DIP Agreement and disbursing those advances in accordance with the Term DIP Agreement.

4.1.10 **Security:** Grafton-Fraser will from time to time execute and deliver additional security documents and such supplements, amendments or additions as may be

requested by the Agent to any of the existing Liens held by the Agent (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.

- 4.1.11 **Suspension of Existing Financial Covenant:** The Obligors and the Agent agree that compliance with the financial covenant set forth in Section 5.12 of the Existing Credit Agreement shall be temporarily suspended, and the Agent will not exercise any of the rights under the Existing Credit Agreement or the other Loan Documents solely in respect of any breach of such financial covenant, before or during the Forbearance Period.
- 4.1.12 **Further Assurances:** Grafton-Fraser will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Agent may require to ensure that the Agent has and continues to have full and complete Guarantees from each Obligor and a first ranking Lien on ABL Priority Collateral and a second ranking Lien on Term Priority Collateral, subject to Permitted Liens and the Administration Charge, the Term DIP Lender's Charge (solely in respect of Term Priority Collateral) and Liens granted to the Term Lenders (solely in respect of Term Priority Collateral) each as defined in the GFI Initial Order (including all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Agent).
- 4.1.13 **Approved Cash Flow:** On Thursday of each week, Grafton-Fraser, with the assistance of the Monitor, shall provide the Agent with a variance report (the "Cash Flow Variance Report") certified by the Chief Financial Officer of Grafton-Fraser showing on a line-by-line basis actual receipts and disbursements and the total available liquidity for the last day of the prior week for the cumulative period since the commencement of the GFI CCAA Proceeding and for a rolling cumulative four-week period once the GFI CCAA Proceeding have been pending for four weeks and noting therein all variances on a line-by-line basis from the amounts in the Approved Cash Flow and shall include explanations for all material variances. The first Cash Flow Variance Report shall be delivered on February 16, 2017. Grafton-Fraser, with the assistance of the Monitor, may from time to time present the Agent with a revised 13-week detailed budget substantially in the form of the current Approved Cash Flow (the "Updated Cash Flow"). The Agent may agree to substitute the revised cash flow for the then current Approved Cash Flow, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Approved Cash Flow for the purposes hereof and a revised schedule of Minimum Receipts and Maximum Disbursements Covenant Levels corresponding to the Updated Cash Flow shall thereafter be deemed to be the effective Schedule 11 for the purposes hereof.
- 4.1.14 **Pre-Filing Borrowings:** Grafton-Fraser shall seek and obtain, as part of the GFI Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the

Agent and the Lender, authorizing and directing Grafton-Fraser to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by Grafton-Fraser to the Agent and the Lender on account of Grafton-Fraser's pre-filing outstanding Borrowings under the Credit Agreement from time to time, whether such Borrowings obligations arose prior to or after the GFI CCAA Filing Date, provided that no advances of funds made by the Agent or the Lender to Grafton-Fraser under the Credit Agreement (as amended) made on or after the granting of the GFI Initial Order shall be used to pay Grafton-Fraser's pre-filing outstanding Borrowings under the Credit Agreement (as amended) (the "Pre-filing Payments Order").

4.1.15 **Blocked Accounts:** Grafton-Fraser agrees as follows:

- 4.1.13.1 that it will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1.15;
- 4.1.13.2 that, on the GFI CCAA Filing Date and at all times thereafter: (a) each of the Grafton-Fraser deposit accounts that receive proceeds of Inventory or other Property subject to a Lien in favour of the Agent or otherwise (including, for greater certainty, Non-Lender Accounts) are and shall be Blocked Accounts (other than the Term DIP Accounts) subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, (b) Grafton-Fraser shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement, and (c) it shall have delivered to the Agent copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with all such other Persons as required by the Agent in its sole discretion; and
- 4.1.13.3 that it will seek and obtain, as part of the GFI Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lender, authorizing and directing Grafton-Fraser to enter into and perform under the above described Blocked Accounts arrangements (the "Blocked Accounts Order").

The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such

cash management arrangements in making accommodations of credit available to Grafton-Fraser and in particular that any accommodations of credit are being provided by the Agent and the Lender to Grafton-Fraser strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

- 4.1.16 **Sale or Investment Solicitation Process:** Grafton-Fraser agrees, subject to Court approval thereof, to undertake and comply with the SISP and agrees that the Stalking Horse and SISP Order must be in form and substance satisfactory to the Agent and the Lender, acting reasonably and, for greater certainty the SISP shall proceed on the timeline set forth in Schedule 9 hereto, with such amendments as may be agreed to by the Agent and the Lender;
- 4.1.17 **Consulting Agreement:** The Consulting Agreement shall be in form and substance satisfactory to the Agent and the Lender, acting reasonably and, for greater certainty, Grafton-Fraser shall not amend the Consulting Agreement or enforce or decline to enforce its rights and remedies under the Consulting Agreement without the prior written consent of the Agent and the Lender;
- 4.1.18 **Notice of Default.** Grafton-Fraser shall provide to the Agent and the Lender immediate written notice upon the occurrence of any Default or Event of Default under the Term DIP Agreement or the Term Forbearance Agreement.
- 4.1.19 **KERP.** Except as otherwise contemplated in the GFI Initial Order or any other Court Order, Grafton-Fraser will not establish or make any retention or bonus payments or amend the terms of the KERP (as defined in the GFI Initial Order);

#### 4.2 **Covenants in the Credit Agreement and the other Loan Documents**

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Obligors in the Credit Agreement and the other Loan Documents.

### ARTICLE 5 AMENDMENTS TO LENDING ARRANGEMENTS

#### 5.1 **Amendments to Existing Credit Agreement**

- 5.1.1 Each of the Obligors hereby agrees with the Agent and the Lender that, effective immediately, (a) the Commitment of the Lender to 2473304 shall be reduced to zero and terminated and to Grafton-Fraser shall be \$25,000,000; (b) the Lender shall not be required to extend further credit under the Credit Agreement to 2473304; (c) the Lender shall not be required to extend any further credit under the Credit Agreement

to Grafton-Fraser, and Grafton-Fraser shall not make any request for Borrowings, if any further extension of credit made by the Lender as requested by Grafton-Fraser would result in the Lender's Exposure to Grafton-Fraser exceeding the lesser of \$25,000,000 or the Borrowing Base of Grafton-Fraser; (c) Borrowings made by Grafton-Fraser will be subject to a calculation of the Borrowing Base and of all of the components thereof attributable solely to Grafton-Fraser (including, without limitation, its Eligible Credit/Debit Card Accounts, its Eligible Inventory, its Availability Reserves and its Priority Payables components included in the Borrowing Base and not any of the foregoing relating to 2473304) such that none of the Collateral of 2473304 shall be available to Grafton-Fraser to support Grafton-Fraser Borrowings; (d) no Borrower will create, incur, assume or permit to exist any Indebtedness of one Borrower to the other Borrower; and (e) all amounts owing by 2473304 under the Credit Agreement as at the date of this Agreement, which amounts are \$1,422,988.76 (plus accrued interest from and including January 24, 2017), shall be added to the Borrowings of Grafton-Fraser under the Credit Agreement and shall for all purposes be treated as Grafton-Fraser Borrowings under the Credit Agreement. The ability of Grafton-Fraser to incur Borrowings shall be determined on the basis that all debts and obligations of Grafton-Fraser incurred in respect of goods or services provided after the date of the GFI Initial Order in the GFI CCAA Proceedings shall be dealt with in accordance with the Approved Cash Flow.

- 5.1.2 Each of the Obligors hereby agrees with the Agent and the Lender that, effective immediately, (a) no new Bankers' Acceptances, BA Equivalent Loans or LIBO Rate Loans shall be made available to, or may be continued or converted by, the Borrowers under the Credit Agreement, provided that, so long as no Terminating Event occurs, any existing Bankers' Acceptances, BA Equivalent Loans, and LIBO Rate Loans made to Grafton-Fraser shall be allowed to expire and converted to Canadian Prime Loans and Base Rate Loans in accordance with the Credit Agreement; (b) no new Letters of Credit shall be requested or issued for the benefit of Grafton-Fraser or 2473304, provided that, so long as no Terminating Event occurs, any existing Letter of Credit issued for the benefit of Grafton-Fraser shall be allowed to remain outstanding and renew in accordance with its terms; and (c) no new F/X Contract shall be requested or concluded for the benefit of 2473304 or Grafton-Fraser.
- 5.1.3 Except to the extent otherwise set forth in this Agreement, the Credit Facility of Grafton-Fraser shall continue in accordance with its terms and conditions as set forth in the Existing Credit Agreement.
- 5.1.4 Grafton-Fraser hereby agrees that it shall request Advances (as defined in the Term DIP Agreement) under the Term DIP Agreement as necessary for such Advances to be received in the amounts and on the dates set out in the Approved Cash Flow and that Grafton-Fraser shall only be permitted to request and obtain Borrowings under the Credit Agreement if, at the date of such Borrowings, Grafton-Fraser has received from the lenders under the Term DIP Agreement all Advances under the Term DIP Agreement that were forecasted to be received by such date in accordance with the Approved Cash Flow.

**5.2 Purpose**

5.2.1 The proceeds of Borrowings by Grafton-Fraser shall, subject to the provisions of this Agreement, be used for funding in the ordinary course its operations and restructuring during the GFI CCAA Proceedings, its out-of-pocket costs incurred in connection with the GFI CCAA Proceedings (including all reasonable fees and expenses of its counsel, the Monitor and the Monitor's counsel and the Agent's counsel), and for such other purposes as may be agreed to by the Agent in writing; all in accordance with the Approved Cash Flow.

**ARTICLE 6  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

Each of the Obligors represents, warrants and covenants with and to the Agent and the Lender as follows:

**6.1 Representations in Loan Documents**

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default stated to be made as at a particular date, each of the representations and warranties made by or on behalf of Grafton-Fraser to the Agent and the Lender in the Existing Credit Agreement or any of the other Loan Documents is, in all material respects, true and correct on the date of this Agreement.

**6.2 Full Effect of Documents**

This Agreement, the Existing Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

**6.3 No Conflict**

The execution and delivery and performance of this Agreement by each Obligor will not violate any requirement of Applicable Law or any Material Contract of Grafton-Fraser, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

**6.4 The Agent May Pursue Rights and Remedies**

Nothing in this Agreement will prejudice the Agent and the Lender's rights to pursue any of their rights or remedies including, without limitation, subject to the Intercreditor Agreement, from enforcing their rights under any of this Agreement, the Existing Credit Agreement or any of the



other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period.

## 6.5 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Agent, the occurrence of any of the following events (other than any such event that constitutes or gives rise to an Existing Default) will constitute a "Terminating Event" under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- 6.5.1 if any Additional Default occurs;
- 6.5.2 if, on a cumulative basis tested weekly, in any given week during the Forbearance Period, the actual Retail Receipts (as so described in the Approved Cash Flow) are less than the Minimum Cumulative Receipts amount as shown on Schedule 11 hereto, or the aggregate amount of the actual Operating Disbursements and Non-Operating Disbursements (each as so described in the Approved Cash Flow) are greater than the Maximum Cumulative Disbursements amount as shown on Schedule 11 hereto;
- 6.5.3 if any Terminating Event (as defined in the Term Forbearance Agreement as it exists as at the date of this Agreement) occurs;
- 6.5.4 an Event of Default (as defined in the Term DIP Agreement as it exists as at the date of this Agreement) occurs, unless the Agent, the Lender and the Term Lenders mutually agree to waive such Event of Default;
- 6.5.5 if (a) Grafton-Fraser creates, incurs, assumes or permits to exist any Lien on any of its property, undertaking or assets now owned or hereafter acquired, or (b) the CCAA Court makes any order declaring that all or part of Grafton-Fraser's property is subject to a Lien in favour of any party other than the Agent and such court ordered charge purports to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent under its Liens in the Security Documents, other than Permitted Liens and any court-ordered charge(s) approved by the Agent and granted by the CCAA Court in the GFI CCAA Proceedings or (in each case solely in respect of the Term Priority Collateral) the Term DIP Charge and the Liens granted to the Term Lender.
- 6.5.6 if, on or after the date of this Agreement:
  - 6.5.6.1 the GFI CCAA Proceedings are terminated without the prior or concurrent consent of the Agent or any Order of the CCAA Court is sought by Grafton-Fraser or granted by the CCAA Court that could reasonably be expected to materially adversely affect the interests of the Agent or the Lender,

- 6.5.6.2 the Monitor reports to the CCAA Court that there has been a material adverse change in respect of Grafton-Fraser and/or the GFI CCAA Proceedings;
- 6.5.7 if the lenders under the Term DIP Agreement refuse to make any Advance requested by Grafton-Fraser or do not make any Advance requested by Grafton-Fraser, in each case because the conditions for such Advance are not satisfied or for any other reason, unless the requested Advance is made on or before 5:00 p.m. (Toronto time) on the Business Day immediately following the Business Day for which such Advance was requested as stated in the Advance request from Grafton-Fraser;
- 6.5.8 the Stalking Horse APA is terminated or the Stalking Horse Purchaser terminates the Exit Commitment, in each case unless resulting from the rejection of the Stalking Horse APA due to the approval by the CCAA Court of an alternate Successful Bid in a circumstance where the Stalking Horse APA is not a back-up bid under the SISP;
- 6.5.9 if any representation, warranty or other statement made or deemed to be made by Grafton-Fraser in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lender as contemplated by this Agreement is untrue in any material respect;
- 6.5.10 if, other than the GFI CCAA Proceedings, any action is taken by or against or consented to by Grafton-Fraser to institute proceedings to be liquidated, adjudicated a bankrupt or insolvent or consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against Grafton-Fraser, or file a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws unless, in the case of any action taken against Grafton-Fraser in connection with any of the foregoing, such petition, application or proceeding is contested by Grafton-Fraser and is dismissed or stayed within 10 Business Days after the institution thereof (and in the case of a stay, such stay is continuing);
- 6.5.11 if any creditor or encumbrancer of Grafton-Fraser takes possession of any of its property or assets, or if distress or execution or any similar process is levied or enforced against Grafton-Fraser's property or assets;
- 6.5.12 if any of the Obligors contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Existing Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Agent or the Lender under or relating to this Agreement, the Existing Credit Agreement or any of the other Loan Documents;
- 6.5.13 if any liability arises or event occurs, including any change in the business, assets or conditions, financial or otherwise, of Grafton-Fraser that will, in the Agent's or the Lender's judgment, acting reasonably, materially further impair Grafton-Fraser's financial condition, operations or ability to comply with its obligations under this

Agreement, the Existing Credit Agreement, or any of the Term DIP Agreement, Term DIP Credit Documents or Term Forbearance Agreement or any Court Order or carry out the SISP in a manner reasonably acceptable to the Agent and the Lender;

- 6.5.14 if any step is taken or event occurs that would materially prejudice or jeopardize the Agent's or the Lender's priority rights with respect to the ABL Priority Collateral or the Term Priority Collateral under this Agreement, the Credit Agreement or the other Loan Documents; or
- 6.5.15 if the stay imposed under the GFI CCAA Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Agent consents thereto.

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Obligor or any other action whatsoever by the Agent, subject to Applicable Law.

## ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

### 7.1 Conditions Precedent

7.1.1 The forbearance and other accommodations granted by the Agent and the Lender hereunder shall only be granted by the Agent and the Lender if the following conditions precedent (the "Conditions Precedent") have been complied with in a manner satisfactory to the Agent on or before 3:00 p.m. (EDT) on January 25, 2017, or such other time or date as specified below:

- 7.1.1.1 the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Obligors and each of the Obligors undertake to deliver an original executed copy of this Agreement to the Agent as soon as reasonably possible thereafter;
- 7.1.1.2 the payment of: (i) the Forbearance Fee owing to the Agent and the Lender payable under Section 3.3.1, and (ii) all fees, disbursements and taxes of Agent's legal counsel due and owing to Agent's legal counsel at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Obligors that, in satisfying this condition precedent, each such amount shall be automatically debited by the Agent from the operating account of Grafton-Fraser without any further consent or agreement of Grafton-Fraser being required in respect thereof;
- 7.1.1.3 the Agent shall have confirmed to the Obligors that the Approved Cash Flow prepared by Grafton-Fraser to be filed with its CCAA materials is satisfactory to the Agent;

- 7.1.1.4 the Agent shall have received, drafts of the GFI Initial Order, the Consulting Agreement, the Stalking Horse APA, the Stalking Horse and SISP Order and the SISP and drafts of all supporting affidavits and reports to be filed in the GFI CCAA Proceedings, the list of creditors and the Approved Cash Flow and such materials shall be in form and substance satisfactory to the Agent and the Lender, acting reasonably;
- 7.1.1.5 the GFI Initial Order shall be in form and substance satisfactory to the Agent and the Lender and shall, *inter alia*,:
- 7.1.1.5.1 provide that the Agent shall at all times be treated as an "unaffected creditor" in the GFI CCAA Proceedings and in any plan of compromise or arrangement filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to Grafton-Fraser thereafter including, without limitation, proceedings under the CCAA or the BIA and any stay of proceedings ordered by the CCAA Court in the GFI CCAA Proceedings shall not apply to the Agent and the Lender; provided that if availability remains for Grafton-Fraser to borrow under the Credit Agreement, the Agent shall, to the extent of the funds available only, for a period of not less than five (5) Business Days following notice of any Terminating Event continue to fund only the payment of 50% of the Specified Priority Payables (excluding HST and all sales Taxes) (and the lenders under the Term DIP Agreement shall also fund 50% of the Specified Priority Payables (excluding HST and all Sales Taxes)), and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved Cash Flows and reasonably requested by Grafton-Fraser and as agreed to by the Agent acting in its sole and unfettered discretion;
- 7.1.1.5.2 provide that the aggregate of any and all advances of funds by the Agent and the Lender to Grafton-Fraser under the Credit Agreement (as amended by this Agreement) made on or after the time of the granting of the Initial Order shall be secured by a CCAA Court ordered security and charge in favour of the Agent (the "ABL DIP Priority Charge") which security and charge shall rank in priority to every other claim, Lien and security interest against Grafton-Fraser's property, assets and undertaking (other than the Term Priority Collateral (as such term is defined in the Intercreditor Agreement)), other than the Administration Charge (as defined in the GFI Initial Order), which may have priority over the ABL DIP Priority Charge and the

Agent's Liens, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Agent;

7.1.1.5.3 except as may be expressly consented to by the Agent, at no time on or after the GFI CCAA Filing Date shall all or part of Grafton-Fraser's property be the subject of a court ordered security or charge in favour of any party where such security or charge is purported to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent or the Lender in respect of the Liens under the Security Documents, other than the Administration Charge, the Term Lender's DIP Charge (solely in respect of the Term Priority Collateral) and the Liens granted to the Term Lenders (solely in respect of the Term Priority Collateral) and under the ABL DIP Priority Charge;

7.1.1.5.4 include the Pre-filing Payments Order; and

7.1.1.5.6 include the Blocked Accounts Order.

7.1.1.6 the Agent shall have received satisfactory evidence that the Term Administrative Agent has agreed to forbear from exercising any rights or remedies under the Term Loan Documents as a result of any default or event of default of the Obligors existing thereunder arising from the JNY CCAA Proceedings, the GFI CCAA Proceedings or otherwise, and delivery of an executed copy of the Term Forbearance Agreement shall be satisfactory evidence thereof as well as shall constitute the consent by the Agent and the Lender to the changes to the Term Loan Documents and other agreements contemplated thereby;

7.1.1.7 the Agent shall have received satisfactory evidence that the Term Administrative Agent and Grafton-Fraser have entered into the Term DIP Agreement, subject to the granting of the GFI Initial Order, the Term DIP Agreement will be effective, and delivery of an executed copy of the Term DIP Agreement shall be satisfactory evidence thereof;

7.1.1.8 all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion.

The Conditions Precedent are for the sole benefit of the Agent and the Lender and may be waived only by the Agent in writing. If the conditions precedent are not complied with to the

satisfaction of the Agent as provided for above, and the Agent will not waive satisfaction thereof at its sole discretion, then the forbearance and other accommodations granted by the Agent hereunder shall be terminated.

## ARTICLE 8 GENERAL

### 8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Existing Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Existing Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Obligors. To the extent of conflict between the terms of this Agreement, the Existing Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

### 8.2 Consent to Term DIP Agreement

The Agent consents to (i) the entry of Grafton-Fraser into the Term DIP Agreement; (ii) the DIP Facility on terms consistent with the Term DIP Agreement; and (iii) the granting of the DIP Lenders' Charge, provided that such DIP Lenders' Charge shall be on terms consistent with the Intercreditor Agreement and a GFI Initial Order in form and substance acceptable to the Agent and the Lender.

### 8.3 Costs and Expenses

The Obligors hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Agent, on demand by the Agent at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Monitor, the Consultant, all counsel to the Agent, any financial advisor retained by the Agent, all other consultants to and agents of the Agent and all other expenses incurred by the Agent in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation: (a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Agent (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Obligor; in each of the foregoing events whether under

the laws of Canada, Ontario or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Obligor specifically authorizes the Agent to debit from any of its accounts with the Agent the amount of any such existing and future fees and disbursements, and other expenses and the Agent agrees to use commercially reasonable efforts to notify such Obligor of such debit and the amount thereof as soon as practicable thereafter.

#### 8.4 Release

- 8.4.1 In consideration of this Agreement and for other good and valuable consideration, each Obligor, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent and the Lender, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a "Claim" and collectively, "Claims") known or unknown, both at law or in equity, that such Obligor or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (a) this Agreement, the Credit Agreement, the JNY Forbearance Agreement (which has been amended and restated by this Agreement) or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement, the JNY Forbearance Agreement (which has been amended and restated by this Agreement) or any of the other Loan Documents; and (b) any and all proposed refinancings of the Borrowers by the Lender (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between the Lender and any and all of the Borrowers.
- 8.4.2 each Obligor understands, acknowledges and agrees that the release set out in Section 8.4.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release;
- 8.4.3 each Obligor agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.4.1; and

8.4.4 each Obligor acknowledges that it has no rights, claims or entitlements under or in connection with the Exit Commitment and the Exit Commitment is not and shall not be construed as an offer open to acceptance by or enforceable by any Obligor.

#### 8.5 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or the Lender or any closing will affect the representations and warranties or the right of the Agent or the Lender to rely upon them.

#### 8.6 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada effective therein.

#### 8.7 Reviewed by Legal Counsel

Each Obligor represents and warrants to the Agent and the Lender that it:

8.7.1 understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;

8.7.2 has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Obligor may wish; and

8.7.3 has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

#### 8.8 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties



irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that country, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.8, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

#### **8.9 Mutual Waiver of Jury Trial**

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Agent, the Lender and any Obligor, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

#### **8.10 Time of Essence**

Time is of the essence in all respects of this Agreement.

#### **8.11 Unaffected Creditor Status of the Agent and the Lender**

The Agent and the Lender shall at all times be treated as an "unaffected creditor" in the GFI CCAA Proceedings and in any plan filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to Grafton-Fraser thereafter including, without limitation, proceedings under the CCAA. Grafton-Fraser acknowledges that the Agent and the Lender have relied to their detriment on this covenant in entering into this Agreement.

#### **8.12 Notices**

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

**8.13 Further Assurances**

Each Obligor will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

**8.14 Confirmation of Documents and Terms**

Each of the Obligors hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lender that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Facilities and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

**8.15 No Merger or Novation**

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent and the Lender or otherwise entered into by the Obligors prior to the date hereof in connection with the Credit Facilities and accommodations provided for or contemplated in the Existing Credit Agreement, there being no novation or merger of the Existing Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Existing Credit Agreement (as amended by this Agreement) and the other Loan Documents.

**8.16 Amendment and Waiver**

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

**8.17 Assignment and Enurement**

No Obligor will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Agent. The Agent may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Obligor. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**8.18 Severability**

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- 8.18.1 the legality, validity or enforceability of the remaining provisions of this Agreement;  
or
- 8.18.2 the legality, validity or enforceability of that provision in any other jurisdiction.

**8.19 Counterparts**

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

**8.20 Electronic Signatures**

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

**8.21 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Existing Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

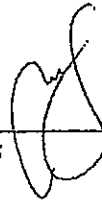
**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.**

Each of the Parties has executed and delivered this Agreement effective as of the 2<sup>nd</sup> day of January, 2017.

2473304 ONTARIO INC.

Per

Name:  
Title:



\_\_\_\_\_  
Mark Sun  
VP and CFO

GRAFTON-FRASER INC.

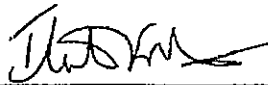
Per \_\_\_\_\_

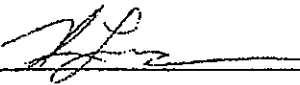
Name:  
Title:



**Mark G. Stan**  
**Vice President & CFO**  
**Grafton-Fraser Inc.**

CANADIAN IMPERIAL BANK OF  
COMMERCE, as Agent and as Lender

Per   
Name:  
Title: **Italo Fortino**  
**Authorized Signatory**

Per   
Name:  
Title: **Kyle Lane**  
**Authorized Signatory**

**SCHEDULE 1**

**[INTENTIONALLY DELETED]**

**SCHEDULE 2  
APPROVED CASH FLOW**

SEE ATTACHED



# DIP Cash Flow Through W/E May 27/17



Weekly Cash Flow																		18 Weeks Total	
(\$000's)	1 Jan 28	2 Feb 04	3 Feb 11	4 Feb 18	5 Feb 25	6 Mar 04	7 Mar 11	8 Mar 18	9 Mar 25	10 Apr 01	11 Apr 08	12 Apr 15	13 Apr 22	14 Apr 29	15 May 06	16 May 13	17 May 20		18 May 27
Comps	(4%)	(2%)	(2%)	(2%)	(2%)	4%	4%	4%	4%	4%	3%	3%	3%	3%	3%	3%	3%	3%	
Retail Receipts	\$ 2,241	\$ 2,195	\$ 2,237	\$ 2,208	\$ 2,231	\$ 2,540	\$ 2,823	\$ 3,043	\$ 2,882	\$ 3,246	\$ 3,551	\$ 3,684	\$ 3,877	\$ 4,091	\$ 3,532	\$ 3,591	\$ 3,602	\$ 3,553	\$ 55,128
<b>Operating Disbursements</b>																			
Merchandise	(734)	(1,703)	(2,203)	(2,181)	(2,216)	(1,513)	(2,191)	(1,398)	(1,154)	(1,551)	(2,785)	(396)	(1,146)	(1,023)	(501)	(339)	(727)	(1,145)	(24,904)
Payroll	(475)	(727)	(250)	(932)	(250)	(808)	(250)	(820)	(250)	(875)	(250)	(1,014)	(250)	(1,108)	(250)	(819)	(250)	(954)	(10,531)
Rent	-	(3,170)	(117)	-	(11)	(3,082)	(242)	(13)	(20)	(3,251)	-	(12)	(10)	(42)	(2,659)	(14)	-	(48)	(12,591)
Sales Tax	(1,708)	-	-	-	-	-	-	-	(201)	(238)	-	(152)	(329)	(335)	(9)	(364)	(361)	(272)	(3,970)
Other Op.	(201)	(286)	(389)	(238)	(219)	(188)	(196)	(174)	(197)	(180)	(245)	(241)	(250)	(287)	(158)	(158)	(158)	(180)	(3,954)
CC Fees	-	(104)	-	-	-	(121)	-	-	-	(142)	-	-	-	(185)	-	-	-	(180)	(732)
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-	(235)	-	-	-	-	(235)
Supplier and Other Deposits	-	(250)	-	-	-	-	-	-	-	-	(250)	-	-	-	-	-	-	-	(500)
	(3,117)	(6,239)	(2,960)	(3,351)	(2,697)	(5,811)	(2,879)	(2,404)	(1,822)	(6,237)	(3,531)	(1,815)	(1,985)	(3,214)	(3,575)	(1,695)	(1,496)	(2,788)	(57,616)
Net Operating CF	(877)	(4,044)	(722)	(1,143)	(466)	(3,271)	(56)	639	1,061	(2,991)	20	1,859	1,893	877	(43)	1,895	2,106	765	(2,488)
<b>Non-Operating Disb.</b>																			
Capex	-	-	-	(100)	-	-	-	-	(100)	-	-	-	(350)	-	-	-	(350)	-	(900)
KERP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(180)	(180)
Interest	-	(100)	-	-	-	(75)	-	-	-	(93)	-	-	-	(98)	-	-	-	-	(356)
Forebearance Fee	-	(200)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(200)
Professional Fees	(875)	(388)	(335)	(180)	(180)	(180)	(230)	(130)	(130)	(125)	(120)	(120)	(120)	(270)	(200)	(59)	(90)	(305)	(4,036)
Jones Payments	(1,283)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,283)
Vacation Escrow	(800)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(800)
	(2,957)	(688)	(335)	(280)	(180)	(255)	(230)	(130)	(230)	(218)	(120)	(120)	(470)	(368)	(200)	(59)	(440)	(495)	(7,774)
Net Cash Flow	(3,834)	(4,730)	(1,057)	(1,423)	(646)	(3,526)	(286)	509	831	(3,209)	(100)	1,749	1,423	509	(243)	1,836	1,666	270	(10,262)
Opening Revolver	\$ 12,826	\$ 16,680	\$ 16,990	\$ 17,648	\$ 18,671	\$ 19,116	\$ 22,543	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,698	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,859	\$ 12,826
Revolver Draw/Repay	3,834	4,730	1,057	1,423	646	3,526	286	(509)	(831)	3,209	100	(1,749)	(1,423)	(509)	243	(1,836)	(1,666)	(270)	10,262
GSO DIP	-	(4,400)	(600)	(300)	(200)	(100)	-	-	-	-	-	-	-	-	-	-	-	-	(6,500)
Ending Revolver	\$ 16,660	\$ 16,990	\$ 17,547	\$ 18,671	\$ 19,116	\$ 22,542	\$ 22,829	\$ 22,320	\$ 21,489	\$ 24,698	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,859	\$ 17,589	\$ 17,589
Net Availability	\$ 480	\$ 2,075	\$ 2,028	\$ 2,043	\$ 2,057	\$ 962	\$ 1,091	\$ 1,918	\$ 2,320	\$ 1,033	\$ 1,405	\$ 2,486	\$ 2,983	\$ 3,507	\$ 2,169	\$ 3,406	\$ 3,857	\$ 4,470	\$ 4,470
Jan 20/17 CF Availability	\$ 171	\$ 2,066	\$ 2,019	\$ 2,083	\$ 2,097	\$ 901	\$ 1,031	\$ 1,857	\$ 2,280	\$ 971	\$ 1,344	\$ 2,424	\$ 2,921	\$ 3,444	\$ 2,106	\$ 3,274	\$ 3,737	\$ 4,425	\$ 4,425
Opening GSO DIP	\$ -	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ -
Draws	-	4,400	500	300	200	100	-	-	-	-	-	-	-	-	-	-	-	-	5,500
Interest (PLD)	-	-	12	14	15	15	16	16	16	16	16	16	16	16	16	16	16	16	248
Ending GSO DIP	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ 5,748	\$ 5,748
Old CIBC ABL	\$ 9,327	\$ 2,632	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New CIBC DIP	7,533	14,458	17,547	18,670	19,116	22,542	22,829	22,320	21,489	24,698	24,798	23,050	21,627	21,118	21,360	19,524	17,859	17,588	17,588
	\$ 16,660	\$ 16,990	\$ 17,547	\$ 18,670	\$ 19,116	\$ 22,542	\$ 22,829	\$ 22,320	\$ 21,489	\$ 24,698	\$ 24,798	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,859	\$ 17,588	\$ 17,588
Payroll Escrow	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
Sales Tax Escrow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 201	\$ 440	\$ 440	\$ 592	\$ 920	\$ 816	\$ 825	\$ 1,189	\$ 1,550	\$ 1,007

**SCHEDULE 3  
EXISTING SECURITY**

- 1 a general security agreement dated as of February 12, 2016 executed by Grafton-Fraser in favour of the Agent;
- 2 a general security agreement dated as of February 12, 2016 executed by 2473304 in favour of the Agent;
- 3 a guarantee agreement dated as of February 12, 2016 executed by Grafton-Fraser and 2473304 in favour of the Agent;
- 4 an intellectual property security agreement dated as of February 12, 2016 executed by Grafton-Fraser in favour of the Agent;
- 5 a notice of intention to give security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 with respect to Grafton-Fraser and registered with the agency of the Bank of Canada for the Province of Ontario on January 25, 2016 under the number 01304227;
- 6 a notice of intention to give security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 with respect to 2473304 and registered with the agency of the Bank of Canada for the Province of Ontario on January 25, 2016 under the number 01304228;
- 7 an application for credit and promise to give bills of lading, warehouse receipts or security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by Grafton-Fraser in favour of the Agent;
- 8 an application for credit and promise to give bills of lading, warehouse receipts or security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by 2473304 in favour of the Agent;
- 9 an agreement as to powers of the Agent in relation to security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by Grafton-Fraser in favour of the Agent;
- 10 an agreement as to powers of the Agent in relation to security under Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by 2473304 in favour of the Agent;
- 11 a special security agreement in respect of specified property or classes of property described in Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by Grafton-Fraser in favour of the Agent;

- 12 a special security agreement in respect of specified property or classes of property described in Section 427 of the *Bank Act* (Canada) dated as of February 12, 2016 and executed by 2473304 in favour of the Agent;
- 13 a deed of hypothec executed by 2473304 on February 10, 2016 in favour of the Agent as hypothecary representative;
- 14 a blocked account agreement dated as of February 12, 2016 among Grafton-Fraser, the Agent and Canadian Imperial Bank of Commerce, in its capacity as the provider of banking services;
- 15 a blocked account agreement dated as of February 12, 2016 among Grafton-Fraser, the Agent and Canadian Imperial Bank of Commerce, in its capacity as the provider of banking services;
- 16 a blocked account agreement dated as of February 12, 2016 among 2473304, the Agent and The Bank of Nova Scotia, in its capacity as the provider of banking services;
- 17 a blocked account agreement dated as of February 12, 2016 among 2473304, the Agent and The Bank of Nova Scotia, in its capacity as the provider of banking services;
- 18 a blocked account agreement dated as of March 17, 2016 among Grafton-Fraser, the Agent and The Toronto-Dominion Bank, in its capacity as the provider of banking services;
- 19 a blocked account agreement dated as of April 29, 2016 among Grafton-Fraser, the Agent and Royal Bank of Canada, in its capacity as the provider of banking services;
- 20 a blocked account agreement dated as of April 29, 2016 among 2473304, the Agent and Royal Bank of Canada, in its capacity as the provider of banking services;
- 21 a blocked account agreement dated as of May 5, 2016 among Grafton-Fraser, the Agent and Bank of Montreal, in its capacity as the provider of banking services;
- 22 a blocked account agreement dated as of May 5, 2016 among 2473304, the Agent and Bank of Montreal, in its capacity as the provider of banking services.

**SCHEDULE 4  
NON-LENDER ACCOUNTS**

Owner	Type of Account	Bank	Reason for Exclusion from Control/ Requirement
Grafton-Fraser Inc.	Store depository account	Royal Bank of Canada	06012-177-597-2
Grafton-Fraser Inc.	Main Account	Bank of Montreal	0002-1207-975
Grafton-Fraser Inc.	Operating account	Bank of Montreal	0002-1915-859
Grafton-Fraser Inc.	Operating account	Bank of Montreal	0002-1915-867
Grafton-Fraser Inc.	Operating account	Bank of Montreal	0002-1915-875
Grafton-Fraser Inc.	US\$ Operating account	Bank of Montreal	0002-4691-263
2473304 Ontario Inc.	Store Depository Account (JNY)	Royal Bank of Canada	00002-109-9423
2473304 Ontario Inc.	Main Account	Bank of Montreal	0002-1883-682
2473304 Ontario Inc.	Expense Account	Bank of Montreal	0002-1883-690
2473304 Ontario Inc.	Disbursements Account	Bank of Montreal	0002-1883-703
2473304 Ontario Inc.	Payroll Account	Bank of Montreal	0002-1883-711
2473304 Ontario Inc.	Vendors Account	Bank of Montreal	0002-1883-738
2473304 Ontario Inc.	USD Account	Bank of Montreal	0002-4671-940

**SCHEDULE 5**

**TERM DIP ACCOUNTS**

Account name: Grafton-Fraser Inc.

Account number: 00002-8789819

Bank: CIBC

Account Type: Business Operating

Currency: CAD

**SCHEDULE 6  
EXISTING DEFAULTS**

1. Events of Default may exist by breaches of representations, warranties and covenants contained in the Existing Credit Agreement or the other Loan Documents (other than this Agreement) that arise or result from the JNY CCAA Proceedings or the cessation of operations by 2473304.

2. Grafton-Fraser has failed to make payment in respect of Material Indebtedness, namely under the Term Loan Agreement, and is otherwise in default under the Term Loan Agreement, as specified in the Term Forbearance Agreement, contrary to Section 7.1 (f) and (g) of the Existing Credit Agreement.

3. 2473304 and Grafton-Fraser have acted in furtherance of one or more matters enumerated in s. 7.1(h) of the Existing Credit Agreement contrary to Section 7.1(h)(v) of the Existing Credit Agreement.

4. Events of Default that have occurred and are continuing contrary to Section 7.1(h) of the Existing Credit Agreement as a result of the JNY CCAA Proceedings and the acknowledgment of insolvency of 2473304 made in connection therewith.

5. Events of Default may exist by breaches of representations and warranties and covenants that refer or relate to a schedule to the Existing Credit Agreement or any other Loan Document (other than this Agreement) which contains information that has been updated and provided to the Agent prior to the date of this Agreement.

6. Events of Default have occurred and are continuing contrary to Section 7.1(p) of the Existing Credit Agreement as a result of the JNY CCAA Proceedings or the cessation of operations by 2473304.

**SCHEDULE 7  
FORM OF TERM DIP AGREEMENT**

SEE ATTACHED

**DIP FACILITY LOAN AGREEMENT**  
**DATED AS OF JANUARY 24, 2017**

WHEREAS the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain of the Borrower's cash requirements during the pendency of its proceeding (the "CCAA Proceeding") under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") to be commenced before the Ontario Superior Court of Justice – Commercial List (the "Court") in accordance with the terms and conditions set out herein;

AND WHEREAS the DIP Lenders have agreed to provide the DIP Facility (as defined below) in accordance with the terms and subject to the conditions set out herein;

NOW THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.

3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.
4. **Borrower:** Grafton-Fraser Inc. ("Borrower")
5. **DIP Lenders:** Subject to the section below entitled "Assignment by the DIP Lenders", the following parties and any financial institution, fund or other entity which has become a party to this Agreement (each, a "DIP Lender" and collectively, the "DIP Lenders") shall be the lenders under the DIP Facility (as defined below):

GSO Domestic Capital Funding (Luxembourg) S.A.R.L.



## GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.

6. **Agent:** GSO Capital Partners LP (the "Agent")
7. **Servicing Agent:** Wilmington Trust, National Association (the "Servicing Agent")
8. **DIP Facility and Loan Amount:** The DIP Lenders agree to advance to the Borrower as a debtor-in-possession non-revolving credit facility (the "DIP Facility") up to the amount of \$5.5 million (the "Loan Amount").
- The maximum amount made available under the DIP Facility shall not exceed the Loan Amount.
9. **DIP Advances:** Advances under the DIP Facility (each, an "Advance") require a written notice to be delivered to the Agent and the Servicing Agent, two Business Days prior to the requested date of the Advance (an "Advance Notice"), which has been approved by the Monitor and executed by an officer of the Borrower setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is required; (c) the specific use for the proceeds of the Advance in accordance with the Approved Cash Flow (as defined below); (d) certification that the representations and warranties contained herein are true and correct as of such date; and (e) such other matters required by the Majority Lenders, as advised to the Borrower in advance.
10. **Use of Proceeds:** The proceeds of the DIP Facility shall be used solely by the Borrower in accordance with the Approved Cash Flow, which shall include provision for payments on account of interest (except for PIK Interest (as defined below)), fees and expenses payable under the DIP Facility and ordinary course payments on account of interest and fees payable under the GSO Facility and the Revolving Facility, including in the case of the Revolving Facility, Indebtedness incurred after the Filing Date (as defined below) in accordance with the Initial Order, post-filing accounts payable in the ordinary course of the Business, Priority Payables and the costs and expenses associated with the Liquidation. No proceeds may be used for any other purpose except with the prior written approval of the Majority Lenders.
- To the extent that any Advance is unused, it shall be Term Priority Collateral.
11. **DIP Lender Commitments:** The respective commitment of each DIP Lender (the "Individual Commitment Amounts") is set out in Schedule "A" hereto.
- The obligations of each DIP Lender shall be several and limited to its Individual Commitment Amount. If the Loan Amount is reduced on account of a mandatory prepayment as provided pursuant to this Agreement, the Individual Commitment Amounts will be reduced on a *pro*

*rata* basis.

12. **Assignment by the DIP Lenders:** A DIP Lender (the "Existing Lender", for the purposes of this section) may assign its rights and obligations under this Agreement, in whole or in part, to any party acceptable to the Agent in its sole and absolute discretion, provided that, any assignee who is not an Affiliate of the Agent or the Existing Lender or a fund manager, advised or sub-advised by the Agent or its Affiliates, shall provide the Monitor with reasonable evidence that such assignee has the financial capacity to fulfil the obligations of the Existing Lender hereunder:
- (a) Following such transfer, the Existing Lender shall be released from its obligations (to the extent transferred) under the DIP Credit Documents, and the respective rights of each of the Borrower and the Existing Lender against one another shall be cancelled, and the new DIP Lender shall assume those obligations and acquire those rights and shall become a party to the DIP Credit Documents.
  - (b) An assignment may be effected by the Agent executing an otherwise duly completed assignment and assumption agreement attached as Schedule "B" hereto (the "Assignment and Assumption Agreement") delivered to it by the Existing Lender and the new DIP Lender.
  - (c) The Borrower authorizes the Agent to execute the Assignment and Assumption Agreement in the form attached as on its behalf, without any consultation.
  - (d) The Agent will promptly deliver a copy of the executed Assignment and Assumption Agreement to the Servicing Agent for recordation in the register.
13. **Assignment by the Borrower:** The Borrower shall not be permitted to assign this Agreement or the other DIP Credit Documents without the unanimous prior written consent of the Majority Lenders except as contemplated by the Asset Purchase Agreement.
14. **Evidence of Indebtedness:** The Servicing Agent shall maintain a register evidencing Advances, and prepayments under the DIP Facility and all other amounts owing from time to time hereunder. The Servicing Agent's register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrower to the DIP Lenders, the Agent and the Servicing Agent pursuant to the DIP Facility.
15. **Interest:** All amounts owing hereunder on account of the principal, overdue interest, fees and expenses shall bear interest at the CDOR Rate plus 14% per annum (the "Interest Rate"). To the extent permitted by Law, effective immediately upon the occurrence of an Event of Default (as defined below),

all amounts owing hereunder on account of principal, overdue interest, fees and expenses shall bear interest at the Interest Rate plus an additional 2% per annum (the Interest Rate, as increased, the "Default Rate").

All interest hereunder shall be computed on the basis of a year of 365 days and shall accrue and be calculated daily and payable in cash, monthly in arrears on the last day of each calendar month (each, an "Interest Payment Date"), provided that interest accruing at the Default Rate shall be payable in cash on demand, both before and after demand and judgment.

In the case of an Advance, the first Interest Period shall commence on and include the date of such Advance and shall end on and exclude the next following Interest Payment Date. Thereafter, in the case of such Advance, the Interest Period shall commence on and include the Interest Payment Date and end on and exclude the next Interest Payment Date or the Maturity Date, whichever is earlier.

For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or fee to be paid under this Agreement or any of the other DIP Credit Documents is to be calculated on the basis of a period that is less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period that is less than a calendar year.

The Borrower may, in its sole discretion, elect to pay the amount of any interest payment (a) entirely in cash, (b) entirely by adding the amount of such accrued and unpaid interest to the principal amount outstanding under the DIP Facility (interest so capitalized, "PIK Interest"), or (c) a combination of cash and PIK Interest. All interest, including interest accruing at the Default Rate, shall automatically be paid in the form of PIK Interest unless the Borrower, in its sole discretion, elects to pay the applicable interest payment in cash or with a combination of cash and PIK Interest, in which case the Borrower shall deliver to the Agent and the Servicing Agent no later than seven Business Days prior to the applicable Interest Payment Date, a written notice notifying the DIP Lenders that the Borrower will be paying such interest in the form of cash interest or a combination of cash and PIK Interest (and if a combination thereof, the amount of which will be represented by each of the cash interest and the PIK Interest).

16. **DIP Facility Fee:** The Borrower shall pay a DIP Facility fee in an amount equal to 1% of the Loan Amount, which shall be fully earned and payable in advance on the date of the first Advance.
17. **Servicing Agent** The Borrower shall pay to the Servicing Agent, for its own account, an

- Fee:** annual administration fee in the aggregate amount equal to U.S.\$15,000 for the day to day discharge of the duties and responsibilities of the Servicing Agent under this Agreement and the other DIP Credit Documents, which fee shall be fully earned, non-refundable and payable in advance on the date of the first Advance.
18. **Other Costs and Expenses:** The Borrower shall pay all costs and expenses of the DIP Lenders, Agent and the Servicing Agent for all out-of-pocket due diligence and travel costs and all reasonable fees, expenses and disbursements of outside counsel, appraisers, field auditors, and any *financial consultant* in connection with the preparation, negotiation and interpretation of the DIP Credit Documents and administration of the DIP Facility, including any costs and expenses incurred by the DIP Lenders, Agent or the Servicing Agent in connection with the enforcement of any of the rights and remedies available hereunder or under any related security.
19. **Approved Cash Flow:** Attached hereto as Schedule "C" is a rolling 13-week period detailed cash flow (the "Approved Cash Flow"), which is in form and substance satisfactory to the Majority Lenders. The Majority Lenders may require changes to the format of cash flow and the details provided therein *including, without limitation, information on a line item basis as to (a) projected cash receipts, and (b) projected disbursements, including ordinary course operating expenses, restructuring expenses, and professional fees and expenses.*
- On Thursday of each week, the Borrower, with the assistance of the Monitor, shall provide the Agent with a variance report (the "Cash Flow Variance Report") certified by the Chief Financial Officer of the Borrower showing on a line-by-line basis actual receipts and disbursements and the total available liquidity for the last day of the prior week for the cumulative period since the commencement of the CCAA Proceeding and for a rolling cumulative four-week period once the CCAA Proceeding have been pending for four weeks and noting therein all variances on a line-by-line basis from the amounts in the Approved Cash Flow and shall include explanations for all material variances. The first Cash Flow Variance Report shall be delivered on February 16, 2017.
- The Borrower, with the assistance of the Monitor, may from time to time present the Agent with a revised 13-week detailed budget substantially in the form of the current Approved Cash Flow (the "Updated Cash Flow"). The Majority Lenders may agree to substitute the revised cash flow for the then current Approved Cash Flow, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Approved Cash Flow for the purposes hereof.
20. **Conditions** The DIP Lenders' agreement to make any Advances under the DIP Facility

Precedent to Advances: is subject to the following conditions precedent (the "Funding Conditions");

- (a) The Borrower's application materials in connection with its application for the Initial Order shall be satisfactory to the Majority Lenders and the Agent, acting reasonably, and such application shall be brought before the Court no later than January 26, 2017, in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and on notice to such parties as are acceptable to the Majority Lenders and the Agent;
- (b) The Court shall have issued the Initial Order in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, among other things, approving this Agreement and the other DIP Credit Documents and granting the DIP Lenders' Charge (as defined below);
- (c) The ABL Agent shall have consented to the terms of this Agreement and the other DIP Credit Documents, the DIP Facility and the DIP Lenders' Charge in accordance with the terms of the Intercreditor Agreement and the Revolving Facility;
- (d) The ABL Agent and the Purchaser shall have entered into a commitment letter for a new revolving credit facility available to the Purchaser immediately following the closing of the transaction contemplated by the Asset Purchase Agreement, in form and substance satisfactory to the Purchaser and the ABL Agent;
- (e) The Initial Order shall not have been amended, restated or modified in a manner that materially adversely affects the rights, remedies or interests of the DIP Lenders or the Agent, in their discretion, without the prior written consent of the Majority Lenders;
- (f) The DIP Credit Documents shall be in form and substance satisfactory to the Majority Lenders, the Agent and the Servicing Agent, acting reasonably, where applicable, and shall have been executed by the parties thereto;
- (g) The Consulting Agreement shall be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (h) The Agent shall have received an Advance Notice in

accordance with the terms hereof;

- (i) All fees and expenses payable to the DIP Lenders, the Agent and the Servicing Agent have been paid or will be paid from the proceeds of the requested Advance on the date of the first Advance;
- (j) There shall be no Encumbrances on all now-owned and hereafter-acquired assets and property of the Borrower, real and personal, tangible or intangible and all proceeds therefrom (the "Collateral") ranking in priority to or *pari passu* with the DIP Lenders' Charge (as defined below) other than as permitted by the terms hereof;
- (k) The Court shall have issued the Stalking Horse and SISP Order, which must be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and the Stalking Horse and SISP Order shall not have been amended, restated or modified in any material respect without the prior written consent of the Majority Lenders;
- (l) The Borrower shall be in compliance with the timetables established by the SISP;
- (m) The Majority Lenders shall be satisfied in all material respects that the Borrower has complied, and is continuing to comply with, all applicable Laws, regulations, policies in relation to its property and the Business, other than as may be permitted under any order of the Court (each, a "Court Order") which is in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (n) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance;
- (o) The Majority Lenders shall have received evidence satisfactory to them that the Borrower's Account (as defined below) has been designated by the Borrower and is not a Blocked Account;
- (p) The Agent shall have received any updated Approved Cash Flows and the Cash Flow Variance Reports in accordance with this Agreement;
- (q) The Majority Lenders shall have been satisfied that all motions, orders and other pleadings and related documents filed or submitted to the Court by the Borrower shall be consistent with the terms hereof and all Court Orders shall

not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the DIP Lenders, under the terms of the DIP Facility and the DIP Credit Documents, unless otherwise agreed to by the Majority Lenders; and

- (r) The Borrower shall be in compliance in all material respects with all covenants and obligations contained in this Agreement and the other DIP Credit Documents.

21. **DIP Lenders' Charge:** All of the obligations of the Borrower under or in connection with the DIP Facility, this Agreement and the other DIP Credit Documents, including without limitation, all principal, interest, fees and amounts owing in respect of fees and expenses of the DIP Lenders, the Agent and the Servicing Agent (collectively, the "DIP Obligations"), shall be secured by a Court-ordered charge on the Collateral in favour of the Agent for the benefit of the DIP Lenders, the Agent and the Servicing Agent (the "DIP Lenders' Charge").  
The DIP Lenders' Charge shall rank ahead of any and all Encumbrances on the Collateral other than the administration charge not exceeding \$800,000 granted by the Court (the "Administration Charge") and the Encumbrance on the ABL Priority Collateral to the extent of the ABL Obligations (the "ABL Security", together with the Administration Charge, the "Priority Charges") and Permitted Encumbrances.
22. **DIP Security:** The DIP Obligations shall be secured by the DIP Security.  
Immediately following the approval of the Court of the DIP Lenders' Charge, the Borrower shall deliver to the Agent the DIP Security. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the Agent subject to subordination only in respect of the Priority Charges and Permitted Encumbrances.
23. **Borrower's Account:** Advances shall be deposited into a bank account to be designated by the Borrower, which shall not be a Blocked Account (the "Borrower's Account") and utilized by the Borrower in accordance with the terms of this Agreement.
24. **Repayment and Maturity Date:** All amounts owing to the DIP Lenders under the DIP Facility shall be due and payable on the earliest of the occurrence of any of the following:
- (a) 150 days following the date of the first Advance;
  - (b) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);
  - (c) the transfer, lease or otherwise disposal of all or any part of the Borrower's Collateral (i) outside the ordinary course of business, (ii) for consideration received of more than \$15,000 at any one time, or (iii) for consideration received of

more than \$75,000 in the aggregate, other than pursuant to the Asset Purchase Agreement, the Liquidation or sales of inventory in the ordinary course of business, without the prior written consent of the Majority Lenders;

- (d) an Event of Default (as defined below) in respect of which the DIP Lenders have elected in their sole discretion to accelerate all amounts owing and demand repayment;

(such earliest date, the "Maturity Date").

The DIP Lenders' commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be permanently and indefeasibly repaid no later than the Maturity Date, without the Agent being required to make demand upon the Borrower or other parties or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

25. **Mandatory  
Prepayments:**

Unless the DIP Lenders provide their prior written unanimous consent otherwise, and subject to the Priority Charges (to the extent of the ABL Security only, in the case of the Priority Charge in favour of the ABL Agent) and the Intercreditor Agreement, the Borrower is required to prepay amounts outstanding under the DIP Facility, subject to a Court Order approving such payment on a motion supported by the Borrower:

- (a) upon receipt of insurance proceeds or expropriation awards by the Borrower unless the proceeds are reinvested to repair or replace such assets prior to the Maturity Date except, if any ABL Obligations are outstanding at such time, for any portion of insurance proceeds or expropriation awards that relate to ABL Priority Collateral;
- (b) upon receipt of net cash proceeds from the sale of any of the Collateral except, if any ABL Obligations are outstanding at such time, proceeds from the sale of ABL Priority Collateral;
- (c) upon receipt of any extraordinary payments such as tax refunds by the Borrower; and
- (d) upon receipt of net cash proceeds from the sale of any equity interests in the Borrower or its subsidiary or the receipt of capital contributions by the Borrower or its subsidiary.

Any prepayment required hereunder shall be a permanent reduction of the Loan Amount and may not be re-borrowed without the prior written unanimous consent of the DIP Lenders in their sole discretion.

26. **Optional**

Subject to the terms of the Intercreditor Agreement, the Borrower shall be



**Prepayment:** entitled, with the consent of the Monitor and on notice to the Servicing Agent, to voluntarily prepay any principal amount of the DIP Obligations.

The Borrower shall give written notice to the Servicing Agent of each voluntary prepayment not less than three Business Days prior to such voluntary prepayment. Such notice shall be irrevocable and shall specify:

(a) the date on which the prepayment is to take place; and

(b) the principal amount of the prepayment.

Any optional prepayment hereunder shall be a permanent reduction of the Loan Amount and may not be re-borrowed without the prior written unanimous consent of the DIP Lenders in their sole discretion.

27. **Break Funding Payments:** In the event of the payment or prepayment (voluntary or otherwise) of any principal amount of the DIP Obligations the Borrower shall compensate the DIP Lenders in an amount equal to the excess, if any, of (a) the amount of interest that would have accrued on the principal amount of the DIP Obligations had such event not occurred, at the CDOR Rate that would have been applicable to the DIP Obligations, for the period from the date of such event to the last day of the then current Interest Period therefor plus 14% per annum, over (b) the amount of interest (as reasonably determined by the Majority Lenders) that would accrue on such principal amount of the DIP Obligations for such period at the interest rate that the DIP Lenders would bid were they to bid, at the commencement of such period, for Canadian dollar deposits of a comparable amount and period from banks in the Canadian market plus 14% per annum. A certificate of the Servicing Agent setting forth in reasonable detail the calculations of any amount or amounts that the DIP Lenders are entitled to receive pursuant to this section (which calculations shall be provided in writing to the Servicing Agent by the Majority Lenders for inclusion in such certificate) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the DIP Lenders the amount shown as due on any such certificate within 10 days after receipt thereof.

28. **Payments:** All payments of principal, fees and expenses hereunder shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to an account of the Borrower maintained at the principal office of the Servicing Agent in its designated place of business. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and Interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrower under this Agreement shall be

made in full without deduction, set-off or counterclaim of any kind or for any reason. If any fees and expenses incurred after the date of this Agreement are not paid by the Borrower, the Servicing Agent may, but shall have no duty to do so, pay all such fees and expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility.

29. **Indemnity:** The Borrower agrees to indemnify and hold harmless the DIP Lenders, the Agent, the Servicing Agent, and their respective Affiliates and officers, directors, employees, representatives, advisors, managers, solicitors and agents (collectively, the "Indemnified Persons") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the DIP Facility, the proposed or actual use of the proceeds of the DIP Facility, this Agreement or the other DIP Credit Documents. Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person or to the extent of any disputes solely among Indemnified Persons other than claims arising out of any act or omission on the part of the Borrower. The DIP Lenders, the Agent and the Servicing Agent shall not be responsible or liable to the Borrower or any other Person for any indirect, consequential special or punitive damages.
30. **Representations and Warranties:** The Borrower represents and warrants to the DIP Lenders, upon which the DIP Lenders rely in entering into this Agreement and the other DIP Credit Documents, that:
- (a) The transactions contemplated by this Agreement and the other DIP Credit Documents:
    - (i) upon the granting of the Initial Order are within the powers of the Borrower;
    - (ii) have been duly authorized, executed and delivered by or on behalf of the Borrower;
    - (iii) upon the granting of the Initial Order constitute legal, valid and binding obligations of the Borrower;
    - (iv) upon and subject to the granting of the Initial Order do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with,

any of the terms or provisions of its constating documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected, other than the consent of the ABL Agent pursuant to the terms of the Revolving Facility and the Intercreditor Agreement;

- (v) upon and subject to the granting of the Initial Order there is no requirement for Borrower to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any governmental authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, other than filings which may be made to register, renew or otherwise record the DIP Lenders' Charge or any DIP Security;
- (b) The Business has been and will continue to be conducted in material compliance with all applicable Laws of each jurisdiction in which each the Business has been or is being carried on subject to the provisions of any Court Order made after the Filing Date and the CCAA;
- (c) The Borrower has obtained any material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect. No proceedings have been commenced to revoke or amend any such Authorizations;
- (d) The Borrower has made all deductions and paid its obligations for Priority Payables as required by applicable Law and is not in arrears in respect of these obligations;
- (e) The Borrower does not have any defined benefit pension plans or similar plans and none of its employees are subject to the terms and conditions of employment with the Borrower under a collective bargaining agreement and the Borrower is in material compliance with all applicable Law respecting its employee's employment;
- (f) All obligations of the Borrower and its Affiliates (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with employee benefit plans of the Borrower have been

performed on a timely basis;

- (g) The Borrower and each of its Affiliates have filed all Tax returns which were required to be filed, paid all Taxes (including interest and penalties) which are due and payable other than Tax the payment of which is being contested in good faith by the proper proceedings and for which adequate cash reserves are being maintained;
- (h) All factual information provided by or on behalf of the Borrower to the DIP Lenders, the Agent or the Servicing Agent for the purposes of or in connection with this Agreement or any transaction contemplated herein is, true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. In particular, and without limiting the generality of the foregoing, all information regarding the Borrower and its subsidiary's corporate structure is true and complete, all financial reports are complete and true in all material respects.

31. **Affirmative  
Covenants:**

In addition to all other covenants and obligations contained herein, the Borrower agrees and covenants to perform and do each of the following until the DIP Facility is permanently and indefeasibly repaid and cancelled or assumed on consent of the Agent:

- (a) Submit to the Court the Initial Order, the Stalking Horse and SISP Order, and any other Court Orders which are being sought by the Borrower in a form confirmed in advance to be satisfactory to the Majority Lenders and the Agent, acting reasonably, subject to any amendments that are required by the Court or the Borrower that are acceptable to the Majority Lenders and the Agent, acting reasonably;
- (b) Comply with the provisions of the Court Orders made in the CCAA Proceeding including, without limitation, the Initial Order and the Stalking Horse and SISP Order;
- (c) Utilize all Advances in a manner that is consistent with the Approved Cash Flow in all material respects or as otherwise agreed to with the written approval of the Majority Lenders;
- (d) Deliver to the Agent any updated Approved Cash Flows and Cash Flow Variance in accordance with this Agreement and

such other reporting and other information from time to time as is reasonably requested by the Majority Lenders;

- (e) Deliver to the Agent; (i) within one Business Day of delivery thereof to the Monitor, copies of all daily sales and margin reports, monthly internal financial statements, liquidity and updates to the Approved Cash Flow that are reported weekly, together with any related or supporting information, provided to the Monitor; (ii) within one Business Day of receipt from the Monitor, any final, written reports, commentary or analysis received by the Borrower from the Monitor regarding the financial position of the Borrower or otherwise; and (iii) concurrent with the delivery of each weekly update to the Approved Cash Flow a report of invoiced and estimated accrued amounts owing to professionals who have the benefit of the Administration Charge;
- (f) Comply with the SISP;
- (g) Subject to the SISP, provide the Agent with a weekly status update regarding the status of the CCAA Proceeding, the Liquidation and the SISP including any information which may otherwise be confidential, subject to same being maintained as confidential by the DIP Lenders and the Agent in accordance with the terms of the Confidentiality Agreement;
- (h) Allow the DIP Lenders, their directors, officers, employees, agents, advisors and representatives full access to all information and documentation of the Borrower and its Affiliates on two Business Days' notice and during normal business hours and cause management thereof to fully cooperate with any directors, officers, employees, agents, advisors and representatives to the DIP Lenders;
- (i) Preserve, renew, maintain and keep in full force its corporate existence and its Authorizations required in respect of the Business or any of the Collateral;
- (j) Use all reasonable efforts to keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Business and affairs of the Borrower and its subsidiary;
- (k) Subject to paragraphs 6, 9 and 11 of the Initial Order, the Stalking Horse and SISP Order, the Consulting Agreement, the CCAA Order approving the Consulting Agreement and

the Asset Purchase Agreement in all material respects, conduct the Business and preserve, protect and maintain the Collateral in the ordinary course of Business;

- (l) Obtain the prior written consent of the Majority Lenders prior to disseminating general written communications to any customer, supplier or employee group, landlords and other stakeholders in respect of this DIP Facility, the DIP Lenders, the Agent, the Servicing Agent, the Asset Purchase Agreement, the Purchaser or the CCAA Proceeding;
- (m) Subject to the Asset Purchase Agreement and the provisions of any Court Order (including the Initial Order) in each case that are not otherwise inconsistent with the terms of this Agreement, in all material respects, preserve current relations with, and the current goodwill of, customers, suppliers, employees, landlords, other stakeholders, any Governmental Authority and all other Persons having material business relationships with the Borrower to the extent such relationships are necessary for the Purchaser to conduct the Business or relate to the Purchased Assets or Assumed Liabilities (each as defined in the Asset Purchase Agreement);
- (n) Maintain in full force all policies and contracts of insurance that are now in effect (or renewals thereof) under which the Borrower, the Business or any of the Collateral is insured;
- (o) Pay all applicable Taxes that are Priority Payables, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Encumbrance thereon and pay all amounts due under any utility contracts;
- (p) Forthwith notify the Agent and the Servicing Agent of the occurrence of any Default or Event of Default;
- (q) Execute and deliver the DIP Credit Documents, in form and substance satisfactory to the Majority Lenders, the Agent and the Servicing Agent, acting reasonably;
- (r) Execute the Consulting Agreement in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (s) Immediately upon the request of the Agent, grant an irrevocable power of attorney in favour of the Agent, coupled with an interest, to empower the Agent to enforce

## Borrower's rights under the Consulting Agreement;

- (t) Promptly notify the Agent and the ABL Agent if the Borrower receives proceeds from the Liquidation of Term Priority Collateral and, subject to a Court Order approving such payment on a motion supported by the Borrower, pay such proceeds in accordance with the priorities set out in the Intercreditor Agreement; and
- (u) Pay when due all principal, interest, fees and other amounts payable by the Borrower under this Agreement and under any other DIP Credit Documents.

32. **Negative Covenants:**

The Borrower covenants and agrees not to do the following, other than with the prior written consent of the Majority Lenders from and after the date hereof;

- (a) Except as contemplated by this Agreement or any Court Order, make any payment of any Indebtedness or obligation existing as at the Filing Date (the "Pre-Filing Debt"), other than ordinary course payments under GSO Facility and the Revolving Facility;
- (b) Create, incur or permit to exist, or permit any Affiliate to create, incur or permit to exist, any Indebtedness other than Pre-Filing Debt, Advances, the DIP Obligations, ordinary course obligations under the GSO Facility and the Revolving Facility, including, in the case of the Revolving Facility, Indebtedness incurred after the Filing Date in accordance with the Initial Order and post-filing accounts payable in the ordinary course of the Business and in accordance with the Approved Cash Flow;
- (c) Except for Permitted Encumbrances and Encumbrances created by the Initial Order, create, permit to exist any Encumbrance, or provide or seek or support a motion by another party to provide an Encumbrance, upon any of the Collateral including, without limitation, a critical supplier's charge;
- (d) Except for payment of the Directors' Escrow (as defined in the Initial Order), make any payments outside the ordinary course of the Business, subject to the obligation to comply with the Approved Cash Flow in all material respects;
- (e) Make any investments in or loans to or guarantee the Indebtedness or obligations of any other Person or entity or

permit its Affiliates to do so;

- (f) Change its jurisdiction of incorporation or registered office;
- (g) Enter into, amend or suffer to exist any transaction or series of related transactions with any Affiliate;
- (h) Except as may be required under the Asset Purchase Agreement, change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other entity;
- (i) Terminate, without cause, any key employees of the Borrower or add, remove or replace any directors or officers of the Borrower;
- (j) Enter any restrictive covenants or agreements which might affect the value or liquidity of any Collateral;
- (k) Subject to paragraphs 6, 9 and 11 of the Initial Order, the Stalking Horse and SISP Order, the Consulting Agreement, the CCAA Order approving the Consulting Agreement and the Asset Purchase Agreement, cease to carry on the Business or activities as they are currently being conducted or change its operations or business practices;
- (l) Transfer the proceeds of any Advance to a Blocked Account;
- (m) Except for a sale pursuant to a Successful Bid, the Consulting Agreement or the Asset Purchase Agreement, sell, assign, lease, convey or otherwise dispose of any of the Collateral except for sales of Inventory in the ordinary course of the Business;
- (n) Notwithstanding the Initial Order, disclaim any contract that is material to the Business, except as otherwise contemplated or required under the Consulting Agreement or the Asset Purchase Agreement and approved by the Monitor;
- (o) Notwithstanding the Initial Order, amend or renew, extend the term, disclaim or accept the surrender of any real property lease except as otherwise contemplated or required under or in the Consulting Agreement, the Asset Purchase Agreement or a Successful Bid and approved by the Monitor;
- (p) Increase any termination or severance entitlements or pay



any termination or severance payments or modify any compensation or benefit plans whatsoever;

- (q) Except as otherwise contemplated in the Initial Order or any other Court Order, establish or make any retention or bonus payments or amend the terms of the KERP (as defined in the Initial Order);
- (r) Enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against the Borrower;
- (s) Amend the Consulting Agreement, including the Budget (as defined in, and attached to, the Consulting Agreement) or the fees referred to therein, or enforce or decline to enforce its rights and remedies under the Consulting Agreement; or
- (t) Transfer Inventory between its retail store locations, distribution centres and warehouses outside the ordinary course of the Business, except in connection with the Liquidation or in connection with the transaction contemplated pursuant to the Asset Purchase Agreement, provided that, no more than 30% of the Inventory in any store can be transferred or exchanged for aged Inventory.

33. **Events of Default;**

The occurrence of any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

- (a) Any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacating, amendment or restatement adversely affects or would reasonably be expected to adversely affect the interest of the DIP Lenders in a material manner, unless the Majority Lenders have given their prior written consent thereto, including the issuance of a Court Order:
  - (i) terminating the CCAA Proceeding or appointing a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower;
  - (ii) terminating, lifting or amending the stay imposed within the CCAA Proceeding in a manner which, in the opinion of the Majority Lenders', in their sole and absolute determination is prejudicial to the DIP

## Lenders;

- (iii) granting any other claim or Encumbrance of equal or priority status to that of the DIP Lenders' Charge except as permitted hereunder; and
  - (iv) staying, reversing, vacating or otherwise modifying the DIP Credit Documents or prejudicially affecting the DIP Lenders or the Collateral;
- (b) Failure of the Borrower to diligently oppose any party that brings an application or motion for any of the relief set out in subsection 33(a) above and/or the failure to secure the dismissal of such motion or application within 60 days from the date that such application or motion is brought (provided no affirmative Court Order is issued on such motion or application during such period);
  - (c) Failure of the Borrower to pay any amounts when due and owing hereunder;
  - (d) The Borrower ceases to carry on or maintain the Business or its assets in the ordinary course of the Business in compliance with the covenants contained in this Agreement, except where such cessation is otherwise consented to in advance in writing by the Majority Lenders;
  - (e) Any representation or warranty made or given hereunder or under any of the other DIP Credit Documents by the Borrower shall be incorrect or misleading in any material respect when made or when the Court Order approving the DIP Credit Documents is made;
  - (f) A liability arises or an event occurs, including any change in the Business, assets, or conditions, financial or otherwise, of the Borrower that will, in the Majority Lenders' judgment, acting reasonably, materially further impair the Borrower's financial condition, operations or ability to comply with its obligations under this Agreement or any other DIP Credit Documents, the Asset Purchase Agreement or any Court Order or carry out the SISP in a manner reasonably acceptable to the Majority Lenders;
  - (g) Any material violation or breach of any Court Order by the Borrower;
  - (h) Failure of the Borrower to perform or comply with any term or covenant of this Agreement or any other DIP Credit

## Documents;

- (i) if, on a cumulative basis tested weekly, in any given week, the actual Receipts (as described in the Approved Cash Flow) of the Borrower are less than their respective Minimum Cumulative Receipts amounts as shown on Schedule "D" hereto, or the aggregate amount of the actual Operating Disbursements and Non-Operating Disbursements (each as described in the Approved Cash Flow) of the Borrower are greater than their Maximum Cumulative Disbursements in amounts as shown on Schedule "D" hereto, provided that, the Borrower, with the assistance of the Monitor, may from time to time present the Agent with a revised Schedule "D" and the Majority Lenders may agree to substitute the revised Schedule "D" for the Schedule "D" attached hereto, in which case the revised Schedule "D" shall thereafter be deemed to be the effective Schedule "D" for the purposes hereof;
- (j) Any proceeding, motion or application is commenced or filed by the Borrower, or if commenced by another party, supported or otherwise consented to by the Borrower, seeking the invalidation, subordination or other challenging of the terms of the DIP Facility, the DIP Lenders' Charge, this Agreement or any of the other DIP Credit Documents or the Asset Purchase Agreement;
- (k) A Terminating Event (as defined in the ABL Forbearance Agreement) occurs; or
- (l) The approval of a Liquidation or sale of any of the assets of the Borrower outside the ordinary course of the Business (other than pursuant to the Asset Purchase Agreement, the Consulting Agreement, the Stalking Horse and SISP Order or arising from a Successful Bid), which does not have the prior written consent of the Majority Lenders.

## 34. Remedies:

Upon the occurrence of an Event of Default, the Majority Lenders may in their discretion elect on five Business Days' notice to the Borrower, the ABL Agent and the Monitor, to terminate the DIP Lenders' commitment to make further Advances to the Borrower and set-off, consolidate or accelerate all amounts outstanding under the DIP Facility and other DIP Credit Documents and declare such amounts to be immediately due and payable without any periods of grace. Upon the occurrence of an Event of Default, the Agent, if directed by the Majority Lenders may, subject to the Intercreditor Agreement:

- (a) Subject to providing on five Business Days' notice to the Borrower, the ABL Agent and the Monitor, apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral, other than the ABL Priority Collateral or for the appointment of a trustee in bankruptcy of the Borrower;
- (b) Apply for a Court Order, on terms satisfactory to the Monitor and the Majority Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceeding to realize on the Collateral, other than the ABL Priority Collateral;
- (c) Exercise the powers and rights of a secured party; and
- (d) Exercise all such other rights and remedies available to the DIP Lenders under the DIP Credit Documents, the Court Orders and applicable Law.

35. **DIP Lenders Approval:** Any consent, approval, instruction or other expression of the DIP Lenders or the Majority Lenders to be delivered in writing may be delivered by any written instrument, including by way of electronic mail.

The Servicing Agent, on behalf of the DIP Lenders or the Majority Lenders, may execute any consent or waiver with the approval and written direction of the Majority Lenders, provided, however, that any consent or waiver which has the result or effect of (a) increasing the Loan Amount, (b) waiving or reducing any payment obligation by the Borrower hereunder, (c) extending the Maturity Date, (d) allowing the Borrower to re-borrow under the DIP Facility, or (e) releasing any of the DIP Security shall require the consent of those DIP Lenders whose Individual Commitment Amounts represent not less than 100% of the Loan Amount.

36. **Appointment of Agent and Servicing Agent and the Roles of the Agent and Servicing Agent:**

- (a) The DIP Lenders appoint the Agent to act as their agent under and in connection with this Agreement and the other DIP Credit Documents and authorize the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with this Agreement and the other DIP Credit Documents, together with any other incidental rights, powers, authorities and discretions.
- (b) The DIP Lenders and the Agent appoint the Servicing Agent to act as their Servicing Agent under and in connection with this Agreement and the other DIP Credit Documents and authorize the Servicing Agent to exercise the rights, powers, authorities and discretions specifically given to the Servicing

Agent under or in connection with this Agreement and the other DIP Credit Documents, together with any other incidental rights, powers, authorities and discretions

- (c) Any communication or document to be delivered to the Agent or Servicing Agent will be effective only when received by the Agent or Servicing Agent, as applicable.
  - (d) Nothing in this Agreement constitutes the Agent or the Servicing Agent as a trustee or fiduciary of any other Person.
  - (e) Neither the Agent nor the Servicing Agent shall be bound to account to the DIP Lenders for any sum or the profit element of any sum received by it for its own account.
37. **Duties of the Agent:**
- (a) The Agent's duties under this Agreement and the DIP Credit Documents are solely mechanical and administrative in nature.
  - (b) The Agent shall as soon as reasonably practicable forward to the Servicing Agent the original or a copy of any document which is delivered to the Agent by any other party.
  - (c) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
  - (d) The Agent shall notify each DIP Lender and the Servicing Agent of the occurrence of any Default or Event of Default by the Borrower in the performance of its obligations under this Agreement or the other DIP Credit Documents of which the Agent has actual knowledge or actual notice.
  - (e) Each time the Borrower requests the prior written consent of DIP Lenders or the Majority Lenders, promptly inform the Servicing Agent of such request and of the Agent's instruction and/or drafts, as applicable, with respect thereto in order for the Servicing Agent to carry out its duties.
  - (f) The Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or any other DIP Credit Documents to which it is expressed to be party (and no others shall be implied).
38. **Duties of the Servicing Agent:**
- (a) The Servicing Agent's duties under this Agreement and the DIP Credit Documents are solely mechanical and administrative in nature. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement

with reference to the Servicing Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

- (b) The Servicing Agent shall as soon as reasonably practicable forward to the DIP Lenders and the Agent the original or a copy of any document which is delivered to the Servicing Agent by the Borrower or the Agent.
- (c) The Servicing Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (d) Notify each DIP Lender and the Agent of the occurrence of any Event of Default by the Borrower in the performance of its obligations under this Agreement or the other DIP Credit Documents of which the Servicing Agent has actual knowledge or actual notice.
- (e) Act in accordance with any instructions given to it by the DIP Lenders, Majority Lenders or the Agent.
- (f) In the event that the Servicing Agent is at any time given instructions by both the Majority Lenders and the Agent which it reasonably deems to be in conflict, follow the instructions given to it by the Majority Lenders. The Servicing Agent may at any time request instructions from DIP Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the DIP Credit Documents the Servicing Agent is permitted or desires to take or to grant and if such instructions are promptly requested, the Servicing Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the DIP Credit Documents until it shall have received such instructions from Majority Lenders or all or such other portion of DIP Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no DIP Lender shall have any right of action whatsoever against the Servicing Agent as a result of Servicing Agent acting or refraining from acting under this Agreement or any of the other DIP Credit Documents in accordance with the

instructions of the Majority Lenders (or all or such other portion of DIP Lenders as shall be prescribed by this Agreement) and notwithstanding the instructions of the Majority Lenders (or such other applicable portion of DIP Lenders), the Servicing Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes the Servicing Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of this Agreement.

- (g) Each time the Borrower requests the prior written consent of the DIP Lenders or the Majority Lenders, use its best efforts to act in accordance with the Agent's instruction and/or drafts, as applicable, with respect thereto and execute and deliver any consent approved by the DIP Lenders or the Majority Lenders, as applicable, to the Borrower.
  - (h) The Servicing Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or any other DIP Credit Documents to which it is expressed to be party (and no others shall be implied).
39. **Exclusion of the Agent and the Servicing Agent's Liability:**
- (a) Without limiting subsection 39(b) below, neither the Agent nor the Servicing Agent shall be liable for any action taken by it under, or in connection with, this Agreement or any other DIP Credit Documents, unless directly caused by its gross negligence or wilful misconduct as finally determined by a court of competent jurisdiction.
  - (b) No party (other than the Agent) shall take proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement or any other DIP Credit Documents and any officer, employee or agent of the Agent may rely on this provision.
  - (c) No party (other than the Servicing Agent) shall take proceedings against any officer, employee or agent of the Servicing Agent in respect of any claim it might have against the Servicing Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement or any other DIP Credit Documents and any officer, employee or agent of the Servicing Agent may rely on this provision.

- (d) If any monies are transferred to the Agent or the Servicing Agent, the Agent or the Servicing Agent, as applicable, will not be liable for any delay (or related consequences) in crediting an account with any amount required under this term sheet or any other DIP Credit Documents to be paid by the Agent or the Servicing Agent, as applicable, if the Agent or the Servicing Agent, as applicable, has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system which may be used by the Agent or the Servicing Agent, as applicable, for that purpose.

40. **DIP Lenders' Indemnity to the Agent and the Servicing Agent:** The DIP Lenders shall (in proportion to their Individual Commitment Amount as at the date of this Agreement) indemnify the Agent and the Servicing Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent or the Servicing Agent, as applicable, other than by reason of the Agent or the Servicing Agent's gross negligence or wilful misconduct as finally determined by a court of competent jurisdiction in acting in their capacity as Agent or Servicing Agent, as applicable, under this Agreement or any other DIP Credit Documents.
41. **Reference to the Agent and the Servicing Agent:** Any reference in this Agreement or the other DIP Credit Documents to the Agent or the Servicing Agent shall be construed so as to include its successors and permitted transferees or assigns hereunder in accordance with its respective interests.
42. **Taxes:** All payments by the Borrower under this Agreement and the other DIP Credit Documents, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, without reduction for or on account of, any present or future Taxes; provided, however, that if any Taxes are required by applicable Law to be withheld ("Withholding Taxes") from any amount payable to the DIP Lenders under this Agreement or under any DIP Credit Documents, the amounts so payable to the DIP Lenders shall be increased to the extent necessary to yield to the DIP Lenders on a net basis after payment of all Withholding Taxes, the amount payable under such DIP Credit Documents at the rate or in the amount specified in such DIP Credit Documents and the Borrower shall provide evidence satisfactory to the DIP Lenders that the Taxes have been so withheld and remitted.



43. **Further Assurances:** The Borrower shall, at its own expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lenders may reasonably request for the purpose of giving effect to this Agreement and the other DIP Credit Documents.
44. **Entire Agreement:** This Agreement and the other DIP Credit Documents, the Asset Purchase Agreement and the Confidentiality Agreement constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any inconsistency between this Agreement and any of the other DIP Credit Documents, the Asset Purchase Agreement or the Confidentiality Agreement, this Agreement shall prevail.
45. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lenders, the Agent or the Servicing Agent in exercising any right or privilege hereunder or under any other DIP Credit Documents will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement.
46. **Severability:** Any provision in this Agreement or any other DIP Credit Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or effecting the validity of enforceability of such provision in any other jurisdiction.
47. **No Third Party Beneficiary:** No Person, other than the Borrower, the Agent, the Servicing Agent and the DIP Lenders, are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
48. **Press Releases:** The Borrower shall not issue any press releases naming the Agent, the Servicing Agent or the DIP Lenders without their prior approval, unless the Borrower is required to do so by applicable Law.
49. **Counterparts and Facsimile Signatures:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.
50. **Notices:** Any notice, request or other communication hereunder to any of the parties shall be *in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person as set forth below:*

**In the case of the DIP Lenders or the Agent:**

GSO Capital Partners LP  
345 Park Avenue, 31st Floor  
New York, NY 10154

Attention: Marc Baliotti / John Beberus / GSO Legal  
Email: Marc.Baliotti@gsocap.com / John.Beberus@gsocap.com /  
gsolegal@gsocap.com

**With a copy to:**

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON MSV 3J7

Attention: Scott Hyman  
Email: shyman@dwpv.com

**In the case of the Servicing Agent:**

Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402

Attention: Meghan McCauley  
Email: mmccauley@wilmingtontrust.com

**With a copy to:**

Lindquist & Vennum LLP  
2000 IDS Centre, 80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

Attention: Mark C. Dietzen  
Email: mdietzen@lindquist.com

**In the case of the Borrower:**

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

Attention: Mark Sun, Vice President and Chief Financial Officer  
Email: msun@graftonfraser.com

**With a copy to:**

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20

Toronto, ON M5H 2T6

Attention: Stuart Brotman / Natasha De Cicco  
Fax No.: 416 -364-7813  
Email: sbrotman@fasken.com / ndecicco@fasken.com

In either case, with a copy to the Monitor:

Richter Advisory Group Inc.  
181 Bay Street, Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Gilles Benchaya / Adam Sherman  
Email: gbenchaya@richterconsulting.com /  
asherma@richterconsulting.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 pm local time or on a day other than a business day, in which case the notice shall be deemed to be received the next business day.

51. English Language: The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*
52. Governing Law and Jurisdiction: This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein.
53. Definitions: "ABL Agent" means Canadian Imperial Bank of Commerce, in its capacity as administrative agent on its own behalf and on behalf of the Lenders under the Revolving Facility;
- "ABL Forbearance Agreement" means the amended and restated forbearance agreement between the Borrower, 2473304 Ontario Inc. and the ABL Agent dated January 24, 2017;
- "ABL Obligations" has the meaning given to that term in the Intercreditor Agreement;
- "ABL Priority Collateral" has the meaning given to that term in the Intercreditor Agreement;
- "ABL Security" has the meaning given to that term in Section 21;
- "Administration Charge" has the meaning given to that term in Section

21;

"Advance" has the meaning given to that term in Section 9;

"Advance Notice" has the meaning given to that term in Section 9;

"Affiliate" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"Agent" has the meaning given to that term in Section 6;

"Agreement" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"Approved Cash Flow" has the meaning given to that term in Section 19;

"Asset Purchase Agreement" means the asset purchase agreement dated January 24, 2017 between Purchaser and Borrower;

"Assignment and Assumption Agreement" has the meaning given to that term in Subsection 12(b);

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Collateral or the Business;

"Blocked Account" has the meaning given to that term in the ABL Forbearance Agreement;

"Borrower" has the meaning given to that term in Section 4;

"Borrower's Account" has the meaning given to that term in Section 23;

"Borrower's Security" has the meaning given to that term in the GSO Facility and shall include (a) the Trade-Mark and Trade-Mark Applications and Security Agreement dated May 24, 2007 between the Borrower and the Predecessor Agent, and any amendments thereto, and (b) the general security agreement dated May 24, 2007 between GF Acquisition Corp. and the Predecessor Agent, and any amendments thereto and as such agreements may be further amended, restated, supplemented or otherwise modified;

"Business" means the men's retail business operated by the Borrower under the Tip Top, George Richards, Big & Tall, Mr. Big and Tall and Kingsport

banners

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or the State of New York;

"Cash Flow Variance Report" has the meaning given to that term in Section 19;

"CCAA" has the meaning given to that term in the recitals;

"CCAA Proceeding" has the meaning given to that term in recitals;

"CDOR Rate" means, with respect to any Advance for an Interest Period, the greater of (a) 1%, and (b) the rate per annum determined by the Agent by reference to the average rate quoted on the Reuters Monitor Screen Page CDOR (displaying Canadian interbank bid rates for Canadian dollar bankers' acceptances) applicable to bankers' acceptances for the applicable term as of 11:00 a.m. (Toronto time) two Business Days prior to the beginning of such Interest Period; provided that, if such rate does not appear on the CDOR Page at such time on such date, the rate for such date will be the rate of interest per annum equivalent to the annual discount rate (rounded upward to the nearest whole multiple of 1/100 of 1%) as of 11:00 a.m., Toronto time on such day at which one of the five largest Canadian chartered banks (measured by assets) listed on Schedule I of the *Bank Act* (Canada) as selected by the Agent is then offering to issue Canadian dollar bankers' acceptances accepted by it having such specified term (or a term as closely as possible comparable to such specified term);

"Collateral" has the meaning given to that term in Subsection 20(j);

"Confidentiality Agreement" means the confidentiality agreement between the Borrower and the Agent dated November 29, 2016;

"Consulting Agreement" means the agreement between the Borrower and an agent engaged by the Borrower for the purpose of conducting the Liquidation;

"Court" has the meaning given to that term in recitals;

"Court Order" has the meaning given to that term in Subsection 20(m);

"Default" means the occurrence or existence of any event, fact or circumstances, that with the giving of notice, passage of time, or both, would constitute an Event of Default;

"Default Rate" has the meaning given to that term in Section 15;

"DIP Credit Documents" means this Agreement, the DIP Security, the

Servicing Agent Fee Agreement and any other documents in respect of the DIP Facility as may be requested by the DIP Lenders;

"DIP Facility" has the meaning given to that term in Section 8;

"DIP Lender" and "DIP Lenders" has the meaning given to those terms in Section 5;

"DIP Lenders' Charge" has the meaning given to that term in Section 21;

"DIP Obligations" has the meaning given to that term in Section 21;

"DIP Security" means the Borrower's Security and related personal property security registrations made in favour of the Agent in connection with the Borrower's Security together with such confirmations, financing statements, renewals, amendments, discharges, insurance endorsements, opinions or other documents as may be requested by the DIP Lenders as security for the DIP Obligations;

"Encumbrances" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"Event of Default" has the meaning given to that term in Section 33;

"Existing Lender" has the meaning given to that term in Section 12;

"Filing Date" means the date the Initial Order is made granting the Borrower protection under the CCAA;

"Funding Conditions" has the meaning given to that term in Section 20;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"GSO Facility" means the non-revolving credit facility dated as of June 16, 2009 made available to the Borrower pursuant to the amended and restated credit agreement entered into by the Borrower, as borrower, Wilmington

Trust, National Association, as Servicing Agent, the Agent, as administrative agent, 2473304 Ontario Inc., as guarantor, and GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as lenders, as amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016, November 29, 2016, December 15, 2016, December 23, 2016 and January 24, 2017, as it may be further amended, supplemented or otherwise modified;

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

"Indebtedness" of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all bankers' acceptances, letters of credit, letters of guarantee and similar instruments, notes, letters of credit or other similar instruments, including obligations under any arrangement with any Person providing for the leasing by the Borrower of any Property (as defined in the GSO Facility), which Property has been or is to be sold or transferred by the Borrower to such Person in contemplation of such leasing, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles consistently applied in Canada, (e) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, which, for greater certainty will not include rent paid or payable by the Borrower in the ordinary course under its commercial lease for its retail merchandising locations, (f) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (g) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, (h) all obligations of such Person to otherwise assure a creditor against loss, (i) all Hedging Obligations and (j) all obligations of such Person for trade accounts and contracts;

"Indemnified Persons" has the meaning given to that term in Section 29;

"Individual Commitment Amounts" has the meaning given to that term in

## Section 11;

"**Initial Order**" means an order of the Court, in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and obtained on application made on notice to, such Persons as the Majority Lenders, the Agent and Borrower determine, acting reasonably, to be sought by the Borrower with respect to the appointment of the Monitor and with respect to the CCAA Proceeding, as amended;

"**Intercreditor Agreement**" means the intercreditor agreement entered into by the ABL Agent and the Agent dated as of February 12, 2016, as it may be amended, supplemented or otherwise modified;

"**Interest**" has the meaning given to that term in Section 15;

"**Interest Payment Date**" has the meaning given to that term in Section 15;

"**Interest Period**" means the period commencing on the date of an Advance and ending one month thereafter;

"**Inventory**" means inventories manufactured by the Borrower or purchased from third party vendors, including raw materials, work-in-process and packaging materials, finished goods, supplies or replacements;

"**Law**" means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"**Lenders**" means the lenders from time to time party to the Revolving Facility;

"**Liquidation**" means the sale and liquidation of certain of Borrower's assets, including certain inventory, furniture, fixtures and equipment by the Borrower, or an agent engaged by the Borrower;

"**Loan Amount**" has the meaning given to that term in Section 8;

"**Majority Lenders**" means, at any time, DIP Lenders whose outstanding commitments represent more than 50% of the sum of the total Loan Amount;

"**Maturity Date**" has the meaning given to that term in Section 24;

"**Monitor**" means Richter Advisory Group Inc., as the Court-appointed Monitor of the Borrower in the CCAA Proceeding;



"Permitted Encumbrances" means the Encumbrances listed in Schedule "E" hereto;

"Person" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"PIK Interest" has the meaning given to that term in Section 15;

"Pre-Filing Debt" has the meaning given to that term in Subsection 32(a);

"Predecessor Agent" means GSO Special Situations Fund LP;

"Priority Charges" has the meaning given to that term in Section 21;

"Priority Payables" means HST, all sales Tax and any amount payable or accrued by Borrower which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created in connection with the DIP Lenders' Charge, (other than the Permitted Encumbrances and Priority Charges) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Encumbrances created in connection with the DIP Lenders' Charge;

"Purchaser" means 1104307 B.C. Ltd.;

"Revolving Facility" means the asset-based revolving credit facility dated as of February 12, 2016 made available to the Borrower pursuant to the credit agreement entered into by the Borrower and 2473304 Ontario Inc., as co-borrowers, the ABL Agent and the Lenders, as it may be amended, supplemented or otherwise modified;

"Servicing Agent" has the meaning given to that term in Section 7;

"Servicing Agent Fee Agreement" means the fee agreement entered into between the Borrower and the Servicing Agent dated as of January , 2017;

"SISP" means the sales and investor solicitation procedures appended to the Stalking Horse and SISP Order;

"Stalking Horse and SISP Order" an order of the Court in form and substance satisfactory to the Majority Lenders, the Agent and the Borrower, acting reasonably, and obtained on application made on notice to, such Persons as the Majority Lenders, the Agent and Borrower determine, acting

reasonably, recognizing the Asset Purchase Agreement as a "stalking horse bid" and approving the SISP;

"Successful Bid" has the meaning given to that term in the SISP;

"Tax" and "Taxes" means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Term Priority Collateral" has the meaning given to that term in the Intercreditor Agreement;

"Updated Cash Flow" has the meaning given to that term in Section 19;  
and

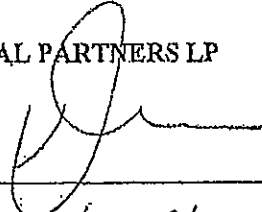
"Withholding Taxes" has the meaning given to that term in Section 42;

[Remainder of page left intentionally blank. Signature page follows]

AS AGENT:

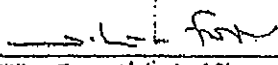
GSO CAPITAL PARTNERS LP

by

  
Doris Lee-Silver  
Authorized Person

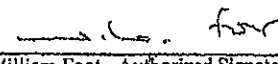
AS DIP LENDERS:

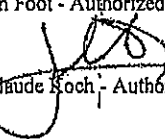
GSO DOMESTIC CAPITAL  
FUNDING (LUXEMBOURG) S.A.R.L.

by   
William Foot - Authorized Signatory

  
Jean-Claude Koch - Authorized Signatory

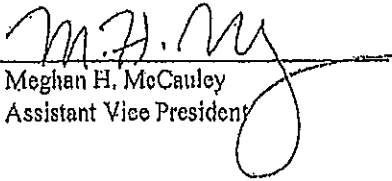
GSO OFFSHORE  
MULTICURRENCY FACILITY  
(LUXEMBOURG) S.A.R.L.

by   
William Foot - Authorized Signatory

  
Jean-Claude Koch - Authorized Signatory

AS SERVICING AGENT:

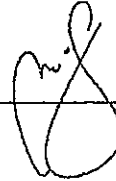
WILMINGTON TRUST, NATIONAL  
ASSOCIATION

by   
Meghan H. McCauley  
Assistant Vice President

AS BORROWER:

GRAFTON-FRASER INC.

by

A handwritten signature in black ink, appearing to read 'M. G. Sun', written over a horizontal line.

Mark G. Sun  
Vice President & CFO  
Grafton-Fraser Inc.

**SCHEDULE "A"**

**Individual Commitment Amounts**

Name of Lender	Individual Commitment Amount
GSO Domestic Capital Funding (Luxembourg) S.A.R.L.	\$2,386,311.40
GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.	\$3,113,688.60
<b>Total</b>	<b>\$5,500,000.00</b>

## SCHEDULE "B"

### Assignment and Assumption Agreement

This assignment and assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*insert name of Assignor*] (the "Assignor"), [*insert name of Assignee*] (the "Assignee") and Grafton-Fraser Inc. (the "Borrower"). Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Loan Agreement (as defined below), receipt of a copy of which is hereby acknowledged by the Assignee.

For an agreed consideration, and subject to the standard terms and conditions attached hereto as Appendix "A", the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, as of the Effective Date: (a) all of the Assignor's rights and obligations in its capacity as a DIP Lender under the DIP Credit Documents and any other documents or instruments delivered pursuant thereto, and (b) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a DIP Lender) against any Person, whether known or unknown, arising under or in connection with the DIP Credit Documents and any other documents or instruments delivered pursuant thereto, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above. The rights and obligations sold and assigned pursuant to clauses (a) and (b) above, and described in more detail below, are referred to herein collectively as, the "Assigned Interest". Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

Effective on the Effective Date, the Assignor shall be released from its obligations in connection with the Assigned Interest and the respective rights of each of the Borrower and the Assignor against one another in respect of the Assigned Interest shall be cancelled and the Assignee shall assume those obligations.

The Borrower acknowledges the assignment of the Assigned Interest to the Assignee and agrees that from and after the Effective Date (a) all payments in respect of the Assigned Interest shall be made to the Assignee, and (b) the Assignee has all of the rights and remedies of the Assignor as a DIP Lender under DIP Loan Agreement.

1. Assignor: [*insert name of Assignor*]
2. Assignee: [*insert name of Assignee*]
3. Borrower: Grafton-Fraser Inc., as borrower under the DIP Loan Agreement ("Borrower")
4. Agent: GSO Capital Partners LP, as agent under the DIP Loan Agreement (the "Agent")
5. Servicing Agent: Wilmington Trust, National Association (the "Servicing Agent")



- 6. **DIP Loan Agreement:** DIP Loan Agreement dated as of January \_\_\_\_\_, 2017, between the between the Borrower, the DIP Lenders, the Agent and the Servicing Agent, as amended, restated, supplemented or otherwise modified from time to time (the "DIP Loan Agreement");
- 7. **DIP Credit Documents:** the DIP Loan Agreement, the DIP Security, the Servicing Agent Fee Agreement and any other documents in respect of the DIP Facility as may be requested by the DIP Lenders (the "DIP Credit Documents");
- 8. **Assigned Interest:**

Name of Assignor	Individual Commitment Amount

The terms set forth in this Assignment and Assumption are hereby agreed to on \_\_\_\_\_ (the "Effective Date").<sup>1</sup>

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER  
GRAFTON FRASER INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> To be inserted by the Agent, and which shall be the effective date of the transfer in the register therefor.

Accepted:

AGENT

[NAME OF AGENT]

By: \_\_\_\_\_

Title: \_\_\_\_\_

Appendix "A"  
STANDARD TERMS AND CONDITIONS

1 Representations and Warranties

1.1 Assignor

- (a) The Assignor represents and warrants that: (i) it is the legal and beneficial owner of the Assigned Interest; (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim; and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption, and to consummate the transactions contemplated hereby; and
- (b) The Assignor assumes no responsibility with respect to: (i) any statements, warranties or representations made in or in connection with the DIP Credit Documents; (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the DIP Credit Documents or any collateral thereunder; (iii) the financial condition of the Borrower; or (iv) the performance or observance by the Borrower.

1.2 Assignee

- (a) The Assignee represents and warrants that: (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a DIP Lender under the DIP Loan Agreement; (ii) from and after the Effective Date, it shall be bound by the provisions of the DIP Loan Agreement as a DIP Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a DIP Lender thereunder; and (iii) it has received copies of the DIP Credit Documents, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other DIP Lender.
- (b) The Assignee agrees that: (i) it will, independently and without reliance on the Agent, the Assignor or any other DIP Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the DIP Credit Documents; and (ii) it will perform in accordance with their terms, all of the obligations which by the terms of the DIP Credit Documents are required to be performed by it as a DIP Lender.

2 Payments

From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to, on or after the Effective Date. The

Assignor and the Assignee shall make all appropriate adjustments in payments by the Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3 General Provisions

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**SCHEDULE "C"**  
**APPROVED CASH FLOW**

# DIP Cash Flow Through W/E May 27/17

Weekly Cash Flow	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19 Weeks	
(\$000's)	Jan 28	Feb 04	Feb 11	Feb 18	Feb 25	Mar 04	Mar 11	Mar 18	Mar 25	Apr 01	Apr 08	Apr 15	Apr 22	Apr 29	May 06	May 13	May 20	May 27	Total	
Comps	(1%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)	(2%)
Receipts	\$ 2,241	\$ 2,195	\$ 2,237	\$ 2,208	\$ 2,231	\$ 2,540	\$ 2,823	\$ 3,043	\$ 3,246	\$ 3,551	\$ 3,684	\$ 3,877	\$ 4,091	\$ 4,352	\$ 4,691	\$ 5,091	\$ 5,552	\$ 6,072	\$ 6,653	\$ 7,284
Operating Disbursements																				
Merchandise	(734)	(1,703)	(2,209)	(2,101)	(2,216)	(1,513)	(2,191)	(1,398)	(1,154)	(1,551)	(2,785)	(3,916)	(1,146)	(1,023)	(501)	(339)	(727)	(1,145)	(24,904)	(24,904)
Payroll	(475)	(727)	(250)	(832)	(250)	(908)	(250)	(820)	(250)	(875)	(250)	(1,014)	(280)	(1,108)	(250)	(818)	(250)	(954)	(10,691)	(10,691)
Rent	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(48)	(48)
Sales Tax	(1,708)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(272)	(272)
Other Op.	(201)	(286)	(385)	(238)	(219)	(188)	(156)	(174)	(180)	(246)	(246)	(241)	(250)	(237)	(158)	(158)	(158)	(158)	(3,954)	(3,954)
CC Fees	-	(104)	-	-	-	(121)	-	-	-	(142)	-	-	-	(185)	-	-	-	-	(732)	(732)
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(235)	(235)
Supplier and Other Deposits	-	(250)	-	-	-	-	-	-	-	(250)	-	-	-	(236)	-	-	-	-	(900)	(900)
Net Operating CF	(3,117)	(6,235)	(2,980)	(3,351)	(2,697)	(5,811)	(2,878)	(2,404)	(1,822)	(6,237)	(3,531)	(1,815)	(1,885)	(3,214)	(3,575)	(1,835)	(1,496)	(1,496)	(17,516)	(17,516)
Non-Operating Disb.	(877)	(4,044)	(729)	(1,145)	(486)	(3,271)	(59)	639	1,081	(2,991)	20	1,863	1,893	877	(43)	1,853	2,106	765	(2,488)	(2,488)
Capex	-	-	-	(100)	-	-	-	-	(100)	-	-	-	(360)	-	-	-	(350)	-	(800)	(800)
Interest	-	(100)	-	-	-	(75)	-	-	-	(93)	-	-	-	(98)	-	-	-	-	(366)	(366)
Forebearance Fee	-	(200)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(200)	(200)
Professional Fees	(875)	(386)	(335)	(180)	(180)	(180)	(230)	(130)	(130)	(125)	(120)	(120)	(120)	(270)	(200)	(59)	(90)	(305)	(4,106)	(4,106)
Jones Payments	(1,283)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,283)	(1,283)
Vacation Escrow	(800)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(800)	(800)
Net Cash Flow	(3,854)	(4,730)	(1,057)	(1,423)	(846)	(3,526)	(286)	509	891	(3,209)	(100)	1,749	1,423	509	(243)	1,836	1,666	270	(10,262)	(10,262)
Opening Revolver	\$ 12,826	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,671	\$ 19,116	\$ 22,643	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,659	\$ 24,799	\$ 23,060	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 12,826	\$ 12,826
Revolver Draw (Repay)	3,854	4,730	1,057	1,423	846	3,526	286	(509)	(891)	3,209	100	(1,749)	(1,423)	(509)	243	(1,836)	(1,666)	(270)	10,262	10,262
GSO DIP	(4,400)	(4,400)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)	(500)
Ending Revolver	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,671	\$ 19,116	\$ 22,643	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,659	\$ 24,799	\$ 23,060	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 17,589	\$ 17,589	\$ 17,589
Net Availability	\$ 460	\$ 2,075	\$ 3,028	\$ 2,043	\$ 2,057	\$ 1,982	\$ 1,091	\$ 1,818	\$ 2,320	\$ 3,031	\$ 1,405	\$ 2,486	\$ 2,983	\$ 3,507	\$ 2,169	\$ 3,408	\$ 3,657	\$ 4,407	\$ 4,407	\$ 4,407
Jan 2017 CF Availability	\$ 171	\$ 2,086	\$ 2,019	\$ 2,063	\$ 2,087	\$ 2,011	\$ 1,031	\$ 1,857	\$ 2,280	\$ 971	\$ 1,344	\$ 2,424	\$ 2,921	\$ 3,444	\$ 2,106	\$ 3,274	\$ 3,737	\$ 4,425	\$ 4,425	\$ 4,425
Opening GSO DIP	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400	\$ 4,400
Draws	4,400	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500	500
Interest (P/K)	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
Ending GSO DIP	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,657	\$ 5,872	\$ 6,088	\$ 6,304	\$ 6,520	\$ 6,736	\$ 6,952	\$ 7,168	\$ 7,384	\$ 7,600	\$ 7,816	\$ 8,032	\$ 8,248	\$ 8,464	\$ 8,680	\$ 8,896
Old CIBC ABL	\$ 9,127	\$ 2,632	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New CIBC DIP	\$ 7,933	\$ 14,488	\$ 17,547	\$ 18,670	\$ 19,116	\$ 22,642	\$ 22,828	\$ 22,320	\$ 21,489	\$ 24,648	\$ 24,798	\$ 23,059	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,858	\$ 17,588	\$ 17,588	\$ 17,588
Payroll Escrow	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
Sales Tax Escrow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**SCHEDULE "D"**

**MINIMUM RECEIPT AND MAXIMUM DISBURSEMENT COVENANT LEVELS**

Grafton-Fraser Inc.  
DIP Covenant Calculations

	Week Ending																	
	28-Jan	04-Feb	11-Feb	18-Feb	25-Feb	04-Mar	11-Mar	18-Mar	25-Mar	01-Apr	08-Apr	15-Apr	22-Apr	29-Apr	05-May	13-May	20-May	27-May
<b>DIP Covenant Test</b>																		
<b>Receipts</b>																		
Receipts	2,241	2,195	2,237	2,208	2,231	2,540	2,823	3,043	2,882	3,246	3,551	3,684	3,877	4,091	3,532	3,591	3,602	3,553
Projected Cum. Receipt	2,241	4,436	6,673	8,881	11,112	13,653	16,475	19,518	22,401	25,647	29,198	32,882	36,759	40,850	44,382	47,973	51,575	55,128
15% Variances	336	665	1,001	1,332	1,667	2,048	2,471	2,928	3,360	3,847	4,380	4,932	5,514	6,128	6,657	7,196	7,736	8,269
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	336	665	1,001	1,332	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cumulative Receipts	\$ 1,904	\$ 3,770	\$ 5,672	\$ 7,549	\$ 9,612	\$ 12,153	\$ 14,975	\$ 18,018	\$ 20,901	\$ 24,147	\$ 27,698	\$ 31,382	\$ 35,269	\$ 39,360	\$ 42,882	\$ 46,473	\$ 50,075	\$ 53,628
<b>Disbursements</b>																		
Disbursements (Excl. Jones)	4,792	6,925	3,295	3,631	2,877	6,067	3,109	2,534	2,052	6,455	3,651	1,935	2,455	3,582	3,775	1,755	1,936	3,283
Projected Cum. Dibs. (Excl. Jones)	4,792	11,717	15,012	18,643	21,520	27,586	30,696	33,230	35,282	41,737	45,388	47,323	49,778	53,359	57,134	58,889	60,825	64,108
15% Variances	719	1,758	2,252	2,796	3,228	4,138	4,604	4,984	5,292	6,261	6,808	7,098	7,467	8,004	8,570	8,833	9,124	9,616
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	719	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cum. Disb. (Excl. Jones)	\$ 5,511	\$ 13,217	\$ 16,512	\$ 20,143	\$ 23,020	\$ 29,086	\$ 32,198	\$ 34,730	\$ 36,782	\$ 43,237	\$ 46,888	\$ 48,823	\$ 51,278	\$ 54,859	\$ 58,634	\$ 60,389	\$ 62,325	\$ 65,608

Based on Unaudited Information



**SCHEDULE "E"**

**PERMITTED ENCUMBRANCES**

1. The following security pursuant to the *Personal Property Security Act* ("PPSA") in each applicable jurisdiction:

**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 debtor's present and after-acquired personal property of the debtor 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 debtor'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 debtor.
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 debtor, Proceeds; Goods, inventory, chattel paper, documents of title, instruments, money, intangibles, accounts and investment property (all as defined in the Personal Property Security Act

<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	(Alberta)) and insurance proceeds. 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	The security interest is taken in all of the debtor's present and after-acquired personal property.
2. 200708558108	GSO Capital Partners, LP, as Administrative Agent	Expiry Date: December 11, 2022 Registration Date: May 7, 2007  Registration Period: 16 years  Expiry Date: May 15, 2023	The security interest is taken in all of the debtor'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. 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 Mazda CX09, JM3TCBDY6G0111704  Amount: \$55,145  Date of Maturity: August 11, 2019
2. 712571193	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015	Inventory, Equipment, Accounts, Other, Motor

<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
		Registration Period: 7 years	Vehicle
3. 675686367	Xerox Canada Ltd.	Expiry Date: December 11, 2022 Registration Date: January 17, 2012	Equipment, Other
		Registration Period: 6 years	
		Expiry Date: January 17, 2018	
3. 635312304	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
		Registration Period: 8 years	
		Expiry Date: May 05, 2013	

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	A security interest is taken in all of the debtor's present and after-acquired personal property
		Registration Period: 7 years	
		Expiry Date: February 8, 2023	
2. 25333881	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 14, 2015	A security interest is taken in all of the debtor's present and after-acquired personal property
		Registration Period: 7 years	
		Expiry Date: December 14, 2022	

2. 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	2016/01/25	2021/12/31	01304227	0010 - CANADIAN IMPERIAL BANK OF COMMERCE 00002 - MAIN BRANCH - COMMERCE COURT 199

M6A 2V2

BAY ST CCW CONCOURSE LEVEL  
MAIN BRANCH -- COMMERCE  
COURT TORONTO, ON M5L 1G9

3. Security interests recorded against all of the Canadian trademarks owned by Borrower, in favour of:
  - (a) GSO Special Situations Fund LP (pursuant to a security agreement placed on file on October 11, 2007);
  - (b) GSO CP Holdings LP (pursuant to an amended security agreement placed on file on October 14, 2008); and
  - (c) Canadian Imperial Bank of Commerce, as Agent (pursuant to a security agreement placed on file on March 11, 2016).

**SCHEDULE 8**  
**FORM OF TERM FORBEARANCE AGREEMENT**

**SCHEDULE 9**  
**SISP TIMELINE**

<b>Step</b>	<b>Latest Date</b>
Liquidation of Closing Stores Begins	February 1, 2017
Participation Notices Sent	February 15, 2017
Finalize list of Closing Stores for Liquidation Purposes	February 17, 2017
Phase I Bids Due under SISP	March 13, 2017
Notify Bidders of Phase II Qualification	March 17, 2017
Phase II Bids Due under SISP	March 24, 2017
Auction (if any) Concludes	April 4, 2017
Vesting Order Motion Heard	April 24, 2017
Liquidation of Closing Stores Ends	April 30, 2017
Closing of Successful Bid	June 5, 2017

**SCHEDULE 10**  
**FORM OF STALKING HORSE APA**

**ASSET PURCHASE AGREEMENT**

**GRAFTON-FRASER INC.**

- and -

**1104307 B.C. LTD.**

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**JANUARY 24, 2017**

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THIS ASSET PURCHASE AGREEMENT is made the 24<sup>th</sup> day of January,  
2017

BY AND AMONG:

**GRAFTON-FRASER INC.,**  
a corporation existing under the laws of  
the Province of Ontario,

(hereinafter referred to as "Seller"),

- and -

**1104307 B.C. LTD.**  
a corporation existing under the laws of  
the Province of British Columbia,

(hereinafter referred to as "Purchaser").

**RECITALS:**

- A. Seller operates a men's retail business under the Tip Top, George Richards, Big & Tall, Mr. Big and Tall and Kingsport banners (the "Business");
- B. Seller intends to obtain protection from its creditors and certain relief under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to the Initial Order (as defined below) and seek the appointment of Richter Advisory Group Inc. as the court-appointed monitor of Seller (the "Monitor");
- C. Subject to approval of the Ontario Superior Court of Justice (Commercial List) (the "Court"), Seller has agreed to sell, transfer and assign to Purchaser and Purchaser has agreed to purchase certain of Seller's assets used in connection with, and assume certain liabilities and obligations of, the Business, upon the terms and subject to the conditions set forth herein; and
- D. Purchaser has agreed that its offer contained in this Agreement will act as a "stalking horse bid" and will continue to be open for acceptance in accordance with the Court approved sale process appended to this Agreement.

**THEREFORE** in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties (as defined herein) hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**1.1**           **Definitions**

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

"**ABL Agent**" means Canadian Imperial Bank of Commerce, in its capacity as administrative agent on its own behalf and on behalf of the Lenders under the Revolving Facility;

"**ABL Obligations**" has the meaning given to that term in the Intercreditor Agreement;

"**ABL Priority Collateral**" has the meaning given to that term in the Intercreditor Agreement;

"**Additional Advance**" has the meaning given to that term in the GSO Facility Amendment;

"**Administration Charge**" has the meaning given to that term in the Initial Order;

"**Affiliate**" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"**Agreement**" means this asset purchase agreement, including all appendices, schedules, and all amendments or restatements, as permitted, and references to "Article", "Section", "Appendix" or "Schedule" mean the specified Article or Section of, Appendix or Schedule to, this Agreement;

"**Approved Cash Flow**" means the 13-week period detailed cash flow attached to the DIP Agreement as it may be substituted pursuant to the terms of the DIP Agreement;

"**Assumed Contracts**" has the meaning set out in Section 2.1(e);

"**Assumed Liabilities**" has the meaning set out in Section 2.3;

"**Assumed Real Property Leases**" has the meaning set out in Section 2.1(d);

"**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Purchased Assets or the Business;

"**Back-Up Bid**" has the meaning set out in the SISP;

"**Books and Records**" has the meaning set out in Section 2.1(k);

"**Business**" has the meaning set out in the recitals;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or the State of New York;

"Cash" has the meaning set out in Section 2.1(l);

"CCAA" has the meaning set out in the recitals;

"CCAA Assignment Order" means an order of the Court made pursuant to section 11.3 of the CCAA, in form and substance satisfactory to Purchaser and Seller, and obtained on application made on notice to, such Persons as Purchaser and Seller determine, acting reasonably, to be sought by Seller assigning the rights and obligations of Seller under an Assumed Contract for which a consent, approval or waiver necessary for the assignment of such Assumed Contract has not been obtained prior to the Closing Time to Purchaser;

"CCAA Proceeding" means the proceedings under the CCAA to which Seller will be subject pursuant to the Initial Order;

"Closing" means the successful completion of the Transaction pursuant to the terms of this Agreement;

"Closing Date" means the date that is four Business Days following the date on which all of the conditions in Sections 6.4 and 6.5 have been satisfied or waived, except for those conditions that by their nature can only be satisfied on the Closing Date, or such earlier or later date as agreed to by the Parties;

"Closing Time" means 10:00 a.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as Seller and Purchaser may agree;

"Commissioner" means the Commissioner of Competition, appointed pursuant to the *Competition Act* (Canada);

"Computers" has the meaning set out in Section 2.1(c);

"Confidentiality Agreement" means the confidentiality agreement between Seller and GSO dated November 29, 2016;

"Consulting Agreement" means the agreement between Seller and an agent engaged by Seller for the purpose of conducting the Liquidation;

"Contracts" means all contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which Seller is a party, by which Seller is bound or under which Seller has, or will have, any liability, whether actual or contingent (in each case, whether written or oral, express or implied) relating to the Purchased Assets and/or the Business, as same may be amended and/or restated, and including any and all related quotations, orders, proposals, tenders

or bookings which remain open for acceptance, warranties, guarantees and documents ancillary thereto relating to the Business;

"Court" has the meaning set out in the recitals;

"Cure Costs" means, in respect of any Assumed Contract, amounts, if any, that must be paid by Purchaser pursuant to section 11.3(4) of the CCAA;

"DIP Agreement" means the agreement dated January 24, 2017 among Seller, GSO, as agent, Wilmington Trust, National Association, as servicing agent and the DIP Lenders, as such agreement may be amended, supplemented or otherwise modified;

"DIP Facility" means the \$5.5 million debtor-in-possession credit facility made available to Seller for use during the CCAA Proceeding pursuant to the DIP Agreement;

"DIP Financing Order" means an order of the Court in form and substance satisfactory to Purchaser obtained on application made on notice to such persons as Purchaser and Seller determine, acting reasonably, approving the DIP Facility, the Encumbrances contemplated therein and the priority thereof, which order may be part of the Initial Order;

"DIP Lenders" means the lenders from time to time party to the DIP Facility;

"Employee Plans" means the following benefit plans sponsored by Seller, comprised of Sun Life Group Policy No. 87050 for all Regular Employees (Class 1), Sun Life Group Policy No. 87050 for Executives (Class 2) and Sun Life Group Policy No. 87050 for Senior Management (Class 3), as such plans may be amended and restated from time to time;

"Employees" means any and all (a) employees or independent contractors of Seller who are actively at work (including full-time, part-time or temporary employees), and (b) employees or independent contractors of Seller who are on lay-off or other leaves of absence (including pregnancy leave, parental leave, disability leave, sickness leave, workers' compensation and other statutory leaves);

"Encumbrances" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"Equipment" has the meaning set out in Section 2.1(b);

"ETA" means Part IX of the *Excise Tax Act* (Canada), as amended from time to time;

"Excluded Assets" has the meaning set out in Section 2.2;

"Excluded Contracts" has the meaning set out in Section 2.2(c);

"Excluded Equipment and Fixtures" has the meaning set out in Section 2.2(g);

"Excluded Inventory" has the meaning set out in Section 2.2(f);

"Excluded Liabilities" has the meaning set out in Section 2.4;

"Excluded Locations" means Seller's retail store locations, distribution centers, storage facilities and warehouses, other than the Purchased Locations;

"Filing Date" means " the date the Initial Order is made granting Seller protection under the CCAA;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"GSO" means GSO Capital Partners LP;

"GSO Facility" means the non-revolving credit facility dated as of June 16, 2009 made available to Seller pursuant to the amended and restated credit agreement entered into by Seller, as borrower, Wilmington Trust, National Association, as servicing agent, GSO, as administrative agent, Guarantor, as guarantor, and GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as lenders, as amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016, November 29, 2016, December 15, 2016, December 23, 2016 and January 24, 2017 as it may be further amended, supplemented or otherwise modified;

"GSO Facility Amendment" means the amending agreement dated as of December 23, 2016 entered into by Seller, as borrower, Wilmington Trust, National Association, as servicing agent, GSO, as administrative agent, Guarantor, as guarantor, and GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as lenders, amending the GSO Facility to, among other things, increase the availability under the GSO Facility by \$2,500,000;

"Guaranteed Purchase Price" has the meaning set out in Section 3.1;

"Guarantor" means 2473304 Ontario Inc.;

"HST" means all Taxes payable under the ETA, including goods and services Taxes and any harmonized sales Taxes in applicable provinces, or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

"Initial Order" means an order of the Court, in form and substance satisfactory to Seller and Purchaser, and obtained on application made on notice to, such Persons as Purchaser and Seller determine, acting reasonably, to be sought by Seller with respect to the appointment of the Monitor and with respect to the CCAA Proceeding, as may be amended;

"Intellectual Property" has the meaning set out in Section 2.1(f);

"Intercreditor Agreement" means the intercreditor agreement dated as of February 12, 2016 entered into by the ABL Agent and GSO, as it may be amended, supplemented or otherwise modified;

"Inventory" has the meaning set out in Section 2.1(a);

"ITA" means the *Income Tax Act* (Canada);

"Law" means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"Lenders" means the lenders from time to time party to the Revolving Facility;

"Liquidation" means the sale and liquidation of certain of the Excluded Assets, including the Excluded Inventory and Excluded Equipment and Fixtures by Seller, or an agent engaged by Seller, including pursuant to the transaction contemplated in the Consulting Agreement;

"Monitor" has the meaning set out in the recitals;

"Monitor's Certificate" means the certificate filed with the Court by the Monitor certifying that the Monitor has received written confirmation from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties;

"New Revolving Facility" means an asset-based revolving credit facility provided by the ABL Agent and the Lenders to Purchaser to meet the working capital needs of the Business from and after the Closing Date and to repay the Revolving Facility, on terms acceptable to Purchaser;

"No-Action Letter" means written confirmation from the Commissioner confirming that the Commissioner does not, at that time, intend to make an application under section 92 of the *Competition Act* (Canada) in respect of the Transaction;

"Parties" means Seller and Purchaser and "Party" means any one of them;



"Permitted Encumbrances" means the Encumbrances listed in Schedule 1.1(a), provided that, in the case of the Encumbrances on the ABL Priority Collateral, such Encumbrances are limited to the extent of the ABL Obligations;

"Person" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"Priority Payables" means HST, sales Tax and any amount payable or accrued by Seller which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created in connection with the Secured Debt, (other than the Permitted Encumbrances and the Administration Charge) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Encumbrances created in connection with the Secured Debt;

"Purchase Price" has the meaning set out in Section 3.1;

"Purchased Assets" has the meaning set out in Section 2.1;

"Purchased Locations" means Seller's retail store locations, distribution centres and warehouses identified on Schedule 1.1(b);

"Purchased Shares" has the meaning set out in Section 2.1(r);

"Revolving Facility" means the asset-based revolving credit facility dated as of February 12, 2016 made available to Seller pursuant to the credit agreement entered into by Seller and Guarantor, as co-borrowers, the ABL Agent and the Lenders, as it may be amended, supplemented or otherwise modified;

"Richter" means Richter Advisory Group Inc., Richter Consulting Canada Inc. or any Affiliate thereof;

"Secured Debt" means all indebtedness, liabilities and obligations owing by Seller and Guarantor under the GSO Facility and any security or other documents or instruments granted or entered into in connection therewith to the agents and lenders thereunder, together with all accrued and accruing interest, fees, costs and expenses;

"Seller" has the meaning set out in the recitals;

"SISP" means the sales and investor solicitation process substantially in the form attached as Appendix "A" or such other form as Seller and Purchaser may agree;

"Software" means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active,

under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software;

"Stalking Horse and SISP Order" has the meaning set out in Section 9.1;

"Stalking Horse Bid" has the meaning set out in Section 9.1;

"Successful Bid" has the meaning set out in the SISP;

"Supplier" has the meaning set out in Section 2.3(e);

"Supplier Agreements" has the meaning set out in Section 6.4(k);

"Supplier Liabilities" has the meaning set out in Section 2.3(e);

"Tax" and "Taxes" means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Term Priority Collateral" has the meaning set out in the Intercreditor Agreement;

"Termination Date" means June 15, 2017, or such other date as Seller and Purchaser may agree, acting reasonably;

"Third Party Consents" means the Authorization and/or consents, approvals and/or authorizations as may be required for the assignment of the Assumed Real Property Leases and the other Assumed Contracts to Purchaser;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

"Transfer Taxes" has the meaning set out in Section 5.1;

"Transferred Employees" has the meaning set out in Section 4.1;

"Vesting Order" means an order of the Court, in form and substance satisfactory to Purchaser and Seller, and obtained on application made on notice to, such Persons as Purchaser and Seller determine, acting reasonably, to be sought by Seller approving this Agreement and the Transaction and vesting in and to Purchaser the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances), substantially in the form attached at Schedule 1.1(c) subject to such amendments as Seller and Purchaser may mutually agree acting reasonably; and

"Wind-Down Amount" has the meaning set out in Section 8.2.

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – All references to dollar amounts are to lawful currency of Canada unless otherwise stated;
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (c) **Including** – Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation";
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day; and
- (g) **Legislation** – A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

1.3 Entire Agreement

This Agreement, the Confidentiality Agreement, the DIP Facility and the agreements and other documents required to be delivered pursuant hereto and thereto, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement, the Confidentiality Agreement and the DIP Facility and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of Agreement, the Confidentiality Agreement or the DIP Facility, except as specifically set forth in this Agreement, the Confidentiality Agreement and the DIP Facility.

1.4 Appendices

The appendices to this Agreement, listed below, are an integral part of this Agreement:

<u>Appendix</u>	<u>Description</u>
Appendix A	- Sales and Investor Solicitation Process

1.5 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(a)	- Permitted Encumbrances
Schedule 1.1(b)	- Purchased Locations
Schedule 1.1(c)	- Vesting Order
Schedule 2.1(e)	- Assumed Contracts
Schedule 2.1(f)	- Intellectual Property
Schedule 2.2(a)	- Excluded Assets
Schedule 2.2(c)	- Excluded Contracts
Schedule 2.3(e)	- Assumed Accounts Payable
Schedule 3.3	- Guaranteed Purchase Price Allocation
Schedule 6.4(l)	- Assumed Contracts Conditional to Closing
Schedule 9.1	- Stalking Horse and SISP Order

1.6 Conflict

In the event of any conflict between the provisions of the body of this Agreement and the Appendices and Schedules, the provisions of the body of this Agreement shall prevail. To the extent there is any inconsistency between this Agreement, the Confidentiality Agreement, the DIP Agreement and the DIP Facility, the DIP Agreement shall prevail.

1.7 Recitals

The Recitals to this Agreement are an integral part of this Agreement.

ARTICLE 2  
PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

Subject to the provisions of this Agreement, at the Closing Time, Seller shall transfer, sell, convey, assign and deliver unto Purchaser, and Purchaser shall purchase, acquire and accept from Seller all right, title and interest of Seller in and to the following property and assets (collectively, the "Purchased Assets"):

- (a) Inventory. All inventories manufactured by Seller or purchased from third party vendors, including raw materials, work-in-process and packaging materials and all finished goods inventory saleable in the ordinary course of the Business or any item of merchandise that is not first quality, not saleable in the ordinary course, worn, faded, torn, mismatched, or affected by other similar defects rendering it not first quality in each case located at the Purchased Locations from and after the date of this Agreement or in transit to a Purchased Location (collectively, the "Inventory"), other than Inventory that is sold in the ordinary course of the Business between the date of this Agreement and the Closing Time;
- (b) Equipment, Fixtures and Furniture. All equipment, fixtures, furniture, displays and signage in each case located at the Purchased Locations as at the date of this Agreement (collectively, the "Equipment");
- (c) Computers and Software. All computer hardware and Software owned by or licensed by Seller and used in connection with the Business (collectively, the "Computers");
- (d) Leased Real Property. All rights of Seller as lessee of real property for the Purchased Locations and all leasehold improvements related thereto (collectively, the "Assumed Real Property Leases");
- (e) Assumed Contracts. All Contracts, including the Assumed Real Property Leases and the Contracts listed on Schedule 2.1(e) (collectively, the "Assumed Contracts");

- (f) Intellectual Property. All right, title and interest of Seller in and to intellectual property of any nature owned by Seller and relating to the Business, including, customer lists, supplier lists, trademarks, proposed trademarks, certification marks, distinguishing guises, industrial designs, copyrights, formulae, processes, research data, technical expertise, know-how, trade secrets, inventions, patent rights, patent registrations, patent continuations or patents, whether domestic or foreign and whether registered or unregistered, and all applications for registration in respect thereof, including the intellectual property listed on Schedule 2.1(f) (collectively, the "Intellectual Property");
- (g) Business and Domain Names. All rights of Seller to all trade names, business names and domain names, including the domain names and business names listed on Schedule 2.1(f) and any derivation thereof or any trademarks or trade names incorporating such business names;
- (h) Goodwill. The goodwill of the Business, together with the exclusive right of Purchaser to represent itself as carrying on the Business in continuation of and in succession to Seller, including all choses in action where Seller is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;
- (i) Prepaid Expenses. All prepaid expenses;
- (j) Authorizations. All Authorizations, owned, held or used by Seller in connection with the Business to the extent that they are transferable;
- (k) Books and Records. All books and records (other than those required by Law to be retained by Seller, copies of which will be made available to Purchaser), including customer lists, sales records, price lists and catalogues, sales literature, advertising material, manufacturing data, production records, employee manuals, personnel records, supply records, inventory records and correspondence files (together with, in the case of any such information which is stored electronically, the media on which the same is stored) but for greater certainty, excluding corporate and Tax records in respect of Seller (collectively, the "Books and Records");
- (l) Cash. All cash on hand, cash equivalents, bank deposits, proceeds from the sale of gift cards by Seller and cash floats and petty cash (the "Cash");
- (m) DIP Facility. All rights of Seller as borrower under the DIP Facility;
- (n) GSO Facility. All rights of Seller as borrower under the GSO Facility;
- (o) Proceeds. All right, title and interest of Seller in and to the net proceeds, if any, from the sale of any Excluded Equipment and Fixtures or rights of Seller as lessee

of real property for the Excluded Locations, including proceeds from the sale of such assets arising from the Liquidation;

- (p) Receivables. All accounts receivables of Seller relating to the Business;
- (q) Taxes. Income Tax instalments paid by Seller and the right to receive any refund of income Taxes paid by Seller;
- (r) Purchased Shares. All shares of Gailwood Investments Limited owned by Seller (the "Purchased Shares");
- (s) Employee Plans. All rights and interests of Seller in and to the Employee Plans in respect of the Transferred Employees; and
- (t) Express Consents – Canada's Anti-Spam Law. All express consents obtained by Seller under applicable privacy and anti-spam Laws from any person to (i) send or cause to be sent an electronic message to such person, (ii) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such person.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement the Purchased Assets shall not include any assets (other than the Purchased Assets) used or held for use in connection with the Business (collectively, the "Excluded Assets") including:

- (a) the property and assets described in Schedule 2.2(a);
- (b) the rights of Seller under this Agreement, the Consulting Agreement and each other document and agreement contemplated hereby and thereby;
- (c) the rights of Seller under the Contracts listed in Schedule 2.2(c) and any Contracts that are not assignable as contemplated in Section 2.5 (collectively, the "Excluded Contracts");
- (d) the rights of Seller as borrower under the Revolving Facility;
- (e) all Books and Records required by Law to be retained by Seller, including personnel records, corporate minute books and Tax records;
- (f) all inventories manufactured by Seller or purchased from third party vendors, including raw materials, work-in-process and packaging materials and all finished goods inventory saleable in the ordinary course of the Business or any item of merchandise that is not first quality, not saleable in the ordinary course, worn, faded, torn, mismatched, or affected by other similar defects rendering it not first

quality that is sold as part of the Liquidation (collectively, the "Excluded Inventory");

- (g) all equipment, fixtures, furniture, displays and signage in each case located at the Excluded Locations as at the date of this Agreement (collectively, the "Excluded Equipment and Fixtures"); and
- (h) all rights of Seller as lessee of real property for the Excluded Locations and all leasehold improvements related thereto.

### 2.3 Assumed Liabilities

On the terms and subject to the conditions of this Agreement, Purchaser agrees, effective at the Closing Time to assume and be responsible for and thereafter honour, perform, discharge and pay as and when due the following obligations and liabilities of Seller:

- (a) all debts, liabilities and obligations with respect to the Purchased Assets from and after the Closing Time, including all debts, liabilities and obligations and services to be rendered in connection with the Business solely in relation to the Purchased Assets accrued from and after the Closing Time;
- (b) subject to subsection 2.5(a), all debts, liabilities and obligations under the Assumed Contracts accrued from and after the Closing Time;
- (c) subject to subsection 2.5(a), all Cure Costs in respect of the Assumed Contracts;
- (d) operational expenses incurred by Seller after the Filing Date in connection with the operation and wind-down of the Business, to the extent reflected in the Approved Cash Flows and not paid at the Closing Time;
- (e) all debts, liabilities and obligations of Seller relating to the Business owing to the Persons that are listed on Schedule 2.3(e) as of the Closing Time (each, a "Supplier"), which are incurred in connection with the purchase of goods or services for the Purchased Locations in the ordinary course of the Business (the "Supplier Liabilities"), to be paid over the course of a period of six months commencing on the Closing Date and provide that the applicable Supplier has entered into a Supplier Agreement with Seller and Purchaser on terms acceptable to Purchaser and the ABL Agent, acting reasonably;
- (f) any Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (g) all liabilities and obligations of Seller in respect of the gift card program established and administered for customers of Seller;
- (h) all liabilities and obligations of Seller to Transferred Employees assumed by Purchaser pursuant to Section 4.2;



- (i) all debts, liabilities and obligations of Seller for the principal, plus accrued interest and fees outstanding under the Revolving Facility as of the Closing Time;
- (j) all debts, liabilities and obligations of Seller under the DIP Facility;
- (k) all debts, liabilities and obligations of Seller under the GSO Facility after giving effect to the release and acknowledgement referred to in Section 6.3(g);
- (l) the Priority Payables outstanding at the Closing Time, to the extent such Priority Payables are reflected in the Approved Cash Flow;
- (m) all debts, liabilities and obligations of Seller associated with customer deposits received by Seller prior to the Closing Time; and
- (n) any other obligations and liabilities expressly assumed under this Agreement, (collectively, the "Assumed Liabilities").

2.4 Excluded Liabilities

Other than the Assumed Liabilities, Purchaser shall not assume and shall not be liable for any debts, liabilities or obligations of Seller (the "Excluded Liabilities") which, for greater certainty, shall include:

- (a) all debts, liabilities and obligations related to any Excluded Assets, including any Excluded Contracts;
- (b) all debts, liabilities and obligations arising from the ownership or use of the Purchased Assets prior to the Closing Date, other than those that are specified as liabilities and obligations to be assumed by Purchaser under Section 2.3;
- (c) all debts, liabilities and obligations of Seller in respect of any actions, causes of action, litigation proceedings, lawsuits, court proceedings or proceedings before any Governmental Authority against Seller or arising from Seller's ownership or use of the Purchased Assets or conduct of the Business prior to the Closing Time;
- (d) any Taxes payable or remittable by Seller, other than Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (e) Encumbrances, other than Permitted Encumbrances; and
- (f) other than Assumed Liabilities in respect of Transferred Employees, all liabilities and obligations of Seller and any of its Affiliates to the Employees.

**2.5 Third Party Consents**

(a) Notwithstanding anything contained in this Agreement or elsewhere, Purchaser will not assume and will have no obligation to discharge any debt, liability or obligation under any Assumed Contract or Authorization which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent, Authorization or, as applicable, a CCAA Assignment Order, has been obtained.

(b) Following the issuance of the Initial Order and, if this Stalking Horse Bid is the Successful Bid, until the Closing Date, Seller shall use commercially reasonable efforts to obtain all Third Party Consents and Authorizations, and, if any Third Party Consent cannot be obtained, to use commercially reasonable efforts to apply for and obtain a CCAA Assignment Order prior to the Closing Time. Purchaser shall provide its reasonable cooperation to assist the Seller in obtaining any such Third Party Consent and Authorization.

**2.6 Final Schedules**

(a) No later than February 17, 2017, Purchaser shall provide Seller with (a) Schedule 1.1(b) identifying the Purchased Locations that it wishes to acquire, representing not less than 110 of Seller's retail stores, (b) a revised Schedule 2.1(e) identifying the Assumed Contracts associated with the Purchased Locations, (c) to the extent applicable, revised Schedules 2.2(a) and 2.2(c) identifying any additional Excluded Assets and/or Excluded Contracts, (d) a revised Schedule 6.4(l) identifying the Assumed Contracts that are conditional to Closing, and (e) Schedule 2.3(e) identifying the Supplier Liabilities to be assumed by Purchaser in accordance with Section 2.3(e),

(b) The Parties agree that effective immediately upon delivery of the Schedules referred to in Section 2.6(a), without any further action or formality: (i) Schedules 1.1(b), 2.1(e), 2.3(e) and, if applicable, 2.2(a) and 2.2(c) shall be deemed to be amended and replaced, (ii) any Inventory, Equipment or Cash located at the Purchased Locations identified on Schedule 1.1(b) shall be deemed to be Purchased Assets; and (iii) there shall be no adjustment to the Purchase Price.

**ARTICLE 3**  
**PURCHASE PRICE AND ALLOCATION**

**3.1 Purchase Price**

The purchase price for the Purchased Assets at the Closing Time, exclusive of all applicable sales and Transfer Taxes shall be the amount of (a) the Secured Debt on the Closing Date, plus (b) the Assumed Liabilities less an amount equal to the Assumed Liabilities referred to in Section 2.3(k) (the "Guaranteed Purchase Price").

3.2 Satisfaction of Purchase Price

Purchaser shall satisfy the Guaranteed Purchase Price at the Closing Time as follows:

- (a) subject to subsection 2.5(a), the payment in cash of an amount sufficient to satisfy all Cure Costs in respect of the Assumed Contracts or the assumption of such liabilities effective as at the Closing Time;
- (b) the payment in cash of an amount sufficient to satisfy the Priority Payables reflected in the Approved Cash Flow outstanding at the Closing Time or the assumption of such liabilities effective as at the Closing Time;
- (c) by causing GSO and the other lender and agent parties to the GSO Facility to release Seller and Guarantor from all of their debts, liabilities and obligations under or with respect to the Secured Debt existing at the Closing Time, other than amounts assumed by Purchaser pursuant to Section 2.3(k); and
- (d) by Purchaser's assumption of the remaining Assumed Liabilities effective at the Closing Time after giving effect to Sections 3.2(a) and 3.2(b).

3.3 Guaranteed Purchase Price Allocation

Seller and Purchaser agree to allocate the Purchase Price among the Purchased Assets and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation no later than 10 Business Days after the Closing Date. The Purchase Price shall be allocated using the methodology set out in Schedule 3.3, which schedule shall be provided by Purchaser to Seller no later than February 17, 2017.

ARTICLE 4  
EMPLOYEE MATTERS

4.1 Offers to Employees

Conditional upon the Closing and with effect as of the Closing Date (or such later date on which those Employees who are on leave return to active service) Purchaser shall offer employment to be made at least seven days prior to the Closing Date to not less than 1,100 of all of the Employees, such offers of employment to be on terms and conditions of employment which are substantially similar in the aggregate to those terms and conditions as are applicable to such Employees as at the date hereof except with respect to recognition of past service. Purchaser shall only be required to recognize such Employees' past service with Seller for purposes of any minimum standards imposed by applicable employment standards legislation and not, for certainty, any notice of termination, pay in lieu of notice, severance pay or any other payment or damages at common law. The Employees who accept Purchaser's offer of employment are collectively referred to as herein as the "Transferred Employees".

4.2 Employee Liability

Purchaser shall assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, pension and retirement benefits and pay in lieu thereof, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date;
- (b) all severance payments, payments for notice of termination or payments in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of the termination by Purchaser of the employment of any Transferred Employee from and after the Closing Date;
- (c) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees from and after the Closing Date;
- (d) all employment-related claims, penalties, contributions, premiums and assessments in respect of the Business arising out of matters which occur from and after the Closing Date; and
- (e) the Employee Plans in respect of the Transferred Employees.

**ARTICLE 5**  
**TAX MATTERS**

5.1 Transfer Taxes

All amounts payable by Purchaser to Seller pursuant to this Agreement do not include any value-added, sales, use, consumption, multi-staged, personal property, customs, excise, stamp, land transfer, or similar taxes, duties, or charges, (collectively "Transfer Taxes") and all Transfer Taxes are the responsibility and for the account of Purchaser. If Seller is required by Law or by administration thereof to collect any applicable Transfer Taxes from Purchaser, then Purchaser shall pay such Transfer Taxes to Seller at the Closing Time, unless Seller agrees that Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case Purchaser shall, in lieu of payment of such applicable Transfer Taxes to Seller, deliver to Seller such certificates, elections, or other documentation required by Law or the administration thereof to substantiate and effect the exemption claimed by Purchaser. Where Seller is not required by Law or by administration thereof to collect applicable Transfer Taxes, Purchaser shall pay such Transfer Taxes directly to the appropriate taxing authority and shall provide evidence of such payment to Seller upon request. Purchaser shall, at all times, indemnify and hold harmless Seller, its directors, officers, and employees against and in respect of any and all amounts assessed by any taxing authority in respect of any failure on the part of Purchaser to pay applicable Transfer Taxes, including all taxes, interest, and penalties assessed

and including all reasonable legal and professional fees incurred by Seller, its directors, officers, and employees as a consequence of or in relation to any such assessment. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time in perpetuity and shall not be subject to any caps, thresholds or other restrictions.

**5.2**            ETA Elections

If the Purchaser and the Seller, acting reasonably, agree that the elections described herein are legally available to be made, Purchaser and Seller shall, on the Closing Date, elect jointly under subsection 167(1) of the ETA and under any similar provision of any applicable provincial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets hereunder, and Purchaser shall file such elections with Canada Revenue Agency and any other applicable Governmental Authorities within the time and in the manner required by applicable Laws, and provide Seller with proof of receipt by Canada Revenue Agency or such other applicable Governmental Authority of the receipt of such elections. Purchaser shall indemnify and hold Seller harmless from and against any Taxes payable under the ETA or other applicable provincial legislation and any penalty or interest in respect thereof that may be payable by or assessed against Seller as a result of or in connection with Seller's failure to collect the applicable Taxes payable under the ETA or other applicable provincial legislation on the sale of the Purchased Assets hereunder, including any such Taxes, penalties and interest arising as a result of any failure or refusal by any Governmental Authority to accept any such election or on the basis that any such election was inapplicable, invalid or not properly made. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time in perpetuity and shall not be subject to any caps, thresholds or other restrictions.

**5.3**            Other Tax Elections

Purchaser and Seller shall execute and deliver such other Tax elections and forms as they may mutually agree upon.

**ARTICLE 6**  
**CLOSING AND CLOSING CONDITIONS**

**6.1**            Closing

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect as at the Closing Time, or such other date and time as may be agreed upon by the Parties. The Closing shall take place at the offices of Davies Ward Phillips & Vineberg LLP, counsel for Purchaser, 155 Wellington Street West, Toronto, Ontario M5V 3J7.

**6.2**            Seller's Deliveries

On or before the Closing Time, Seller shall deliver or cause to be delivered:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing Time;
- (b) customary deeds, assignments, bills of sale and other conveyancing documents, to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Vesting Order;
- (c) specific assignments of all the right, title and interest of Seller in and to the Intellectual Property as may be required for registration purposes;
- (d) a copy of the issued and entered Vesting Order;
- (e) a certificate by a senior officer of Seller certifying that the representations and warranties of Seller set out herein are true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (f) a payout letter from the ABL Agent setting out the debts, liabilities and obligation of Seller for the principal, plus accrued interest and fees outstanding under the Revolving Facility as of the Closing Time;
- (g) a share purchase agreement and other authorizing and conveyancing documents, to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the Purchased Shares to Purchaser;
- (h) an acknowledgement addressed to the Monitor dated the Closing Date that each of the conditions precedent in Section 6.5 have been fulfilled, performed or waived as of the Closing Time;
- (i) an executed copy of the Monitor's Certificate;
- (j) the elections referred to in Sections 5.2 and 5.3; and
- (k) any other documents required to give effect to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

6.3 Purchaser's Deliveries

On or before the Closing Time, Purchaser shall deliver or caused to be delivered:

- (a) if applicable, payment of the cash portion of the Guaranteed Purchase Price, which shall be paid to the Monitor by cash payment by way of certified cheque on bank draft to or to the order of the Monitor or by wire transfer in immediately available funds to an account which shall be designated by the Monitor to the Purchaser;

- (b) customary deeds, assignments, bills of sale and other conveyancing documents to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Vesting Order;
- (c) instruments evidencing Purchaser's assumption of the Assumed Liabilities;
- (d) a certificate by a senior officer of Purchaser certifying that the representations and warranties of Purchaser set out herein are true and correct at the Closing Time and attaching certified copies of the articles of incorporation and by-laws of Purchaser and the resolution of Purchaser's directors or shareholders approving the subject matter of this Agreement;
- (e) an acknowledgement dated the Closing Date that each of the conditions precedent in Section 6.4 have been fulfilled, performed or waived as of the Closing Time;
- (f) a receipt for the Purchased Assets;
- (g) a (i) release of Seller and Guarantor from the Secured Debt, other than the liabilities and obligations of Seller for the outstanding principal Additional Advance existing at the Closing Time plus accrued interest, fees and expenses and other amounts payable in connection with the Additional Advance, and (ii) an acknowledgement of the outstanding principal Secured Debt remaining after giving effect to the release referred to in subparagraph (i);
- (h) payment of all Transfer Taxes (if any) payable pursuant to Section 5.1;
- (i) the elections referred to in Sections 5.2 and 5.3; and
- (j) any other documents required pursuant to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

**6.4 Conditions of Closing in Favour of Purchaser**

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Purchaser to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Purchaser at any time:

- (a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing Time shall have been complied with or performed in all material respects;

- (c) No Bankruptcy. Seller shall not have made, or be deemed to have made, an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* or shall not have obtained an order of the Court binding this Transaction on a trustee in bankruptcy;
- (d) Stalking Horse and SISP Order. The Stalking Horse and SISP Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (e) Successful Bid. This Agreement is the Successful Bid;
- (f) Vesting Order. The Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (g) DIP Financing Order. The DIP Financing Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (h) DIP Facility. The DIP Facility shall have been assumed by Purchaser, with such changes as may be required and agreed between Purchaser and the DIP Lenders;
- (i) Initial Order. All stays of proceedings contained in the Initial Order shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which, in Purchaser's opinion, acting reasonably, is not prejudicial to Purchaser or which does not adversely affect Purchaser's rights under this Agreement or in respect of the Purchased Assets and the exercise of rights and Court-ordered Encumbrances contained in the Initial Order have not been amended or modified in any manner materially prejudicial to Purchaser as at the Closing Time;
- (j) New Revolving Facility. All conditions to the effectiveness of the New Revolving Facility shall have been satisfied, other than the delivery of the Monitor's Certificate to the Purchaser pursuant to Section 6.6;
- (k) Supplier Arrangements. Seller and Purchaser shall have entered into settlement agreements (the "Supplier Agreements") with the Suppliers on terms acceptable to Purchaser and the ABL Agent, acting reasonably, establishing the terms of continued supply and the payment terms upon which Purchaser has agreed to assume the Supplier Liabilities pursuant to Section 2.3(e);



- (l) Third Party Consents or CCAA Assignment Order. Seller shall have obtained Third Party Consents or a CCAA Assignment Order in respect of the Assumed Real Property Leases and the Assumed Contracts identified on Schedule 6.4(l) on or before the Closing Time;
- (m) Competition Act. To the extent that a notification is required under Part IX of the *Competition Act* (Canada), the Commissioner shall have issued an advance ruling certificate pursuant to section 102 of the *Competition Act* (Canada) in respect of the transactions contemplated by this Agreement, or any applicable waiting period under Section 123 of the *Competition Act* (Canada) shall have expired or been earlier terminated or waived and the Commissioner shall have issued a No-Action Letter satisfactory to Purchaser and Seller, acting reasonably;
- (n) Liquidation. The Liquidation shall have been completed with the result that the proceeds of the Liquidation of ABL Priority Collateral shall have been paid to the ABL Agent and the proceeds of the Liquidation of the Term Priority Collateral shall have been paid to GSO, in each case, in accordance with the priorities set out in the Intercreditor Agreement;
- (o) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (p) Injunctions. There shall be in effect no injunction against closing the Transactions entered by a court of competent jurisdiction;
- (q) No Material Damage. No damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred prior to the Closing Time; and
- (r) Documents. Seller shall have delivered the documents referred to in Section 6.2.

If any of the foregoing conditions in this Section 6.4 has not been fulfilled by the Closing Time, Purchaser may terminate this Agreement by notice to Seller. However, Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

#### 6.5 Conditions of Closing in Favour of Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Seller, to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Seller at any time:

- (a) Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing Time shall have been complied with or performed in all material respects;
- (c) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (d) Stalking Horse and SISP Order. The Stalking Horse and SISP Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (e) Successful Bid. This Agreement is the Successful Bid;
- (f) Vesting Order. The Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (g) DIP Financing Order. The DIP Financing Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) at the Closing Time;
- (h) Revolving Facility. The ABL Agent and the Lenders under the Revolving Facility shall have released Seller and the Guarantor from any debts, liabilities and obligations under the Revolving Facility, including any Encumbrances granted by Seller and the Guarantor in connection therewith, to take effect immediately after Purchaser satisfies the obligations assumed by it pursuant to Section 2.3(i) using the proceeds of the New Revolving Facility;
- (i) Competition Act. To the extent that a notification is required under Part IX of the *Competition Act* (Canada), the Commissioner shall have issued an advance ruling certificate pursuant to section 102 of the *Competition Act* (Canada) in respect of the transactions contemplated by this Agreement, or any applicable waiting period under Section 123 of the *Competition Act* (Canada) shall have expired or been

earlier terminated or waived and the Commissioner shall have issued a No-Action Letter satisfactory to Purchaser and Seller, acting reasonably;

- (j) Injunctions. There shall be in effect no injunction against closing the Transaction entered by a court of competent jurisdiction; and
- (k) Documents. Purchaser shall have made the payments and delivered the documents referred to in Section 6.3.

If any of the foregoing conditions in this Section 6.5 has not been fulfilled by the Closing Time, Seller may terminate this Agreement by notice to Purchaser. However, Seller may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

#### 6.6 Monitor's Certificate

When the conditions set out in Sections 6.4 and 6.5 have been satisfied or waived, Purchaser and Seller will each deliver to the Monitor written confirmation of same. The Closing shall be deemed to have occurred upon delivery by the Monitor of an executed copy of the Monitor's Certificate to Purchaser.

#### 6.7 Possession of Assets and Risk of Loss

(a) The Purchased Assets shall be at the risk of Seller until the Closing Date. If before the Closing Date, all or a material part of the Purchased Assets are lost, damaged or destroyed then Purchaser may terminate this Agreement forthwith upon written notice to Seller to such effect,

(b) At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situate at the Closing Time. The Purchaser acknowledges that the Seller has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. The Purchaser shall promptly notify the Seller of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller, or to such other Person as the Seller may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and Warranties of Seller**

Seller hereby represents and warrants to Purchaser as follows and acknowledges that Purchaser is relying on such representation and warranty in connection with its purchase of the Purchased Assets:

- (a) Seller is a corporation duly formed and existing under the laws of Ontario and, subsequent to obtaining the Vesting Order and the CCAA Assignment Order, if applicable, has the power and authority to enter into, and to perform its obligations under, this Agreement.
- (b) The execution, delivery and performance by Seller of this Agreement:
  - (i) upon the granting of the Initial Order and the Stalking Horse and SISP Order and the Vesting Order, is within the powers of Seller;
  - (ii) has been duly authorized, executed and delivered by Seller;
  - (iii) upon the granting of the Initial Order and Stalking Horse and SISP Order and the Vesting Order, constitutes legal, valid and binding obligations of the Seller;
  - (iv) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected, other than the consent of the ABL Agent pursuant to the terms of the Revolving Facility, GSO and the other lenders party to the GSO Facility, the Third Party Consents, and the CCAA Assignment Order, if applicable; and
  - (v) subject to the Vesting Order, will not result in the violation of any applicable Law.
- (c) Other than the Stalking Horse and SISP Order, Vesting Order, the DIP Financing Order, the Third Party Consents or CCAA Assignment Order, and in connection with obtaining clearance under the *Competition Act* (Canada) in accordance with Section 6.5(i), if applicable, there is no requirement for Seller to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.

- (d) Seller is not a non-resident of Canada for the purposes of the ITA.
- (e) Seller is a registrant for purposes of the ETA whose registration number is 10216 4514 RT0001.
- (f) All of the Assumed Contracts are valid and binding against Seller and to the best of the knowledge of the Seller, (i) there are no outstanding defaults by Seller under the Assumed Contracts and (ii) there exists no outstanding default by the counterparties to the Assumed Contracts.
- (g) Seller does not have any defined benefit pension plans or similar plans and none of the Employees are subject to the terms and conditions of employment with Seller under a collective bargaining agreement and Seller is in material compliance with all applicable Law respecting the Employees' employment with Seller.
- (h) Seller has made all deductions for payroll, employment insurance, Canada Pension Plan and payroll Tax required by applicable Law to be made as at the date hereof from the Employees' remuneration.

7.2 Representations and Warranties of Purchaser

Purchaser represents and warrants to Seller as follows and acknowledges and confirms that Seller is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) Purchaser is a corporation duly formed and existing under the laws of British Columbia and has the power and authority to enter into, and to perform its obligations under, this Agreement.
- (b) The execution, delivery and performance by Purchaser of this Agreement:
  - (i) has been duly authorized by all necessary corporate action;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constituting documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected, other than the consent of the ABL Agent pursuant to the terms of the Intercreditor Agreement; and
  - (iii) will not result in the violation of any applicable Law.
- (c) This Agreement has been duly executed and delivered by Purchaser.

- (d) Other than the Stalking Horse and SISP Order, Vesting Order, the DIP Financing Order, the Third Party Consents or CCAA Assignment Order, and in connection with obtaining clearance under the *Competition Act* (Canada) in accordance with Section 6.4(m), if applicable, there is no requirement for Purchaser to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (e) Purchaser is a WTO investor for purposes of the *Investment Canada Act*.
- (f) Purchaser will become registered on or prior to Closing for purposes of the ETA.
- (g) Purchaser is not a non-resident of Canada for the purposes of the ITA.
- (h) There are no actions, suits, appeals, claims, applications, orders, investigations, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Purchaser's knowledge, threatened against Purchaser that could prohibit, restrict or seek to enjoin the Transaction.

**ARTICLE 8**  
**COVENANTS OF THE PARTIES**

**8.1**

**Covenants of Seller**

Seller covenants and agrees with Purchaser as follows:

- (a) upon request by Purchaser, Seller agrees that it shall change its name to a name which does not include the words "Grafton" or "Fraser" or any part thereof or any similar words; provided that Purchaser acknowledges that any name change cannot take effect until the Closing Time. Seller agrees that if requested to change its name by Purchaser, neither Seller nor any of its Affiliates will use the words "Grafton" or "Fraser" or any part thereof or any similar words;
- (b) until the Closing Time, Seller shall furnish Purchaser and its representatives reasonable access to the Business and the Purchased Assets at all times during normal business hours, as well as such information within the possession or control of Seller regarding the Business as Purchaser and its representatives may reasonably request;
- (c) Seller shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.4 of this Agreement and shall cooperate with Purchaser in its efforts to cause the satisfaction of the conditions set out in Section 6.5 of this Agreement; and

- (d) Subject to the Initial Order, Seller shall ensure it has made all deductions and paid its obligations for Priority Payables as required by applicable Law and is not in arrears in respect of these obligations prior to the Closing Time.

8.2 Covenant of Purchaser in respect of Wind-Down Amount

Purchaser covenants and agrees with Seller to pay the Monitor immediately after the Closing the amount of \$200,000 (the "Wind-Down Amount") to fund the reasonable costs, fees and disbursements of Seller and its advisors, in each case at their standard rates and charges, to wind down and complete the CCAA Proceeding after the Closing Date, provided that the Monitor confirms in writing prior to the Closing that any portion of the Wind-Down Amount that is not required in connection with the wind down and completion of the CCAA Proceeding shall form the property of Purchaser and be returned to Purchaser on the date of the Monitor's discharge.

8.3 General Covenants of Purchaser

Purchaser covenants and agrees with Seller as follows:

- (a) for a period of six years following the Closing Date, Purchaser covenants to use reasonable care to preserve the Books and Records of Seller and to permit Seller and its representatives and successors and assigns and any trustee in bankruptcy access to any such Books and Records that contain information relating to the period prior to the Closing Time, as Seller and its representatives and successors and assigns and any trustee in bankruptcy may reasonably request; and
- (b) Purchaser shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.5 of this Agreement and shall cooperate with Seller in its efforts to cause the satisfaction of the conditions set out in Section 6.4 of this Agreement.

ARTICLE 9  
STALKING HORSE AND SISP

9.1 Stalking Horse and SISP

Seller and Purchaser acknowledge that this Agreement and the Transaction are subject to Court approval.

The Parties acknowledge and agree that Seller shall apply to the Court in the CCAA Proceeding as promptly as practicable after execution of this Agreement, for an order substantially in the form attached as Schedule 9.1 or such other form as Seller and Purchaser may agree (the "Stalking Horse and SISP Order") recognizing this Agreement, as a "stalking horse bid" (the "Stalking Horse Bid") and approving the SISP, and all Parties will use commercially reasonable efforts to have the Stalking Horse and SISP Order issued. Purchaser acknowledges and agrees that the SISP is in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

**ARTICLE 10**  
**CONFIDENTIALITY**

**10.1**            **Confidentiality**

In addition to the obligations under the Confidentiality Agreement, each of Purchaser and Seller covenants and agrees that neither it nor its respective Affiliates or representatives, will disclose the existence or terms of this Agreement or the fact of its execution and delivery to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except (a) as and to the extent required by Law, (b) in the case of GSO and the Seller to its directors, officers, employees, agents, managers and their representatives and Affiliates, (c) in the case of GSO, to funds managed, advised, or sub-advised by GSO or its Affiliates, including any limited partners in such funds, (d) to the ABL Agent, (e) in the case of the Seller, as may be required under the CCAA in connection with filing and obtaining the Stalking Horse and SISP Order, the Vesting Order or the CCAA Assignment Order, or (f) as otherwise may be required by the Court. The Parties will cooperate and consult with one another, to the extent reasonably practical, with respect to the issuance of any press release or other public statement regarding this Agreement and the Transaction.

**ARTICLE 11**  
**TERMINATION**

**11.1**            **Termination**

- (a) This Agreement may be terminated at any time prior to the Closing Time:
  - (i) by mutual written agreement of Seller and Purchaser and on consent of the Monitor;
  - (ii) as provided in Sections 6.4 and 6.5, provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled;
  - (iii) by Purchaser as provided in Section 6.7; or
  - (iv) by Seller, if Closing shall not have occurred on or prior to the Termination Date, provided that Seller has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled.
  
- (b) This Agreement shall automatically terminate at any time prior to the Closing Time if:
  - (i) this Agreement is not the Successful Bid or the Back-Up Bid (as determined pursuant to the SISP); or



- (ii) this Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed.

**11.2 Effect of Termination**

(a) If this Agreement is terminated pursuant to, or due to the occurrence of any of the events set out in Section 11.1 all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for and subject to the provisions of Section 10.1 and this Section 11.2.

(b) Under no circumstance shall any of the Parties or their respective directors, officers, employees, managers, Affiliates or agents or their respective directors, officers and employees be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

**ARTICLE 12  
AS IS WHERE IS**

**12.1 Acquisition of Assets on "As Is, Where Is" Basis**

Purchaser acknowledges that Seller is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and that, as of the date of this Agreement, Purchaser has had an opportunity to conduct any and all due diligence regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities and that it has relied solely on its own independent review, investigation, and/or inspection of any documents regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities other than the representations contained in Section 7.1. Any information provided by Seller, Richter or the Monitor to Purchaser describing the Purchased Assets, the Business and the Assumed Liabilities has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated herein, Purchaser acknowledges that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding Seller, the Business, the Purchased Assets or Assumed Liabilities or the completeness of any information provided in connection therewith or in any instrument furnished in connection with this Agreement including, without limitation, the respective rights, titles and interests of Seller, if any, in the Purchased Assets other than the representations contained in Section 7.1. This Section 12.1 shall not merge on the Closing Date and is deemed incorporated by reference in all documents delivered pursuant to the terms of this Agreement.

**ARTICLE 13**  
**GENERAL**

**13.1**        **Disputes**

Any dispute arising out of or in connection with this Agreement shall be submitted to and finally resolved by a motion brought before the Court in the CCAA Proceeding.

**13.2**        **Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or email:

- (a)        in the case of a notice to Seller at:

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

Attention:    Mark Sun, Vice President and Chief Financial Officer  
Email:        msun@graffonfraser.com

with a copy (which shall not constitute notice) to:

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

Attention:    Stuart Brotman / Natasha De Cicco  
Facsimile No.: 416.364.7813  
Email:        sbrotman@fasken.com / ndecicco@fasken.com

- (b)        in the case of a notice to Purchaser at:

c/o GSO Capital Partners LP  
345 Park Avenue, 31st Floor  
New York, NY 10154

Attention:    Marc Baliotti / John Beberus / GSO Legal  
Email:        Marc.Baliotti@gsocap.com / John.Beberus@gsocap.com /  
                  gsolegal@gsocap.com

with a copy (which shall not constitute notice) to:

Davies Ward Phillips & Vineberg LLP  
40th Floor, 155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Scott Hyman  
Fax No.: 416.863.0871  
Email: shyman@dwpv.com

- (c) in the case with a further copy to the Monitor, as follows:

Richter Advisory Group Inc.  
181 Bay Street, Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Gilles Benchaya / Adam Sherman  
Email: gbenchaya@richterconsulting.com / asherman@richter.ca

with a copy (which shall not constitute notice) to:

Cassels Brock Blackwell LLP  
Suite 2100, Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Attention: Jane Dietrich  
Email: jdietrich@casselsbrock.com

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

### 13.3 Assignment

Neither Party shall assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party, provided that (a) Purchaser may assign this Agreement to any of its Affiliates or funds managed, advised or sub-advised by GSO or its Affiliates before the filing of the Vesting Order where (i) prior notice of such assignment is provided to the Seller, and (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, or (b) Purchaser may assign its rights under

this Agreement as security for its obligations to its lenders, including under the New Revolving Facility.

**13.4**            **Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

**13.5**            **Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

**13.6**            **Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

**13.7**            **Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date provided that the reasonable costs and expenses of any actions taken after Closing Date at the request of a Party shall be the responsibility of the requesting Party.

**13.8**            **Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

**13.9**            **Personal Information**

Purchaser hereby acknowledges that it is aware, and that it will advise its representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them. To the extent that any personally identifiable information of any customers is transferred from the Seller to the

Purchaser prior to the filing of the Initial Order, the Purchaser agrees to abide by the Seller's privacy policy with respect to such personally identifiable information.

13.10 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as otherwise provided in this Agreement, each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and no Person other than the Parties and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

13.11 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

13.12 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

13.13 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

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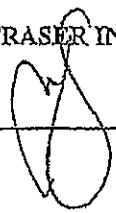
IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

GRAFTON-FRASER INC.

By: \_\_\_\_\_

Name:

Title:



**Mark G. Sun**  
Vice President & CFO  
Grafton-Fraser Inc.

1104307 B.C. LTD.

By: \_\_\_\_\_

Name: MARISA BEENEY  
Title: AUTHORIZED SIGNATORY

Schedule 1.1(a)

Permitted Encumbrances

1. The following court-ordered charges granted pursuant to, and defined in, the order of the Court granting Seller protection pursuant to the CCAA:
  - (a) Term Lender's DIP Charge;
  - (b) Liens granted to the Term Secured Parties;
  - (c) ABL Lender's DIP Charge; and
  - (d) Liens granted to the ABL Secured Parties.
  
2. The following securities pursuant to the *Personal Property Security Act* ("PPSA") in each applicable jurisdiction:

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 debtor's present and after-acquired personal property of the debtor 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 debtor'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	All present and after- acquired personal property of the debtor.



<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
2. 07051518194	GSO Capital Partners, LP, as Administrative Agent	Expiry Date: December 11, 2022 Registration Date: May 15, 2007  Registration Period: 16 years  Expiry Date: May 15, 2023	All present and after- acquired personal property of the debtor. 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.
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	The security interest is taken in all of the debtor's present and after-acquired personal property.
2. 200708558108	GSO Capital Partners, LP, as Administrative Agent	Expiry Date: December 11, 2022 Registration Date: May 7, 2007  Registration Period: 16 years  Expiry Date: May 15, 2023	The security interest is taken in all of the debtor'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. 719663706	Canadian Dealer Lease Service Inc. and Bank of	Registration Date: August 16, 2016	Inventory, Accounts, Other, Motor Vehicle Included

<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
	Nova Scotia - DLAC	Registration Period: 3 years  Expiry Date: August 16, 2019	2016 Maza CX09, JM3TCBDY6G0111704  Amount: \$55,145  Date of Maturity: August 11, 2019
2. 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
3. 675686367	Xerox Canada Ltd.	Registration Date: January 17, 2012  Registration Period: 6 years  Expiry Date: January 17, 2018	Equipment, Other
3. 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 debtor's present and after-acquired personal property
2. 25333881	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 14, 2015	A security interest is taken in all of the debtor's present and after-acquired personal

<u>Registration Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
		Registration Period: 7 years Expiry Date: December 14, 2022	property

3. 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

4. Security interests recorded against all of the Canadian trademarks owned by Seller, 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).

**Schedule 1.1(b)**

**Purchased Locations**

No later than February 17, 2017, Purchaser shall provide Seller with a list of the Purchased Locations it wishes to acquire, representing not less than 110 of Seller's retail stores.

Schedule 1.1(c)

Vesting Order

See attached.

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

WEEKDAY, THE #

JUSTICE

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DAY OF ■, 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 (the "Sale Agreement") between the Applicant and 1104307 B.C. Ltd. (the "Purchaser") dated ■, 2017 and appended to the Affidavit of ■ dated ■ (the "Affidavit"), and vesting in the Purchaser the Debtor'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 Report of Richter Advisory Group Inc., in its capacity as the court appointed monitor of the Applicant (the "Monitor"), dated ■ (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 [NAME] sworn [DATE] filed:

1. 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.

2. THIS COURT ORDERS AND DECLARES that 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, 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 [NAME] in these proceedings dated January █, 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) 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.

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

4. 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 Debtor.

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 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 Debtor and shall not be void or voidable by creditors of the Debtor, 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.

6. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

7. 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.

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**Schedule A – Form of Monitor's Certificate**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**Applicant**

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], 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 [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Applicant and [NAME OF PURCHASER] (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 section • 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**

**Schedule C – Permitted Encumbrances**

## Schedule 2.1(e)

### Assumed Contracts

#### A. Loan Documents

1. Non-revolving credit facility dated as of June 16, 2009 made available to Seller pursuant to the amended and restated credit agreement between Seller, as borrower, Wilmington Trust, National Association, as servicing agent, GSO Capital Partners LP, as administrative agent, 2473304 Ontario Inc., as guarantor, and GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as lenders, as amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016, November 29, 2016, December 15, 2016, December 23, 2016 and January 20, 2017, as it may be further amended, supplemented or otherwise modified, and any related agreements or documents thereto.
2. DIP facility loan agreement dated January 20, 2017 between GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as DIP lenders, GSO Capital Partners LP, as agent, Wilmington Trust, National Association, as servicing agent, and Seller, as borrower, as it may be further amended, supplemented or otherwise modified, and any related agreements or documents thereto.

#### B. Benefit Plans

1. Sun Life Group Policy No. 87050 for all Regular Employees (Class 1), as such plan may be amended and restated from time to time.
2. Sun Life Group Policy No. 87050 for Executives (Class 2), as such plan may be amended and restated from time to time.
3. Sun Life Group Policy No. 87050 for Senior Management (Class 3), as such plan may be amended and restated from time to time.

#### C. Contracts

1. Agreement to lease, dated October 7, 2016, between Seller and Marco Enterprises, regarding a condominium lease for Lance Itkoff, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
2. Vehicle lease agreement and disclosure statement, dated August 11, 2016, between Seller and Agincourt Mazda, regarding a car lease for Lance Itkoff, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
3. Letter agreement, dated November 2, 2016, between Peerless Clothing Inc. and Seller, regarding a security deposit in the amount of \$500,000, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

4. Quotation, dated November 23, 2016, from SDR Distribution Services Inc., regarding hanging distribution, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
5. Professional services agreement, dated June 22, 2016 (with an effective date of July 5, 2016), between Advantix Digital LLC and Seller, regarding digital marketing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
6. Proposal from Advantix Digital LLC, dated May 31, 2016, regarding digital marketing, and any attachments, amendments or related agreements thereto in effect at the Closing Time, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
7. Work services agreement and draft enrollment form, dated April 5, 2016, between American Express Travel Related Services Company, Inc. and Seller, regarding AMEX payment processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
8. Terms and conditions/merchant card acceptance agreement, undated, from Amex Bank of Canada, regarding the terms governing the acceptance of American Express cards in Canada, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
9. Merchant operating manual (Canada), dated April 2016, from American Express, regarding the policies and procedures governing Seller's acceptance of American Express cards, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
10. Mutual non-disclosure agreement, dated November 2, 2016, between Anchor HR Services Inc. and Seller, regarding the exchange of confidential information while the parties were contemplating entering into a commercial relationship, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
11. Terms of service agreement, dated November 14, 2016, and a proposal, between Anchor HR Services Inc. and Seller, regarding human resources consultation services in connection with Seller's reorganization, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
12. Code library license agreement, dated December 19, 2014, between B2 Processing Solutions and Seller, regarding a bridge between the pin pads and POS/RMS system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
13. Master communications agreement (#1-354442841-M1), including the service schedule to master communications agreement, undated (but executed March 10 and 12, 2015), and all quotes, between Bell Canada and Seller, regarding Seller's corporate telephone system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

14. Master communications agreement (#1-354442841-M1), including the hosting services schedule to master communications agreement (retail), executed September 10, 2014, and all appendices thereto, between Bell Canada and Seller, regarding offsite system processing (Q9 networks), and any attachments, amendments or related agreements thereto in effect at the Closing Time.
15. Internet protocol virtual private network (IPN VPN) service schedule, executed September 10, 2014, between Bell Canada and Seller, regarding IP VPN/network services, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
16. Master equipment sale agreement (S151120663), undated, between Bell Canada/Bell Aliant Regional Communications LP and Seller, providing terms to govern quotations that will be attached as schedule A from time to time.
17. Bell Canada Bell Total Connect service schedule to master communications agreement, dated December 21, 2015, between Bell Canada and Seller.
18. Subscription agreement, including quote 483451, dated June 18, 2014, for Seller from bLoyal.com, which includes four packages for various subscription-based products that appear to relate to online services/e-commerce, data retrieval and marketing, regarding a CRM and POS system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
19. Subscription agreement, including quote 484038, dated September 23, 2014, for Seller from bLoyal.com, which includes two quoted packages for a reporting database subscription, regarding a CRM and POS system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
20. Master license agreement, dated February 7, 2012, between Societe Internationale de Promotion et de Creation S.A.S and Seller, as amended by amendments dated April 5, 2012, August 2, 2012 and June 12, 2013, regarding the licensing and sub-licensing of marks and Hechter designs in Canada in consideration of which Seller pays Societe Internationale de Promotion et de Creation S.A.S certain royalties, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
21. Sub-license agreement, dated February 26, 2014, between Societe Internationale de Promotion et de Creation S.A.S, Seller and Shanghai Shenda America LLC, regarding the sub-licensing of marks, Hechter designs and domain names/sub-domain names in the United States of America in consideration of which Shanghai Shenda America LLC pays Seller certain royalties, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
22. Terms and conditions of Seller, dated April 14, 2005, signed as accepted and agreed to by Freeman Formalwear, regarding shipping, advertising, promotional materials, in store point of purchase support and other terms agreed to by Freeman Formalwear, and any attachments, amendments or related agreements thereto in effect at the Closing Time.



23. E-mail dated September 24, 2014 from Leonard Goldstein at Freeman Formalwear to Paul Hudson at Seller, regarding a \$99,000 credit and attaching a description of a "fixed cost pricing method".
24. Canadian merchant agreement, dated November 15, 2007, between Givex Canada Corp. and Seller, regarding the supply of coupons and gift card services to Seller, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
25. Presentation deck and Schedule B Givex pricing page from 2011/2012, regarding the supply of coupons and gift card services to Seller, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
26. Discover Canadian merchant operating regulations (R14.1), dated April 11, 2014, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
27. Discover Canadian merchant services agreement, dated September 5, 2014, between Seller and DFS Services LLC, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
28. Global merchant agreement, dated July 19, 2006, between Global Payments Direct, Inc., Seller, GPC Financial Corporation (only in its capacity as "member" for VISA processing) and National Bank of Canada (only in its capacity as "member" for MasterCard processing), as amended on July 27, 2011 and September 12, 2014, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
29. Master lease and financing agreement number 5253307970 dated July 31, 2014 between Hewlett-Packard Financial Services Canada Company and Seller, providing the terms for the following schedules relating to a POS hardware/software lease:
  - (a) Schedule 5253307970000003, dated September 19, 2014, for approximately \$106,153 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.
  - (b) Schedule 5253307970000002 dated September 19, 2014 for approximately \$275,023.50 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.
  - (c) Schedule 5253307970000001 dated July 31, 2014 for approximately \$247,952 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.

30. IBM agreement for services acquired from an IBM business partner from IBM Canada and an accompanying statement of work, regarding ERP hardware maintenance, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
31. License agreement for software products, dated June 3, 1992, between Island Pacific Corporation and Seller, as amended on March 23, 2010, regarding ERP software maintenance, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
32. License agreement, dated October 18, 1988, between Grafton Group Limited and Island Pacific Systems Corporation, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
33. Volume pricing chain-wide plan from SVI Retail, Inc. to Seller, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
34. Maintenance agreement, dated December 7, 2011, and any end user license agreements, order forms and purchase orders, between QlikTech Inc. and Seller, regarding the provision and maintenance of certain software, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
35. Service pricing agreement, dated April 14, 2016, between Payworks Inc. and Seller, regarding payroll, ancillary data processing services and human resources services for corporate employees, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
36. Service pricing agreement, dated, May 29, 2015, between Payworks Inc. and Seller, regarding payroll, ancillary data processing services and human resources services for corporate employees, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
37. Software license and services agreement, dated June 27, 2012, between StoreForce Solutions Inc. and Seller, regarding the licensing of StoreForce's enterprise-wide retail performance management, labour scheduling and business intelligence software for Seller's use, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
38. Signed proposal, dated August 10, 2015, between Summit Tech Communications Inc. and Seller, regarding e-commerce strategy and services, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
39. Sales and license agreement, dated June 10, 2013, between Supercrease Inc. and Seller, regarding the licensing of a system for applying resin from cartridges onto garments to form a permanent crease, the purchase of such cartridges and the related use of marks and copyrights, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

40. Rental agreement, dated January 1, 2014, between Tallman Idealease and Seller, regarding the monthly truck rental of one truck, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
41. Renewal offer, dated November 23, 2016, between Telus/Sky Wireless Communications and Seller, regarding the provision of cell phones and tablets, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
42. Microsoft dynamics retail management system proposal and related invoices, dated June 17, 2014, between Texo and Seller, regarding the licensing and maintenance of a retail management system software, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
43. UPS contract carrier agreement, dated September 23, 2015, between United Parcel Service Canada Ltd. and Grafton Fraser Kingsport DC, regarding freight carrier services, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
44. Service agreement, effective as of December 16, 2013, between WIS International and Seller, regarding physical inventory counting services, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
45. Lease and maintenance agreement, dated January 13, 2012, between Xerox and Seller, regarding Xerox photocopier equipment, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
46. Facility rental service agreement, dated September 3, 2015, between Seller and Cintas, regarding floor mats, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
47. 2<sup>nd</sup> revised rollout proposal, dated June 29, 2012, between Seller and Countwise LLC, regarding traffic counters in 30 stores, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
48. 2015 digital program statement of work, dated May 19, 2015, between Seller and DAC Group, regarding store music, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
49. 2015 local listings management statement of work, dated May 19, 2015, between Seller and DAC Group, regarding store music, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
50. schedule B technicians suggested checklist for the HVAC maintenance inspection program, dated July 1, 2013, between Seller and Dixon Air & Heating Inc, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

51. Account detail summary, dated August 2012, from Gunnebo, addressed to Seller, regarding health and safety, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
52. Confidential rate confirmation, dated June 16, 2016, from Quiktrax, addressed to Seller, regarding a freight vendor, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
53. Retail distribution and license agreement, dated January 1, 2013, as amended January 26, 2015, March 10, 2015 and August 1, 2015, between ABG-Jones, LLC and Seller, regarding Seller's use of the Jones New York licensed marks for menswear, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

D. Leases



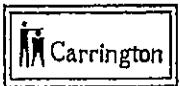
No later than February 17, 2017, Purchaser shall provide Seller with an updated list of Assumed Contracts, identifying the Assumed Contracts associated with the Purchased Locations.



Schedule 2.1(f)




Intellectual Property



A. Trademarks

Trademarks Owned by the Seller in Canada

No.	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
1.	GRAFTON-FRASER INC.	AUTOFLEX	App 1165481 Reg TMA628156 Reg 10-DEC-2004	Registered Renewal due: 10-DEC-2019
2.	GRAFTON-FRASER INC.,	AVENUE RD.	App 543199 Reg TMA315357 Reg 20-JUN-1986	Registered Renewal due: 20-JUN-2031
3.	GRAFTON-FRASER INC.,	BACK COUNTRY	App 645784 Reg TMA382405 Reg 29-MAR-1991	Registered Renewal due: 29-MAR-2021
4.	GRAFTON-FRASER INC.,	BOSA DESIGN 	App 746049 Reg TMA570678 Reg 13-NOV-2002	Registered Renewal due: 13-NOV-2017
5.	GRAFTON-FRASER INC.	BRITCHES	App 568666 Reg TMA414940 Reg 30-JUL-1993	Registered Renewal due: 30-JUL-2023
6.	GRAFTON-FRASER INC.	BRITCHES CLASSIC SPORT DESIGN (NEW/BLEU) 	App 568663 Reg TMA444217 Reg 23-JUN-1995	Registered Renewal due: 23-JUN-2025
7.	GRAFTON-FRASER INC.	BRITCHES GREAT OUTDOOR COLLECTION	App 783867 Reg TMA505684 Reg 17-DEC-1998	Registered Renewal due: 17-DEC-2028
8.	GRAFTON-FRASER INC.	BRITCHES GREAT OUTDOORS	App 842381 Reg TMA527329 Reg 04-MAY-2000	Registered Renewal due: 04-MAY-2030
9.	Grafton-Fraser Inc.,	BUSINESS CASUAL	App 846835 Reg TMA500577 Reg 14-SEP-1998	Registered Renewal due: 14-SEP-2028
10.	GRAFTON-FRASER INC.,	CARRINGTON & DESIGN 	App 516648 Reg TMA307085 Reg 20-SEP-1985	Registered Renewal due: 20-SEP-2030



No.	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
11.	GRAFTON-FRASER INC.,	CLUB VIP GOLD	App 715178 Reg TMA425742 Reg 25-MAR-1994	Registered Renewal due: 25-MAR-2024
12.	GRAFTON-FRASER INC.,	CRICKETEER	App 478014 Reg TMA316499 Reg 18-JUL-1986	Registered Renewal due: 18-JUL-2031
13.	GRAFTON-FRASER INC.	CRICKETEER & DESIGN 	App 479325 Reg TMA316448 Reg 18-JUL-1986	Registered Renewal due: 18-JUL-2031
14.	GRAFTON-FRASER INC.,	EARTH CREW	App 752211 Reg TMA512455 Reg 31-MAY-1999	Registered Renewal due: 31-MAY-2029
15.	GRAFTON-FRASER INC.,	EDITIONS BY GEORGE RICHARDS	App 653986 Reg TMA383683 Reg 26-APR-1991	Registered Renewal due: 26-APR-2021
16.	GRAFTON-FRASER INC.,	FOREIGN TRADE	App 543848 Reg TMA321831 Reg 19-DEC-1986	Registered Renewal due: 19-DEC-2016
17.	Grafton-Fraser Inc.,	FRIDAY WEAR	App 739089 Reg TMA463336 Reg 13-SEP-1996	Registered Renewal due: 13-SEP-2026
18.	GRAFTON-FRASER INC.	GEORGE RICHARDS BIG & TALL	App 1185918 Reg TMA627469 Reg 03-DEC-2004	Registered Renewal due: 03-DEC-2019
19.	GRAFTON-FRASER INC.	GEORGE RICHARDS BIG & TALL MENSWEAR	App 1185919 Reg TMA627344 Reg 02-DEC-2004	Registered Renewal due: 02-DEC-2019
20.	GRAFTON-FRASER INC.,	GEORGE RICHARDS KINGSIZE CLOTHIERS FOR BIG AND TALL & DESIGN 	App 526249 Reg TMA306621 Reg 06-SEP-1985	Registered Renewal due: 06-SEP-2030
21.	GRAFTON-FRASER INC.	GEORGE RICHARDS XL	App 1534970 Reg TMA894056 Reg 15-JAN-2015	Registered Renewal due: 15-JAN-2030
22.	Grafton-Fraser Inc.,	GIANNI MARCO	App 535892 Reg TMA311494 Reg 21-FEB-1986	Registered Renewal due: 21-FEB-2031

No.	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
23.	GRAFTON-FRASER INC.	GR SIGNATURE SERIES DESIGN SIGNATURE SERIES	App 1524143 Reg TMA951840 Reg 11-OCT-2016	Registered Renewal due: 11-OCT-2031
24.	GRAFTON-FRASER INC.,	GRAFTON & CO. DESIGN GRAFTON & Co.	App 573243 Reg TMA337868 Reg 11-MAR-1988	Registered Renewal due: 11-MAR-2018
25.	GRAFTON-FRASER INC.	GRAFTON 1853 & DESIGN  GRAFTON 1853	App 1522461 Reg TMA950781 Reg 29-SEP-2016	Registered Renewal due: 29-SEP-2031
26.	GRAFTON-FRASER INC.	GRAFTON 1853 LIQUID WOOL	App 1655859 Reg TMA952403 Reg 18-OCT-2016	Registered Renewal due: 18-OCT-2031
27.	GRAFTON-FRASER INC.,	GRAFTON CLUB SINCE 1853 & DESIGN 	App 501597 Reg TMA286808 Reg 13-JAN-1984	Registered Renewal due: 13-JAN-2029
28.	Grafton-Fraser Inc.	HARWICK	App 1209356 Reg TMA647678 Reg 09-SEP-2005	Registered Renewal due: 09-SEP-2020
29.	GRAFTON-FRASER INC.,	INTERNATIONAL ZONES	App 609817 Reg TMA383393 Reg 26-APR-1991	Registered Renewal due: 26-APR-2021
30.	GRAFTON-FRASER INC.,	INTERNATIONAL ZONES & DESIGN 	App 609816 Reg TMA386509 Reg 12-JUL-1991	Registered Renewal due: 12-JUL-2021
31.	Grafton-Fraser Inc.	KINGSPORT	App 1209354 Reg TMA647864 Reg 13-SEP-2005	Registered Renewal due: 13-SEP-2020
32.	Grafton-Fraser Inc.,	LEISHMAN	App 406292 Reg TMA231809 Reg 16-FEB-1979	Registered Renewal due: 16-FEB-2024
33.	Grafton-Fraser Inc.,	LEISHMAN CLOTHES	App 162831 Reg UCA11495 Reg 26-AUG-1933	Registered Renewal due: 26-AUG-2023


No.	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
34.	Grafton-Fraser Ino.	LIVE LARGE BIG & TALL	App 1219084 Reg TMA690431 Reg 21-JUN-2007	Registered Renewal due: 21-JUN-2022
35.	GRAFTON- FRASER INC.	MADISON CLUB	App 556905 Reg TMA330679 Reg 31-JUL-1987	Registered Renewal due: 31-JUL-2017
36.	GRAFTON- FRASER INC.	MR. BIG & TALL	App 1434473 Reg TMA782213 Reg 10-NOV-2010	Registered Renewal due: 10-NOV-2025
37.	Grafton-Fraser Inc.,	MR. BIG 'N TALL	App 557070 Reg TMA325166 Reg 27-MAR-1987	Registered Renewal due: 27-MAR-2017
38.	GRAFTON- FRASER INC.	MR. BIG AND TALL XL	App 1534966 Reg TMA894054 Reg 15-JAN-2015	Registered Renewal due: 15-JAN-2030
39.	GRAFTON- FRASER INC.	NABOUR STORES	App 493952 Reg TMA288827 Reg 16-MAR-1984	Registered Renewal due: 16-MAR-2029 Rtw 16-MAR-2014
40.	Grafton-Fraser Inc.,	NEW EDITIONS	App 324542 Reg TMA169081 Reg 08-MAY-1970	Registered Renewal due: 08-MAY-2030
41.	GRAFTON- FRASER INC.	NORTEK & DESIGN 	App 842238 Reg TMA536123 Reg 30-OCT-2000	Registered Renewal due: 30-OCT-2030
42.	GRAFTON- FRASER INC.,	NORTHWOODS	App 723463 Reg TMA443255 Reg 26-MAY-1995	Registered Renewal due: 26-MAY-2025
43.	GRAFTON- FRASER INC.	NXT Nortek	App 1329387 Reg TMA802497 Reg 20-JUL-2011	Registered Renewal due: 20-JUL-2026
44.	GRAFTON- FRASER INC.	PROFILO	App 1137255 Reg TMA664981 Reg 25-MAY-2006	Registered Renewal due: 25-MAY-2021
45.	GRAFTON- FRASER INC.,	PROFILO CLASSICS	App 1089815 Reg TMA593967 Reg 05-NOV-2003	Registered Renewal due: 05-NOV-2018
46.	Grafton-Fraser Inc.,	REPP LTD.	App 749329 Reg TMA490828 Reg 04-MAR-1998	Registered Renewal due: 04-MAR-2028
47.	Grafton-Fraser Ino.,	REPP LTD. BIG & TALL (DESIGN) 	App 791522 Reg TMA472738 Reg 17-MAR-1997	Registered Renewal due: 17-MAR-2027




No.	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
48.	GRAFTON-FRASER INC.	SIGNATURE CARRINGTON	App 1434479 Reg TMA782214 Reg 10-NOV-2010	Registered Renewal due: 10-NOV-2025
49.	Grafton-Fraser Inc.,	SIGNATURE SERIES DESIGN 	App 705702 Reg TMA433896 Reg 30-SEP-1994	Registered Renewal due: 30-SEP-2024
50.	Grafton-Fraser Inc.	STONEHOUSE	App 1006491 Reg TMA561639 Reg 09-MAY-2002	Registered Renewal due: 09-MAY-2017
51.	GRAFTON-FRASER INC.	THE SUIT EXCHANGE	App 877362 Reg TMA529956 Reg 05-JUL-2000	Registered Renewal due: 05-JUL-2030
52.	Grafton-Fraser Inc.,	TIP TOP	App 408077 Reg TMA228964 Reg 14-JUL-1978	Registered Renewal due: 14-JUL-2023
53.	Grafton-Fraser Inc.,	TIP TOP BUSINESS CASUAL & DESIGN 	App 848374 Reg TMA500592 Reg 14-SEP-1998	Registered Renewal due: 14-SEP-2028
54.	Grafton-Fraser Inc.,	TIP TOP CLASSICS	App 1046184 Reg TMA576108 Reg 20-FEB-2003	Registered Renewal due: 20-FEB-2018
55.	Grafton-Fraser Inc.,	TIP TOP TAILORS	App 104873 Reg TMDA28783 Reg 20-JUL-1921	Registered Renewal due: 20-JUL-2031
56.	Grafton-Fraser Inc.,	TIP TOP TAILORS & DESIGN 	App 705693 Reg TMA438656 Reg 03-FEB-1995	Registered Renewal due: 03-FEB-2025
57.	Grafton-Fraser Inc.,	TIP TOP VETEMENTS D'AFFAIRES DÉCONTRACTÉS & DESIGN 	App 848373 Reg TMA500590 Reg 14-SEP-1998	Registered Renewal due: 14-SEP-2028
58.	Grafton-Fraser Inc.,	TIP TOP WAREHOUSE OUTLET & DESIGN 	App 511040 Reg TMA293888 Reg 10-AUG-1984	Registered Renewal due: 10-AUG-2029

No	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
59.	Grafton-Fraser Inc.,	TT & CO. SPORT & DESIGN 	App 701559 Reg TMA429886 Reg 01-JUL-1994	Registered Renewal due: 01-JUL-2024
60.	Grafton-Fraser Inc.,	TT & COMPANY	App 862657 Reg TMA511103	Registered Renewal due: 27-APR-2029
61.	Grafton-Fraser Inc.,	TT & COMPANY & DESIGN 	App 862658 Reg TMA511104 Reg 27-APR-1999	Registered Renewal due: 27-APR-2029
62.	GRAFTON-FRASER INC.,	UP COUNTRY	App 750753 Reg TMA441932 Reg 14-APR-1995	Registered Renewal due: 14-APR-2025

**Trademarks Owned by the Seller in Other Jurisdictions**

No	Country	Owner	Trademark	Application No. Registration No. Registration Date	Status Next deadline
1.	China	Grafton-Fraser Inc.,	GRAFTON 1853 & Design	App 10666131 Reg 10666131 Reg 08-28-2013	Registered Renewal due: 12-06-2023
2.	China	Grafton-Fraser Inc.,	GRAFTON 1853 & Design	App 10666130 Reg 10666130 Reg 08-28-2013	Registered Renewal due: 12-06-2023
3.	Japan	Grafton-Fraser Inc.,	GRAFTON 1853 & Design	App 24383/2012 Reg 5559375 Reg 02-22-2013	Registered Renewal due: 02-22-2023
4.	Korea	Grafton-Fraser Inc.,	GRAFTON 1853 & Design	App 45-2012-0045464 Reg 45-0045464 Reg 07-12-2013	Registered Renewal due: 07-13-2023
5.	US	GRAFTON-FRASER INC.	GEORGE RICHARDS XL GEORGE RICHARDS XL	App 85442756 Reg 4971253 Reg 07-JUN-2016	Registered Affidavit Use due: 06-07-2022 Renewal due: 06-07-2026
6.	US	GRAFTON-FRASER INC.	GR SIGNATURE SERIES 	App 85441968	Pending Response due: 05-28-2017

7.	US	GRAFTON-FRASER INC.	GRAFTON 1853 	App 85440851	Pending Response due: 05-14-2017
8.	US	GRAFTON-FRASER INC.	MR. BIG AND TALL XL MR. BIG AND TALL XL	App 85441590 Reg 4971252 Reg 07-JUN-2016	Registered Affidavit Use due: 06-07-2022 Renewal due: 06-07-2026

B. Business Names

Grafton Fraser Inc.

C. Domain Names

godaddy.com

GEORGERICHARDSMENSWEAR.COM  
MRBIGANDTALLMENSWEAR.COM  
TIPTOPTAILORMENSWEAR.COM  
GRAFTONFRASER.CA  
GRAFTONFRASER.COM  
MYGEORGERICHARDS.COM  
MYMRBIGANDTALL.COM  
MYTIPTOPTAILORS.COM  
GRAFTON1852.CA  
GRAFTON1852.COM  
GRAFTON1853.CA  
GRAFTON1853.COM  
GRXL.COM  
GRXL.CA  
GEORGERICHARDSXL.COM  
GEORGERICHARDSXL.CA  
GEORGERICHARDSXLMENSWEAR.COM  
GEORGERICHARDSXLMENSWEAR.CA  
MYGEORGERICHARDSXL.COM  
MYGEORGERICHARDSXL.CA  
MRBIGANDTALL.COM  
GFSFMOBILE.COM  
GEORGERICHARDS.COM

instantdomainregistration.com

GRAFTONHOUSE.COM

www.cadns.ca

BRITCHES.CA  
STONEHOUSEMENSWEAR.CA

MRBIGANDTALL.CA  
KINGSPORTCLOTHIERS.CA  
SUITEXCHANGE.CA  
GRAFTON.CA  
GEORGERICHARDS.CA  
GRAFTONHOUSE.CA  
MRBIGTALL.CA  
TIPTOPTAILORS.CA  
TIPTOP.CA

**Schedule 2.2(a)**

**Excluded Assets**

None.

## Schedule 2.2(c)

### Excluded Contracts

#### A. Contracts

1. Sponsorship agreement, dated March 4, 2015, between Seller, Rogers Sports Holdings Inc. and Rogers Blue Jays Partnership, and accompanying deal summaries, regarding advertising and sponsorship, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
2. Promotional agreement, dated April 22, 2016, between Seller, Rogers Sports Holdings Inc. and Rogers Blue Jays Partnership, regarding advertising and sponsorship, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
3. Vendor terms and agreement, dated March 29, 2012, between Seller and Caulfeild Apparel Group Ltd., regarding a merchant contract, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
4. Public advertising contract, dated July 25, 2015, between Seller and Core Media Inc., regarding advertising, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
5. Public advertising contract, dated March 3, 2016, between Seller and Core Media Inc., regarding advertising, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
6. Agreements with EDI Project, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
7. Service offer and agreement, dated February 13, 2012, between Seller and Gestion 4S Inc., regarding consulting for design, development and delivery of Microsoft Dynamics retail management system (point of sale system), and any attachments, amendments or related agreements thereto in effect at the Closing Time.
8. Service offer and agreement, dated June 25, 2014, between Seller and Gestion 4S Inc., regarding consulting for support for the development, launch and management of Seller's "big world" brand e-commerce webstores, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
9. Agreements with GBG related to Jones New York, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
10. Agreement, dated August 19, 2016, between Seller and 114161 Canada Inc. (d/b/a Remco), including a rate proposal and terms and conditions, dated April 12, 2016, regarding a freight vendor, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

11. Agreement with Return Path, regarding the auditing of Seller's e-mail list, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
12. Agreement with SPS Commerce, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
13. Agreement with Triversity, regarding Seller's old point of sale system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
14. Services agreement, dated December 12, 2012, between Seller and Trustwave Canada Inc., regarding PCI compliance, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
15. Conflict minerals policy, dated June 18, 2013, between Jones Investment Co. Inc. and Seller, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

B. Leases

16. No later than February 17, 2017, Purchaser shall provide Seller with a list of the Excluded Contracts for the Seller leases that will not be assigned.

**Schedule 2.3(e)**

**Assumed Accounts Payable**

No later than February 17, 2017, Purchaser shall provide Seller with a list of the Assumed Accounts Payable in connection with the Purchased Locations.



**Schedule 3.3**

**Guaranteed Purchase Price Allocation**

No later than February 17, 2017, Purchaser shall provide Seller with the Guaranteed Purchase Price Allocation.

## Schedule 6.4(m)

### Assumed Real Property Leases and Assumed Contracts Conditional to Closing

#### A. Contracts

1. Vehicle lease agreement and disclosure statement, dated August 11, 2016, between Seller and Agincourt Mazda, regarding a car lease for Lance Itkoff, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
2. Professional services agreement, dated June 22, 2016 (with an effective date of July 5, 2016), and a proposal dated May 31, 2016, between Advantix Digital LLC and Seller, regarding digital marketing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
3. Work services agreement and draft enrollment form, dated April 5, 2016, between American Express Travel Related Services Company, Inc. and Seller, regarding AMEX payment processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
4. Terms and conditions/merchant card acceptance agreement, undated, from Amex Bank of Canada, regarding the terms governing the acceptance of American Express cards in Canada, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
5. Merchant operating manual (Canada), dated April 2016, from American Express, regarding the policies and procedures governing Seller's acceptance of American Express cards, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
6. Mutual non-disclosure agreement, dated November 2, 2016, between Anchor HR Services Inc. and Seller, regarding the exchange of confidential information while the parties were contemplating entering into a commercial relationship, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
7. Code library license agreement, dated December 19, 2014, between B2 Processing Solutions and Seller, regarding a bridge between the pin pads and POS/RMS system, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
8. Appendix A-4 (co-location service in Q9 facility), executed September 10, 2014, between Bell Canada and Seller.
9. Internet protocol virtual private network (IPN VPN) service schedule, executed September 10, 2014, between Bell Canada and Seller, regarding IP VPN/network services, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

10. Master license agreement, dated February 7, 2012, between Societe Internationale de Promotion et de Creation S.A.S and Seller, as amended by amendments dated April 5, 2012, August 2, 2012 and June 12, 2013, regarding the licensing and sub-licensing of marks and Hechter designs in Canada in consideration of which Seller pays Societe Internationale de Promotion et de Creation S.A.S certain royalties, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
11. Discover Canadian merchant operating regulations (R14.1), dated April 11, 2014, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
12. Discover Canadian merchant services agreement, dated September 5, 2014, between Seller and DFS Services LLC, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
13. Global merchant agreement, dated July 19, 2006, between Global Payments Direct, Inc., Seller, GPC Financial Corporation (only in its capacity as "member" for VISA processing) and National Bank of Canada (only in its capacity as "member" for MasterCard processing), as amended on July 27, 2011 and September 12, 2014, regarding debit and credit card processing, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
14. Master lease and financing agreement number 5253307970 dated July 31, 2014 between Hewlett-Packard Financial Services Canada Company and Seller, providing the terms for the following schedules relating to a POS hardware/software lease:
  - (a) Schedule 5253307970000003, dated September 19, 2014, for approximately \$106,153 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.
  - (b) Schedule 5253307970000002 dated September 19, 2014 for approximately \$275,023.50 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.
  - (c) Schedule 5253307970000001 dated July 31, 2014 for approximately \$247,952 in financed items, between Hewlett-Packard Financial Services Canada Company and Seller, regarding a POS hardware/software lease, and any acceptance certificates, amendments or related agreements thereto in effect at the Closing Time.
15. License agreement for software products, dated June 3, 1992, between Island Pacific Corporation and Seller, as amended on March 23, 2010, regarding ERP software maintenance, and any attachments, amendments or related agreements thereto in effect at the Closing Time.


16. Service pricing agreement, dated April 14, 2016, between Payworks Inc. and Seller, regarding payroll, ancillary data processing services and human resources services for corporate employees, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
17. Service pricing agreement, dated May 29, 2015, between Payworks Inc. and Seller, regarding payroll, ancillary data processing services and human resources services for corporate employees, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
18. Software license and services agreement, dated June 27, 2012, between StoreForce Solutions Inc. and Seller, regarding the licensing of StoreForce's enterprise-wide retail performance management, labour scheduling and business intelligence software for Seller's use, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
19. Rental agreement, dated January 1, 2014, between Tallman Idealease and Seller, regarding the monthly truck rental of one truck, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
20. Renewal offer, dated November 23, 2016, between Telus/Sky Wireless Communications and Seller, regarding the provision of cell phones and tablets, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
21. Lease and maintenance agreement, dated January 13, 2012, between Xerox and Seller, regarding Xerox photocopier equipment, and any attachments, amendments or related agreements thereto in effect at the Closing Time.
22. Retail distribution and license agreement, dated January 1, 2013, as amended January 26, 2015, March 10, 2015 and August 1, 2015, between ABG-Jones, LLC and Seller, regarding Seller's use of the Jones New York licensed marks for menswear, and any attachments, amendments or related agreements thereto in effect at the Closing Time.

B. Leases


No later than February 17, 2017, Purchaser shall provide Seller with a list of Assumed Contracts for the Purchased Locations it wishes to acquire requiring Third Party Consents or a CCAA Assignment Order.

**Schedule 9.1**  
**Stalking Horse and SISP Order**

See attached.

Court File No. 

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE 

)

MONDAY, THE 30<sup>th</sup>

JUSTICE 

)

DAY OF JANUARY, 2017

)



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

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

(the "Applicant")

ORDER  
(Stalking Horse & SISP)

THIS MOTION, 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 24, 2017 and the Exhibits thereto (the "Sun Affidavit"), the report of Richter Advisory Group Inc. ("Richter"), in its capacity as the proposed monitor of the Applicant, dated January 24, 2017, and the Appendices thereto, the first report of Richter, in its capacity as monitor of the Applicant (the "Monitor"), dated January , 2017, and the Appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, 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 for any other party although duly served as appears from the affidavits of service of Irene Artuso sworn January 24, 2017 and January , 2017, filed.

## SERVICE & DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined shall have the meaning ascribed to them under (i) the asset purchase agreement dated January 2, 2017 (the "Stalking Horse Agreement") between the Applicant and 1104307 B.C. Ltd. (the "Stalking Horse Bidder"); or (ii) the sale and investment solicitation process attached hereto as Schedule "A" (the "SISP"), as the case may be.

## APPROVAL OF STALKING HORSE AGREEMENT

3. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the Stalking Horse Agreement be and is hereby ratified, authorized and approved, *provided, however*, that nothing contained in this Order approves the sale or the vesting of the Purchased Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that, if the Stalking Horse Agreement is the Successful Bid under the SISP, the approval of the sale and vesting of the Purchased Assets to the Stalking Horse Bidder shall be considered by this Court on a subsequent motion made to this Court following completion of the SISP.

4. THIS COURT ORDERS that the Stalking Horse Agreement be and is hereby approved and accepted solely for the purposes of being the Stalking Horse Bid under the SISP and subject to the further Order of the Court referred to in paragraph 3 above.

5. THIS COURT ORDERS that the Stalking Horse Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder thereunder shall not otherwise be limited or impaired in any way by (a) the Applicant's CCAA proceedings and the declarations of insolvency made in connection therewith; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (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 security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, 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) the execution, delivery or performance of the Stalking Horse Agreement shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party; and
- (b) the Stalking Horse Bidder shall not 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 Stalking Horse Agreement.

#### APPROVAL OF SISP

6. THIS COURT ORDERS that the SISP attached hereto as Schedule "A" (subject to such non-material amendments as may be agreed to by the Applicant, the ABL Agent and the DIP Lenders and approved by the Monitor) be and is hereby approved and the Applicant and the Monitor are hereby authorized and directed to take such steps as they deem necessary or advisable (subject to the terms of the SISP) to carry out the SISP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.

7. THIS COURT ORDERS that the Applicant and the Monitor and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Applicant or the Monitor, as applicable, as determined by the Court.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is hereby authorized and permitted to disclose and transfer to each potential bidder (the "Bidders") (including, without limitation, the Stalking Horse Bidder) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant's records pertaining to the Applicant's past



and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Assets and/or the Business ("Sale"). Each 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 Applicant, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Assets and/or Business acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant, or ensure that all other personal information is destroyed.

#### GENERAL

9. 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.

10. 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.

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## SALE AND INVESTOR SOLICITATION PROCESS

On January 25, 2017, Grafton-Fraser Inc. (the "Company") filed an application for an Initial Order under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") and Richter Advisory Group Inc. was appointed as the monitor (the "Monitor").

On January 30, 2017, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order, which, among other things: (a) approved this sale and investor solicitation process (the "SISP"), and (b) authorized the execution by the Company of the agreement of purchase and sale between the Company and 1104307 B.C. Ltd. dated January 24, 2017 (the "Stalking Horse Agreement") as the stalking horse bid for the purpose of conducting the SISP.

The purpose of the SISP is to identify one or more financiers, purchasers of and/or investors in the Company, the Business and/or Assets (each as defined below) to make an offer (each a "Bid") that is superior to the offer contemplated by the Stalking Horse Agreement, and to complete the transactions contemplated by any such offer, or by the Stalking Horse Agreement if no other offers are accepted. Set forth below are the procedures (the "SISP Procedures") that shall govern the SISP and any transactions consummated as a result thereof.

### 1. Defined Terms

The following capitalized terms have the following meanings when used in this SISP:

"Acknowledgment of the SISP" means an acknowledgment of the SISP in the form attached as Schedule "A" hereto;

"Additional Confidential Information" means information required to match the financial information of a retail store operated by the Company with the location of such a store;

"Aggregate Bid" means a combination of Portion Bids that do not overlap for Assets sought to be purchased, and which, when totalled, equal or exceed the Minimum Bid Amount;

"Assets" means the assets, undertakings and property of the Company;

"Auction" has the meaning given to it in Section 13(b);

"Auction Procedure" has the meaning given to it in Section 13(b);

"Back-Up Bid Expiration Date" has the meaning given to it in Section 16;

"Back-Up Bid" has the meaning given to it in Section 13(a)(ii);

"Back-Up Bidder" has the meaning given to it in Section 13(a)(ii);

"Bid" has the meaning given to it in the introduction;

"Business" means the business of retailing men's apparel and accessories carried on by the Company;

"Business Day" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

"CCAA" has the meaning given to it in the introduction;

"Company" has the meaning given to it in the introduction;

"Confidential Teaser" means the confidential teaser describing the opportunity to acquire all or substantially all of the Assets or invest in the Business;

"Confidentiality Agreement" means the confidentiality agreement, with terms satisfactory to the Monitor and the Company, entered into between the Company and an Interested Party;

"Court" has the meaning given to it in the introduction;

"Data Room" means an electronic data room compiled by the Company containing confidential information in respect of the Company, the Business and the Assets;

"Deposit" has the meaning given to it in Section 9(j);

"Dollars" or means Canadian dollars;

"Form Purchase Agreement" means the template agreement of purchase and sale posted in the Data Room;

"Guaranteed Purchase Price" has the meaning given to it in the Stalking Horse Agreement;

"Interested Party" has the meaning given to it in Section 2;

"Investment Proposal" has the meaning given to it in Section 7;

"Management" has the meaning given to it in Section 4;

"Minimum Bid Amount" means in the case of a Sale Proposal or Investment Proposal, an overall result or value which the Company in consultation with the Monitor considers equivalent or better than 102% of an amount required to repay the Secured Debt and the ABL Obligations (in each case as defined in the Stalking Horse Agreement) and any amounts payable in priority to those obligations in full which sum is estimated to be \$65,000,000 to be updated by the Monitor at least 5 days before the Phase I Bid Deadline;

"Monitor" has the meaning given to in the introduction;

"Outside Date" means June 15, 2017 or such other date as the Company, the Monitor and Successful Bidder(s) and the Back-Up Bidder may agree, acting reasonably;

"Participation Notice" has the meaning given to it in Section 4;

"Phase I Bid" means an initial bid submitted by an Interested Party pursuant to Section 7 hereof;

"Phase I Bid Deadline" as the meaning given to it in Section 7 hereof;

"Phase I Bidder" means a bidder submitting a Phase I Bid;

"Phase I Participant Requirements" has the meaning given to it in Section 8 hereof;

"Phase II Bid" means a Bid submitted by a Qualified Phase I Bidder;

"Phase II Bidder" means a bidder submitting a Phase II Bid;

"Phase II Bid Deadline" has the meaning given to it in Section 7;

"Portion Bid" means a Bid for less than all or substantially all of the Assets that is otherwise a Qualified Phase I Bid or a Qualified Phase II Bid;

"Portion Bidder" means a Qualified Phase I Bidder and/or a Qualified Phase II Bidder that submits a Portion Bid;

"Purchase Price" has the meaning given to it in Section 9(b)(1);

"Qualified Phase I Bid" means a Phase I Bid that satisfies the conditions set out in Section 9 hereof. A Portion Bid may be a Qualified Phase I Bid;

"Qualified Phase I Bidder" means a bidder submitting a Qualified Phase I Bid;

"Qualified Phase II Bid" means a Phase II Bid that satisfies the conditions set out in Section 12 hereof. A Portion Bid may be a Qualified Phase II Bid;

"Qualified Phase II Bidder" means bidder submitting a Qualified Phase II Bid;

"Qualified Investment Bid" is an Investment Proposal that is determined to be a Qualified Phase II Bid by the Company and the Monitor pursuant to Section 12;

"Qualified Sale Bid" is a Sale Proposal that is determined to be a Qualified Phase II Bid by the Company and the Monitor pursuant to Section 12;

"Sale Proposal" has the meaning given to it in Section 7;

"Secured Lenders" means the GSO Capital Partners LP and Canadian Imperial Bank of Commerce in their capacity as secured lenders of the Company;

"SISP" has the meaning given to it in the introduction;

"SISP Procedures" has the meaning given to it in the introduction;

"Stalking Horse Agreement" has the meaning given to it in the introduction;

"Stalking Horse Bidder" means 1104307 B.C. Ltd., or an affiliate thereof;

"Successful Bid" has the meaning given to it in Section 13(a)(i); and

"Successful Bidder" has the meaning given to it in Section 13(a)(i).

2. The SISP Procedures

The SISP shall consist of two phases. In the first phase, any interested party (an "Interested Party") that meets the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement and an Acknowledgment of the SISP, shall be provided the Confidential Teaser and access to the Data Room in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline. Phase I Bidders that are determined by the Company, in consultation with the Monitor, to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be given access to the Additional Confidential Information in order to complete diligence prior to submitting a Phase II Bid by the Phase II Bid Deadline.

The Company, in consultation with the Monitor, shall supervise the SISP Procedures and each will generally consult with the other in respect of all matters arising out of these SISP Procedures. The Monitor shall direct and preside over the Auction, if applicable. In the event that there is disagreement as to the interpretation or application of these SISP Procedures, the Court will have the jurisdiction to hear and resolve such dispute.

3. "As Is, Where Is"

The sale of the Business or any part of the Assets or investment in the Company will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature or description by the Company, the Monitor or any of their employees, officers, directors, agents or advisors, except to the extent set forth in the relevant definitive sale or investment agreement with a Successful Bidder.

By participating in this process, each Interested Party is deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Business, the Assets or the Company prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or regarding the Business, the Assets or the Company in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business, the Assets or the Company or the completeness of any

information provided in connection therewith, except as expressly stated in the terms of any definitive transaction documents.

4. Role of Management of the Company

In the event that any party or parties involved in the management of the Company ("Management") intends to submit a Bid pursuant to the SISP, any such party or parties *must advise the Monitor of such intention in writing by February 15, 2017 (the "Participation Notice")*. Upon receipt of a Participation Notice, the Monitor will assume the role of the Company in the SISP Procedures with such modifications as are necessary, and Management will be excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP. For greater certainty, any such party or parties delivering a Participation Notice will be subject to the SISP Procedures as an Interested Party.

5. Role of the Monitor

The Monitor's responsibilities pursuant to the SISP include:

- (a) Consulting with the Company in connection with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s);
- (b) Overseeing the SISP Procedures;
- (c) Reporting to the Court in connection with the SISP Procedures including the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s);
- (d) Conducting an Auction if necessary in accordance with the Auction Procedures attached hereto as Schedule "C"; and
- (e) Assisting the Company to facilitate information requests including assisting the Company in preparing or modifying financial information to assist with the bidding procedures included in this SISP and the closing of the transaction contemplated in the Successful Bid(s) (including the Stalking Horse Agreement).

6. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Teaser and access to the Data Room. If the Company, in consultation with the Monitor, determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive the Additional Confidential Information.

The Company, with the assistance of the Monitor, will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Interested Parties. Neither the Company nor the Monitor shall be obligated to

furnish any due diligence information after the Phase I Bid Deadline other than the Additional Confidential Information to Qualified Phase I Bidders before the Phase II Bid Deadline. Neither the Company nor the Monitor shall be obligated to furnish any due diligence information after the Phase II Bid Deadline, provided however that the Company and Monitor may, but are not obligated to, provide further information including, without limitation, financial information to the Successful Bidder (including the Stalking Horse Bidder). Neither the Company nor the Monitor is responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets and the Business.

7. Bid Deadlines

An Interested Party that wishes to make a Bid to (a) acquire the Business or all, substantially all or any part of the Assets, including any offer to acquire some or all of the Company's retail store leases, intellectual property and furniture, fixtures and equipment (a "Sale Proposal"), or (b) make an investment in the Company by way of private issuances, sale or placement of newly issued or treasury equity, equity-linked or debt securities, instruments or obligations of the Company with one or more lenders and/or investors or security holders (an "Investment Proposal"), must deliver an executed copy of a Phase I Bid to the Monitor, at the address specified in Schedule "B" hereto (including by email) so as to be received by it not later than 5:00 p.m. (Eastern Time) on March 13, 2017, or such other later date or time as may be agreed by the Company and the Monitor with the consent of the Secured Lenders (the "Phase I Bid Deadline").

All Phase II Bids must be submitted to the Monitor, at the address specified in Schedule "B" hereto (including by email) so as to be received by it not later than 5:00 p.m. (Eastern Time) on March 24, 2017, or such other later date or time as may be agreed by the Company and the Monitor with the consent of the Secured Lenders (the "Phase II Bid Deadline").

PHASE I

8. Phase I Participant Requirements.

To participate in Phase I of the SISP and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Company with an executed copy of each of the following prior to being provided with the Confidential Teaser and access to the Data Room: (i) a Confidentiality Agreement; and (ii) an Acknowledgement of the SISP (collectively, the "Phase I Participant Requirements").

9. Qualified Phase I Bids

Only Qualified Phase I Bidders shall be allowed to participate in Phase II of the SISP. In order for the Company to determine whether an Interested Party is a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Company, in consultation with the Monitor, each of the following on or before the Phase I Bid Deadline:

- (a) Irrevocable Bid: A cover letter stating that the Phase I Bid is irrevocable until Court approval of the Successful Bid(s), provided that if such Phase I Bidder is selected as the Successful Bidder or the Back-Up Bidder, its Phase I Bid shall remain irrevocable until the Back-Up Bid Expiration Date (as defined below);
- (b) which includes:
  - (i) Sale Proposal: in the case of a Sale Proposal, a duly authorized and executed definitive purchase agreement together with all completed schedules thereto substantially in the form of the Form Purchase Agreement containing the detailed terms and conditions of the proposed transaction, including identification of the Business or the Assets proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired (the "Purchase Price"), the detailed structure and financing of the proposed transaction, together with a blackline comparing the purchase agreement submitted to the Form Purchase Agreement; and
  - (ii) Investment Proposal: in the case of an Investment Proposal, a duly authorized and executed binding term sheet describing the detailed terms and conditions of the proposed transaction, including details regarding the proposed equity and debt structure of the Company following completion of the proposed transaction, the direct or indirect investment target and the aggregate amount of equity and debt investment (including the sources of such capital, the underlying assumptions regarding the *pro forma* capital structure, as well as anticipated tranches of debt, debt service fees, interest and amortization) to be made in the Company, and the debt, equity, or other securities, if any, proposed to be allocated to creditors of the Company;
- (c) Purchase Price: Evidence that the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an Investment Proposal) under the Phase I Bid or Aggregate Bid shall be an amount equal to or greater than the Minimum Bid Amount; provided that any Portion Bidder shall not be subject to the Minimum Bid Amount except to the extent that it forms an Aggregate Bid;
- (d) Proof of Financial Ability to Perform: Written evidence upon which the Company and the Monitor may reasonably conclude that the Interested Party has the necessary financial ability to close the contemplated transaction on or before the Outside Date and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
  - (i) evidence of the Interested Party's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction;



- (ii) contact names and phone numbers for verification of financing sources; and
  - (iii) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Company and the Monitor demonstrating that such Interested Party has the ability to close the contemplated transaction;
- (e) Unconditional Bid: Evidence that it is not conditioned on (i) the outcome of unperformed due diligence other than review of the Additional Confidential Information and/or (ii) obtaining financing;
- (f) Identification: Full written disclosure of the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Phase I Bid, including whether any prior or current member of the Company's board, management, any employee or consultant to the Company or any creditor) or shareholder of the Company is involved in any way with the Phase I Bid or assisted with the Phase I Bid, and the complete terms of any such participation as well as evidence of corporate authority to sponsor or participate in the Phase I Bid;
- (g) Acknowledgment: An acknowledgement and representation that the Interested Party: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Business and/or the Assets to be acquired, liabilities to be assumed or the Company in making its Phase I Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Company, the Monitor or any of their respective employees, directors, officers, agents, advisors or other representatives, regarding the Business, Assets to be acquired, liabilities to be assumed, the Company or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;
- (h) Authorization: Evidence, in form and substance reasonably satisfactory to the Company and the Monitor, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase I Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (i) Break or Termination Fee: Evidence that it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (j) Deposit: A cash deposit (the "Deposit") in an amount equal to 10% of the Purchase Price (in the case of a Sale Proposal) or imputed value (in the case of an

Investment Proposal) that shall be paid to the Monitor in trust, which Deposit shall be held and dealt with in accordance with these SISP Procedures;

- (k) Employees: If applicable, full details of the proposed number of employees of the Company who will become employees of the Phase I Bidder if determined to be the Successful Bidder and the proposed terms and conditions of employment to be offered to those employees;
- (l) Other: Such other information as may reasonably be requested by the Company or the Monitor; and
- (m) Phase I Bid Deadline: It is received by the Monitor, at the address specified in Schedule "B" hereto (including by email) on or before the Phase I Bid Deadline.

The Company, with the approval of the Monitor, may waive any one or more minor and non-material violations of the requirements specified for Qualified Phase I Bids and deem such non-compliant Bids to be Qualified Phase I Bids, provided that, proof of financial ability to perform required pursuant to Section 9(d) cannot be waived without consent of the Secured Lenders.

#### 10. Evaluation of Qualified Phase I Bids and Designation as Qualified Phase I Bidder

The Company, in consultation with the Monitor, shall evaluate Qualified Phase I Bids on various grounds including, but not limited to, the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the certainty of closing the transactions contemplated by the Phase I Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase I Bids.

The Company, with the approval of the Monitor, shall have the option, in its discretion, to aggregate Portion Bids.

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

As soon as practical after the Phase I Bid Deadline, the Company, in consultation with the Monitor, will advise an Interested Party whether or not its Phase I Bid constitutes a Qualified Phase I Bid and that it is a Qualified Phase I Bidder and, if such Phase I Bidder is a Qualified Phase I Bidder, that it is invited to participate in Phase II of the SISP. For certainty, the Stalking Horse Agreement is a Qualified Phase I Bid and the Stalking Horse Bidder is a Qualified Phase I Bidder for all purposes of these SISP Procedures.

#### 11. No Qualified Phase I Bids

If no Qualified Phase I Bid other than a Bid pursuant to the Stalking Horse Agreement is received by the Phase I Bid Deadline, the Stalking Horse Bidder shall be declared the

Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

## PHASE II

### 12. Qualified Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Company, in consultation with the Monitor, a Phase II Bid must: (i) satisfy all of the requirements for a Qualified Phase I Bid contained in Section 9; and (ii) shall not be conditional in any way on the outcome of unperformed due diligence including with respect to the Additional Confidential Information. For certainty, the Stalking Horse Agreement is a Qualified Phase II Bid and the Stalking Horse Bidder is a Qualified Phase II Bidder for all purposes of these SISP Procedures.

### 13. Evaluation of Qualified Phase II Bids and Subsequent Actions

The Company, in consultation with the Monitor, shall evaluate Qualified Phase II Bids on various grounds including, but not limited to, the Purchase Price or imputed or projected value, the treatment of creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the certainty of closing the transactions contemplated by the Qualified Phase II Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Phase II Bids.

Following such evaluation, the Company, with the approval of the Monitor, may:

- (a) In the case of a Qualified Sale Bid or Qualified Investment Bid, including to the extent such Qualified Phase II Bids are Portion Bids:
  - (i) Accept, subject to Court approval, one (or more than one, if for distinct and compatible transactions) of the Qualified Phase II Bids (each, a "Successful Bid" and the offeror(s) making such Successful Bid being a "Successful Bidder") and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid(s) with Successful Bidder(s); or
  - (ii) Conditionally accept one (or more than one, if for distinct and compatible transactions) of the Qualified Phase II Bids, which acceptance will be conditional upon the failure of the transaction(s) contemplated by the Successful Bid to close (the "Back-up Bid" and offeror(s) making such Back-up Bid being the "Back-Up Bidder"); and
- (b) If more than one Qualified Sale Bids have been received, pursue an auction (an "Auction") in accordance with the procedures set out in the attached Schedule "C" (the "Auction Procedure") or if the Company in consultation with

the Monitor otherwise determines that an Auction is appropriate under the circumstances.

The Company, with the approval of the Monitor, shall have the option, in its discretion, to aggregate Portion Bids. Notwithstanding anything to the contrary herein, the Company, with the approval of the Monitor, shall be permitted to include Qualified Investment Bids or Qualified Sale Bids in the Auction, including to the extent such Qualified Phase II Bids are Portion Bids.

The Company shall be under no obligation to accept the highest or best offer or any offer (other than the offer contained in the Stalking Horse Agreement if no higher or better offer is accepted) or to pursue or hold an Auction or to select any Successful Bidder(s) and any Back-Up Bidder(s). For greater certainty, any accepted offer, whether at the Auction or otherwise, must provide consideration sufficient to satisfy the Minimum Bid Amount requirements.

No later than five Business Days after the Phase II Bid Deadline, the Company shall advise the Qualified Phase II Bidders if Successful Bid(s) and Back-Up Bid(s) have been accepted, or conditionally accepted, as the case may be. If the Company, with the approval of the Monitor, determines to conduct an Auction pursuant to the SISP Procedures, the Company or the Monitor will advise the Qualified Phase II Bidders of the date, time, location and the rules (if any) of the Auction in accordance with the Auction Procedure.

14. No Qualified Phase II Bids

If no Qualified Phase II Bid other than a Bid pursuant to the Stalking Horse Agreement is received by the Phase II Bid Deadline, then the Stalking Horse Bidder shall be declared the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid.

APPROVAL MOTION

15. Approval Motion

The Company shall use reasonable efforts to make a motion to the Court to approve the Successful Bid(s) and Back-Up Bid(s) as soon as practical following the determination by it and the Monitor of the Successful Bidder(s). The Company will be deemed to have accepted the Successful Bid(s) only when it has been approved by the Court. All Qualified Phase II Bids (other than the Successful Bid(s) and the Back-Up Bid(s)) shall be deemed rejected by the Company on and as of the date of approval of the Successful Bid(s) by the Court.

16. Back-Up Bidder

If a Successful Bidder fails to close the transaction contemplated by the Successful Bid(s) on or before the Outside Date for any reason, then the Company will be deemed to have accepted the Back-Up Bid(s) and will proceed with the transaction pursuant to the terms

thereof. The Back-Up Bid(s) shall remain open for acceptance until the closing of the Successful Bid(s), or such other later date as the Company and the Back-Up Bidder may agree, acting reasonably (the "Back-Up Bid Expiration Date").

## MISCELLANEOUS

### 17. Information From Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by the Company regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Company to determine that the Interested Party is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as applicable.

### 18. Deposits

All Deposits shall be held by the Monitor in a single interest bearing account designated solely for such purpose. A Deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Phase I Bidders not selected as either a Qualified Phase I Bidder or a Qualified Phase II Bidder shall be returned to such Phase I Bidder within three Business Days of being advised that it is not a Qualified Phase I Bidder or a Qualified Phase II Bidder, as the case may be. Deposits, and any interest thereon, paid by Qualified Phase II Bidders not selected as either a Successful Bidder or a Back-Up Bidder shall be returned to such Qualified Phase II Bidders within three Business Days of Court approval of the Successful Bid. In the case of Back-Up Bid(s), the Deposit and any interest earned thereon shall be retained by the Monitor until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder within three Business Days thereafter or, if a Back-Up Bid becomes a Successful Bid, shall be dealt with in accordance with the definitive documents for the Back-Up Bid.

### 19. Modifications and Termination

The Company, in consultation with the Monitor, and subject to Section 20, the Secured Lenders, shall have the right to adopt such other rules for the SISP Procedures (including rules that may depart from those set forth herein) that will better promote the sale of the Business or all or any part of the Assets or investment in the Company under these SISP Procedures. The Company, in consultation with the Monitor, shall apply to the Court if it wishes to materially modify or terminate the process set out in these SISP Procedures. For certainty, any amendments to the Phase I Bid Deadline or the Phase II Deadline or other dates set out in these SISP Procedures, including those relating to the Auction, shall not constitute a material modification but shall require the consent of the Secured Lenders.

### 20. Consultation with the Secured Lenders

The Company, in consultation with the Monitor, shall, as appropriate, consult with the Secured Lenders throughout the SISP; provided that, to the extent the Secured Lender is

related to a Bidder, including the Stalking Horse Bidder, the Company and the Monitor shall not provide such Secured Lender with information that might create an unfair advantage or jeopardize the integrity of the SISP.

21. Other

Neither the Company nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid(s) and Back-Up Bid(s). Any such claim shall be the sole liability of the parties that submitted such Successful Bid(s) and Back-Up Bid(s).

**SCHEDULE "A"**

**Acknowledgement of the SISP**

The undersigned hereby acknowledges receipt of the Sale and Investor Solicitation Process approved by the Order of the Honourable Justice ● of the Ontario Superior Court of Justice (Commercial List) dated January ●, 2017 (the "SISP") and that compliance with the terms and provisions of the SISP is required in order to participate in the SISP and for any Bids to be considered by the Company.

This \_\_\_ day of \_\_\_\_\_, 2017.

[NAME]

By:

\_\_\_\_\_  
[Signing Officer]

**SCHEDULE "B"**  
**ADDRESS PARTICULARS**

Richter Advisory Group Inc.  
181 Bay Street, Suite 3320  
Bay Wellington Tower  
Toronto, ON M5J 2T3

Attention: Gilles Benchaya/ Adam Sherman  
Phone: 514.934.3496/ 416.642.4836  
Fax: 514.934.3504/ 416.488.3765  
Email: [gbenchaya@richterconsulting.com](mailto:gbenchaya@richterconsulting.com)/ [asherman@richter.ca](mailto:asherman@richter.ca)



**SCHEDULE "C"**  
**AUCTION PROCEDURES**

**Auction**

- I. If the Company, with the approval of the Monitor, determines to conduct an Auction pursuant to the SISP Procedures, the Company or the Monitor will notify the Qualified Phase II Bidders who made a Qualified Phase II Bid that the Auction will be held at the offices of Fasken Martineau DuMoulin LLP, 333 Bay Street, Suite 2400, Toronto, Ontario at 9:00 a.m. (Eastern Time) on date that is determined by the Company or the Monitor, provided that it is a date that is not later than seven Business Days after the Phase II Bid Deadline, or such other place, date and time as the Company or the Monitor may advise. Capitalized terms used but not defined herein have the meaning given to them in the SISP Procedures. The Auction shall be conducted in accordance with the following procedures:
  - (a) Participation At the Auction. Only a Qualified Phase II Bidder is eligible to participate in the Auction. Each Qualified Phase II Bidder must inform the Company and the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Phase II Bidders, the Monitor and the Company and the Secured Lenders and their respective counsel and other advisors and any other parties acceptable to the Company in consultation with the Monitor shall be permitted to attend the Auction.
  - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The highest Qualified Phase II Bid at the beginning of the Auction shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Phase II Bidder may submit no more than one Overbid. Only Qualified Phase II Bidder who bids in a round (including the Qualified Phase II Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction. For greater certainty, an Aggregate Bid may be determined to be the Opening Bid for any round including the opening round.
  - (c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Phase II Bidders at the Auction. The determination of which Qualified Phase II Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor reasonably deems relevant to the value of the Qualified Phase II Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the value of any non-cash consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Monitor's reasonable assessment of the certainty of the Qualified Phase II Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the impact of

the contemplated transaction on any actual or potential litigation; (vi) the net economic effect of any changes from the Opening Bid of the previous round; (vii) the net after-tax consideration to be received by the Company; and (viii) such other considerations as the Monitor deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). For greater certainty, the Monitor may ascribe monetary values to non-monetary terms in Overbids for the purposes of assessing and valuing such Overbids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed. All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Phase II Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-Up Bid.

- (d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Phase II Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Monitor may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time plus any additional Minimum Overbid Increments. In respect of the Stalking Horse Agreement and any Overbid by the Stalking Horse Purchaser, the value shall include the amount of any indebtedness owing to it that is to be deemed repaid or otherwise released and any priority indebtedness to be assumed pursuant to and in accordance with the terms of the Stalking Horse Agreement.
  - (ii) *The Bid Requirements same as for Qualified Phase II Bids:* Except as modified herein, an Overbid must comply with the bid requirements contained herein, provided, however, that the Phase II Bid Deadline shall not apply. Any Overbid made by a Qualified Phase II Bidder must provide that it remains irrevocable and binding on the Qualified Phase II Bidder and open for acceptance until the closing of the Successful Bid(s).
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Phase II Bidder and the material terms of the then highest and/or best Overbid, including the nature of the proposed transaction contemplated by the best Overbid, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Company based on, among other things, the Bid Assessment Criteria. For greater certainty, an Aggregated Bid may be determined to be the highest and/or best Overbid.

- (iv) *Consideration of Overbids:* The Monitor reserves the right, in consultation with the Company, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Company and individual Qualified Phase II Bidders; (B) allow individual Qualified Phase II Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Phase II Bidders the opportunity to provide the Monitor with such additional evidence as it, or the Company, may require, that the Qualified Phase II Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor and Company may have clarifying discussions with a Qualified Phase II Bidder, and the Monitor may allow a Qualified Phase II Bidder to make technical clarifying changes to its Overbid following such discussions.
- (v) *Portion Bids:* Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid (in a minimum increment to be determined by the Monitor) with respect to the Assets on which it is bidding without being required to submit an Overbid with respect to all Assets or the applicable Opening Bid; provided that any Aggregated Bid that is an Overbid shall be subject to these Auction procedures as any other Overbid, including that such Aggregated Bid that is an Overbid shall be subject to the Minimum Overbid Increment. Portion Bids can be aggregated with any other Qualified Phase II Bid, as determined by the Company and the Monitor.
- (vi) *Failure to Bid:* If at the end of any round of bidding a Qualified Phase II Bidder (other than a Portion Bidder, or the Qualified Phase II Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase II Bidder shall not be entitled to continue to participate in the next round of the Auction.
- (e) Discussion with other Bidders. A Qualified Phase II Bidder shall not strategize or discuss with other Qualified Phase II Bidders for the purpose of submitting an Overbid without the consent of the Monitor.
- (f) Additional Procedures. The Monitor may, in consultation with the Company, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the SISP Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Phase II Bidders.

- (g) Closing the Auction. The Auction shall be closed after the Monitor, with the assistance of the Company and their respective legal counsel, has (i) reviewed the final Overbid of each Qualified Phase II Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identified the Successful Bid and the Back-Up Bid and advise the Qualified Phase II Bidders participating in the Auction of such determination. One or more Portion Bids can, in the discretion of the Monitor, form part of a Successful Bid and Back-Up Bid so long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bid shall be included in the definition of Successful Bidder or Back-Up Bid, as applicable.
- (h) Finalizing Documentation. Promptly following a Bid of a Qualified Phase II Bidder being declared the Successful Bid or the Back-Up Bid, the applicable Qualified Phase II Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid.
- (i) Qualified Investment Bids. Notwithstanding any other provision of these SISP Procedures, if a Qualified Phase II Bidder submits a Qualified Investment Bid, which the Company or the Monitor considers would result in a greater value being received for the benefit of the Company's creditors than the Qualified Sale Bids, then the Monitor may allow such Qualified Phase II Bidder to participate in the Auction, notwithstanding that such Qualified Investment Bid may not otherwise comply with the terms of these Auction Procedures. In such case, the Monitor may adopt appropriate rules to facilitate such Qualified Phase II Bidder's participation in the Auction.

SCHEDULE 11

MINIMUM RECEIPT AND MAXIMUM DISBURSEMENT COVENANT LEVELS

Grafton-Fraser Inc.  
DIP Covenant Calculations

	Week Ending																	
	28-Jan	04-Feb	11-Feb	18-Feb	25-Feb	04-Mar	11-Mar	18-Mar	25-Mar	01-Apr	08-Apr	15-Apr	22-Apr	29-Apr	06-May	13-May	20-May	27-May
<b>DIP Covenant Test</b>																		
<b>Receipts</b>																		
Receipts	2,241	2,195	2,237	2,208	2,231	2,540	2,823	3,043	2,882	3,246	3,551	3,684	3,877	4,091	3,532	3,591	3,602	3,553
Projected Cum. Receipt	2,241	4,436	6,673	8,881	11,112	13,653	16,475	19,518	22,401	25,647	29,198	32,882	36,759	40,850	44,382	47,973	51,575	55,128
<b>15% Variances</b>																		
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,600	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	336	665	1,001	1,332	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cumulative Receipts	\$ 1,904	\$ 3,770	\$ 5,672	\$ 7,549	\$ 9,612	\$ 12,153	\$ 14,975	\$ 18,018	\$ 20,901	\$ 24,147	\$ 27,698	\$ 31,382	\$ 36,259	\$ 39,350	\$ 42,882	\$ 46,473	\$ 50,075	\$ 53,628
<b>Disbursements</b>																		
Disbursements (Excl. Jones)	4,792	6,925	3,295	3,631	2,877	6,067	3,109	2,534	2,052	6,455	3,651	1,935	2,455	3,582	3,775	1,755	1,938	3,283
Projected Cum. Disb. (Excl. Jones)	4,792	11,717	15,012	18,643	21,520	27,585	30,696	33,230	35,282	41,737	45,388	47,323	49,778	53,359	57,134	58,889	60,825	64,108
<b>15% Variances</b>																		
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	719	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cum. Disb. (Excl. Jones)	\$ 5,511	\$ 13,217	\$ 16,512	\$ 20,143	\$ 23,020	\$ 29,086	\$ 32,196	\$ 34,730	\$ 36,782	\$ 43,237	\$ 46,888	\$ 48,823	\$ 51,278	\$ 54,859	\$ 58,634	\$ 60,389	\$ 62,325	\$ 65,608

Based on Unaudited Information

**SCHEDULE 2  
APPROVED CASH FLOW**

SEE ATTACHED

# DIP Cash Flow Through W/E May 27/17



Weekly Cash Flow	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18 Weeks
(\$000's)	Jan 28	Feb 04	Feb 11	Feb 18	Feb 25	Mar 04	Mar 11	Mar 18	Mar 25	Apr 01	Apr 08	Apr 15	Apr 22	Apr 29	May 06	May 13	May 20	May 27	Total
Comps	(4%)	(2%)	(2%)	(2%)	(2%)	4%	4%	4%	4%	4%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Retail Receipts	\$ 2,241	\$ 2,195	\$ 2,237	\$ 2,208	\$ 2,231	\$ 2,540	\$ 2,823	\$ 3,043	\$ 2,882	\$ 3,246	\$ 3,551	\$ 3,684	\$ 3,877	\$ 4,091	\$ 3,532	\$ 3,591	\$ 3,602	\$ 3,553	\$ 55,128
<b>Operating Disbursements</b>																			
Merchandise	(734)	(1,703)	(2,203)	(2,181)	(2,216)	(1,513)	(2,191)	(1,398)	(1,154)	(1,551)	(2,785)	(396)	(1,145)	(1,023)	(501)	(339)	(727)	(1,145)	(24,904)
Payroll	(475)	(727)	(250)	(932)	(250)	(908)	(250)	(820)	(250)	(875)	(250)	(1,014)	(250)	(1,108)	(250)	(819)	(250)	(954)	(10,631)
Rent	-	(3,170)	(117)	-	(11)	(3,082)	(242)	(13)	(20)	(3,251)	-	(12)	(10)	(42)	(2,659)	(14)	-	(48)	(12,691)
Sales Tax	(1,708)	-	-	-	-	-	-	-	(201)	(238)	-	(152)	(329)	(335)	(9)	(364)	(361)	(272)	(3,970)
Other Op.	(201)	(286)	(389)	(238)	(219)	(188)	(196)	(174)	(197)	(180)	(246)	(241)	(250)	(287)	(156)	(158)	(158)	(190)	(3,954)
CC Fees	-	(104)	-	-	-	(121)	-	-	-	(142)	-	-	-	(185)	-	-	-	(180)	(732)
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-	(235)	-	-	-	-	(239)
Supplier and Other Deposits	-	(250)	-	-	-	-	-	-	-	-	(250)	-	-	-	-	-	-	-	(500)
	(3,117)	(6,239)	(2,960)	(3,351)	(2,697)	(5,611)	(2,879)	(2,404)	(1,822)	(6,237)	(3,531)	(1,815)	(1,985)	(3,214)	(3,575)	(1,695)	(1,496)	(2,788)	(57,616)
<b>Net Operating CF</b>	(877)	(4,044)	(722)	(1,143)	(466)	(3,271)	(56)	639	1,061	(2,991)	20	1,669	1,893	877	(43)	1,895	2,106	765	(2,488)
<b>Non-Operating Disb.</b>																			
Capex	-	-	-	(100)	-	-	-	-	(100)	-	-	-	(350)	-	-	-	(350)	-	(900)
KERP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(180)	(190)
Interest	-	(100)	-	-	-	(75)	-	-	-	(93)	-	-	-	(98)	-	-	-	-	(366)
Forebearance Fee	-	(200)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(200)
Professional Fees	(875)	(386)	(335)	(180)	(180)	(180)	(230)	(130)	(130)	(125)	(120)	(120)	(120)	(270)	(200)	(59)	(90)	(305)	(4,036)
Jones Payments	(1,283)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,283)
Vacation Escrow	(800)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(800)
	(2,957)	(686)	(336)	(280)	(180)	(255)	(230)	(130)	(230)	(216)	(120)	(120)	(470)	(368)	(200)	(59)	(440)	(495)	(7,774)
<b>Net Cash Flow</b>	(3,834)	(4,730)	(1,057)	(1,423)	(646)	(3,526)	(286)	509	831	(3,209)	(100)	1,749	1,423	509	(243)	1,836	1,666	270	(10,262)
Opening Revolver	\$ 12,826	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,871	\$ 19,116	\$ 22,543	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,699	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 12,826
Revolver Draw (Repay.)	3,834	4,730	1,057	1,423	646	3,526	286	(509)	(831)	3,209	100	(1,749)	(1,423)	(509)	243	(1,836)	(1,666)	(270)	10,262
GSO DIP	-	(4,400)	(500)	(300)	(200)	(100)	-	-	-	-	-	-	-	-	-	-	-	-	(5,500)
<b>Ending Revolver</b>	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,871	\$ 19,116	\$ 22,543	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,699	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 17,589	\$ 17,589
<b>Net Availability</b>	\$ 480	\$ 2,075	\$ 2,028	\$ 2,043	\$ 2,057	\$ 962	\$ 1,091	\$ 1,918	\$ 2,320	\$ 1,033	\$ 1,405	\$ 2,486	\$ 2,983	\$ 3,507	\$ 2,169	\$ 3,406	\$ 3,857	\$ 4,470	\$ 4,470
Jan 20/17 CF Availability	\$ 171	\$ 2,066	\$ 2,019	\$ 2,083	\$ 2,097	\$ 901	\$ 1,031	\$ 1,857	\$ 2,260	\$ 971	\$ 1,344	\$ 2,424	\$ 2,921	\$ 3,444	\$ 2,106	\$ 3,274	\$ 3,737	\$ 4,425	\$ 4,425
Opening GSO DIP	\$ -	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ -
Draws	-	4,400	500	300	200	100	-	-	-	-	-	-	-	-	-	-	-	-	5,500
Interest (PIK'd)	-	-	12	14	15	15	16	16	16	16	16	16	16	16	16	16	16	16	248
<b>Ending GSO DIP</b>	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ 5,748	\$ 5,748
Old CIBC ABL	\$ 9,127	\$ 2,532	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New CIBC DIP	7,533	14,458	17,647	18,670	19,116	22,542	22,829	22,320	21,489	24,698	24,798	23,050	21,627	21,118	21,360	19,524	17,859	17,588	17,588
	\$ 16,660	\$ 16,990	\$ 17,547	\$ 18,570	\$ 19,116	\$ 22,542	\$ 22,829	\$ 22,320	\$ 21,489	\$ 24,698	\$ 24,798	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,859	\$ 17,588	\$ 17,588
Payroll Escrow	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
Sales Tax Escrow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 201	\$ 440	\$ 440	\$ 592	\$ 920	\$ 816	\$ 825	\$ 1,189	\$ 1,550	\$ 1,007	\$ 1,007

PRIVILEGED AND CONFIDENTIAL



**SCHEDULE 3  
EXISTING DEFAULTS**

1. Events of Default may exist by breaches of representations and warranties and covenants that refer or relate to a schedule to the Existing Credit Agreement or any other Loan Document (other than this Forbearance Agreement) which contains information that has been updated and provided to the Administrative Agent prior to the date of this Agreement.
2. Events of Default have occurred and are continuing due to breaches of representations and warranties contained in the Existing Credit Agreement or the other Loan Documents (other than this Forbearance Agreement) by the Guarantor.
3. Events of Default have occurred and are continuing contrary to s. 5.1(m) of the Existing Credit Agreement.
4. The Borrower has taken voluntary action for its liquidation and sale as part of the GFI CCAA Proceedings contrary to s. 5.1(o) of the Existing Credit Agreement.
5. The Borrower and Guarantor are not solvent contrary to s. 5.1(cc) of the Existing Credit Agreement.
6. Events of Default as a result of a breach of s. 5.1(dd) of the Existing Credit Agreement.
7. The Borrower has failed to pay interest on any Advance within three Banking Days following the due date therefor contrary to s. 8.1(b) of the Existing Credit Agreement.
8. An event of default has occurred and continues after the applicable grace period, if any, specified in an agreement or instrument related to Indebtedness which exceeds \$1,000,000 and the effect of such event is to accelerate or permit the acceleration of Indebtedness or either of them contrary to s. 8.1(f) of the Existing Credit Agreement.
9. The Guarantor has acted in furtherance of one or more matters enumerated in s. 8.1(g)(i)-(iv) of the Existing Credit Agreement contrary to s. 8.1(g) of the Existing Credit Agreement.
10. The Borrower and the Guarantor have failed to deliver to the Administrative Agent and the Servicing Agent, forthwith upon becoming aware of a Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default together with a statement of an officer of the Borrower and the Guarantor setting forth details of such Default or Event of Default and the action which has been, or is proposed to be, taken with respect thereto contrary to ss. 6.1(h) and 8.1(d) of the Existing Credit Agreement.
11. The Borrower and the Guarantor have failed to promptly deliver to the Servicing Agent a copy of the Fletcher Claim contrary to ss. 6.1(i)(vii) of the Existing Credit Agreement.

**SCHEDULE 4  
ABL OBLIGATIONS**


As of January 24, 2017, the principal amount of Existing Indebtedness (as defined in the ABL Forbearance Agreement) is \$13,011,611.14 in respect of borrowings by the Borrower and \$1,422,988.76 in respect of borrowings by the Guarantor.

**SCHEDULE 5  
EXISTING SECURITY**

1. General Security Agreement granted by the Borrower in favour of the Administrative Agent
2. Trademark and Trademark Application Security Agreement granted by the Borrower in favour of the Administrative Agent
3. Collateral Assignment of Rights under the Share Purchaser Agreement granted by the Borrower in favour of the Administrative Agent
4. Guarantee Agreement dated as of February 12, 2016 executed by the Guarantor in favour of the Administrative Agent
5. General Security Agreement dated as of February 12, 2016 executed by the Guarantor in favour of the Administrative Agent
6. Deed of Hypothec dated as of February 12, 2016 granted by the Guarantor in favour of the Administrative Agent

# **EXHIBIT "F"**

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



*A Commissioner for Taking Affidavits*

*Dylan Chocho*

**DIP FACILITY LOAN AGREEMENT  
DATED AS OF JANUARY 24, 2017**

WHEREAS the Borrower (as defined below) has requested that the DIP Lenders (as defined below) provide financing to fund certain of the Borrower's cash requirements during the pendency of its proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to be commenced before the Ontario Superior Court of Justice – Commercial List (the "**Court**") in accordance with the terms and conditions set out herein;

AND WHEREAS the DIP Lenders have agreed to provide the DIP Facility (as defined below) in accordance with the terms and subject to the conditions set out herein;

NOW THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **Defined Terms:** A capitalized term not defined in the body of this Agreement has the meaning ascribed to it in the Definitions section below.
2. **Interpretation:** In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

References in this Agreement to Section or Schedule are to be construed as references to a Section or Schedule of or to this Agreement unless the context requires otherwise.

3. **Currency:** Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.
4. **Borrower:** Grafton-Fraser Inc. ("**Borrower**")
5. **DIP Lenders:** Subject to the section below entitled "Assignment by the DIP Lenders", the following parties and any financial institution, fund or other entity which has become a party to this Agreement (each, a "**DIP Lender**" and collectively, the "**DIP Lenders**") shall be the lenders under the DIP Facility (as defined below):

GSO Domestic Capital Funding (Luxembourg) S.A.R.L.

GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.

6. **Agent:** GSO Capital Partners LP (the "**Agent**")
7. **Servicing Agent:** Wilmington Trust, National Association (the "**Servicing Agent**")
8. **DIP Facility and Loan Amount:**

The DIP Lenders agree to advance to the Borrower as a debtor-in-possession non-revolving credit facility (the "**DIP Facility**") up to the amount of \$5.5 million (the "**Loan Amount**").

The maximum amount made available under the DIP Facility shall not exceed the Loan Amount.
9. **DIP Advances:**

Advances under the DIP Facility (each, an "**Advance**") require a written notice to be delivered to the Agent and the Servicing Agent, two Business Days prior to the requested date of the Advance (an "**Advance Notice**"), which has been approved by the Monitor and executed by an officer of the Borrower setting out: (a) the proposed amount of the requested Advance; (b) the date the Advance is required; (c) the specific use for the proceeds of the Advance in accordance with the Approved Cash Flow (as defined below); (d) certification that the representations and warranties contained herein are true and correct as of such date; and (e) such other matters required by the Majority Lenders, as advised to the Borrower in advance.
10. **Use of Proceeds:**

The proceeds of the DIP Facility shall be used solely by the Borrower in accordance with the Approved Cash Flow, which shall include provision for payments on account of interest (except for PIK Interest (as defined below)), fees and expenses payable under the DIP Facility and ordinary course payments on account of interest and fees payable under the GSO Facility and the Revolving Facility, including in the case of the Revolving Facility, Indebtedness incurred after the Filing Date (as defined below) in accordance with the Initial Order, post-filing accounts payable in the ordinary course of the Business, Priority Payables and the costs and expenses associated with the Liquidation. No proceeds may be used for any other purpose except with the prior written approval of the Majority Lenders.

To the extent that any Advance is unused, it shall be Term Priority Collateral.
11. **DIP Lender Commitments:**

The respective commitment of each DIP Lender (the "**Individual Commitment Amounts**") is set out in Schedule "A" hereto.

The obligations of each DIP Lender shall be several and limited to its Individual Commitment Amount. If the Loan Amount is reduced on account of a mandatory prepayment as provided pursuant to this Agreement, the Individual Commitment Amounts will be reduced on a *pro*

*rata* basis.

12. **Assignment by the DIP Lenders:** A DIP Lender (the "**Existing Lender**", for the purposes of this section) may assign its rights and obligations under this Agreement, in whole or in part, to any party acceptable to the Agent in its sole and absolute discretion, provided that, any assignee who is not an Affiliate of the Agent or the Existing Lender or a fund manager, advised or sub-advised by the Agent or its Affiliates, shall provide the Monitor with reasonable evidence that such assignee has the financial capacity to fulfil the obligations of the Existing Lender hereunder:
- (a) Following such transfer, the Existing Lender shall be released from its obligations (to the extent transferred) under the DIP Credit Documents, and the respective rights of each of the Borrower and the Existing Lender against one another shall be cancelled, and the new DIP Lender shall assume those obligations and acquire those rights and shall become a party to the DIP Credit Documents.
  - (b) An assignment may be effected by the Agent executing an otherwise duly completed assignment and assumption agreement attached as Schedule "B" hereto (the "**Assignment and Assumption Agreement**") delivered to it by the Existing Lender and the new DIP Lender.
  - (c) The Borrower authorizes the Agent to execute the Assignment and Assumption Agreement in the form attached as on its behalf, without any consultation.
  - (d) The Agent will promptly deliver a copy of the executed Assignment and Assumption Agreement to the Servicing Agent for recordation in the register.
13. **Assignment by the Borrower:** The Borrower shall not be permitted to assign this Agreement or the other DIP Credit Documents without the unanimous prior written consent of the Majority Lenders except as contemplated by the Asset Purchase Agreement.
14. **Evidence of Indebtedness:** The Servicing Agent shall maintain a register evidencing Advances, and prepayments under the DIP Facility and all other amounts owing from time to time hereunder. The Servicing Agent's register constitutes, in the absence of manifest error, *prima facie* evidence of the Indebtedness of the Borrower to the DIP Lenders, the Agent and the Servicing Agent pursuant to the DIP Facility.
15. **Interest:** All amounts owing hereunder on account of the principal, overdue interest, fees and expenses shall bear interest at the CDOR Rate plus 14% per annum (the "**Interest Rate**"). To the extent permitted by Law, effective immediately upon the occurrence of an Event of Default (as defined below),



all amounts owing hereunder on account of principal, overdue interest, fees and expenses shall bear interest at the Interest Rate plus an additional 2% per annum (the Interest Rate, as increased, the "**Default Rate**").

All interest hereunder shall be computed on the basis of a year of 365 days and shall accrue and be calculated daily and payable in cash, monthly in arrears on the last day of each calendar month (each, an "**Interest Payment Date**"), provided that interest accruing at the Default Rate shall be payable in cash on demand, both before and after demand and judgment.

In the case of an Advance, the first Interest Period shall commence on and include the date of such Advance and shall end on and exclude the next following Interest Payment Date. Thereafter, in the case of such Advance, the Interest Period shall commence on and include the Interest Payment Date and end on and exclude the next Interest Payment Date or the Maturity Date, whichever is earlier.

For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or fee to be paid under this Agreement or any of the other DIP Credit Documents is to be calculated on the basis of a period that is less than a calendar year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the period that is less than a calendar year.

The Borrower may, in its sole discretion, elect to pay the amount of any interest payment (a) entirely in cash, (b) entirely by adding the amount of such accrued and unpaid interest to the principal amount outstanding under the DIP Facility (interest so capitalized, "**PIK Interest**"), or (c) a combination of cash and PIK Interest. All interest, including interest accruing at the Default Rate, shall automatically be paid in the form of PIK Interest unless the Borrower, in its sole discretion, elects to pay the applicable interest payment in cash or with a combination of cash and PIK Interest, in which case the Borrower shall deliver to the Agent and the Servicing Agent no later than seven Business Days prior to the applicable Interest Payment Date, a written notice notifying the DIP Lenders that the Borrower will be paying such interest in the form of cash interest or a combination of cash and PIK Interest (and if a combination thereof, the amount of which will be represented by each of the cash interest and the PIK Interest).

16. **DIP Facility Fee:** The Borrower shall pay a DIP Facility fee in an amount equal to 1% of the Loan Amount, which shall be fully earned and payable in advance on the date of the first Advance.
17. **Servicing Agent:** The Borrower shall pay to the Servicing Agent, for its own account, an

- Fee:** annual administration fee in the aggregate amount equal to U.S.\$15,000 for the day to day discharge of the duties and responsibilities of the Servicing Agent under this Agreement and the other DIP Credit Documents, which fee shall be fully earned, non-refundable and payable in advance on the date of the first Advance.
18. **Other Costs and Expenses:** The Borrower shall pay all costs and expenses of the DIP Lenders, Agent and the Servicing Agent for all out-of-pocket due diligence and travel costs and all reasonable fees, expenses and disbursements of outside counsel, appraisers, field auditors, and any financial consultant in connection with the preparation, negotiation and interpretation of the DIP Credit Documents and administration of the DIP Facility, including any costs and expenses incurred by the DIP Lenders, Agent or the Servicing Agent in connection with the enforcement of any of the rights and remedies available hereunder or under any related security.
19. **Approved Cash Flow:** Attached hereto as Schedule "C" is a rolling 13-week period detailed cash flow (the "**Approved Cash Flow**"), which is in form and substance satisfactory to the Majority Lenders. The Majority Lenders may require changes to the format of cash flow and the details provided therein including, without limitation, information on a line item basis as to (a) projected cash receipts, and (b) projected disbursements, including ordinary course operating expenses, restructuring expenses, and professional fees and expenses.
- On Thursday of each week, the Borrower, with the assistance of the Monitor, shall provide the Agent with a variance report (the "**Cash Flow Variance Report**") certified by the Chief Financial Officer of the Borrower showing on a line-by-line basis actual receipts and disbursements and the total available liquidity for the last day of the prior week for the cumulative period since the commencement of the CCAA Proceeding and for a rolling cumulative four-week period once the CCAA Proceeding have been pending for four weeks and noting therein all variances on a line-by-line basis from the amounts in the Approved Cash Flow and shall include explanations for all material variances. The first Cash Flow Variance Report shall be delivered on February 16, 2017.
- The Borrower, with the assistance of the Monitor, may from time to time present the Agent with a revised 13-week detailed budget substantially in the form of the current Approved Cash Flow (the "**Updated Cash Flow**"). The Majority Lenders may agree to substitute the revised cash flow for the then current Approved Cash Flow, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Approved Cash Flow for the purposes hereof.
20. **Conditions** The DIP Lenders' agreement to make any Advances under the DIP Facility

**Precedent to Advances:** is subject to the following conditions precedent (the "**Funding Conditions**"):

- (a) The Borrower's application materials in connection with its application for the Initial Order shall be satisfactory to the Majority Lenders and the Agent, acting reasonably, and such application shall be brought before the Court no later than January 26, 2017, in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and on notice to such parties as are acceptable to the Majority Lenders and the Agent;
- (b) The Court shall have issued the Initial Order in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, among other things, approving this Agreement and the other DIP Credit Documents and granting the DIP Lenders' Charge (as defined below);
- (c) The ABL Agent shall have consented to the terms of this Agreement and the other DIP Credit Documents, the DIP Facility and the DIP Lenders' Charge in accordance with the terms of the Intercreditor Agreement and the Revolving Facility;
- (d) The ABL Agent and the Purchaser shall have entered into a commitment letter for a new revolving credit facility available to the Purchaser immediately following the closing of the transaction contemplated by the Asset Purchase Agreement, in form and substance satisfactory to the Purchaser and the ABL Agent;
- (e) The Initial Order shall not have been amended, restated or modified in a manner that materially adversely affects the rights, remedies or interests of the DIP Lenders or the Agent, in their discretion, without the prior written consent of the Majority Lenders;
- (f) The DIP Credit Documents shall be in form and substance satisfactory to the Majority Lenders, the Agent and the Servicing Agent, acting reasonably, where applicable, and shall have been executed by the parties thereto;
- (g) The Consulting Agreement shall be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (h) The Agent shall have received an Advance Notice in

accordance with the terms hereof;

- (i) All fees and expenses payable to the DIP Lenders, the Agent and the Servicing Agent have been paid or will be paid from the proceeds of the requested Advance on the date of the first Advance;
- (j) There shall be no Encumbrances on all now-owned and hereafter-acquired assets and property of the Borrower, real and personal, tangible or intangible and all proceeds therefrom (the "Collateral") ranking in priority to or *pari passu* with the DIP Lenders' Charge (as defined below) other than as permitted by the terms hereof;
- (k) The Court shall have issued the Stalking Horse and SISP Order, which must be in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and the Stalking Horse and SISP Order shall not have been amended, restated or modified in any material respect without the prior written consent of the Majority Lenders;
- (l) The Borrower shall be in compliance with the timetables established by the SISP;
- (m) The Majority Lenders shall be satisfied in all material respects that the Borrower has complied, and is continuing to comply with, all applicable Laws, regulations, policies in relation to its property and the Business, other than as may be permitted under any order of the Court (each, a "Court Order") which is in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (n) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance;
- (o) The Majority Lenders shall have received evidence satisfactory to them that the Borrower's Account (as defined below) has been designated by the Borrower and is not a Blocked Account;
- (p) The Agent shall have received any updated Approved Cash Flows and the Cash Flow Variance Reports in accordance with this Agreement;
- (q) The Majority Lenders shall have been satisfied that all motions, orders and other pleadings and related documents filed or submitted to the Court by the Borrower shall be consistent with the terms hereof and all Court Orders shall

not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the DIP Lenders, under the terms of the DIP Facility and the DIP Credit Documents, unless otherwise agreed to by the Majority Lenders; and

- (r) The Borrower shall be in compliance in all material respects with all covenants and obligations contained in this Agreement and the other DIP Credit Documents.

21. **DIP Lenders' Charge:** All of the obligations of the Borrower under or in connection with the DIP Facility, this Agreement and the other DIP Credit Documents, including without limitation, all principal, interest, fees and amounts owing in respect of fees and expenses of the DIP Lenders, the Agent and the Servicing Agent (collectively, the "**DIP Obligations**"), shall be secured by a Court-ordered charge on the Collateral in favour of the Agent for the benefit of the DIP Lenders, the Agent and the Servicing Agent (the "**DIP Lenders' Charge**").
- The DIP Lenders' Charge shall rank ahead of any and all Encumbrances on the Collateral other than the administration charge not exceeding \$500,000 granted by the Court (the "**Administration Charge**") and the Encumbrance on the ABL Priority Collateral to the extent of the ABL Obligations (the "**ABL Security**", together with the Administration Charge, the "**Priority Charges**") and Permitted Encumbrances.
22. **DIP Security:** The DIP Obligations shall be secured by the DIP Security.
- Immediately following the approval of the Court of the DIP Lenders' Charge, the Borrower shall deliver to the Agent the DIP Security. The DIP Security shall continue as a first priority Encumbrance on the Collateral in favour of the Agent subject to subordination only in respect of the Priority Charges and Permitted Encumbrances.
23. **Borrower's Account:** Advances shall be deposited into a bank account to be designated by the Borrower, which shall not be a Blocked Account (the "**Borrower's Account**") and utilized by the Borrower in accordance with the terms of this Agreement.
24. **Repayment and Maturity Date:** All amounts owing to the DIP Lenders under the DIP Facility shall be due and payable on the earliest of the occurrence of any of the following:
- (a) 150 days following the date of the first Advance;
  - (b) conversion of the CCAA Proceeding into a proceeding under the *Bankruptcy and Insolvency Act* (Canada);
  - (c) the transfer, lease or otherwise disposal of all or any part of the Borrower's Collateral (i) outside the ordinary course of business, (ii) for consideration received of more than \$15,000 at any one time, or (iii) for consideration received of

more than \$75,000 in the aggregate, other than pursuant to the Asset Purchase Agreement, the Liquidation or sales of inventory in the ordinary course of business, without the prior written consent of the Majority Lenders;

- (d) an Event of Default (as defined below) in respect of which the DIP Lenders have elected in their sole discretion to accelerate all amounts owing and demand repayment;

(such earliest date, the "Maturity Date").

The DIP Lenders' commitment to make Advances under the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be permanently and indefeasibly repaid no later than the Maturity Date, without the Agent being required to make demand upon the Borrower or other parties or to give notice that the DIP Facility has expired and that the obligations thereunder are due and payable.

25. **Mandatory  
Prepayments:**

Unless the DIP Lenders provide their prior written unanimous consent otherwise, and subject to the Priority Charges (to the extent of the ABL Security only, in the case of the Priority Charge in favour of the ABL Agent) and the Intercreditor Agreement, the Borrower is required to prepay amounts outstanding under the DIP Facility, subject to a Court Order approving such payment on a motion supported by the Borrower:

- (a) upon receipt of insurance proceeds or expropriation awards by the Borrower unless the proceeds are reinvested to repair or replace such assets prior to the Maturity Date except, if any ABL Obligations are outstanding at such time, for any portion of insurance proceeds or expropriation awards that relate to ABL Priority Collateral;
- (b) upon receipt of net cash proceeds from the sale of any of the Collateral except, if any ABL Obligations are outstanding at such time, proceeds from the sale of ABL Priority Collateral;
- (c) upon receipt of any extraordinary payments such as tax refunds by the Borrower; and
- (d) upon receipt of net cash proceeds from the sale of any equity interests in the Borrower or its subsidiary or the receipt of capital contributions by the Borrower or its subsidiary.

Any prepayment required hereunder shall be a permanent reduction of the Loan Amount and may not be re-borrowed without the prior written unanimous consent of the DIP Lenders in their sole discretion.

26. **Optional**

Subject to the terms of the Intercreditor Agreement, the Borrower shall be

**Prepayment:** entitled, with the consent of the Monitor and on notice to the Servicing Agent, to voluntarily prepay any principal amount of the DIP Obligations.

The Borrower shall give written notice to the Servicing Agent of each voluntary prepayment not less than three Business Days prior to such voluntary prepayment. Such notice shall be irrevocable and shall specify:

- (a) the date on which the prepayment is to take place; and
- (b) the principal amount of the prepayment.

Any optional prepayment hereunder shall be a permanent reduction of the Loan Amount and may not be re-borrowed without the prior written unanimous consent of the DIP Lenders in their sole discretion.

27. **Break Funding Payments:** In the event of the payment or prepayment (voluntary or otherwise) of any principal amount of the DIP Obligations the Borrower shall compensate the DIP Lenders in an amount equal to the excess, if any, of (a) the amount of interest that would have accrued on the principal amount of the DIP Obligations had such event not occurred, at the CDOR Rate that would have been applicable to the DIP Obligations, for the period from the date of such event to the last day of the then current Interest Period therefor plus 14% per annum, over (b) the amount of interest (as reasonably determined by the Majority Lenders) that would accrue on such principal amount of the DIP Obligations for such period at the interest rate that the DIP Lenders would bid were they to bid, at the commencement of such period, for Canadian dollar deposits of a comparable amount and period from banks in the Canadian market plus 14% per annum. A certificate of the Servicing Agent setting forth in reasonable detail the calculations of any amount or amounts that the DIP Lenders are entitled to receive pursuant to this section (which calculations shall be provided in writing to the Servicing Agent by the Majority Lenders for inclusion in such certificate) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the DIP Lenders the amount shown as due on any such certificate within 10 days after receipt thereof.

28. **Payments:** All payments of principal, fees and expenses hereunder shall be made for value in the full amount due at or before 12:00 noon on the day such amount is due by deposit or transfer thereof to an account of the Borrower maintained at the principal office of the Servicing Agent in its designated place of business. Payments received after such time shall be deemed to have been made on the next following Business Day. If any payment is due on a day which is not a Business Day, such payment shall be due on the next following Business Day and Interest shall accrue until but excluding the actual date of payment.

Each payment to be made by the Borrower under this Agreement shall be

made in full without deduction, set-off or counterclaim of any kind or for any reason. If any fees and expenses incurred after the date of this Agreement are not paid by the Borrower, the Servicing Agent may, but shall have no duty to do so, pay all such fees and expenses whereupon such amounts shall be added to and form part of the DIP Obligations and shall reduce the availability under the DIP Facility.

29. **Indemnity:** The Borrower agrees to indemnify and hold harmless the DIP Lenders, the Agent, the Servicing Agent, and their respective Affiliates and officers, directors, employees, representatives, advisors, managers, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the DIP Facility, the proposed or actual use of the proceeds of the DIP Facility, this Agreement or the other DIP Credit Documents. Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person or to the extent of any disputes solely among Indemnified Persons other than claims arising out of any act or omission on the part of the Borrower. The DIP Lenders, the Agent and the Servicing Agent shall not be responsible or liable to the Borrower or any other Person for any indirect, consequential special or punitive damages.
30. **Representations and Warranties:** The Borrower represents and warrants to the DIP Lenders, upon which the DIP Lenders rely in entering into this Agreement and the other DIP Credit Documents, that:
- (a) The transactions contemplated by this Agreement and the other DIP Credit Documents:
    - (i) upon the granting of the Initial Order are within the powers of the Borrower;
    - (ii) have been duly authorized, executed and delivered by or on behalf of the Borrower;
    - (iii) upon the granting of the Initial Order constitute legal, valid and binding obligations of the Borrower;
    - (iv) upon and subject to the granting of the Initial Order do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with,



any of the terms or provisions of its constating documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected, other than the consent of the ABL Agent pursuant to the terms of the Revolving Facility and the Intercreditor Agreement;

- (v) upon and subject to the granting of the Initial Order there is no requirement for Borrower to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any governmental authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, other than filings which may be made to register, renew or otherwise record the DIP Lenders' Charge or any DIP Security;
- (b) The Business has been and will continue to be conducted in material compliance with all applicable Laws of each jurisdiction in which each the Business has been or is being carried on subject to the provisions of any Court Order made after the Filing Date and the CCAA;
- (c) The Borrower has obtained any material Authorizations for the operation of the Business, which Authorizations remain, and after entering into the DIP Facility will remain, in full force and effect. No proceedings have been commenced to revoke or amend any such Authorizations;
- (d) The Borrower has made all deductions and paid its obligations for Priority Payables as required by applicable Law and is not in arrears in respect of these obligations;
- (e) The Borrower does not have any defined benefit pension plans or similar plans and none of its employees are subject to the terms and conditions of employment with the Borrower under a collective bargaining agreement and the Borrower is in material compliance with all applicable Law respecting its employee's employment;
- (f) All obligations of the Borrower and its Affiliates (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with employee benefit plans of the Borrower have been

performed on a timely basis;

- (g) The Borrower and each of its Affiliates have filed all Tax returns which were required to be filed, paid all Taxes (including interest and penalties) which are due and payable other than Tax the payment of which is being contested in good faith by the proper proceedings and for which adequate cash reserves are being maintained;
- (h) All factual information provided by or on behalf of the Borrower to the DIP Lenders, the Agent or the Servicing Agent for the purposes of or in connection with this Agreement or any transaction contemplated herein is, true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. In particular, and without limiting the generality of the foregoing, all information regarding the Borrower and its subsidiary's corporate structure is true and complete, all financial reports are complete and true in all material respects.

31. **Affirmative Covenants:**

In addition to all other covenants and obligations contained herein, the Borrower agrees and covenants to perform and do each of the following until the DIP Facility is permanently and indefeasibly repaid and cancelled or assumed on consent of the Agent:

- (a) Submit to the Court the Initial Order, the Stalking Horse and SISP Order, and any other Court Orders which are being sought by the Borrower in a form confirmed in advance to be satisfactory to the Majority Lenders and the Agent, acting reasonably, subject to any amendments that are required by the Court or the Borrower that are acceptable to the Majority Lenders and the Agent, acting reasonably;
- (b) Comply with the provisions of the Court Orders made in the CCAA Proceeding including, without limitation, the Initial Order and the Stalking Horse and SISP Order;
- (c) Utilize all Advances in a manner that is consistent with the Approved Cash Flow in all material respects or as otherwise agreed to with the written approval of the Majority Lenders;
- (d) Deliver to the Agent any updated Approved Cash Flows and Cash Flow Variance in accordance with this Agreement and

such other reporting and other information from time to time as is reasonably requested by the Majority Lenders;

- (e) Deliver to the Agent: (i) within one Business Day of delivery thereof to the Monitor, copies of all daily sales and margin reports, monthly internal financial statements, liquidity and updates to the Approved Cash Flow that are reported weekly, together with any related or supporting information, provided to the Monitor; (ii) within one Business Day of receipt from the Monitor, any final, written reports, commentary or analysis received by the Borrower from the Monitor regarding the financial position of the Borrower or otherwise; and (iii) concurrent with the delivery of each weekly update to the Approved Cash Flow a report of invoiced and estimated accrued amounts owing to professionals who have the benefit of the Administration Charge;
- (f) Comply with the SISP;
- (g) Subject to the SISP, provide the Agent with a weekly status update regarding the status of the CCAA Proceeding, the Liquidation and the SISP including any information which may otherwise be confidential, subject to same being maintained as confidential by the DIP Lenders and the Agent in accordance with the terms of the Confidentiality Agreement;
- (h) Allow the DIP Lenders, their directors, officers, employees, agents, advisors and representatives full access to all information and documentation of the Borrower and its Affiliates on two Business Days' notice and during normal business hours and cause management thereof to fully cooperate with any directors, officers, employees, agents, advisors and representatives to the DIP Lenders;
- (i) Preserve, renew, maintain and keep in full force its corporate existence and its Authorizations required in respect of the Business or any of the Collateral;
- (j) Use all reasonable efforts to keep the DIP Lenders apprised on a timely basis of all material developments with respect to the Business and affairs of the Borrower and its subsidiary;
- (k) Subject to paragraphs 6, 9 and 11 of the Initial Order, the Stalking Horse and SISP Order, the Consulting Agreement, the CCAA Order approving the Consulting Agreement and

the Asset Purchase Agreement in all material respects, conduct the Business and preserve, protect and maintain the Collateral in the ordinary course of Business;

- (l) Obtain the prior written consent of the Majority Lenders prior to disseminating general written communications to any customer, supplier or employee group, landlords and other stakeholders in respect of this DIP Facility, the DIP Lenders, the Agent, the Servicing Agent, the Asset Purchase Agreement, the Purchaser or the CCAA Proceeding;
- (m) Subject to the Asset Purchase Agreement and the provisions of any Court Order (including the Initial Order) in each case that are not otherwise inconsistent with the terms of this Agreement, in all material respects, preserve current relations with, and the current goodwill of, customers, suppliers, employees, landlords, other stakeholders, any Governmental Authority and all other Persons having material business relationships with the Borrower to the extent such relationships are necessary for the Purchaser to conduct the Business or relate to the Purchased Assets or Assumed Liabilities (each as defined in the Asset Purchase Agreement);
- (n) Maintain in full force all policies and contracts of insurance that are now in effect (or renewals thereof) under which the Borrower, the Business or any of the Collateral is insured;
- (o) Pay all applicable Taxes that are Priority Payables, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Encumbrance thereon and pay all amounts due under any utility contracts;
- (p) Forthwith notify the Agent and the Servicing Agent of the occurrence of any Default or Event of Default;
- (q) Execute and deliver the DIP Credit Documents, in form and substance satisfactory to the Majority Lenders, the Agent and the Servicing Agent, acting reasonably;
- (r) Execute the Consulting Agreement in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably;
- (s) Immediately upon the request of the Agent, grant an irrevocable power of attorney in favour of the Agent, coupled with an interest, to empower the Agent to enforce

Borrower's rights under the Consulting Agreement;

- (t) Promptly notify the Agent and the ABL Agent if the Borrower receives proceeds from the Liquidation of Term Priority Collateral and, subject to a Court Order approving such payment on a motion supported by the Borrower, pay such proceeds in accordance with the priorities set out in the Intercreditor Agreement; and
- (u) Pay when due all principal, interest, fees and other amounts payable by the Borrower under this Agreement and under any other DIP Credit Documents.

32. **Negative Covenants:**

The Borrower covenants and agrees not to do the following, other than with the prior written consent of the Majority Lenders from and after the date hereof:

- (a) Except as contemplated by this Agreement or any Court Order, make any payment of any Indebtedness or obligation existing as at the Filing Date (the "**Pre-Filing Debt**"), other than ordinary course payments under GSO Facility and the Revolving Facility;
- (b) Create, incur or permit to exist, or permit any Affiliate to create, incur or permit to exist, any Indebtedness other than Pre-Filing Debt, Advances, the DIP Obligations, ordinary course obligations under the GSO Facility and the Revolving Facility, including, in the case of the Revolving Facility, Indebtedness incurred after the Filing Date in accordance with the Initial Order and post-filing accounts payable in the ordinary course of the Business and in accordance with the Approved Cash Flow;
- (c) Except for Permitted Encumbrances and Encumbrances created by the Initial Order, create, permit to exist any Encumbrance, or provide or seek or support a motion by another party to provide an Encumbrance, upon any of the Collateral including, without limitation, a critical supplier's charge;
- (d) Except for payment of the Directors' Escrow (as defined in the Initial Order), make any payments outside the ordinary course of the Business, subject to the obligation to comply with the Approved Cash Flow in all material respects;
- (e) Make any investments in or loans to or guarantee the Indebtedness or obligations of any other Person or entity or

permit its Affiliates to do so;

- (f) Change its jurisdiction of incorporation or registered office;
- (g) Enter into, amend or suffer to exist any transaction or series of related transactions with any Affiliate;
- (h) Except as may be required under the Asset Purchase Agreement, change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other entity;
- (i) Terminate, without cause, any key employees of the Borrower or add, remove or replace any directors or officers of the Borrower,
- (j) Enter any restrictive covenants or agreements which might affect the value or liquidity of any Collateral;
- (k) Subject to paragraphs 6, 9 and 11 of the Initial Order, the Stalking Horse and SISP Order, the Consulting Agreement, the CCAA Order approving the Consulting Agreement and the Asset Purchase Agreement, cease to carry on the Business or activities as they are currently being conducted or change its operations or business practices;
- (l) Transfer the proceeds of any Advance to a Blocked Account;
- (m) Except for a sale pursuant to a Successful Bid, the Consulting Agreement or the Asset Purchase Agreement, sell, assign, lease, convey or otherwise dispose of any of the Collateral except for sales of Inventory in the ordinary course of the Business;
- (n) Notwithstanding the Initial Order, disclaim any contract that is material to the Business, except as otherwise contemplated or required under the Consulting Agreement or the Asset Purchase Agreement and approved by the Monitor;
- (o) Notwithstanding the Initial Order, amend or renew, extend the term, disclaim or accept the surrender of any real property lease except as otherwise contemplated or required under or in the Consulting Agreement, the Asset Purchase Agreement or a Successful Bid and approved by the Monitor;
- (p) Increase any termination or severance entitlements or pay

any termination or severance payments or modify any compensation or benefit plans whatsoever;

- (q) Except as otherwise contemplated in the Initial Order or any other Court Order, establish or make any retention or bonus payments or amend the terms of the KERP (as defined in the Initial Order);
- (r) Enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against the Borrower;
- (s) Amend the Consulting Agreement, including the Budget (as defined in, and attached to, the Consulting Agreement) or the fees referred to therein, or enforce or decline to enforce its rights and remedies under the Consulting Agreement; or
- (t) Transfer Inventory between its retail store locations, distribution centres and warehouses outside the ordinary course of the Business, except in connection with the Liquidation or in connection with the transaction contemplated pursuant to the Asset Purchase Agreement, provided that, no more than 30% of the Inventory in any store can be transferred or exchanged for aged Inventory.

33. **Events of Default:**

The occurrence of any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

- (a) Any Court Order is issued, dismissed, stayed, reversed, vacated, amended or restated and such issuance, dismissal, stay, reversal, vacating, amendment or restatement adversely affects or would reasonably be expected to adversely affect the interest of the DIP Lenders in a material manner, unless the Majority Lenders have given their prior written consent thereto, including the issuance of a Court Order:
  - (i) terminating the CCAA Proceeding or appointing a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower;
  - (ii) terminating, lifting or amending the stay imposed within the CCAA Proceeding in a manner which, in the opinion of the Majority Lenders', in their sole and absolute determination is prejudicial to the DIP

Lenders;

- (iii) granting any other claim or Encumbrance of equal or priority status to that of the DIP Lenders' Charge except as permitted hereunder; and
  - (iv) staying, reversing, vacating or otherwise modifying the DIP Credit Documents or prejudicially affecting the DIP Lenders or the Collateral;
- (b) Failure of the Borrower to diligently oppose any party that brings an application or motion for any of the relief set out in subsection 33(a) above and/or the failure to secure the dismissal of such motion or application within 60 days from the date that such application or motion is brought (provided no affirmative Court Order is issued on such motion or application during such period);
  - (c) Failure of the Borrower to pay any amounts when due and owing hereunder;
  - (d) The Borrower ceases to carry on or maintain the Business or its assets in the ordinary course of the Business in compliance with the covenants contained in this Agreement, except where such cessation is otherwise consented to in advance in writing by the Majority Lenders;
  - (e) Any representation or warranty made or given hereunder or under any of the other DIP Credit Documents by the Borrower shall be incorrect or misleading in any material respect when made or when the Court Order approving the DIP Credit Documents is made;
  - (f) A liability arises or an event occurs, including any change in the Business, assets, or conditions, financial or otherwise, of the Borrower that will, in the Majority Lenders' judgment, acting reasonably, materially further impair the Borrower's financial condition, operations or ability to comply with its obligations under this Agreement or any other DIP Credit Documents, the Asset Purchase Agreement or any Court Order or carry out the SISP in a manner reasonably acceptable to the Majority Lenders;
  - (g) Any material violation or breach of any Court Order by the Borrower;
  - (h) Failure of the Borrower to perform or comply with any term or covenant of this Agreement or any other DIP Credit



## Documents;

- (i) if, on a cumulative basis tested weekly, in any given week, the actual Receipts (as described in the Approved Cash Flow) of the Borrower are less than their respective Minimum Cumulative Receipts amounts as shown on Schedule "D" hereto, or the aggregate amount of the actual Operating Disbursements and Non-Operating Disbursements (each as described in the Approved Cash Flow) of the Borrower are greater than their Maximum Cumulative Disbursements in amounts as shown on Schedule "D" hereto, provided that, the Borrower, with the assistance of the Monitor, may from time to time present the Agent with a revised Schedule "D" and the Majority Lenders may agree to substitute the revised Schedule "D" for the Schedule "D" attached hereto, in which case the revised Schedule "D" shall thereafter be deemed to be the effective Schedule "D" for the purposes hereof;
- (j) Any proceeding, motion or application is commenced or filed by the Borrower, or if commenced by another party, supported or otherwise consented to by the Borrower, seeking the invalidation, subordination or other challenging of the terms of the DIP Facility, the DIP Lenders' Charge, this Agreement or any of the other DIP Credit Documents or the Asset Purchase Agreement;
- (k) A Terminating Event (as defined in the ABL Forbearance Agreement) occurs; or
- (l) The approval of a Liquidation or sale of any of the assets of the Borrower outside the ordinary course of the Business (other than pursuant to the Asset Purchase Agreement, the Consulting Agreement, the Stalking Horse and SISP Order or arising from a Successful Bid), which does not have the prior written consent of the Majority Lenders.

## 34. Remedies:

Upon the occurrence of an Event of Default, the Majority Lenders may in their discretion elect on five Business Days' notice to the Borrower, the ABL Agent and the Monitor, to terminate the DIP Lenders' commitment to make further Advances to the Borrower and set-off, consolidate or accelerate all amounts outstanding under the DIP Facility and other DIP Credit Documents and declare such amounts to be immediately due and payable without any periods of grace. Upon the occurrence of an Event of Default, the Agent, if directed by the Majority Lenders may, subject to the Intercreditor Agreement:

- (a) Subject to providing on five Business Days' notice to the Borrower, the ABL Agent and the Monitor, apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral, other than the ABL Priority Collateral or for the appointment of a trustee in bankruptcy of the Borrower;
- (b) Apply for a Court Order, on terms satisfactory to the Monitor and the Majority Lenders, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceeding to realize on the Collateral, other than the ABL Priority Collateral;
- (c) Exercise the powers and rights of a secured party; and
- (d) Exercise all such other rights and remedies available to the DIP Lenders under the DIP Credit Documents, the Court Orders and applicable Law.

35. **DIP Lenders Approval:**

Any consent, approval, instruction or other expression of the DIP Lenders or the Majority Lenders to be delivered in writing may be delivered by any written instrument, including by way of electronic mail.

The Servicing Agent, on behalf of the DIP Lenders or the Majority Lenders, may execute any consent or waiver with the approval and written direction of the Majority Lenders, provided, however, that any consent or waiver which has the result or effect of (a) increasing the Loan Amount, (b) waiving or reducing any payment obligation by the Borrower hereunder, (c) extending the Maturity Date, (d) allowing the Borrower to re-borrow under the DIP Facility, or (e) releasing any of the DIP Security shall require the consent of those DIP Lenders whose *Individual Commitment Amounts* represent not less than 100% of the Loan Amount.

36. **Appointment of Agent and Servicing Agent and the Roles of the Agent and Servicing Agent:**

- (a) The DIP Lenders appoint the Agent to act as their agent under and in connection with this Agreement and the other DIP Credit Documents and authorize the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with this Agreement and the other DIP Credit Documents, together with any other incidental rights, powers, authorities and discretions.
- (b) The DIP Lenders and the Agent appoint the Servicing Agent to act as their Servicing Agent under and in connection with this Agreement and the other DIP Credit Documents and authorize the Servicing Agent to exercise the rights, powers, authorities and discretions specifically given to the Servicing

Agent under or in connection with this Agreement and the other DIP Credit Documents, together with any other incidental rights, powers, authorities and discretions

- (c) Any communication or document to be delivered to the Agent or Servicing Agent will be effective only when received by the Agent or Servicing Agent, as applicable.
  - (d) Nothing in this Agreement constitutes the Agent or the Servicing Agent as a trustee or fiduciary of any other Person.
  - (e) Neither the Agent nor the Servicing Agent shall be bound to account to the DIP Lenders for any sum or the profit element of any sum received by it for its own account.
37. **Duties of the Agent:**
- (a) The Agent's duties under this Agreement and the DIP Credit Documents are solely mechanical and administrative in nature.
  - (b) The Agent shall as soon as reasonably practicable forward to the Servicing Agent the original or a copy of any document which is delivered to the Agent by any other party.
  - (c) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
  - (d) The Agent shall notify each DIP Lender and the Servicing Agent of the occurrence of any Default or Event of Default by the Borrower in the performance of its obligations under this Agreement or the other DIP Credit Documents of which the Agent has actual knowledge or actual notice.
  - (e) Each time the Borrower requests the prior written consent of DIP Lenders or the Majority Lenders, promptly inform the Servicing Agent of such request and of the Agent's instruction and/or drafts, as applicable, with respect thereto in order for the Servicing Agent to carry out its duties.
  - (f) The Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or any other DIP Credit Documents to which it is expressed to be party (and no others shall be implied).
38. **Duties of the Servicing Agent:**
- (a) The Servicing Agent's duties under this Agreement and the DIP Credit Documents are solely mechanical and administrative in nature. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement

with reference to the Servicing Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

- (b) The Servicing Agent shall as soon as reasonably practicable forward to the DIP Lenders and the Agent the original or a copy of any document which is delivered to the Servicing Agent by the Borrower or the Agent.
- (c) The Servicing Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (d) Notify each DIP Lender and the Agent of the occurrence of any Event of Default by the Borrower in the performance of its obligations under this Agreement or the other DIP Credit Documents of which the Servicing Agent has actual knowledge or actual notice.
- (e) Act in accordance with any instructions given to it by the DIP Lenders, Majority Lenders or the Agent.
- (f) In the event that the Servicing Agent is at any time given instructions by both the Majority Lenders and the Agent which it reasonably deems to be in conflict, follow the instructions given to it by the Majority Lenders. The Servicing Agent may at any time request instructions from DIP Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the DIP Credit Documents the Servicing Agent is permitted or desires to take or to grant and if such instructions are promptly requested, the Servicing Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the DIP Credit Documents until it shall have received such instructions from Majority Lenders or all or such other portion of DIP Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no DIP Lender shall have any right of action whatsoever against the Servicing Agent as a result of Servicing Agent acting or refraining from acting under this Agreement or any of the other DIP Credit Documents in accordance with the

instructions of the Majority Lenders (or all or such other portion of DIP Lenders as shall be prescribed by this Agreement) and notwithstanding the instructions of the Majority Lenders (or such other applicable portion of DIP Lenders), the Servicing Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes the Servicing Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of this Agreement.

- (g) Each time the Borrower requests the prior written consent of the DIP Lenders or the Majority Lenders, use its best efforts to act in accordance with the Agent's instruction and/or drafts, as applicable, with respect thereto and execute and deliver any consent approved by the DIP Lenders or the Majority Lenders, as applicable, to the Borrower.
  - (h) The Servicing Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or any other DIP Credit Documents to which it is expressed to be party (and no others shall be implied).
39. **Exclusion of the Agent and the Servicing Agent's Liability:**
- (a) Without limiting subsection 39(b) below, neither the Agent nor the Servicing Agent shall be liable for any action taken by it under, or in connection with, this Agreement or any other DIP Credit Documents, unless directly caused by its gross negligence or wilful misconduct as finally determined by a court of competent jurisdiction.
  - (b) No party (other than the Agent) shall take proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement or any other DIP Credit Documents and any officer, employee or agent of the Agent may rely on this provision.
  - (c) No party (other than the Servicing Agent) shall take proceedings against any officer, employee or agent of the Servicing Agent in respect of any claim it might have against the Servicing Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement or any other DIP Credit Documents and any officer, employee or agent of the Servicing Agent may rely on this provision.

- (d) If any monies are transferred to the Agent or the Servicing Agent, the Agent or the Servicing Agent, as applicable, will not be liable for any delay (or related consequences) in crediting an account with any amount required under this term sheet or any other DIP Credit Documents to be paid by the Agent or the Servicing Agent, as applicable, if the Agent or the Servicing Agent, as applicable, has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system which may be used by the Agent or the Servicing Agent, as applicable, for that purpose.

40. **DIP Lenders' Indemnity to the Agent and the Servicing Agent:** The DIP Lenders shall (in proportion to their Individual Commitment Amount as at the date of this Agreement) indemnify the Agent and the Servicing Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent or the Servicing Agent, as applicable, other than by reason of the Agent or the Servicing Agent's gross negligence or wilful misconduct as finally determined by a court of competent jurisdiction in acting in their capacity as Agent or Servicing Agent, as applicable, under this Agreement or any other DIP Credit Documents.
41. **Reference to the Agent and the Servicing Agent:** Any reference in this Agreement or the other DIP Credit Documents to the Agent or the Servicing Agent shall be construed so as to include its successors and permitted transferees or assigns hereunder in accordance with its respective interests.
42. **Taxes:** All payments by the Borrower under this Agreement and the other DIP Credit Documents, including any payments required to be made from and after the exercise of any remedies available to the DIP Lenders upon an Event of Default, shall be made free and clear of, without reduction for or on account of, any present or future Taxes; provided, however, that if any Taxes are required by applicable Law to be withheld ("**Withholding Taxes**") from any amount payable to the DIP Lenders under this Agreement or under any DIP Credit Documents, the amounts so payable to the DIP Lenders shall be increased to the extent necessary to yield to the DIP Lenders on a net basis after payment of all Withholding Taxes, the amount payable under such DIP Credit Documents at the rate or in the amount specified in such DIP Credit Documents and the Borrower shall provide evidence satisfactory to the DIP Lenders that the Taxes have been so withheld and remitted.

43. **Further Assurances:** The Borrower shall, at its own expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) as the DIP Lenders may reasonably request for the purpose of giving effect to this Agreement and the other DIP Credit Documents.
44. **Entire Agreement:** This Agreement and the other DIP Credit Documents, the Asset Purchase Agreement and the Confidentiality Agreement constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any inconsistency between this Agreement and any of the other DIP Credit Documents, the Asset Purchase Agreement or the Confidentiality Agreement, this Agreement shall prevail.
45. **Amendments and Waivers:** No waiver or delay on the part of the DIP Lenders, the Agent or the Servicing Agent in exercising any right or privilege hereunder or under any other DIP Credit Documents will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Agreement.
46. **Severability:** Any provision in this Agreement or any other *DIP Credit Documents* which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or effecting the validity of enforceability of such provision in any other jurisdiction.
47. **No Third Party Beneficiary:** No Person, other than the Borrower, the Agent, the Servicing Agent and the DIP Lenders, are entitled to rely upon this Agreement and the parties expressly agree that this Agreement does not confer rights upon any party not a signatory hereto.
48. **Press Releases:** The Borrower shall not issue any press releases naming the Agent, the Servicing Agent or the DIP Lenders without their prior approval, unless the Borrower is required to do so by applicable Law.
49. **Counterparts and Facsimile Signatures:** This Agreement may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.
50. **Notices:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the Person as set forth below:

**In the case of the DIP Lenders or the Agent:**

GSO Capital Partners LP  
345 Park Avenue, 31st Floor  
New York, NY 10154

Attention: Marc Baliotti / John Beberus / GSO Legal  
Email: Marc.Baliotti@gsocap.com / John.Beberus@gsocap.com /  
gsolegal@gsocap.com

**With a copy to:**

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Scott Hyman  
Email: shyman@dwpv.com

**In the case of the Servicing Agent:**

Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402

Attention: Meghan McCauley  
Email: mmccauley@wilmingtontrust.com

**With a copy to:**

Lindquist & Vennum LLP  
2000 IDS Centre, 80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

Attention: Mark C. Dietzen  
Email: mdietzen@lindquist.com

**In the case of the Borrower:**

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

Attention: Mark Sun, Vice President and Chief Financial Officer  
Email: msun@graftonfraser.com

**With a copy to:**

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20



Toronto, ON M5H 2T6

Attention: Stuart Brotman / Natasha De Cicco  
 Fax No.: 416 -364-7813  
 Email: sbrotman@fasken.com / ndecicco@fasken.com

**In either case, with a copy to the Monitor:**

Richter Advisory Group Inc.  
 181 Bay Street, Suite 3320  
 Bay Wellington Tower  
 Toronto, ON M5J 2T3

Attention: Gilles Benchaya / Adam Sherman  
 Email: gbenchaya@richterconsulting.com /  
 asherman@richterconsulting.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 pm local time or on a day other than a business day, in which case the notice shall be deemed to be received the next business day.

51. **English Language:** The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*
52. **Governing Law and Jurisdiction:** This Agreement shall be governed by, and construed in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein.
53. **Definitions:** "ABL Agent" means Canadian Imperial Bank of Commerce, in its capacity as administrative agent on its own behalf and on behalf of the Lenders under the Revolving Facility;
- "ABL Forbearance Agreement" means the amended and restated forbearance agreement between the Borrower, 2473304 Ontario Inc. and the ABL Agent dated January 24, 2017;
- "ABL Obligations" has the meaning given to that term in the Intercreditor Agreement;
- "ABL Priority Collateral" has the meaning given to that term in the Intercreditor Agreement;
- "ABL Security" has the meaning given to that term in Section 21;
- "Administration Charge" has the meaning given to that term in Section

21;

"Advance" has the meaning given to that term in Section 9;

"Advance Notice" has the meaning given to that term in Section 9;

"Affiliate" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"Agent" has the meaning given to that term in Section 6;

"Agreement" means this Agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter;

"Approved Cash Flow" has the meaning given to that term in Section 19;

"Asset Purchase Agreement" means the asset purchase agreement dated January 24, 2017 between Purchaser and Borrower;

"Assignment and Assumption Agreement" has the meaning given to that term in Subsection 12(b);

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Collateral or the Business;

"Blocked Account" has the meaning given to that term in the ABL Forbearance Agreement;

"Borrower" has the meaning given to that term in Section 4;

"Borrower's Account" has the meaning given to that term in Section 23;

"Borrower's Security" has the meaning given to that term in the GSO Facility and shall include (a) the Trade-Mark and Trade-Mark Applications and Security Agreement dated May 24, 2007 between the Borrower and the Predecessor Agent, and any amendments thereto, and (b) the general security agreement dated May 24, 2007 between GF Acquisition Corp. and the Predecessor Agent, and any amendments thereto and as such agreements may be further amended, restated, supplemented or otherwise modified;

"Business" means the men's retail business operated by the Borrower under the Tip Top, George Richards, Big & Tall, Mr. Big and Tall and Kingsport

banners

"**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario or the State of New York;

"**Cash Flow Variance Report**" has the meaning given to that term in Section 19;

"**CCAA**" has the meaning given to that term in the recitals;

"**CCAA Proceeding**" has the meaning given to that term in recitals;

"**CDOR Rate**" means, with respect to any Advance for an Interest Period, the greater of (a) 1%, and (b) the rate per annum determined by the Agent by reference to the average rate quoted on the Reuters Monitor Screen Page CDOR (displaying Canadian interbank bid rates for Canadian dollar bankers' acceptances) applicable to bankers' acceptances for the applicable term as of 11:00 a.m. (Toronto time) two Business Days prior to the beginning of such Interest Period; provided that, if such rate does not appear on the CDOR Page at such time on such date, the rate for such date will be the rate of interest per annum equivalent to the annual discount rate (rounded upward to the nearest whole multiple of 1/100 of 1%) as of 11:00 a.m., Toronto time on such day at which one of the five largest Canadian chartered banks (measured by assets) listed on Schedule I of the *Bank Act* (Canada) as selected by the Agent is then offering to issue Canadian dollar bankers' acceptances accepted by it having such specified term (or a term as closely as possible comparable to such specified term);

"**Collateral**" has the meaning given to that term in Subsection 20(j);

"**Confidentiality Agreement**" means the confidentiality agreement between the Borrower and the Agent dated November 29, 2016;

"**Consulting Agreement**" means the agreement between the Borrower and an agent engaged by the Borrower for the purpose of conducting the Liquidation;

"**Court**" has the meaning given to that term in recitals;

"**Court Order**" has the meaning given to that term in Subsection 20(m);

"**Default**" means the occurrence or existence of any event, fact or circumstances, that with the giving of notice, passage of time, or both, would constitute an Event of Default;

"**Default Rate**" has the meaning given to that term in Section 15;

"**DIP Credit Documents**" means this Agreement, the DIP Security, the

Servicing Agent Fee Agreement and any other documents in respect of the DIP Facility as may be requested by the DIP Lenders;

"**DIP Facility**" has the meaning given to that term in Section 8;

"**DIP Lender**" and "**DIP Lenders**" has the meaning given to those terms in Section 5;

"**DIP Lenders' Charge**" has the meaning given to that term in Section 21;

"**DIP Obligations**" has the meaning given to that term in Section 21;

"**DIP Security**" means the Borrower's Security and related personal property security registrations made in favour of the Agent in connection with the Borrower's Security together with such confirmations, financing statements, renewals, amendments, discharges, insurance endorsements, opinions or other documents as may be requested by the DIP Lenders as security for the DIP Obligations;

"**Encumbrances**" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"**Event of Default**" has the meaning given to that term in Section 33;

"**Existing Lender**" has the meaning given to that term in Section 12;

"**Filing Date**" means the date the Initial Order is made granting the Borrower protection under the CCAA;

"**Funding Conditions**" has the meaning given to that term in Section 20;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**GSO Facility**" means the non-revolving credit facility dated as of June 16, 2009 made available to the Borrower pursuant to the amended and restated credit agreement entered into by the Borrower, as borrower, Wilmington

Trust, National Association, as Servicing Agent, the Agent, as administrative agent, 2473304 Ontario Inc., as guarantor, and GSO Domestic Capital Funding (Luxembourg) S.A.R.L. and GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L., as lenders, as amended on April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015, February 12, 2016, June 6, 2016, August 3, 2016, September 26, 2016, November 29, 2016, December 15, 2016, December 23, 2016 and January 24, 2017, as it may be further amended, supplemented or otherwise modified;

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

**"Indebtedness"** of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, including by way of overdraft and drafts or orders accepted as representing extensions of credit, (b) all obligations of such Person evidenced by bonds, debentures, the face amount of all bankers' acceptances, letters of credit, letters of guarantee and similar instruments, notes, letters of credit or other similar instruments, including obligations under any arrangement with any Person providing for the leasing by the Borrower of any Property (as defined in the GSO Facility), which Property has been or is to be sold or transferred by the Borrower to such Person in contemplation of such leasing, (c) all obligations of such Person to pay the deferred purchase price of property or services, (d) all obligations of such Person as lessee which are capitalized in accordance with generally accepted accounting principles consistently applied in Canada, (e) all indebtedness, liabilities and obligations secured by an Encumbrance on any asset of such Person, whether or not the same is otherwise indebtedness, liabilities or obligations of such Person, which, for greater certainty will not include rent paid or payable by the Borrower in the ordinary course under its commercial lease for its retail merchandising locations, (f) all indebtedness, liabilities and obligations of others which is, directly or indirectly, guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire, (g) all indebtedness, liabilities and obligations in respect of financial instruments which are classified as a liability on the balance sheet of such Person, (h) all obligations of such Person to otherwise assure a creditor against loss, (i) all Hedging Obligations and (j) all obligations of such Person for trade accounts and contracts;

**"Indemnified Persons"** has the meaning given to that term in Section 29;

**"Individual Commitment Amounts"** has the meaning given to that term in

Section 11;

**"Initial Order"** means an order of the Court, in form and substance satisfactory to the Majority Lenders and the Agent, acting reasonably, and obtained on application made on notice to, such Persons as the Majority Lenders, the Agent and Borrower determine, acting reasonably, to be sought by the Borrower with respect to the appointment of the Monitor and with respect to the CCAA Proceeding, as amended;

**"Intercreditor Agreement"** means the intercreditor agreement entered into by the ABL Agent and the Agent dated as of February 12, 2016, as it may be amended, supplemented or otherwise modified;

**"Interest"** has the meaning given to that term in Section 15;

**"Interest Payment Date"** has the meaning given to that term in Section 15;

**"Interest Period"** means the period commencing on the date of an Advance and ending one month thereafter;

**"Inventory"** means inventories manufactured by the Borrower or purchased from third party vendors, including raw materials, work-in-process and packaging materials, finished goods, supplies or replacements;

**"Law"** means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

**"Lenders"** means the lenders from time to time party to the Revolving Facility;

**"Liquidation"** means the sale and liquidation of certain of Borrower's assets, including certain inventory, furniture, fixtures and equipment by the Borrower, or an agent engaged by the Borrower;

**"Loan Amount"** has the meaning given to that term in Section 8;

**"Majority Lenders"** means, at any time, DIP Lenders whose outstanding commitments represent more than 50% of the sum of the total Loan Amount;

**"Maturity Date"** has the meaning given to that term in Section 24;

**"Monitor"** means Richter Advisory Group Inc., as the Court-appointed Monitor of the Borrower in the CCAA Proceeding;

**"Permitted Encumbrances"** means the Encumbrances listed in Schedule "E" hereto;

**"Person"** means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

**"PIK Interest"** has the meaning given to that term in Section 15;

**"Pre-Filing Debt"** has the meaning given to that term in Subsection 32(a);

**"Predecessor Agent"** means GSO Special Situations Fund LP;

**"Priority Charges"** has the meaning given to that term in Section 21;

**"Priority Payables"** means HST, all sales Tax and any amount payable or accrued by Borrower which is secured by an Encumbrance which ranks or is capable of ranking prior to or *pari passu* with the Encumbrances created in connection with the DIP Lenders' Charge, (other than the Permitted Encumbrances and Priority Charges) including amounts accrued or owing for wages, vacation pay, termination pay (only where it is a priority payable), employee deductions, or Taxes, and other statutory or other claims that have or may have priority over, or rank *pari passu* with, the Encumbrances created in connection with the DIP Lenders' Charge;

**"Purchaser"** means 1104307 B.C. Ltd.;

**"Revolving Facility"** means the asset-based revolving credit facility dated as of February 12, 2016 made available to the Borrower pursuant to the credit agreement entered into by the Borrower and 2473304 Ontario Inc., as co-borrowers, the ABL Agent and the Lenders, as it may be amended, supplemented or otherwise modified;

**"Servicing Agent"** has the meaning given to that term in Section 7;

**"Servicing Agent Fee Agreement"** means the fee agreement entered into between the Borrower and the Servicing Agent dated as of January , 2017;

**"SISP"** means the sales and investor solicitation procedures appended to the Stalking Horse and SISP Order;

**"Stalking Horse and SISP Order"** an order of the Court in form and substance satisfactory to the Majority Lenders, the Agent and the Borrower, acting reasonably, and obtained on application made on notice to, such Persons as the Majority Lenders, the Agent and Borrower determine, acting

reasonably, recognizing the Asset Purchase Agreement as a "stalking horse bid" and approving the SISP;

**"Successful Bid"** has the meaning given to that term in the SISP;

**"Tax"** and **"Taxes"** means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

**"Term Priority Collateral"** has the meaning given to that term in the Intercreditor Agreement;

**"Updated Cash Flow"** has the meaning given to that term in Section 19; and

**"Withholding Taxes"** has the meaning given to that term in Section 42;

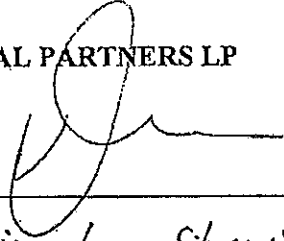
[Remainder of page left intentionally blank. Signature page follows]



AS AGENT:

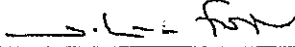
GSO CAPITAL PARTNERS LP

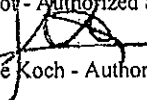
by

  
Doris Lee-Silver  
Authorized Person

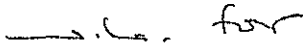
AS DIP LENDERS:

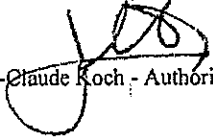
GSO DOMESTIC CAPITAL  
FUNDING (LUXEMBOURG) S.A.R.L.

by   
\_\_\_\_\_  
William Foot - Authorized Signatory

  
Jean-Claude Koch - Authorized Signatory

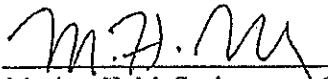
GSO OFFSHORE  
MULTICURRENCY FACILITY  
(LUXEMBOURG) S.A.R.L.

by   
\_\_\_\_\_  
William Foot - Authorized Signatory

  
Jean-Claude Koch - Authorized Signatory

AS SERVICING AGENT:

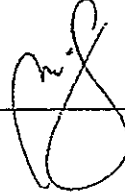
WILMINGTON TRUST, NATIONAL  
ASSOCIATION

by   
Meghan H. McCauley  
Assistant Vice President

AS BORROWER:

GRAFTON-FRASER INC.

by

A handwritten signature in black ink, appearing to read 'M. G. Sun', written over a horizontal line.

**Mark G. Sun**  
Vice President & CFO  
Grafton-Fraser Inc.

**SCHEDULE "A"**

**Individual Commitment Amounts**

<b>Name of Lender</b>	<b>Individual Commitment Amount</b>
GSO Domestic Capital Funding (Luxembourg) S.A.R.L.	\$2,386,311.40
GSO Offshore Multicurrency Facility (Luxembourg) S.A.R.L.	\$3,113,688.60
<b>Total</b>	<b>\$5,500,000.00</b>

**SCHEDULE "B"****Assignment and Assumption Agreement**

This assignment and assumption (the "**Assignment and Assumption**") is dated as of the Effective Date set forth below and is entered into by and between [*insert name of Assignor*] (the "**Assignor**"), [*insert name of Assignee*] (the "**Assignee**") and Grafton-Fraser Inc. (the "**Borrower**"). Capitalized terms used but not defined herein shall have the meanings given to them in the DIP Loan Agreement (as defined below), receipt of a copy of which is hereby acknowledged by the Assignee.

For an agreed consideration, and subject to the standard terms and conditions attached hereto as Appendix "A", the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, as of the Effective Date: (a) all of the Assignor's rights and obligations in its capacity as a DIP Lender under the DIP Credit Documents and any other documents or instruments delivered pursuant thereto, and (b) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a DIP Lender) against any Person, whether known or unknown, arising under or in connection with the DIP Credit Documents and any other documents or instruments delivered pursuant thereto, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above. The rights and obligations sold and assigned pursuant to clauses (a) and (b) above, and described in more detail below, are referred to herein collectively as, the "**Assigned Interest**". Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

Effective on the Effective Date, the Assignor shall be released from its obligations in connection with the Assigned Interest and the respective rights of each of the Borrower and the Assignor against one another in respect of the Assigned Interest shall be cancelled and the Assignee shall assume those obligations.

The Borrower acknowledges the assignment of the Assigned Interest to the Assignee and agrees that from and after the Effective Date (a) all payments in respect of the Assigned Interest shall be made to the Assignee, and (b) the Assignee has all of the rights and remedies of the Assignor as a DIP Lender under DIP Loan Agreement.

1. **Assignor:** [*insert name of Assignor*]
2. **Assignee:** [*insert name of Assignee*]
3. **Borrower:** Grafton-Fraser Inc., as borrower under the DIP Loan Agreement ("**Borrower**")
4. **Agent:** GSO Capital Partners LP, as agent under the DIP Loan Agreement (the "**Agent**")
5. **Servicing Agent:** Wilmington Trust, National Association (the "**Servicing Agent**")

- 6. **DIP Loan Agreement:** DIP Loan Agreement dated as of January \_\_\_\_\_, 2017, between the between the Borrower, the DIP Lenders, the Agent and the Servicing Agent, as amended, restated, supplemented or otherwise modified from time to time (the "DIP Loan Agreement");
- 7. **DIP Credit Documents:** the DIP Loan Agreement, the DIP Security, the Servicing Agent Fee Agreement and any other documents in respect of the DIP Facility as may be requested by the DIP Lenders (the "DIP Credit Documents");
- 8. **Assigned Interest:**

Name of Assignor	Individual Commitment Amount

The terms set forth in this Assignment and Assumption are hereby agreed to on \_\_\_\_\_ (the "Effective Date").<sup>1</sup>

**ASSIGNOR**  
**[NAME OF ASSIGNOR]**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**ASSIGNEE**  
**[NAME OF ASSIGNEE]**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**BORROWER**  
**GRAFTON FRASER INC.**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

<sup>1</sup> To be inserted by the Agent, and which shall be the effective date of the transfer in the register therefor.

Accepted:

AGENT

[NAME OF AGENT]

By: \_\_\_\_\_

Title: \_\_\_\_\_



**Appendix "A"**  
**STANDARD TERMS AND CONDITIONS**

**1 Representations and Warranties**

**1.1 Assignor**

- (a) The Assignor represents and warrants that: (i) it is the legal and beneficial owner of the Assigned Interest; (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim; and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption, and to consummate the transactions contemplated hereby; and
- (b) The Assignor assumes no responsibility with respect to: (i) any statements, warranties or representations made in or in connection with the DIP Credit Documents; (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the DIP Credit Documents or any collateral thereunder; (iii) the financial condition of the Borrower; or (iv) the performance or observance by the Borrower.

**1.2 Assignee**

- (a) The Assignee represents and warrants that: (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a DIP Lender under the DIP Loan Agreement; (ii) from and after the Effective Date, it shall be bound by the provisions of the DIP Loan Agreement as a DIP Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a DIP Lender thereunder; and (iii) it has received copies of the DIP Credit Documents, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other DIP Lender.
- (b) The Assignee agrees that: (i) it will, independently and without reliance on the Agent, the Assignor or any other DIP Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the DIP Credit Documents; and (ii) it will perform in accordance with their terms, all of the obligations which by the terms of the DIP Credit Documents are required to be performed by it as a DIP Lender.

**2 Payments**

From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to, on or after the Effective Date. The

Assignor and the Assignee shall make all appropriate adjustments in payments by the Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

**3      General Provisions**

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**SCHEDULE "C"**  
**APPROVED CASH FLOW**

# DIP Cash Flow Through W/E May 27/17



Weekly Cash Flow	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18 Weeks
(\$000's)	Jan 28	Feb 04	Feb 11	Feb 18	Feb 25	Mar 04	Mar 11	Mar 18	Mar 25	Apr 01	Apr 08	Apr 15	Apr 22	Apr 29	May 06	May 13	May 20	May 27	Total
Comps	(4%)	(2%)	(2%)	(2%)	(2%)	4%	4%	4%	4%	4%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Retail Receipts	\$ 2,241	\$ 2,195	\$ 2,237	\$ 2,208	\$ 2,231	\$ 2,540	\$ 2,823	\$ 3,043	\$ 2,882	\$ 3,246	\$ 3,551	\$ 3,684	\$ 3,877	\$ 4,091	\$ 3,532	\$ 3,591	\$ 3,602	\$ 3,553	\$ 55,128
<b>Operating Disbursements</b>																			
Merchandise	(734)	(1,703)	(2,203)	(2,181)	(2,216)	(1,513)	(2,191)	(1,398)	(1,154)	(1,551)	(2,785)	(396)	(1,146)	(1,023)	(501)	(339)	(727)	(1,145)	(24,904)
Payroll	(475)	(727)	(250)	(932)	(250)	(908)	(250)	(820)	(250)	(875)	(250)	(1,014)	(250)	(1,108)	(250)	(819)	(250)	(954)	(10,631)
Rent	-	(3,170)	(117)	-	(11)	(3,082)	(242)	(13)	(20)	(3,251)	-	(12)	(10)	(42)	(2,659)	(14)	-	(48)	(12,691)
Sales Tax	(1,708)	-	-	-	-	-	-	-	(201)	(238)	-	(152)	(329)	(335)	(9)	(364)	(361)	(272)	(3,970)
Other Op.	(201)	(286)	(389)	(238)	(219)	(188)	(196)	(174)	(197)	(180)	(246)	(241)	(250)	(287)	(156)	(158)	(158)	(190)	(3,954)
CC Fees	-	(104)	-	-	-	(121)	-	-	-	(142)	-	-	-	(185)	-	-	-	(180)	(732)
Royalty	-	-	-	-	-	-	-	-	-	-	-	-	-	(235)	-	-	-	-	(235)
Supplier and Other Deposits	-	(250)	-	-	-	-	-	-	-	-	(250)	-	-	-	-	-	-	-	(500)
	(3,117)	(6,239)	(2,960)	(3,351)	(2,697)	(5,811)	(2,879)	(2,404)	(1,822)	(6,237)	(3,531)	(1,815)	(1,985)	(3,214)	(3,575)	(1,695)	(1,496)	(2,788)	(57,616)
<b>Net Operating CF</b>	(877)	(4,044)	(722)	(1,143)	(466)	(3,271)	(56)	639	1,061	(2,991)	20	1,869	1,893	877	(43)	1,895	2,106	765	(2,488)
<b>Non-Operating Disb.</b>																			
Capex	-	-	-	(100)	-	-	-	-	(100)	-	-	-	(350)	-	-	-	(350)	-	(900)
KERP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(190)	(190)
Interest	-	(100)	-	-	-	(75)	-	-	-	(93)	-	-	-	(98)	-	-	-	-	(366)
Forebearance Fee	-	(200)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(200)
Professional Fees	(875)	(386)	(335)	(180)	(180)	(180)	(230)	(130)	(130)	(125)	(120)	(120)	(120)	(270)	(200)	(59)	(90)	(305)	(4,036)
Jones Payments	(1,283)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,283)
Vacation Escrow	(800)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(800)
	(2,957)	(686)	(335)	(280)	(180)	(255)	(230)	(130)	(230)	(218)	(120)	(120)	(470)	(368)	(200)	(59)	(440)	(495)	(7,774)
<b>Net Cash Flow</b>	(3,834)	(4,730)	(1,057)	(1,423)	(646)	(3,526)	(286)	509	831	(3,209)	(100)	1,749	1,423	509	(243)	1,836	1,666	270	(10,262)
Opening Revolver	\$ 12,826	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,671	\$ 19,116	\$ 22,543	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,699	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 12,826
Revolver Draw (Repay.)	3,834	4,730	1,057	1,423	646	3,526	286	(509)	(831)	3,209	100	(1,749)	(1,423)	(509)	243	(1,836)	(1,666)	(270)	10,262
GSO DIP	-	(4,400)	(500)	(300)	(200)	(100)	-	-	-	-	-	-	-	-	-	-	-	-	(5,500)
Ending Revolver	\$ 16,660	\$ 16,990	\$ 17,548	\$ 18,671	\$ 19,116	\$ 22,543	\$ 22,829	\$ 22,320	\$ 21,490	\$ 24,699	\$ 24,799	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,361	\$ 19,525	\$ 17,859	\$ 17,589	\$ 17,589
<b>Net Availability</b>	\$ 480	\$ 2,075	\$ 2,028	\$ 2,043	\$ 2,057	\$ 962	\$ 1,091	\$ 1,918	\$ 2,320	\$ 1,033	\$ 1,405	\$ 2,486	\$ 2,983	\$ 3,507	\$ 2,169	\$ 3,406	\$ 3,857	\$ 4,470	\$ 4,470
Jan 20/17 CF Availability	\$ 171	\$ 2,066	\$ 2,019	\$ 2,083	\$ 2,097	\$ 901	\$ 1,031	\$ 1,857	\$ 2,260	\$ 971	\$ 1,344	\$ 2,424	\$ 2,921	\$ 3,444	\$ 2,106	\$ 3,274	\$ 3,737	\$ 4,425	\$ 4,425
Opening GSO DIP	\$ -	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ -
Draws	-	4,400	500	300	200	100	-	-	-	-	-	-	-	-	-	-	-	-	5,500
Interest (PIK'd)	-	-	12	14	15	15	16	16	16	16	16	16	16	16	16	16	16	16	248
Ending GSO.DIP	\$ -	\$ 4,400	\$ 4,912	\$ 5,226	\$ 5,441	\$ 5,557	\$ 5,572	\$ 5,588	\$ 5,604	\$ 5,620	\$ 5,636	\$ 5,652	\$ 5,668	\$ 5,684	\$ 5,700	\$ 5,716	\$ 5,732	\$ 5,748	\$ 5,748
Old CIBC ABL	\$ 9,127	\$ 2,532	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
New CIBC DIP	7,533	14,458	17,547	18,670	19,116	22,542	22,829	22,320	21,489	24,698	24,798	23,050	21,627	21,118	21,360	19,524	17,859	17,588	17,588
	\$ 16,660	\$ 16,990	\$ 17,547	\$ 18,670	\$ 19,116	\$ 22,542	\$ 22,829	\$ 22,320	\$ 21,489	\$ 24,698	\$ 24,798	\$ 23,050	\$ 21,627	\$ 21,118	\$ 21,360	\$ 19,524	\$ 17,859	\$ 17,588	\$ 17,588
Payroll Escrow	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800
Sales Tax Escrow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 201	\$ 440	\$ 440	\$ 592	\$ 920	\$ 816	\$ 825	\$ 1,189	\$ 1,550	\$ 1,007	\$ 1,007

PRIVILEGED AND CONFIDENTIAL

**SCHEDULE "D"**

**MINIMUM RECEIPT AND MAXIMUM DISBURSEMENT COVENANT LEVELS**

Grafton-Fraser Inc.  
DIP Covenant Calculations

	Week Ending																	
	28-Jan	04-Feb	11-Feb	18-Feb	25-Feb	04-Mar	11-Mar	18-Mar	25-Mar	01-Apr	08-Apr	15-Apr	22-Apr	29-Apr	06-May	13-May	20-May	27-May
<b>DIP Covenant Test</b>																		
<b>Receipts</b>																		
Receipts	2,241	2,195	2,237	2,208	2,231	2,540	2,823	3,043	2,882	3,246	3,551	3,684	3,877	4,091	3,532	3,591	3,802	3,553
Projected Cum. Receipt	2,241	4,436	6,673	8,881	11,112	13,653	16,475	19,518	22,401	25,647	29,198	32,882	36,759	40,850	44,382	47,973	51,575	55,128
15% Variances	336	665	1,001	1,332	1,667	2,048	2,471	2,928	3,360	3,847	4,380	4,932	5,514	6,128	6,657	7,196	7,736	8,269
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	336	665	1,001	1,332	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cumulative Receipts	\$ 1,904	\$ 3,770	\$ 5,672	\$ 7,549	\$ 9,612	\$ 12,153	\$ 14,975	\$ 18,018	\$ 20,901	\$ 24,147	\$ 27,698	\$ 31,382	\$ 35,259	\$ 39,350	\$ 42,882	\$ 46,473	\$ 50,075	\$ 53,628
<b>Disbursements</b>																		
Disbursements (Excl. Jones)	4,792	6,925	3,295	3,631	2,877	6,067	3,109	2,534	2,052	6,455	3,651	1,935	2,455	3,582	3,775	1,755	1,936	3,283
Projected Cum. Dibs. (Excl. Jones)	4,792	11,717	15,012	18,643	21,520	27,586	30,696	33,230	35,282	41,737	45,388	47,323	49,778	53,359	57,134	58,889	60,825	64,108
15% Variances	719	1,758	2,252	2,796	3,228	4,138	4,604	4,984	5,292	6,261	6,808	7,098	7,467	8,004	8,570	8,833	9,124	9,616
Cap	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Lesser of	719	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Covenant Cum. Disb. (Excl. Jones)	\$ 5,511	\$ 13,217	\$ 16,512	\$ 20,143	\$ 23,020	\$ 29,086	\$ 32,196	\$ 34,730	\$ 36,782	\$ 43,237	\$ 46,888	\$ 48,823	\$ 51,278	\$ 54,859	\$ 58,634	\$ 60,389	\$ 62,325	\$ 65,608

Based on Unaudited Information

## SCHEDULE "E"

### PERMITTED ENCUMBRANCES

1. The following security pursuant to the *Personal Property Security Act* ("PPSA") in each applicable jurisdiction:

**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 debtor's present and after-acquired personal property of the debtor 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 debtor'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 debtor.
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 debtor. Proceeds: Goods, inventory, chattel paper, documents of title, instruments, money, intangibles, accounts and investment property (all as defined in the Personal Property Security Act

<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	(Alberta)) and insurance proceeds. 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	The security interest is taken in all of the debtor's present and after-acquired personal property.
2. 200708558108	GSO Capital Partners, LP, as Administrative Agent	Expiry Date: December 11, 2022 Registration Date: May 7, 2007  Registration Period: 16 years  Expiry Date: May 15, 2023	The security interest is taken in all of the debtor'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. 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 Mazda CX09, JM3TCBDY6G0111704  Amount: \$55,145  Date of Maturity: August 11, 2019
2. 712571193	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 11, 2015	Inventory, Equipment, Accounts, Other, Motor



<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registration Period</u>	<u>Collateral</u>
		Registration Period: 7 years	Vehicle
3. 675686367	Xerox Canada Ltd.	Expiry Date: December 11, 2022 Registration Date: January 17, 2012	Equipment, Other
		Registration Period: 6 years	
		Expiry Date: January 17, 2018	
3. 635312304	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007	Inventory, Equipment, Accounts, Other, Motor Vehicle Included
		Registration Period: 8 years	
		Expiry Date: May 05, 2013	

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	A security interest is taken in all of the debtor's present and after-acquired personal property
		Registration Period: 7 years	
		Expiry Date: February 8, 2023	
2. 25333881	Canadian Imperial Bank of Commerce, as Agent	Registration Date: December 14, 2015	A security interest is taken in all of the debtor's present and after-acquired personal property
		Registration Period: 7 years	
		Expiry Date: December 14, 2022	

2. 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	2016/01/25	2021/12/31	01304227	0010 – CANADIAN IMPERIAL BANK OF COMMERCE 00002 – MAIN BRANCH – COMMERCE COURT 199

M6A 2V2

BAY ST CCW CONCOURSE LEVEL  
MAIN BRANCH – COMMERCE  
COURT TORONTO, ON M5L1G9

3. Security interests recorded against all of the Canadian trademarks owned by Borrower, in favour of:
  - (a) GSO Special Situations Fund LP (pursuant to a security agreement placed on file on October 11, 2007);
  - (b) GSO CP Holdings LP (pursuant to an amended security agreement placed on file on October 14, 2008); and
  - (c) Canadian Imperial Bank of Commerce, as Agent (pursuant to a security agreement placed on file on March 11, 2016).

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

Applicant

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

**Proceeding commenced at  
Toronto**

**APPLICATION RECORD OF THE APPLICANT  
(Initial CCAA Order)  
(Returnable January 25, 2017)  
VOLUME 1 OF 2**

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