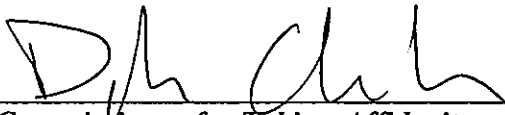


# **EXHIBIT "J"**

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

  
A Commissioner for Taking Affidavits  
Dylan Choche

---

**INTERCREDITOR AGREEMENT**

**by and between**

**CANADIAN IMPERIAL BANK OF COMMERCE,**

**as ABL Agent,**

**and**

**GSO CAPITAL PARTNERS LP,**

**as Term Administrative Agent**

**Dated as of February 12, 2016**

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## INTERCREDITOR AGREEMENT

**THIS INTERCREDITOR AGREEMENT** (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms hereof, this “**Agreement**”) is entered into as of February 12, 2016 by and among **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as administrative agent (together with its successors and assigns in such capacity, the “**ABL Agent**”) on its own behalf and on behalf of the lenders from time to time party to the ABL Credit Agreement referred to below (together with their respective successors and assigns in such capacity, the “**ABL Lenders**”) and any ABL Bank Product Affiliates and ABL Cash Management Affiliates (each as defined below) (such ABL Bank Product Affiliates, ABL Cash Management Affiliates, ABL Lenders and ABL Agent, collectively the “**ABL Secured Parties**”) and **GSO CAPITAL PARTNERS LP** in its capacity as administrative agent (together with its successors and assigns in such capacity, the “**Term Administrative Agent**”), on its own behalf and on behalf of the lenders from time to time party to the Term Credit Agreement referred to below (together with their respective successors and assigns in such capacity, the “**Term Lenders**” and, together with the Term Administrative Agent, the “**Term Secured Parties**”).

### RECITALS

A. Pursuant to that certain Credit Agreement dated as of February 12, 2016 by and among Grafton-Fraser Inc. and 2473304 Ontario Inc. (collectively, the “**ABL Borrower**”), the ABL Agent and the ABL Lenders party thereto (as such agreement may be amended, supplemented, restated, amended and restated or otherwise modified from time to time, the “**ABL Credit Agreement**”), the ABL Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the ABL Borrower.

B. As a condition to the effectiveness of the ABL Credit Agreement and to secure the obligations of the ABL Borrower under and in connection with the ABL Documents (as hereinafter defined), the ABL Borrower has granted to the ABL Agent (for the benefit of itself and the other ABL Secured Parties) Liens on the Collateral.

C. Pursuant to that certain amended and restated credit agreement dated as of June 16, 2009 by and among Grafton-Fraser Inc., as borrower, and 2473304 Ontario Inc., as guarantor, (collectively, the “**Term Borrower**”), the Term Administrative Agent and the Term Lenders (as such agreement has been or may be amended, supplemented, restated, amended and restated or otherwise modified from time to time, including without limitation pursuant to each of the amendments dated as of April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015 and February 12, 2016, the “**Term Credit Agreement**”), the Term Lenders have agreed to make, and to continue to make, certain loans to the Term Borrower.

D. As a condition to the continued effectiveness of the Term Credit Agreement and to secure the obligations of the Term Borrower under and in connection with the Term Documents (as hereinafter defined), the Term Borrower has granted to the Term Administrative Agent, as agent for the Term Secured Parties, Liens on the Collateral.

E. Each of the ABL Agent (on behalf of the ABL Secured Parties) and the Term Administrative Agent (on behalf of the Term Secured Parties) and, by their acknowledgment hereof, the ABL Borrower and the Term Borrower, desire to agree to the relative priority of Liens on the Collateral and certain other rights, priorities and interests as provided herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1 - DEFINITIONS

### 1.1 PPSA Definitions.

The following terms which are defined in the PPSA are used herein as so defined: Chattel Paper, Instruments, Money, Securities Account and Security Entitlement.

### 1.2 Other Definitions.

Subject to Section 1.1, as used in this Agreement, the following terms shall have the meanings set forth below:

“ABL Agent” shall have the meaning assigned to that term in the introduction to this Agreement.

“ABL Bank Products Affiliate” shall mean an ABL Lender or any Affiliate of an ABL Lender that has entered into a Swap Agreement or other Bank Products with the ABL Borrower with the obligations of the ABL Borrower thereunder being secured by one or more ABL Collateral Documents, together with their respective successors, assigns and transferees (even if such ABL Lender subsequently ceases to be a lender under the ABL Credit Agreement for any reason).

“ABL Borrower” shall have the meaning assigned to that term in the recitals to this Agreement.

“ABL Cash Management Affiliate” shall mean an ABL Lender or any Affiliate of an ABL Lender that provides Cash Management Services to the ABL Borrower with the obligations of such ABL Borrower thereunder being secured by one or more ABL Collateral Documents, together with their respective successors, assigns and transferees (even if such ABL Lender subsequently ceases to be a lender under the ABL Credit Agreement for any reason).

“ABL Collateral Documents” shall mean all Security Documents (as defined in the ABL Credit Agreement) and all other security agreements, mortgages, deeds of trust, hypothecs and other collateral documents executed and delivered in connection with the indebtedness, liabilities and obligations of the Borrower under the ABL Credit Agreement and any Swap Agreements and Cash Management Services Agreements, in each case as the same may be entered into and/or amended, supplemented, restated or otherwise modified from time to time in accordance with this Agreement.



“**ABL Credit Agreement**” shall mean have the meaning assigned to such term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the ABL Obligations, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder, in each case, to the extent permitted by this Agreement.

“**ABL Documents**” shall mean the ABL Credit Agreement, the ABL Collateral Documents, all Swap Agreements, all Cash Management Services Agreements and those other ancillary agreements as to which any ABL Secured Party is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any ABL Borrower or any of its Subsidiaries or Affiliates, and delivered to any ABL Secured Party, in connection with any of the foregoing or the ABL Credit Agreement, in each case as the same may be entered into and/or amended, supplemented, restated or otherwise modified from time to time in accordance with this Agreement.

“**ABL Lenders**” shall have the meaning assigned to that term in the introduction to this Agreement.

“**ABL Obligations**” shall mean all obligations of every nature of ABL Borrower from time to time owed to the ABL Secured Parties, or any of them, under any ABL Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such ABL Borrower, would have accrued on any ABL Obligation, whether or not a claim is allowed against such ABL Borrower for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under letters of credit, payments for early termination of Swap Agreements, obligations under F/X Contracts, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the ABL Documents, as entered into, amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with this Agreement.

“**ABL Priority Collateral**” shall mean all Collateral consisting of the following:

- (1) all Accounts, other than Accounts arising from the sale of Term Priority Collateral;
- (2) all Chattel Paper (including tangible Chattel Paper and electronic Chattel Paper), other than Chattel Paper arising from the sale of Term Priority Collateral;
- (3) (x) all bank accounts, DDAs, Deposit Accounts and Money and all cash, cheques, other negotiable instruments, funds and other evidences of payments held therein, and (y) Securities, Securities Accounts, Security Entitlements and Securities credited to such a Securities Account, and, in each case, all cash, cheques and other property held therein or credited thereto; provided, however, that to the extent that (i) Proceeds of Term Priority Collateral are deposited in any bank account, DDA, Deposit Account or Securities Account, and (ii) the Term Administrative Agent gives at any time a Term Proceeds Notice to the ABL Agent, such Proceeds (subject to Section 3.7) shall be treated as Term Priority Collateral;

- (4) all Inventory;
- (5) to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (4) constituting ABL Priority Collateral, all Documents of Title, Intangibles (other than any Intellectual Property) and Instruments (including promissory notes); provided that to the extent any of the foregoing also relates to Term Priority Collateral, only that portion evidencing to the items referred to in the preceding clauses (1) through (4) shall be included in the ABL Priority Collateral;
- (6) all books and records relating to the items referred to in the preceding clauses (1) through (5) constituting ABL Priority Collateral (including all books, databases, customer lists, engineer drawings, and records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (5));
- (7) all collateral security and guarantees with respect to any of the foregoing and all cash, Money, insurance Proceeds, Instruments, Securities Entitlements, Securities, financial assets and Deposit Accounts received as Proceeds of any of the foregoing (such proceeds, "ABL Priority Proceeds").

"ABL Recovery" shall have the meaning set forth in Section 5.3(a).

"ABL Secured Parties" shall have the meaning to that term in the introduction to this Agreement.

"Accounts" shall mean "accounts" as such term is defined in the PPSA, and also all: debts, accounts, accounts receivable, credit card receivables, notes, drafts, acceptances, monies and choses in action (except any chose in action relating to Term Priority Collateral) and all forms of obligations and receivables and rights to payment for credit extended and for goods sold or leased, or services rendered, whether or not yet earned by performance; and all securities, bills, notes, and documents now held or owned or which may be hereafter taken, held or owned by or on behalf of a Person in respect of such debts, accounts, claims, monies and choses in action or any part thereof.

"Affiliate" shall mean, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

"Agreement" shall have the meaning assigned to that term in the introduction to this Agreement.

"Availability Reserves" shall have the meaning set forth in the ABL Credit Agreement.

"Bank Products" shall have the meaning set forth in the ABL Credit Agreement.

"Borrower" shall mean any of the ABL Borrower and the Term Borrower.

**"Business Day"** shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Toronto, Ontario are authorized or required by law to remain closed (or are in fact closed).

**"Capital Stock"** shall mean, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and non-voting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise Control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing.

**"Cash Management Services"** shall have the meaning set forth in the ABL Credit Agreement.

**"Cash Management Services Agreement"** shall mean any agreement pursuant to which an ABL Cash Management Affiliate agrees to provide cash management services to the ABL Borrower while an ABL Lender, or an Affiliate of such ABL Cash Management Affiliate, is a lender under the ABL Credit Agreement.

**"Collateral"** shall mean all Property now owned or hereafter acquired by any Borrower in or upon which a Lien is granted or purported to be granted to the ABL Agent or the other ABL Secured Parties, the Term Administrative Agent or the other Term Secured Parties under any of the ABL Collateral Documents or the Term Collateral Documents, together with all rents, issues, profits, products and Proceeds thereof.

**"Control"** shall mean the possession, directly or indirectly, of the power (a) to vote 50% or more of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "Controlling" and "Controlled" have meanings correlative thereto.

**"Control Collateral"** shall mean any Collateral consisting of any Security, Security Entitlement, Deposit Account (located in the U.S.), Instruments and any other Collateral as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor.

**"Copyright Licenses"** shall mean any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Borrower or that such Borrower otherwise has the right to license, or granting any right to any Borrower under any Copyright now or hereafter owned by any third party, and all rights of such Borrower under any such agreement.

**"Copyrights"** shall mean all of the following now owned or licenced or hereafter acquired by or licenced or assigned to any Borrower: (a) all copyright rights in any work,

whether subject to the copyright laws of Canada or any other country or any political subdivision thereof, whether as author, assignee, transferee or otherwise, whether registered or unregistered and whether published or unpublished, (b) all registrations and applications for registration of any such copyright in Canada or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the Canadian Intellectual Property Office, including those listed in the ABL Credit Agreement and/or the Term Credit Agreement, and all (i) rights and privileges arising under applicable law with respect to such Borrower's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"Credit Documents" shall mean the ABL Documents and the Term Documents.

"DDAs" shall mean any chequing or other demand daily depository account maintained by the Borrower.

"Debtor Relief Laws" shall mean the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditor Arrangement Act* (Canada), the *Winding-up Act* (Canada), Title 11 of the *United States Code*, each as now or hereafter in effect or any successor thereto, as well as all other liquidation, conservatorship, bankruptcy, assignment for benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of Canada or provincial law or of any applicable foreign law from time to time in effect affecting the rights of creditors generally.

"Deposit Accounts" shall mean any demand, time, savings, passbook, deposit, or similar account maintained with a bank.

"DIP Financing" shall have the meaning set forth in Section 6.6 hereof.

"Discharge of ABL Obligations" shall mean (a) the payment in full in cash of all outstanding ABL Obligations excluding contingent indemnity obligations with respect to then unasserted claims but including, with respect to amounts available to be drawn under outstanding letters of credit issued thereunder (or indemnities or other undertakings issued pursuant thereto in respect of outstanding letters of credit, other than contingent indemnity obligations with respect to then unasserted claims), the cancellation of such letters of credit or the delivery or provision of money or backstop letters of credit in respect thereof in compliance with the terms of the applicable ABL Document (which shall not exceed an amount equal to 105% of the aggregate undrawn amount of such letters of credit) and (b) the termination of all commitments to extend credit under the ABL Documents.

"Discharge of Term Obligations" shall mean the payment in full in cash of all outstanding Term Obligations (other than contingent indemnity obligations with respect to then unasserted claims).

**"Documents of Title"** means all documents of title (as defined in the PPSA), whether negotiable or non-negotiable, including all warehouse receipts and bills of lading in which a Borrower now or hereafter has an interest, and any part thereof.

**"Domain Names"** means all Internet domain names and associated URL addresses in or to which any Borrower now or hereafter has any right, title or interest.

**"Enforcement Notice"** shall mean a written notice delivered by either the ABL Agent or the Term Administrative Agent to the other announcing that an Enforcement Period has commenced.

**"Enforcement Period"** shall mean the period of time following the receipt by either the ABL Agent or the Term Administrative Agent of an Enforcement Notice from the other and continuing until the earliest of (a) in case of an Enforcement Period commenced by the Term Administrative Agent, the Discharge of Term Obligations, (b) in the case of an Enforcement Period commenced by the ABL Agent, the Discharge of ABL Obligations, or (c) the ABL Agent or the Term Administrative Agent (as applicable) terminate, or agree in writing to terminate, the Enforcement Period.

**"Equipment"** shall mean (x) any "equipment" as such term is defined in the PPSA, and shall include all machinery, equipment, data processing, equipment (but excluding all data, books, records and software related to, or containing information about, ABL Priority Collateral), computers (but excluding all data, books, records and software related to, or containing information about, ABL Priority Collateral), office equipment, furnishings, appliances, furniture, fixtures, tools, and vehicles now or hereafter owned by any Borrower in each case, regardless of whether characterized as equipment under the PPSA (but excluding any such items which constitute Inventory), and (y) any and all additions, substitutions and replacements of any of the foregoing and all accessions thereto, wherever located, whether or not at any time of determination incorporated or installed therein or attached thereto and all parts thereof, and all replacements therefor, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto, including any fixtures.

**"Event of Default"** shall mean an Event of Default as defined in the ABL Credit Agreement or the Term Credit Agreement, as applicable.

**"Exercise of Any Secured Creditor Remedies", "Exercise of Secured Creditor Remedies" or "Exercise Any Secured Creditor Remedies"** shall mean, except as otherwise provided in the final sentence of this definition:

- (a) the taking by any Secured Party of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale pursuant to the provisions of the PPSA or other applicable law;
- (b) the exercise by any Secured Party of any right or remedy provided to a secured creditor on account of a Lien under any of the Credit Documents, under applicable law, in an Insolvency Proceeding or otherwise, including the election to retain any of the Collateral in satisfaction of a Lien;

- (c) the taking of any action by any Secured Party or the exercise of any right or remedy by any Secured Party in respect of the collection on, offset against, marshalling of, injunction respecting or foreclosure on the Collateral;
- (d) the appointment on the application of a Secured Party, of a receiver, receiver and manager, monitor, sequestrator, custodian, trustee or interim receiver of all or part of the Collateral;
- (e) the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale conducted by a Secured Party or any other means at the direction of a Secured Party permissible under applicable law;
- (f) the exercise of any other right or remedy of a secured creditor under the PPSA, any Debtor Relief Law or other applicable law or in equity; and
- (g) the exercise by a Secured Party of any voting rights relating to any Capital Stock included in the Collateral.

For the avoidance of doubt, none of the following shall be deemed to constitute an Exercise of Secured Creditor Remedies: (i) the filing of a proof of claim in any Insolvency Proceeding, (ii) the exercise of the right by the ABL Agent in accordance with the ABL Credit Agreement and/or the ABL Collateral Documents in effect on the date hereof to instruct depository institutions to deliver amounts in Deposit Accounts to the ABL Agent or to instruct account debtors or any other Person to deliver Proceeds of ABL Priority Collateral to the ABL Agent, (iii) the consent by the ABL Agent or the Term Administrative Agent to a store closing sale, going out of business sale or other disposition by any Borrower of any of the ABL Priority Collateral or any of the Term Priority Collateral in circumstances where an Event of Default has not occurred and is continuing, (iv) the reduction of advance rates or sub-limits by the ABL Secured Parties, or (v) the imposition of Availability Reserves by the ABL Agent or (vi) any payment by the Borrower to any Term Secured Party in connection with a prepayment event under the Term Credit Agreement.

**"Financing Lease"** shall mean any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with generally accepted accounting principles consistently applied in Canada as established by the Canadian Institute of Chartered Accountants or its successor to be capitalized on a balance sheet of the lessee.

**"F/X Contracts"** shall have the meaning set forth in the ABL Credit Agreement.

**"Governmental Authority"** shall mean any nation or government, any province, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Guarantor"** means any Person that delivers an indemnity, guarantee or other similar agreement in favour of the ABL Agent or a Term Secured Party in support of the ABL Obligations or the Term Obligations, as the case maybe.

**"Indebtedness"** shall mean (i) all obligations of a Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other

similar instruments; (ii) the maximum amount (after giving effect to any prior drawings which may have been reimbursed or reductions) of all letters of credit, bankers' acceptances, bank guarantees, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person; (iii) obligations of such Person under any swap contract or hedge agreement; (iv) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, and (v) any guarantees of the foregoing.

**"Insolvency Proceeding"** shall mean (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clauses (a) and (b) undertaken under any Debtor Relief Laws.

**"Intangibles"** means, without limitation, "intangibles" (as defined in the PPSA); and also all intangibles now or hereafter owned by the Borrower 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.

**"Intellectual Property"** shall mean all intellectual property and similar property of every kind and nature now owned or hereafter acquired by any Borrower, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, Trade Secrets, confidential or proprietary technical and business information, know how, show how or other data or information, software, databases, all other proprietary information, including but not limited to Domain Names, and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

**"Inventory"** means "inventory" (as defined in the PPSA) and also all: packaging, advertising, and shipping materials related to any of the foregoing; goods held for sale or lease or furnished or to be furnished under a contract or contracts of sale or service by a Borrower, or used or consumed or to be used or consumed in a Borrower's business; goods of said description in transit; returned, repossessed and rejected goods of said description; and all Documents of Title which represent any of the foregoing, and including all goods, merchandise, raw materials, goods in process, finished goods and other goods comprising "inventory" held for sale, lease, resale or exchange or furnished or to be furnished under contracts for service or that are used or consumed in the business in of a Borrower, and any part thereof.

**"Lender(s)"** means individually, the ABL Lenders or the Term Lenders and, collectively, means all of the ABL Lenders and the Term Lenders.

**"License"** means any Patent License, Trade Secret License, Trademark License, Copyright License or other license or sublicense agreement to which any Borrower is a party.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any Financing Lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Lien Priority" shall mean with respect to any Lien of the ABL Agent or the other ABL Secured Parties or the Term Administrative Agent or the other Term Secured Parties in the Collateral, the order of priority of such Lien as specified in Section 2.1.

"Patent License" shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Borrower or that any Borrower otherwise has the right to license, is in existence, or granting to any Borrower any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Borrower under any such agreement.

"Patents" shall mean all of the following now owned or licenced or hereafter acquired by or licenced to any Borrower: (a) all letters patent of Canada or the equivalent thereof in any other country, all registrations and recordings thereof, and all applications for letters patent of Canada or the equivalent thereof in any other country, including registrations, recordings and pending applications in the Canadian Intellectual Property Office or any similar offices in any other country or any political subdivision hereof, including those listed in the ABL Credit Agreement and/or the Term Credit Agreement, respectively, and (b) (i) rights and privileges arising under applicable law with respect to such Borrower's use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

"Person" shall mean an individual, partnership, corporation, limited liability company, unlimited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"PPSA" shall mean the *Personal Property Security Act* (Ontario) (or any successor thereto) or similar legislation of any other Canadian jurisdiction, including, without limitation, the Civil Code of Quebec, the laws of which are required by such legislation to be applied in connection with the creation, perfection, enforcement, opposability, validity or effect of security interests.

"Priority Collateral" shall mean the ABL Priority Collateral or the Term Priority Collateral, as applicable.



**"Proceeds"** shall mean (a) all "proceeds", as defined in the PPSA, with respect to the Collateral, and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

**"Property"** shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**"Pro Rata"** shall mean with respect to the ABL Secured Parties and the Term Secured Parties on any given date, the percentage obtained by dividing (i) the aggregate amount of the ABL Obligations or Term Obligations, as applicable, outstanding on such date by (ii) the sum of the ABL Obligations and the Term Obligations outstanding on such date.

**"Real Property"** shall mean any right, title or interest of the Borrower in and to real property, including any fee interest, leasehold interest, easement, or license and any other right to use or occupy real property.

**"Secured Parties"** shall mean the ABL Secured Parties and the Term Secured Party.

**"Security"** shall mean any "security" as such term is defined in the STA, and includes, irrespective of the provisions of Sections 10 to 16 of the STA, any stock, shares, interests in partnerships or limited liability companies, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options (including clearing house options), futures contracts, warrants, bonds, debentures, promissory notes, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

**"STA"** means the Securities Transfer Act (Ontario).

**"Subsidiary"** shall mean with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity (a) of which Capital Stock representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

**"Swap Agreement"** shall mean any Swap Agreement (as defined in the ABL Credit Agreement) between ABL Borrower and an ABL Bank Products Affiliate entered into while an ABL Lender, or an Affiliate of such ABL Bank Products Affiliate, is a lender under the ABL Credit Agreement.

**"Term Borrower"** shall have the meaning assigned to that term in the introduction to this Agreement.

**"Term Collateral Documents"** shall mean all "Security Documents" as defined in the Term Credit Agreement, and all other security agreements, mortgages, deeds of trust, hypothecs and other collateral documents executed and delivered in connection with the Term Credit

Agreement, in each case as the same may be entered into and/or amended, supplemented, restated or otherwise modified from time to time in accordance with this Agreement.

**"Term Credit Agreement"** shall have the meaning assigned to that term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the Term Obligations, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder in each case, to the extent permitted by this Agreement.

**"Term Documents"** shall mean the Term Credit Agreement, the Term Collateral Documents and those other ancillary agreements as to which any Term Secured Party is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of the Term Borrower or any of its Subsidiaries or Affiliates, and delivered to any Term Secured Party, in connection with any of the foregoing or the Term Credit Agreement, in each case as the same may be entered into and/or amended, supplemented, restated or otherwise modified from time to time in accordance with this Agreement.

**"Term Lenders"** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a **"Lender"** under the Term Credit Agreement.

**"Term Obligations"** shall mean all obligations of every nature of the Term Borrower from time to time owed to the Term Secured Parties or any of them, under any Term Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to the Term Borrower, would have accrued on any Term Obligation, whether or not a claim is allowed against the Term Borrower for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the Term Documents, as entered into, amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with this Agreement.

**"Term Priority Collateral"** shall mean all Collateral other than ABL Priority Collateral but including the following:

- (1) all Equipment, Fixtures, Real Property, Intellectual Property and Securities (other than any Securities described in clauses 3(y) and 7 of the definition of ABL Priority Collateral);
- (2) except to the extent constituting ABL Priority Collateral, all Instruments, Documents of Title and Intangibles;
- (3) all other Collateral, other than the ABL Priority Collateral;
- (4) all collateral security and guarantees with respect to the foregoing, and all cash, Money, insurance Proceeds, Instruments, Securities, financial assets and Deposit Accounts received as Proceeds of any Collateral, other than the ABL Priority Collateral (including ABL Priority Proceeds), (such proceeds, **"Term Priority Proceeds"**).

"Term Proceeds Notice" has the meaning set forth in Section 3.8(a).

"Term Recovery" shall have the meaning set forth in Section 5.3(b).

"Term Secured Parties" shall have the meaning assigned to that term in the introduction to this Agreement.

"Trade Secret Licenses" shall mean any and all agreements, whether written or oral, providing for the grant by or to any Borrower of any right in or to Trade Secrets, to the extent that a grant of a security interest in such Trade Secret License is not prohibited by applicable law or the applicable Trade Secret License.

"Trade Secrets" shall mean with respect to any Borrower, all of such Borrower's right, title and interest in and to all Canadian and foreign trade secrets and other confidential or proprietary information regardless of whether such trade secrets and confidential proprietary information have been reduced to writing, including know how, processes, formulae, compositions, designs, and confidential business and technical information, and all rights of any kind whatsoever accruing thereunder or pertaining thereto, including (a) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including payments under all licenses, non-disclosure agreements and memoranda of understanding entered into in connection therewith, and damages and payments for past or future misappropriations thereof, and (b) the right to sue or otherwise recover for past, present or future misappropriations thereof.

"Trademark License" shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Borrower or that any Borrower otherwise has the right to license, or granting to any Borrower any right to use any Trademark now or hereafter owned by any third party, and all rights of any Borrower under any such agreement.

"Trademarks" shall mean all of the following now owned or licenced or hereafter acquired by or licenced to any Borrower: (a) all trademarks, service marks, trade names, corporate names, company names, business names, service marks, certification marks, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted, acquired or assigned to, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the Canadian Intellectual Property Office or any similar offices in any province or any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed in the ABL Credit Agreement and/or the Term Credit Agreement, respectively, and (b) any and all (i) rights and privileges arising under applicable law with respect to such Borrower's use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof, and (vi) all of the goodwill of the business connected with the use of and symbolized by the foregoing.

"Use Period" means the period commencing on the date that the ABL Agent (or ABL Borrower acting with the consent of the ABL Agent) commences the liquidation and sale of the ABL Priority Collateral in a manner as provided in Section 3.6 (having theretofore furnished the Term Administrative Agent with an Enforcement Notice) and ending 180 days thereafter. If any stay or other order that prohibits any of the ABL Agent, the other ABL Secured Parties or the ABL Borrower (with the consent of the ABL Agent) from commencing and continuing to Exercise Any Secured Creditor Remedies with respect to, or to liquidate and sell, the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order and the Use Period shall be so extended.

### 1.3 Rules of Construction.

Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation", and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or". The words "hereof", "herein", "hereby", "hereunder", and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection and clause references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation.

## ARTICLE 2 - LIEN PRIORITY

### 2.1 Priority of Liens.

- (a) Subject to the provisos in subclauses (b) and (c) of Section 4.1, notwithstanding (i) the date, time, method, manner, or order of grant, attachment, or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the ABL Secured Parties in respect of all or any portion of the Collateral or of any Liens granted to the Term Secured Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favour of the ABL Secured Parties or the Term Secured Parties in any Collateral, (iii) any provision of the PPSA, Debtor Relief Laws or any other applicable law, or of the ABL Documents or the Term Documents, (iv) whether an ABL Secured Party or a Term Secured Party, in each case, either directly or through agents, holds possession of, or has control over, all

or any part of the Collateral, (v) the date on which the ABL Obligations or the Term Obligations are advanced or made available to the Borrower, (vi) the fact that any such Liens in favour of an ABL Secured Party or a Term Secured Party securing any of the ABL Obligations or Term Obligations, respectively, are (x) subordinated to any Lien securing any obligation of any Borrower other than the Term Obligations or the ABL Obligations, respectively, or (y) otherwise subordinated, voided, avoided, invalidated or lapsed, or (vii) any other circumstance of any kind or nature whatsoever, the ABL Agent, on behalf of itself and the other ABL Secured Parties, and the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, hereby agree that:

- 1) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the Term Administrative Agent or any other Term Secured Party that secures all or any portion of the Term Obligations shall be in all respects junior and subordinate to all Liens granted to the ABL Agent and any other ABL Secured Party in the ABL Priority Collateral to secure all or any portion of the ABL Obligations;
  - 2) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the ABL Obligations shall be in all respects senior and prior to all Liens granted to the Term Administrative Agent or any other Term Secured Party in the ABL Priority Collateral to secure all or any portion of the Term Obligations;
  - 3) any Lien in respect of all or any portion of the Term Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the ABL Obligations shall be in all respects junior and subordinate to all Liens granted to the Term Administrative Agent and any other Term Secured Party in the Term Priority Collateral to secure all or any portion of the Term Obligations; and
  - 4) any Lien in respect of all or any portion of the Term Priority Collateral now or hereafter held by or on behalf of the Term Administrative Agent or any other Term Secured Party that secures all or any portion of the Term Obligations shall be in all respects senior and prior to all Liens granted to the ABL Agent or any ABL Secured Party in the Term Priority Collateral to secure all or any portion of the ABL Obligations.
- (b) Notwithstanding any failure by any ABL Secured Party or Term Secured Party to perfect its security interests in the Collateral or any avoidance, invalidation, priming or subordination by any third party or court of competent jurisdiction of the security interests in the Collateral granted to the ABL Secured Parties or the Term Secured Parties but, for the avoidance of doubt, subject to the provisos in subclauses (b) and (c) of Section 4.1, the priority and rights as between the ABL Secured Parties and the Term Secured Parties with respect to the Collateral shall be as set forth herein.

- (c) The Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, acknowledges and agrees that, concurrently herewith, the ABL Agent, for the benefit of itself and the other ABL Secured Parties, has been, or may be, granted Liens upon all of the Collateral in which the Term Administrative Agent has been granted Liens and the Term Administrative Agent hereby consents thereto. The ABL Agent, for and on behalf of itself and the other ABL Secured Parties, acknowledges and agrees that, concurrently herewith, the Term Administrative Agent, for the benefit of itself and the other Term Secured Parties, has been, or may be, granted Liens upon all of the Collateral in which the ABL Agent has been granted Liens and the ABL Agent hereby consents thereto. The subordination of Liens by the Term Administrative Agent and the ABL Agent in favour of one another as set forth herein shall not be deemed to subordinate any Term Secured Party's Liens or any ABL Secured Party's Liens to the Liens of any other Person nor be affected by the subordination of such Liens to any other Lien.

## 2.2 Waiver of Right to Contest Liens.

- (a) Term Secured Parties Waiver.

The Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the ABL Agent and the other ABL Secured Parties in respect of the Collateral or the provisions of this Agreement. The Term Administrative Agent, for itself and on behalf of the other Term Secured Parties, agrees that none of the Term Administrative Agent or the Term Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the ABL Agent or any ABL Secured Party under the ABL Documents with respect to the ABL Priority Collateral, provided that the Exercise of Secured Creditor Remedies is in compliance with the terms of this Agreement. The Term Administrative Agent, for itself and on behalf of the other Term Secured Parties, hereby waives any and all rights it or the other Term Secured Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the ABL Agent or any ABL Secured Party seeks to enforce its Liens in any ABL Priority Collateral, provided that the Exercise of Secured Creditor Remedies is in compliance with the terms of this Agreement. The foregoing shall not be construed to prohibit the Term Administrative Agent or any other Term Secured Party from enforcing the provisions of this Agreement.

- (b) ABL Agent Waiver.

The ABL Agent, for and on behalf of itself and the other ABL Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in

any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the Term Administrative Agent and the other Term Secured Parties in respect of the Collateral or the provisions of this Agreement. Except to the extent expressly set forth in this Agreement, the ABL Agent, for itself and on behalf of the other ABL Secured Parties, agrees that none of the ABL Agent or the other ABL Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the Term Administrative Agent or any other Term Secured Party under the Term Documents with respect to the term Priority Collateral. The ABL Agent, for itself and on behalf of the other ABL Secured Parties, hereby waives any and all rights it or the other ABL Secured Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the Term Administrative Agent or any other Term Secured Party seeks to enforce its Liens in any Term Priority Collateral. The foregoing shall not be construed to prohibit the ABL Agent from enforcing the provisions of this Agreement.

### 2.3 Remedies Standstill.

- (a) The Term Lender, on behalf of itself and the Term Secured Party, agrees that, from the date hereof until the date upon which the Discharge of ABL Obligations shall have occurred, neither the Term Lender nor any Term Secured Party will Exercise Any Secured Creditor Remedies with respect to any of the ABL Priority Collateral without the written consent of the ABL Agent, and will not take, receive or accept any Proceeds of ABL Priority Collateral, it being understood and agreed that the temporary deposit of Proceeds of ABL Priority Collateral in a Deposit Account controlled by the Term Lender shall not constitute a breach of this Agreement so long as such Proceeds are promptly (but in no event later than five Business Days after receipt) remitted to the ABL Agent. From and after the date upon which the Discharge of ABL Obligations shall have occurred (or prior thereto upon obtaining the written consent of the ABL Agent), the Term Lender or any Term Secured Party may Exercise Any Secured Creditor Remedies under the Term Documents or applicable law as to any ABL Priority Collateral; provided, however, that any Exercise of Secured Creditor Remedies with respect to any Collateral by the Term Lender or the Term Secured Party is at all times subject to the provisions of this Agreement.
- (b) The ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that, from the date hereof until the date upon which the Discharge of Term Obligations shall have occurred, neither the ABL Agent nor any ABL Secured Party will Exercise Any Secured Creditor Remedies with respect to the Term Priority Collateral without the written consent of the Term Lender, and will not take, receive or accept any Proceeds of the Term Priority Collateral, it being understood and agreed that the temporary deposit of Proceeds of Term Priority Collateral in a Deposit Account controlled by the ABL Agent shall not constitute a breach of this Agreement so long as such Proceeds are promptly (but in no event later than five Business Days after receipt) remitted to the Term Lender. From and after the date upon which the Discharge of Term Obligations shall have occurred (or prior thereto upon obtaining the written consent of the Term Lender), the ABL

Agent or any ABL Secured Party may Exercise Any Secured Creditor Remedies under the ABL Documents or applicable law as to any Term Priority Collateral; provided, however, that any Exercise of Secured Creditor Remedies with respect to any Collateral by the ABL Agent or the ABL Secured Parties is at all times subject to the provisions of this Agreement.

- (c) Notwithstanding the provisions of Section 2.3(b), the Term Lender, on behalf of itself and the Term Secured Party, agrees that it will not Exercise Any Secured Creditor Remedies with respect to any Collateral, unless it has first provided the ABL Agent five (5) Business Days prior written notice (a "Term Standstill Notice") that it intends to commence an Enforcement Period pursuant to an Enforcement Notice on the fifth (5th) Business Day following the ABL Agent's receipt of the Term Standstill Notice (such five Business Day standstill period being hereinafter referred to as a "Term Standstill Period"); provided, however, that if the ABL Agent commences any Enforcement Period or Exercises Any Secured Creditor Remedies prior to the commencement of, during, or after a Term Standstill Period, this Section 2.3(c) shall no longer be applicable.
- (d) In the event that, at any given time, both an ABL Secured Party and a Term Secured Party are undertaking the Exercise of Any Secured Creditor Remedies (in accordance with this Agreement) at the same time, each of the relevant ABL Secured Party and the relevant Term Secured Party shall have the right to Exercise Any Secured Creditor Remedies as to any ABL Priority Collateral, as regards any ABL Secured Party, and any Term Priority Collateral, as regards any Term Security Party, notwithstanding that the other Secured Party is also engaged in an Exercise of Any Secured Creditor Remedies, provided that any such Exercise of Any Secured Creditor Remedies shall be in accordance with this Agreement.
- (e) Notwithstanding the provisions of Section 2.3(a), 2.3(b), 2.3(c) or 2.3(d) or any other provision of this Agreement, nothing contained herein shall be construed to prevent any Lender or any Secured Party from (i) filing a claim or statement of interest with respect to the ABL Obligations or Term Obligations owed to it in any Insolvency Proceeding commenced by or against any Borrower, (ii) taking any action (not adverse to the priority status of the Liens of the other Lender or other Secured Parties on the Collateral in which such other Lender or other Secured Parties has a priority Lien or the rights of the other Lender or any of the other Secured Parties to Exercise Any Secured Creditor Remedies in respect thereof) in order to create, perfect, preserve or protect (but not enforce its Lien) on any Collateral, (iii) filing any necessary or responsive pleadings in opposition to any motion, claim, adversary proceeding or other pleading filed by any Person objecting to or otherwise seeking disallowance of the claim or Lien of such Lender or Secured Parties, (iv) filing any pleadings, objections, motions, or agreements which assert rights or interests available to unsecured creditors of the Borrower arising under any Insolvency Proceeding or applicable non-bankruptcy law, (v) voting on any plan of reorganization or file any proof of claim and making other filings, arguments and motions in any Insolvency Proceeding of any Borrower, (vi) objecting to the proposed retention of Collateral by the other



Lender or any other Secured Parties in full or partial satisfaction of any ABL Obligations or Term Obligations due to such other Lender or Secured Parties, or (viii) filing any notices or other necessary or desirable to preserve its rights under the PPSA, in each case (i) through (vii) above to the extent not inconsistent with the terms of this Agreement.

## 2.4 Exercise of Rights.

### (a) No Other Restrictions.

Except as expressly set forth in this Agreement, each Term Secured Party and each ABL Secured Party shall have any and all rights and remedies it may have as a creditor under applicable law or in equity, including the right to the Exercise of Secured Creditor Remedies; provided, however, that the Exercise of Secured Creditor Remedies with respect to the Collateral shall be subject to the Lien Priority and to the provisions of this Agreement. The ABL Secured Parties may enforce the provisions of the ABL Documents, the Term Secured Parties may enforce the provisions of the Term Documents and each may Exercise Any Secured Creditor Remedies, all in such order and in such manner as each may determine in the exercise of its sole discretion, consistent with the terms of this Agreement and mandatory provisions of applicable law; provided, however, that each of the ABL Agent, on behalf of itself and the other ABL Secured Parties, and the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, agrees to provide to the other (x) an Enforcement Notice prior to the commencement of an Exercise Any Secured Creditor Remedies, and (y) copies of any notices that it or an ABL Secured Party or a Term Secured Party, as the case may be, delivers to any Borrower; provided further, however, that the ABL Agent's failure to provide any such copies to the Term Administrative Agent (but not the Enforcement Notice) shall not impair any of the ABL Agent's rights hereunder or under any of the ABL Documents and the Term Administrative Agent's failure to provide any such copies to the ABL Agent (but not the Enforcement Notice) shall not impair any of the Term Administrative Agent's rights hereunder or under any of the Term Documents. Each of the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, and the ABL Agent, on behalf of itself and the other ABL Secured Parties, agrees that (i) it will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim, in the case of the Term Administrative Agent and each other Term Secured Party, against either the ABL Agent or any other ABL Secured Party, and in the case of the ABL Agent and each other ABL Secured Party, against either the Term Administrative Agent or any other Term Secured Party, seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to any action taken or omitted to be taken by such Person with respect to the Collateral which is consistent with the terms of this Agreement and applicable law, and none of such Parties shall be liable for any such action taken or omitted to be taken, and (ii) it will not be a petitioning creditor or otherwise assist in the filing of an involuntary Insolvency Proceeding.

(b) Release of Liens.

- (i) In the event of (A) any private or public sale of all or any portion of the ABL Priority Collateral in connection with any Exercise of Secured Creditor Remedies by an ABL Secured Party or with the consent of an ABL Secured Party (other than in connection with a refinancing, completed in accordance with Section 5.2), or (B) any sale, transfer or other disposition of all or any portion of the ABL Priority Collateral (which, for greater certainty, may have names or marks affixed thereto for identifying or selling same) (other than in connection with a refinancing, completed in accordance with Section 5.2), so long as such sale, transfer or other disposition is then permitted by the ABL Documents or consented to by the requisite ABL Secured Parties, irrespective of whether an Event of Default has occurred, the Term Lender and the Term Administrative Agent agrees, on behalf of itself and the other Term Secured Parties, that the ABL Priority Collateral sold, transferred or otherwise disposed of will be free and clear of the Liens on such ABL Priority Collateral securing the Term Obligations, and the Term Administrative Agent and the other Term Secured Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, or disposed shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the ABL Secured Parties' Liens on such ABL Priority Collateral. In furtherance of, and subject to, the foregoing, the Term Administrative Agent agrees that it will promptly execute any and all Lien releases or other documents reasonably requested by the ABL Agent and any other ABL Secured Party in connection therewith, but only to the extent that the Lien would not result in any release of any Term Priority Collateral.
- (ii) In the event of (A) any private or public sale of all or any portion of the Term Priority Collateral in connection with any Exercise of Secured Creditor Remedies by or with the consent of a Term Secured Party (other than in connection with a refinancing, completed in accordance with Section 5.2), or (B) any sale, transfer or other disposition of all or any portion of the Term Priority Collateral (other than in connection with a refinancing, completed in accordance with Section 5.2), so long as such sale, transfer or other disposition is then permitted by the Term Documents or consented to by the requisite Term Secured Party, irrespective of whether an Event of Default has occurred, the ABL Agent, on behalf of itself and the other ABL Secured Parties, agrees that the Term Priority Collateral sold, transferred or otherwise disposed of will be free and clear of the Liens on such Term Priority Collateral securing the ABL Obligations and the ABL Secured Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, or disposed shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the Term Secured Parties' Liens on such Term Priority Collateral. In furtherance of, and subject to, the foregoing, the ABL Agent , on behalf of itself and the other ABL Secured Parties,

agrees that it will promptly execute any and all Lien releases or other documents reasonably requested by the Term Administrative Agent and any other Term Secured Party in connection therewith, but only to the extent that the Lien would not result in any release of any ABL Priority Collateral.

2.5 No Subordination.

The ABL Agent, on behalf of itself and the other ABL Secured Parties, agrees that it and they shall not, without the prior written consent of the Term Administrative Agent in its sole discretion, subordinate, agree to subordinate, or permit or suffer to be subordinated, any Lien granted to the ABL Secured Parties over all or any part of the Collateral to any Lien securing any obligation of any Borrower other than the Term Obligations. The Term Administrative Agent, on behalf of itself and the other Term Secured Parties, agrees that it and they shall not, without the prior written consent of the ABL Agent, in its sole discretion, subordinate, agree to subordinate, or permit or suffer to be subordinated, any Lien granted to the Term Secured Parties over all or any part of the Collateral to any Lien securing any obligation of any Borrower other than the ABL Obligations.

2.6 No New Liens.

(a) Restriction on Term Secured Parties.

Until the date upon which the Discharge of ABL Obligations shall have occurred, the parties hereto agree that no Term Secured Party shall acquire or hold any Lien on any assets of any Borrower which would fall within the definition of ABL Priority Collateral securing any Term Obligation which assets are not also subject to the Lien of the ABL Secured Parties under the ABL Documents. If any Term Secured Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any such assets of any Borrower securing any Term Obligation which assets are not also subject to the Lien of the ABL Secured Parties under the ABL Documents, then the Term Administrative Agent (or the relevant Term Secured Party) shall, without the need for any further consent of any other Term Secured Party and the Term Borrower and notwithstanding anything to the contrary in any other Term Document, be deemed to also hold and have held such Lien as agent or bailee for the benefit of itself and the other Term Secured Parties and the ABL Agent as security for the ABL Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the ABL Agent in writing of the existence of such Lien.

(b) Restriction on ABL Secured Parties.

Until the date upon which the Discharge of Term Obligations shall have occurred, the parties hereto agree that no ABL Secured Party shall acquire or hold any Lien on any assets of any Borrower which would fall within the definition of Term Priority Collateral securing any ABL Obligation which assets are not also subject to the Lien of the Term Administrative Agent under the Term Documents. If any ABL Secured Party shall (nonetheless and in breach hereof) acquire or hold any

Lien on any such assets of any Borrower securing any ABL Obligation which assets are not also subject to the Lien of the Term Administrative Agent under the Term Documents, then such ABL Secured Party shall, without the need for any further consent of any ABL Borrower or any ABL Guarantor and notwithstanding anything to the contrary in any other ABL Document be deemed to also hold and have held such Lien as agent or bailee for the benefit of itself and the Term Administrative Agent and the other Term Secured Parties as security for the Term Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the Term Administrative Agent in writing of the existence of such Lien.

**2.7 Waiver of Marshalling.**

- (a) Subject to Section 4.1(d), until the Discharge of ABL Obligations, the Term Lender, on behalf of itself and the Term Secured Party, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.
- (b) Subject to Section 4.1(d), until the Discharge of Term Obligations, the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

**ARTICLE 3 - ACTIONS OF THE PARTIES**

**3.1 Certain Actions Permitted.**

The Term Administrative Agent and the ABL Agent may make such demands or file such claims in respect of the Term Obligations or the ABL Obligations, as applicable, as are necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders, or rules of procedure at any time. Nothing in this Agreement shall prohibit the receipt by the Term Administrative Agent or any Term Secured Party of the required payments of interest, principal and other amounts owed in respect of the Term Obligations so long as such receipt is not the direct or indirect result of the exercise by the Term Administrative Agent or any Term Secured Party of rights or remedies as a secured creditor (including set-off) with respect to ABL Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them. Nothing in this Agreement shall prohibit the receipt by the ABL Agent or any ABL Secured Party of the required payments of interest, principal and other amounts owed in respect of the ABL Obligations so long as such receipt is not the direct or indirect result of the exercise by the ABL Agent or any ABL Secured Party of rights or remedies as a secured creditor (including set-off) with respect to Term Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them.

### **3.2 Lender for Perfection.**

The ABL Agent, for and on behalf of itself and each ABL Secured Party, and the Term Administrative Agent, for and on behalf of itself and each Term Secured Party, as applicable, each agree to hold all Collateral in their respective possession, custody, or control (or in the possession, custody, or control of agents or bailies for either) as agent for the other solely for the purpose of perfecting the security interest granted to each in such Collateral, subject to the terms and conditions of this Section 3.2. None of the ABL Secured Parties or the Term Secured Parties, as applicable, shall have any obligation whatsoever to the others to assure that the Collateral is genuine or owned by any Borrower, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the ABL Agent and the Term Administrative Agent under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral as agent for the other Party for purposes of perfecting the Lien held by the Term Administrative Agent or the ABL Agent, as applicable. Neither the Term Administrative Agent nor any of the Term Secured Parties are, or shall be deemed to be a fiduciary of any kind for the ABL Secured Parties, or any other Person. Neither the ABL Agent nor any other ABL Secured Party is, and no such Person shall be deemed to be, a fiduciary of any kind for the Term Administrative Agent, the other Term Secured Parties or any other Person. Without limiting the generality of the foregoing, the ABL Secured Parties shall not be obligated to see to the application of any Proceeds of the Term Priority Collateral deposited into any Deposit Account or be answerable in any way for the misapplication thereof, it being understood and agreed that any Proceeds of Term Priority Collateral (A) (i) which are still on deposit in any Deposit Account which an ABL Secured Party has asserted control thereon, after an Event of Default, and where the ABL Agent has not yet applied such Proceeds to the reduction of the ABL Obligations, and (ii) in respect of which a Term Proceeds Notice has been delivered, shall be promptly paid following the occurrence of an Event of Default under the Term Credit Agreement (as confirmed solely by the Term Administrative Agent) over to the Term Administrative Agent in accordance with Section 3.8(a); or (B) which an ABL Secured Party has asserted control thereon and where the ABL Agent has actual knowledge, prior to the ABL Agent applying such Proceeds to the reduction of the ABL Obligations, that all or a portion of such Proceeds constitute Proceeds of Term Priority Collateral, then, whether or not the ABL Agent does apply such Proceeds of Term Priority Collateral to the reduction of the ABL Obligations, it shall promptly pay over such Proceeds to the Term Administrative Agent in accordance with Section 3.8(a) following the occurrence of an Event of Default under the Term Credit Agreement (as confirmed solely by the Term Administrative Agent) and following the delivery of a Term Proceeds Notice.

### **3.3 Sharing of Information and Access.**

In the event that an ABL Secured Party shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any books and records of any Term Borrower which contain information identifying or pertaining to the Collateral, the ABL Agent shall promptly notify the Term Administrative Agent of such event and, upon request from the Term Administrative Agent and as promptly as practicable thereafter, either make available to the Term Administrative Agent such books and records for inspection and duplication or provide to the Term Administrative Agent copies thereof. In the event that any Term Secured Party shall, in the exercise of its rights under the Term Collateral Documents or otherwise, receive possession or control of any books and records of the ABL Borrower which

contain information identifying or pertaining to any of the Collateral, the Term Administrative Agent shall promptly notify the ABL Agent of such event and, upon request from the ABL Agent and as promptly as practicable thereafter, either make available to the ABL Agent such books and records for inspection and duplication or provide the ABL Agent copies thereof.

### **3.4 Insurance.**

The Collateral includes insurance proceeds and, therefore, the Lien Priority shall govern the ultimate disposition of casualty insurance proceeds. The ABL Agent and the Term Administrative Agent shall each be named as additional insured or loss payee, as applicable, with respect to all insurance policies relating to the Collateral. Until the Discharge of ABL Obligations, the ABL Agent shall have the sole and exclusive right, as against the Term Administrative Agent and the other Term Secured Parties, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of ABL Priority Collateral. Until the Discharge of Term Obligations, the Term Administrative Agent shall have the sole and exclusive right, as against the ABL Agent and the other ABL Secured Parties, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of Term Priority Collateral. If any insurance claim includes both ABL Priority Collateral and Term Priority Collateral, the insurer will not settle such claim separately with respect to ABL Priority Collateral and Term Priority Collateral, and if the Parties are unable after negotiating in good faith to agree on the settlement for such claim, either Party may apply to a court of competent jurisdiction to make a determination as to the settlement of such claim, and unless such determination is appealed to a court of competent jurisdiction, the court's determination shall be binding upon the Parties upon the expiry of all applicable appeal periods. All proceeds of such insurance shall be remitted to the ABL Agent or the Term Administrative Agent, as the case may be, and each of the Term Administrative Agent and ABL Agent shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance with Section 4.1 hereof

### **3.5 No Additional Rights For the Borrower Hereunder.**

Except as provided in Section 3.6, if any ABL Secured Party or any Term Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, the Borrower shall not be entitled to use such violation as a defence to any action by such ABL Secured Party or such Term Secured Party, nor to assert such violation as a counterclaim or basis for set-off or recoupment against such ABL Secured Party or such Term Secured Party.

### **3.6 Inspection and Access Rights.**

- (a) Without limiting any rights the ABL Agent or any other ABL Secured Party may otherwise have under applicable law or by agreement, in the event of any liquidation of the ABL Priority Collateral (or any other Exercise of Any Secured Creditor Remedies by the ABL Agent) and whether or not the Term Lender or any other Term Secured Party has commenced and is continuing to Exercise Any Secured Creditor Remedies of the Term Lender, the ABL Agent or any other Person (including any ABL Borrower) acting with the consent, or on behalf, of any ABL Secured Party (each, an "ABL Authorized Person"), shall have the right (a) during normal business hours on any Business Day, to access ABL Priority Collateral that (i) is stored or located in or on, (ii) has become an accession with

respect to, or (iii) has been commingled with. Term Priority Collateral, and (b) during the Use Period, to use the Term Priority Collateral (including, without limitation. Equipment, fixtures, Intellectual Property, Intangibles and Real Property), each of the foregoing in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, complete a production run of Inventory involving, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a "store closing", "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in the any ABL Borrower's business), store or otherwise deal with the ABL Priority Collateral, in each case upon prior written notice to the Term Administrative Agent, but without the involvement of or interference by any Term Secured Party or liability to any Term Secured Party. In the event that any ABL Secured Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies with respect to any ABL Priority Collateral or any other sale or liquidation of the ABL Priority Collateral has been commenced by the ABL Borrower (with the consent of the ABL Agent), the Term Administrative Agent may not sell, assign, transfer, license or otherwise dispose of the related Term Priority Collateral prior to the expiration of the Use Period, unless the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.6.

- (b) During the period of actual occupation, use and/or control by any ABL Secured Party and/or ABL Authorized Person (or their respective employees, agents, advisers and representatives) of any Term Priority Collateral, the ABL Secured Parties shall be obligated to repair at their expense any physical damage (but not any diminution in value) to such Term Priority Collateral resulting from such occupancy, use or control, and to leave such Term Priority Collateral in substantially the same condition (as determined by the Term Administrative Agent, acting reasonably) as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted. Notwithstanding the foregoing, in no event shall the ABL Secured Parties or the ABL Agent have any liability to the Term Secured Party and/or to the Term Lender pursuant to this Section 3.6 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Secured Parties (or the ABL Agent, as the case may be) of their rights under Section 3.6 and the ABL Secured Parties shall have no duty or liability to maintain the Term Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Secured Parties, or for any diminution in the value of the Term Priority Collateral that results from ordinary wear and tear resulting from the use of the Term Priority Collateral by the ABL Secured Parties in the manner and for the time periods specified under this Section 3.6. Without limiting the rights granted in this Section 3.6, the ABL Secured Parties and the ABL Agent shall cooperate with the Term Secured Party and/or the Term Lender in connection with any efforts made by the Term Secured Party and/or the Term Lender to sell the Term Priority Collateral.

- (c) Except as set forth in Section 3.6(b), the ABL Agent and the ABL Secured Parties shall not be obligated to pay any amounts to the Term Administrative Agent or the other Term Secured Parties (or any person claiming by, through or under the Term Secured Party, including any purchaser of the Term Priority Collateral) or to the ABL Borrower, for or in respect of the use by the ABL Agent and the ABL Secured Parties of the Term Priority Collateral.
- (d) The ABL Secured Parties shall (i) use the Term Priority Collateral in accordance with applicable law; (ii) insure to the full replacement value of such Collateral for damage to property and liability to persons, including property and liability insurance for the benefit of the Term Secured Parties, and any such insurance policy for the benefit of the Term Secured Parties shall name the Term Administrative Agent as sole loss payee and additional insured, and (iii) indemnify the Term Secured Parties from any physical damage or loss arising from the ABL Secured Parties' use of the tangible Term Priority Collateral consisting of Equipment and fixtures (except for those arising from the gross negligence or wilful misconduct of any Term Secured Party).
- (e) The Term Administrative Agent and the other Term Secured Parties shall use commercially reasonable efforts to not hinder or obstruct the ABL Agent and the other ABL Secured Parties from exercising the rights described in Section 3.6(a) hereof. The ABL Agent and the other ABL Secured Parties shall use commercially reasonable efforts to not hinder or obstruct the Term Administrative Agent and the other Term Secured Parties from exercising the rights described in Section 3.6(a) hereof.
- (f) The Term Administrative Agent may advertise and conduct public auctions or private sales of the Term Priority Collateral without notice (except as required by applicable law) to any ABL Secured Party, the involvement of or interference by any ABL Secured Party or liability to any ABL Secured Party as long as, in the case of an actual sale, the respective purchaser assumes and agrees to the obligations of the Term Administrative Agent under this Section 3.6. The ABL Agent may advertise and conduct public auctions or private sales of the ABL Priority Collateral without notice (except as required by applicable law) to any Term Secured Party, the involvement of or interference by any Term Secured Party or liability to any Term Secured Party as long as, in the case of an actual sale, the respective purchaser assumes and agrees to the obligations of the ABL Agent under this Section 3.6.

### **3.7 Tracing of and Priorities in Proceeds.**

The ABL Agent, for itself and on behalf of the other ABL Secured Parties, and the Term Administrative Agent, for itself and on behalf of the other Term Secured Parties, further agree that prior to an issuance of any notice of Exercise of Any Secured Creditor Remedies by such Secured Party (unless a bankruptcy or insolvency Event of Default then exists), any Proceeds of Collateral, whether or not deposited under control agreements, which are used by any Borrower to acquire other property which is Collateral shall not (solely as between the Lenders) be treated as Proceeds of Collateral for purposes of determining the relative priorities in the Collateral



which was so acquired, provided that such Proceeds of Collateral were not obtained through the completion of a transaction or the taking of an action otherwise prohibited by the Term Credit Agreement or the ABL Credit Agreement.

### 3.8 Payments Over.

#### (a) Term Priority Collateral.

So long as the Discharge of Term Obligations has not occurred, any Term Priority Collateral or Proceeds thereof not constituting ABL Priority Collateral received by the ABL Agent or any other ABL Secured Party in connection with the exercise of any right or remedy (including set-off) relating to (i) the Term Priority Collateral in contravention of this Agreement shall be segregated and held in trust and forthwith paid over to the Term Administrative Agent for the benefit of the Term Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, and (ii) any Proceeds of Term Priority Collateral in respect of which the Term Administrative Agent at any time has given notice to the ABL Agent to the effect that, and providing satisfactory evidence that, such Proceeds were derived from or constitute Term Priority Collateral and either have been or will be deposited into any bank account, DDA, Deposit Account or Securities Account (a "Term Proceeds Notice"), shall be segregated and held in trust and forthwith paid over to the Term Administrative Agent for the benefit of the Term Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Administrative Agent is hereby authorized to make any such endorsements as agent for the ABL Agent or any such other ABL Secured Party. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

#### (b) ABL Priority Collateral.

So long as the Discharge of ABL Obligations has not occurred, any ABL Priority Collateral or Proceeds thereof not constituting Term Priority Collateral received by the Term Administrative Agent or any other Term Secured Party in connection with the exercise of any right or remedy (including set off) relating to the ABL Priority Collateral in contravention of this Agreement shall be segregated and held in trust and forthwith paid over to the ABL Agent for the benefit of the ABL Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The ABL Agent is hereby authorized to make any such endorsements as agent for the Term Administrative Agent or any such Term Secured Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

## ARTICLE 4 - APPLICATION OF PROCEEDS.

### 4.1 Application of Proceeds.

(a) Revolving Nature of ABL Obligations.

The Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, expressly acknowledges and agrees that (i) the ABL Credit Agreement includes a revolving commitment, that in the ordinary course of business the ABL Agent and the other ABL Secured Parties will apply payments and make advances thereunder, and that no application of any ABL Priority Collateral or the release of any Lien by the ABL Agent upon any portion of the Collateral in connection with a permitted disposition by the ABL Borrower under any ABL Credit Agreement shall constitute the Exercise of Secured Creditor Remedies under this Agreement; (ii) the amount of the ABL Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that subject to Section 5.2(e), the terms of the ABL Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the ABL Obligations may be increased, replaced or refinanced, in each event, without notice to or consent by the Term Secured Party and without affecting the provisions hereof; and (iii) all Proceeds of ABL Priority Collateral and, subject to Sections 3.2 and 3.8(a), all Proceeds or Collateral received by the ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, to the ABL Obligations at any time; provided, however, that from and after the date on which the ABL Agent (or any other ABL Secured Party) or the Term Administrative Agent (or any other Term Secured Party) commences the Exercise of Any Secured Creditor Remedies, all amounts received by the ABL Secured Party or any ABL Agent shall be applied as specified in this Section 4.1. The Lien Priority shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the ABL Obligations or the Term Obligations, or any portion thereof.

(b) Application of ABL Priority Collateral.

The ABL Agent and the Term Administrative Agent hereby agree that all ABL Priority Collateral and ABL Priority Proceeds thereof, received by either of them in connection with any Exercise of Secured Creditor Remedies with respect to the ABL Priority Collateral shall be applied.

- (i) first, to the payment of costs and expenses of the ABL Agent and the other ABL Secured Parties in connection with such Exercise of Secured Creditor Remedies,
- (ii) second, to the payment of the ABL Obligations in accordance with the ABL Documents until the Discharge of ABL Obligations shall have occurred,
- (iii) third, to the payment of costs and expenses of the other Term Secured Parties in connection with an Exercise of Secured Creditor Remedies;

- (iv) fourth, to the payment of the Term Obligations, and
- (v) fifth, the balance, if any, to the Borrower or as a court of competent jurisdiction may direct.

provided that in connection with an Insolvency Proceeding, if the Lien granted in favour of the ABL Agent or the other ABL Secured Parties in respect of such ABL Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the Proceeds received with respect to the ABL Priority Collateral subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the Term Obligations in accordance with the Term Documents until Discharge of Term Obligations shall have occurred.

(c) Application of Term Priority Collateral.

The ABL Agent and the Term Administrative Agent hereby agree that all Term Priority Collateral, and Term Priority Proceeds thereof, received by either of them in connection with any Exercise of Secured Creditor Remedies with respect to the Term Priority Collateral shall be applied,

- (i) first, to the payment of costs and expenses of the Term Administrative Agent and the other Term Secured Parties in connection with such Exercise of Secured Creditor Remedies,
- (ii) second, to the payment of the Term Obligations in accordance with the Term Documents until the Discharge of Term Obligations shall have occurred,
- (iii) third, to the payment of costs and expenses of the ABL Secured Parties in connection with an Exercise of Secured Creditor Remedies;
- (iv) fourth, to the payment of the ABL Obligations; and
- (v) fifth, the balance, if any, to the Borrower or as a court of competent jurisdiction may direct.

provided that in connection with an Insolvency Proceeding, if the Lien granted in favour of the Term Administrative Agent or the other Term Secured Parties in respect of such Term Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the Proceeds received with respect to the Term Priority Collateral subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the ABL Obligations in accordance with the ABL Documents until Discharge of ABL Obligations shall have occurred.

(d) Limited Obligation or Liability.

In exercising remedies, whether as a secured creditor or otherwise, the ABL Agent shall have no obligation or liability to the Term Administrative Agent or to

any other Term Secured Party, and neither the Term Administrative Agent nor any other Term Secured Party shall have any obligation or liability to the ABL Agent or any other ABL Secured Party regarding the adequacy of any Proceeds or for any action or omission, except solely for an action or omission that breaches the express obligations undertaken by each Party under the terms of this Agreement. Notwithstanding anything to the contrary herein contained, none of the Parties hereto waives any claim that it may have against a Secured Party on the grounds that any sale, transfer or other disposition by the Secured Party was not commercially reasonable in every respect as required by the PPSA.

(e) **Turnover of Collateral After Discharge.**

Upon the Discharge of ABL Obligations, the ABL Agent shall deliver to the Term Administrative Agent or shall execute such documents as the Term Administrative Agent may reasonably request (at the expense of the Term Borrower) to enable the Term Administrative Agent to have control over any Control Collateral still in the possession, custody, or control of the ABL Agent and the other ABL Secured Parties in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Upon the Discharge of Term Obligations, the Term Administrative Agent shall deliver to the ABL Agent or shall execute such documents as the ABL Agent may reasonably request (at the expense of the ABL Borrower) to enable the ABL Agent to have control over any Control Collateral still in the possession, custody or control of the Term Administrative Agent and the other Term Secured Parties in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

**4.2 Specific Performance.**

Each of the ABL Agent and the Term Administrative Agent is hereby authorized to demand specific performance of this Agreement, whether or not any Borrower or any Guarantor shall have complied with any of the provisions of any of the Credit Documents, at any time when the other Party shall have failed to comply with any of the provisions of this Agreement applicable to it. Each of the ABL Agent, for and on behalf of itself and the ABL Secured Parties, and the Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

**ARTICLE 5 - INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS**

**5.1 Notice of Acceptance and Other Waivers.**

(a) **Reliance.**

Subject to Section 5.2, all ABL Obligations at any time made or incurred by any Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, hereby waives notice of acceptance, or

proof of reliance by the ABL Agent of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the ABL Obligations. Subject to Section 5.2, all Term Obligations at any time made or incurred by any Borrower or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the ABL Agent, on behalf of itself and the other ABL Secured Parties, hereby waives notice of acceptance, or proof of reliance, by the Term Administrative Agent or any other Term Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Term Obligations.

(b) Limitation on Liability of ABL Agent.

None of the ABL Agent, any other ABL Secured Party or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or to take any other action whatsoever with regard to the Collateral or any part thereof, except as specifically provided in this Agreement. If the ABL Agent or any other ABL Secured Party honours (or fails to honour) a request by any Borrower for an extension of credit pursuant to the ABL Credit Agreement or any of the other ABL Documents, whether the ABL Agent or such other ABL Secured Party has knowledge that the honouring of (or failure to honour) any such request would constitute a default under the terms of the Term Credit Agreement or any other Term Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default under the terms of the Term Credit Agreement, or if the ABL Agent or such other ABL Secured Party otherwise should exercise any of its contractual rights or remedies under any ABL Documents (subject to the express terms and conditions hereof), neither the ABL Agent nor such other ABL Secured Party shall have any liability whatsoever to the Term Administrative Agent or any other Term Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). Subject to Section 5.2, the ABL Agent and the other ABL Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under the ABL Credit Agreement and any of the other ABL Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the Term Administrative Agent or any of the other Term Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. The Term Administrative Lender, on behalf of itself and the other Term Secured Parties, agrees that neither the ABL Agent nor the other ABL Secured Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the ABL Priority Collateral pursuant to the ABL Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) Limitation on Liability of Term Secured Parties.

None of the Term Administrative Agent, any other Term Secured Party or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or to take any other action whatsoever with regard to the Collateral or any part thereof, except as specifically provided in this Agreement. If the Term Administrative Agent or any other Term Secured Party honours (or fails to honour) a request by any Borrower for an extension of credit pursuant to the Term Credit Agreement or any of the other Term Documents, whether the Term Administrative Agent or any other Term Secured Party has knowledge that the honouring of (or failure to honour) any such request would constitute a default under the terms of the ABL Credit Agreement or any other ABL Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the Term Administrative Agent or any other Term Secured Party otherwise should exercise any of its contractual rights or remedies under the Term Documents (subject to the express terms and conditions hereof), neither the Term Administrative Agent nor any other Term Secured Party shall have any liability whatsoever to the ABL Agent or any other ABL Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). Subject to Section 5.2, the Term Administrative Agent and the other Term Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under the Term Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the ABL Agent or any other ABL Secured Party has in the Collateral, except as otherwise expressly set forth in this Agreement. The ABL Agent, on behalf of itself and the other ABL Secured Parties, agrees that none of the Term Administrative Agent or the other Term Secured Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of the Term Priority Collateral pursuant to the Term Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

## **5.2 Modifications to ABL Documents and Term Documents.**

### **(a) Permitted Modifications to the ABL Obligations.**

The Term Administrative Agent, on behalf of itself and the other Term Secured Parties, hereby agrees that, without affecting the obligations of the Term Administrative Agent and the Term Secured Parties hereunder, the ABL Agent and the ABL Secured Parties may, at any time and from time to time, in their sole discretion without the consent or notice to the Term Administrative Agent or any other Term Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the Term Administrative Agent or any Term Secured Party or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise

modify any of the ABL Documents in any manner whatsoever, including, without limitation, to:

- (i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the ABL Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the ABL Obligations or any of the ABL Documents;
  - (ii) subject to Section 2.6, retain or obtain a Lien on any Property of any Person to secure any of the ABL Obligations, and in connection therewith to enter into any additional ABL Documents;
  - (iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the ABL Obligations;
  - (iv) release its Lien on any Collateral or other Property;
  - (v) exercise or refrain from exercising any rights against any Borrower, any Guarantor, or any other Person;
  - (vi) subject to Section 2.6, retain or obtain the primary or secondary obligation of any other Person with respect to any of the ABL Obligations; and
  - (vii) otherwise manage and supervise the ABL Obligations as the ABL Agent and the other ABL Secured Parties shall deem appropriate.
- (b) Permitted Modifications to the Term Obligations.

The ABL Agent, on behalf of itself and the ABL Secured Parties, hereby agrees that, without affecting the obligations of the ABL Agent and the ABL Secured Parties hereunder, the Term Administrative Agent and the Term Secured Party may, at any time and from time to time, in their sole discretion without the consent of or notice to the ABL Agent or any ABL Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the ABL Agent or any ABL Secured Party or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the Term Documents in any manner whatsoever (other than in a manner which would contravene the provisions of this Agreement), including, without limitation, to:

- (i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Term Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Term Obligations or any of the Term Documents;

- (ii) subject to Section 2.6, retain or obtain a Lien on any Property of any Person to secure any of the Term Obligations, and in connection therewith to enter into any additional Term Documents;
- (iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Term Obligations;
- (iv) exercise or refrain from exercising any rights against any Borrower, any Guarantor, or any other Person;
- (v) subject to Section 2.6, retain or obtain the primary or secondary obligation of any other Person with respect to any of the Term Obligations; and
- (vi) release its Lien on any Collateral or other Property;
- (vii) otherwise manage and supervise the Term Obligations as the Term Administrative Agent and the other Term Secured Parties shall deem appropriate.

(c) Refinancings.

The ABL Obligations and the Term Obligations may be refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is required to permit the refinancing transaction under any ABL Document or any Term Document) of the ABL Agent, the ABL Secured Parties, the Term Lender or the Term Secured Party, as the case may be, all without affecting the Lien Priorities provided for herein or the other provisions hereof, provided, however, that the holders of such refinancing Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement pursuant to such documents or agreements (including amendments or supplements to this Agreement) as the ABL Agent or the Term Lender, as the case may be, shall reasonably request and in form and substance reasonably acceptable to the ABL Agent or the Term Lender, as the case may be, and any such refinancing transaction shall be in accordance with any applicable provisions of both the ABL Documents and the Term Documents (to the extent such documents survive the refinancing).

(d) Notifications re: Amendments and Waivers.

The ABL Agent and the Term Administrative Agent shall notify in writing the other party of any proposed amendment or modification to or waiver in respect of any term of the ABL Documents and the Term Documents, respectively.

(e) Prohibited Amendments to the ABL Documents.

Without the consent of the Term Administrative Agent, the ABL Agent and the ABL Secured Parties shall not agree to any amendment of, or to any waiver of a



provision of the ABL Documents that (i) increases the interest rate, changes any definition relating to the interest payable thereunder and/or increases the fees payable thereunder such that the aggregate of the interest and fees payable under the ABL Credit Agreement would be 200 basis points or more greater than the aggregate of the interest and fees payable under the ABL Credit Agreement in effect as of the date hereof, (ii) accelerates the scheduled dates on which payments of interest on the ABL Obligations are due or the final maturity date of the revolving loans made under the ABL Credit Agreement except, in either case, as a result of the occurrence of an Event of Default under an ABL Document, (iii) amends or adds any Event of Default or any financial maintenance covenant with respect to the ABL Obligations in a manner that is more adverse to the Term Secured Parties or more restrictive to the Borrower or its Subsidiaries than the Events of Default or financial maintenance covenants set forth in the ABL Documents in effect as of the date hereof, unless a parallel amendment to any similar financial maintenance covenant, or a parallel amendment to or addition of any similar Event of Default is made in the Term Documents, provided that in the case of any such amendment to any financial covenant in the Term Documents, the relative difference between such covenant, if any, as reflected in the Term Documents and the ABL Documents as of the date hereof shall be maintained, (iv) changes or adds any consensual encumbrance or restriction of any kind on the ability of the Borrower or any of its Subsidiaries to pay any Term Obligations other than those encumbrances and restrictions set forth in the ABL Documents in effect on the date hereof, or (v) increases the aggregate of (A) the principal amount of the loan under the ABL Credit Agreement, (B) the mark to market value under any Swap Agreements, and (C) any payments to any ABL Cash Management Affiliates in respect of cash management services provided to the Borrower that are not being applied on account of the loan under the ABL Credit Agreement, to an amount greater than \$50,000,000.

(f) Prohibited Amendments to the Term Documents

Without the consent of the ABL Agent, the Term Administrative Agent and the other Term Secured Parties shall not agree to any amendment of, or to any waiver of a provision of the Term Documents that (i) increases the interest rate, changes any definition relating to the interest payable thereunder and/or increases the fees payable thereunder such that the interest and fees payable under the Term Credit Agreement would be 200 basis points or more greater than the aggregate of the interest and fees payable under the Term Credit Agreement in effect as of the date hereof, (ii) accelerates the scheduled dates on which payments of interest on the Term Obligations are due or the final maturity date of the advance made under the Term Credit Agreement except, in either case, as a result of the occurrence of an Event of Default under a Term Document, (iii) amends or adds any Event of Default or any financial maintenance covenant with respect to the Term Obligations in a manner that is more adverse to the ABL Secured Parties or more restrictive to the Borrower or its Subsidiaries than the Events of Default or financial maintenance covenants set forth in the Term Documents in effect as of the date hereof, unless a parallel amendment to any similar financial maintenance covenant, or a parallel amendment to or addition of any similar Event of Default

is made in the ABL Documents, provided that in the case of any such amendment to any financial covenant in the Term Documents, the relative difference between such covenant, if any, as reflected in the Term Documents and the ABL Documents as of the date hereof shall be maintained, (iv) changes or adds any consensual encumbrance or restriction of any kind on the ability of the Borrower or any of its Subsidiaries to pay any ABL Obligations other than those encumbrances and restrictions set forth in the Term Documents in effect on the date hereof, or (v) increases the aggregate principal amount of the Term Obligations to an amount greater than \$32,600,000.

### 5.3 Reinstatement and Continuation of Agreement.

(a) ABL Recoveries.

If the ABL Agent or any other ABL Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor or any other Person any payment made in satisfaction of all or any portion of the ABL Obligations (an "ABL Recovery"), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery. If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect in the event of such ABL Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement. All rights, interests, agreements, and obligations of the ABL Agent and the other ABL Secured Parties and the Term Administrative Agent and the other Term Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Obligations. No priority or right of the ABL Agent or any other ABL Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the non-compliance by any Person with the terms, provisions, or covenants of any of the ABL Documents, regardless of any knowledge thereof which the ABL Agent or any ABL Secured Party may have.

(b) Term Recoveries.

If the Term Administrative Agent or any other Term Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor or any other Person any payment made in satisfaction of all or any portion of the Term Obligations (a "Term Recovery"), then the Term Obligations shall be reinstated to the extent of such Term Recovery. If this Agreement shall have been terminated prior to such Term Recovery, this Agreement shall be reinstated in full force and effect in the event of such Term Recovery, and such prior termination shall not diminish, release,

discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement. All rights, interests, agreements, and obligations of the ABL Agent and the other ABL Secured Parties and the Term Administrative Agent and the other Term Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Obligations. No priority or right of the Term Administrative Agent or any Term Secured Parties shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the non-compliance by any Person with the terms, provisions, or covenants of any of the Term Documents, regardless of any knowledge thereof which the Term Administrative Agent or any other Term Secured Party may have.

#### **5.4 Credit Card Notifications and Blocked Account Agreements.**

The Term Secured Parties agree that until such time as the ABL Obligations have been paid in full and the ABL Documents discharged, the Term Secured Parties shall not exercise any notice rights or control rights under any blocked account or other deposit account control agreement or under any credit card notification agreement delivered under or pursuant to the Credit Documents. The ABL Agent agrees to provide the Term Administrative Agent with three Business Days prior written notice of its expected date for the payment in full of the ABL Obligations.

### **ARTICLE 6 - INSOLVENCY PROCEEDINGS**

#### **6.1 Relief From Stay.**

Until the Discharge of ABL Obligations has occurred, the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the ABL Priority Collateral without the ABL Agent's express written consent. Until the Discharge of Term Obligations has occurred, the ABL Agent, on behalf of itself and the other ABL Secured Parties, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the Term Priority Collateral without the Term Administrative Agent's express written consent. In addition, neither the Term Administrative Agent nor the ABL Agent shall seek any relief from the automatic stay with respect to any Collateral without providing three (3) days' prior written notice to the other, unless such period is agreed by both the ABL Agent and the Term Administrative Agent to be modified or unless the ABL Agent or Term Administrative Agent, as applicable, makes a good faith determination that either (A) the ABL Priority Collateral or the Term Priority Collateral, as applicable, will decline speedily in value or (B) the failure to take any action will have a reasonable likelihood of endangering the ABL Agent's or the Term Administrative Agent's ability to realize upon its Collateral.

#### **6.2 Asset Sales.**

The Term Administrative Agent agrees, on behalf of itself and the other Term Secured Parties, that it will not oppose any sale consented to by the ABL Agent or the other ABL Secured Parties of any ABL Priority Collateral (pursuant to any provision under the law applicable to any Insolvency Proceeding or under a court order in respect of measures granted with similar effect under Debtor Relief Laws) so long as the proceeds of such sale are applied in accordance with this Agreement. The ABL Agent agrees, on behalf of itself and the other ABL Secured Parties, that it will not oppose any sale consented to by the Term Administrative Agent or the other Term Secured Parties of any Term Priority Collateral (pursuant to any provision under the law applicable to any Insolvency Proceeding or under a court order in respect of measures granted with similar effect under Debtor Relief Laws) so long as the proceeds of such sale are applied in accordance with this Agreement. If such sale of Collateral includes both ABL Priority Collateral and Term Priority Collateral, the ABL Secured Parties shall be entitled to receive net proceeds from such sale in an amount at least equal to the then outstanding amount under the ABL Credit Agreement with respect to the ABL Priority Collateral included in such sale (based on valuations ascribed to such ABL Priority Collateral by the Borrower in its Borrowing Base Reports (as such term is defined in the ABL Credit Agreement) and in any inventory reports utilized in the preparation of such Borrowing Base Reports delivered to the ABL Agent) and the Term Secured Parties shall be entitled to receive net proceeds from such sale in an amount equal to the then-outstanding Term Obligations with respect to the Term Priority Collateral included in such sale; as to the balance of the net proceeds, if the Parties are unable after negotiating in good faith to agree on the allocation of the purchase price between the ABL Priority Collateral and Term Priority Collateral, either Party may apply to the court in such Insolvency Proceeding to make a determination of such allocation, and the court's determination shall be binding upon the Parties.

### **6.3 Separate Grants of Security and Separate Classification.**

Each of the Term Administrative Agent and the ABL Agent acknowledges and agrees that (i) the grants of Liens pursuant to the ABL Security Documents and the Term Security Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Term Obligations are fundamentally different from the ABL Obligations and must be separately classified in any proposal or plan of reorganization (or other proposal or plan of similar effect under any Debtor Relief Laws) proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Secured Parties and the Term Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the ABL Agent, on behalf of itself and the other ABL Secured Parties, and the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, hereby acknowledge and agree that all distributions shall be made as if there were separate classes of ABL Obligation claims and Term Obligation claims against the Borrower, with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral or Term Priority Collateral is sufficient (for this purpose ignoring all claims held by the other Secured Parties), the ABL Secured Parties and the Term Secured Parties, respectively, shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest that is available from each pool of Priority Collateral for each of the ABL Secured Parties and the Term Secured Parties, respectively; before any distribution is made in respect of the claims held by the other Secured Parties from such Priority Collateral, with the other Secured Parties hereby acknowledging and agreeing to turn over to the respective

other Secured Parties amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries.

#### **6.4 ABL Obligations Unconditional.**

All rights of the ABL Agent, on behalf of itself and the other ABL Secured Parties, hereunder, and all agreements and obligations of the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, and the Borrower (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any ABL Document;
- (b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the ABL Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any ABL Document, subject to the limitations set forth in this Agreement;
- (c) any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, restatement or increase of all or any portion of the ABL Obligations or any guarantee or guaranty thereof, subject to the limitations set forth in this Agreement; or
- (d) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Borrower in respect of the ABL Obligations, or of any of the Term Secured Parties or any Borrower, to the extent applicable, in respect of this Agreement.

#### **6.5 Term Obligations Unconditional.**

All rights of the Term Administrative Agent, on behalf of itself and the other Term Secured Parties, hereunder, all agreements and obligations of the ABL Agent, on behalf of itself and the other ABL Secured Parties, and the Borrower (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any Term Document;
- (b) any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Term Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Term Document, subject to the limitations set forth in this Agreement;
- (c) any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral, or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any

refinancing, replacement, refunding, restatement or increase of all or any portion of the Term Obligations or any guarantee or guaranty thereof, subject to the limitations set forth in this Agreement; or

- (d) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Borrower in respect of the Term Obligations, or of any of the ABL Agent or any Borrower, to the extent applicable, in respect of this Agreement.

#### 6.6 DIP Financing.

- (a) If any Borrower or any Guarantor shall be subject to any Insolvency Proceeding at any time prior to the Discharge of ABL Obligations, and the ABL Agent or the ABL Secured Parties shall seek to provide any Borrower or any Guarantor with, or consent to a third party providing, any debtor-in-possession financing or consent to any order for the use of cash collateral constituting ABL Priority Collateral (under any provision of any Debtor Relief Laws or under a court order) (each, a "DIP Financing"), with such DIP Financing to be secured by all or any portion of the ABL Priority Collateral, then the Term Administrative Agent, on behalf of itself and the Term Secured Parties, agrees that, provided that the proposed DIP Financing is on terms acceptable to the Term Administrative Agent, acting reasonably and in good faith, it will raise no objection and will not support any objection to such DIP Financing or use of cash collateral or to the Liens securing the same (and will not request any protection solely as a result of such DIP Financing or use of cash collateral that is ABL Priority Collateral), so long as (i) the Term Administrative Agent retains its Lien on the Collateral to secure the Term Obligations (in each case, including Proceeds thereof arising after the commencement a proceeding under any Debtor Relief Laws) and, as to the Term Priority Collateral only, such Lien has the same priority as existed prior to the commencement of a proceeding under the subject Debtor Relief Laws and any Lien on the Term Priority Collateral securing such DIP Financing is junior and subordinate to the Lien of the Term Administrative Agent on the Term Priority Collateral, (ii) all Liens on ABL Priority Collateral securing any such DIP Financing shall be senior to or on a parity with the Liens of the ABL Agent and the ABL Secured Parties securing the ABL Obligations on ABL Priority Collateral and (iii) the foregoing provisions of content of a plan of reorganization or other plan of similar effect under any Debtor Relief Laws.
- (b) If any Borrower or any Guarantor shall be subject to any Insolvency Proceeding at any time prior to the Discharge of Term Obligations, and the Term Administrative Agent or the Term Secured Parties shall seek to provide any Borrower or any Guarantor with; or consent to a third party providing, any DIP Financing, with such DIP Financing to be secured by all or any portion of the Term Priority Collateral, then the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that, provided that the proposed DIP Financing is on terms acceptable to the ABL Agent, acting reasonably and in good faith, it will raise no objection and will not support any objection to such DIP Financing or to the Liens securing the same (and will not request any protection solely as a result of such

DIP Financing), so long as (i) the ABL Agent retains its Lien on the Collateral to secure the ABL Obligations (in each case, including Proceeds thereof arising after the commencement of a proceeding under any Debtor Relief Law) and, as to the ABL Priority Collateral only, such Lien has the same priority as existed prior to the commencement of a proceeding under the subject Debtor Relief Laws and any Lien on ABL Priority Collateral securing such DIP Financing furnished by the Term Administrative Agent or Term Secured Parties is junior and subordinate to the Lien of the ABL Agent on the ABL Priority Collateral, (ii) all Liens on Term Priority Collateral securing any such DIP Financing furnished by the Term Administrative Agent or Term Secured Parties shall be senior to or on a parity with the Liens of the Term Administrative Agent and the Term Secured Parties securing the Term Obligations on Term Priority Collateral and (iii) the foregoing provisions of this Section 6.6(b) shall not prevent the ABL Agent and the ABL Secured Parties from objecting to any provision in any DIP Financing relating to any provision or content of a plan of reorganization or other plan of similar effect under any Debtor Relief Laws.

- (c) All Liens granted to the ABL Agent or the Term Administrative Agent in any Insolvency Proceeding, are intended by the Parties to be and shall be deemed to be subject to the Lien Priority and the other terms and conditions of this Agreement.

## ARTICLE 7 - MISCELLANEOUS

### 7.1 Rights of Subrogation.

The Term Administrative Agent, for and on behalf of itself and the Term Secured Party, agrees that no payment to the ABL Agent or any ABL Secured Party pursuant to the provisions of this Agreement shall entitle the Term Administrative Agent or any Term Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of ABL Obligations shall have occurred. Following the Discharge of ABL Obligations, the ABL Agent agrees to execute such documents, agreements, and instruments as the Term Administrative Agent or any Term Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the ABL Obligations resulting from payments to the ABL Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the ABL Agent are paid by such Person upon request for payment thereof. The ABL Agent, for and on behalf of itself and the ABL Secured Parties, agrees that no payment to the Term Administrative Agent or any Term Secured Party pursuant to the provisions of this Agreement shall entitle the ABL Agent or any ABL Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of Term Obligations shall have occurred. Following the Discharge of Term Obligations, the Term Administrative Agent agrees to execute such documents, agreements, and instruments as the ABL Agent or any ABL Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Term Obligations resulting from payments to the Term Administrative Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the Term Administrative Agent are paid by such Person upon request for payment thereof.

**7.2 Further Assurances.**

The Parties will, at their own expense and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the ABL Agent or any other ABL Secured Party or the Term Administrative Agent or any other Term Secured Party to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 7.2, to the extent that such action would contravene any law, order or other legal requirement or any of the terms or provisions of this Agreement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 7.2.

**7.3 Representations.**

The Term Administrative Agent represents and warrants to the ABL Agent that it has the requisite power and authority under the Term Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the other Term Secured Parties and that this Agreement shall be binding obligations of the Term Administrative Agent and the other Term Secured Parties, enforceable against the Term Administrative Agent and the other Term Secured Parties in accordance with its terms. The ABL Agent represents and warrants to the Term Administrative Agent that it has the requisite power and authority under the ABL Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the other ABL Secured Parties and that this Agreement shall be binding obligations of the ABL Agent and the other ABL Secured Parties, enforceable against the ABL Agent and the other ABL Secured Parties in accordance with its terms.

**7.4 Amendments.**

No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by the Term Administrative Agent and the ABL Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**7.5 Addresses for Notices.**

Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, or sent by prepaid registered mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or five (5) days following the date of mailing (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.



ABL Agent:	<p>Canadian Imperial Bank Of Commerce 199 Bay Street, 4<sup>th</sup> Floor Toronto, Ontario M5L 1A2</p> <p>Attention: Senior Director, Portfolio Management Telecopy: (416) 861-9422</p>
With a copy to:	<p>Canadian Imperial Bank Of Commerce 199 Bay Street, 11<sup>th</sup> Floor Toronto, Ontario M5L 1A9</p> <p>Attention: Tim Meadowcroft, Assistant General Counsel Telecopy: (416) 304-4573 Email: <a href="mailto:tim.meadowcroft@cibc.com">tim.meadowcroft@cibc.com</a></p>
With a copy to:	<p>Norton Rose Fulbright Canada LLP Royal Bank Plaza, South Tower Suite 3800, 200 Bay Street Toronto, Ontario M5J 2Z4</p> <p>Attention: David Amato Telecopy: (416) 216-3930 Email: <a href="mailto:david.amato@nortonrosefulbright.com">david.amato@nortonrosefulbright.com</a></p>
Term Administrative Agent:	<p>GSO Capital Partners LP 345 Park Avenue New York, New York 10154</p> <p>Attention: Louis Salvatore and Matthew Bass Telecopy: (212) 503-6921 Email: <a href="mailto:Lou.Salvatore@gsocap.com">Lou.Salvatore@gsocap.com</a></p>
With a copy to:	<p>Davies Ward Phillips &amp; Vineberg LLP 155 Wellington Street West Toronto, Ontario M5V 3J7</p> <p>Attention: Scott R. Hyman Telecopy: (416) 863-0871 Email: <a href="mailto:shyman@dwpv.com">shyman@dwpv.com</a></p>

**7.6 No Waiver; Remedies.**

No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**7.7 Continuing Agreement, Transfer of Secured Obligations.**

This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Discharge of ABL Obligations and the Discharge of Term Obligations shall have occurred, (b) be binding upon the Parties and their successors and assigns, and (c) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Collateral. All references to any Borrower shall include any Borrower as debtor-in-possession and any receiver or trustee for such Borrower in any Insolvency Proceeding. Without limiting the generality of the foregoing clause (c), the ABL Agent or any other ABL Secured Party or the Term Administrative Agent, or any other Term Secured Party may assign or otherwise transfer all or any portion of the ABL Obligations or the Term Obligations, as applicable, to any other Person (other than any Borrower, any Guarantor or any Affiliate of any Borrower or any Guarantor and any Subsidiary of any Borrower or any Guarantor (except as provided in the ABL Credit Agreement or the Term Credit Agreement, as applicable)), and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the ABL Agent or such other ABL Secured Party or the Term Administrative Agent or such other Term Secured Party, as the case may be, herein or otherwise. The ABL Secured Parties and the Term Secured Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide Indebtedness to, or for the benefit of, any Borrower on the faith hereof.

**7.8 Governing Law; Entire Agreement.**

The validity, performance, and enforcement of 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. This Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto.

**7.9 Counterparts.**

This Agreement may be executed in any number of counterparts, and it is not necessary that the signatures of all Parties be contained on any one counterpart hereof, each counterpart will be deemed to be an original, and all together shall constitute one and the same document.

**7.10 No Third Party Beneficiaries.**

This Agreement is solely for the benefit of the ABL Agent and the other ABL Secured Parties and the Term Administrative Agent and the other Term Secured Parties. No other Person (including any Borrower or any Affiliate of any Borrower, or any Subsidiary of any Borrower or

any other creditor of any of them) shall be deemed to be a third party beneficiary of this Agreement.

**7.11 Headings.**

The headings of the articles and sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**7.12 Severability.**

If any of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and shall not invalidate the Lien Priority or the application of Proceeds and other priorities set forth in this Agreement.

**7.13 Attorneys' Fees.**

The Parties agree that if any dispute, arbitration, litigation, or other proceeding is brought with respect to the enforcement of this Agreement or any provision hereof, the prevailing party in such dispute, arbitration, litigation, or other proceeding shall be entitled to recover its reasonable attorneys' fees and all other costs and expenses incurred in the enforcement of this Agreement, irrespective of whether suit is brought.

**7.14 Venue; Process.**

(a) SUBMISSION TO JURISDICTION.

EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE PROVINCE OF ONTARIO, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ONTARIO COURT OR, TO THE EXTENT PERMITTED BY LAW, IN ANY FEDERAL COURT SITTING IN ONTARIO. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY ABL SECURED PARTY OR ANY TERM SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY TERM DOCUMENTS, OR ANY ABL DOCUMENTS AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) **CONSENT TO SERVICE OF PROCESS.**

EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.5. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

**7.15 Intercreditor Agreement.**

This Agreement is the Intercreditor Agreement referred to in the ABL Credit Agreement and the Term Credit Agreement. Nothing in this Agreement shall be deemed to subordinate the obligations due to (i) any ABL Secured Party to the obligations due to any Term Secured Party or (ii) any Term Secured Party to the obligations due to any ABL Secured Party (in each case, whether before or after the occurrence of an Insolvency Proceeding), it being the intent of the Parties that this Agreement shall effectuate a subordination of Liens but not a subordination of Indebtedness.

**7.16 No Warranties or Liability.**

The Term Administrative Agent and the ABL Agent acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any other ABL Document or any Term Document. Except as otherwise provided in this Agreement, the Term Administrative Agent and the other Term Secured Parties, and the ABL Agent and the other ABL Secured Parties, will be entitled to manage and supervise their respective extensions of credit to any Borrower in accordance with law and their usual practices, modified from time to time as they deem appropriate.

**7.17 Conflicts.**

In the event of any conflict between the provisions of this Agreement and the provisions of any ABL Document or any Term Document, the provisions of this Agreement shall govern.

**7.18 Information Concerning Financial Condition of the Borrower.**

Each of the Term Administrative Agent and the ABL Agent hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and all other circumstances bearing upon the risk of non-payment of the ABL Obligations or the Term Obligations. The Term Administrative Agent and the ABL Agent hereby agree that no party shall have any duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the Term Administrative Agent or the ABL Agent, in its sole discretion, undertakes at any time or from time to time to provide any information to any other party to this Agreement, (a) it shall be under no obligation (i) to provide any such information to such other party or any other party on any subsequent occasion, (ii) to undertake any investigation not a part of its regular business routine, or (iii) to disclose any other information, or (b) it makes no representation as to the accuracy or completeness of any such information and shall not be liable for any information contained therein, and (c) the Party receiving such information hereby to hold the other Party harmless from any action the receiving

Party may take or conclusion the receiving Party may reach or draw from any such information, as well as from and against any and all losses, claims, damages, liabilities, and expenses to which such receiving Party may become subject arising out of or in connection with the use of such information.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the ABL Agent, for and on behalf of itself and the other ABL Secured Parties, and the Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, have caused this Agreement to be duly executed and delivered as of the date first above written.

**CANADIAN IMPERIAL BANK OF  
COMMERCE, as ABL Agent**

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

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

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

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

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

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

Name:  
Title:

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

Name:  
Title:

IN WITNESS WHEREOF, the ABL Agent, for and on behalf of itself and the other ABL Secured Parties, and the Term Administrative Agent, for and on behalf of itself and the other Term Secured Parties, have caused this Agreement to be duly executed and delivered as of the date first above written.

**CANADIAN IMPERIAL BANK OF  
COMMERCE, as ABL Agent**

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

Name:

Title:

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

Name:

Title:

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

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

Name: MARISA BEENEY  
Title: AUTHORIZED SIGNATORY

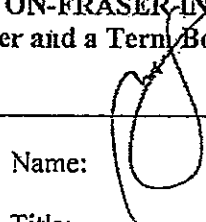
**ACKNOWLEDGMENT**

Each Borrower and each Guarantor hereby acknowledges that it has received a copy of this Agreement and consents thereto, agrees to recognize all rights granted thereby to the ABL Agent and the other ABL Secured Parties and the Term Administrative Agent and the other Term Secured Parties and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. Each Borrower and each Guarantor further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement and (i) as between the ABL Secured Parties; the Borrowers and Guarantors, the ABL Documents remain in full force and effect as written and are in no way modified hereby, and (ii) as between the Term Secured Parties, the Borrowers and Guarantors, the Term Documents remain in full force and effect as written and are in no way modified hereby.

Without limiting the foregoing, the Borrower consents to the performance by the Term Administrative Agent of the obligations set forth in Section 3.6 and acknowledges and agrees that neither the Term Administrative Agent nor any other Term Secured Party shall ever be accountable or liable for any action taken or omitted by the ABL Agent or any other ABL Secured Party or any of their respective members; partners, directors, officers, employees, agents successors or assigns, in connection therewith or incidental thereto, or in consequence thereof including any improper use or disclosure of any proprietary information or other Intellectual Property by the ABL, Lender or any other ABL Secured Party or its or any of their respective members, partners, directors, officers, employees, agents, successors or assigns or any other damage to or misuse or loss of any Property of the Borrower as a result of any action taken or omitted by the ABL Agent or its respective members, partners, directors, officers, employees, agents successors or assigns pursuant to Section 3.6.

**GRAFTON-FRASER INC., as an ABL  
Borrower and a Term Borrower**

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



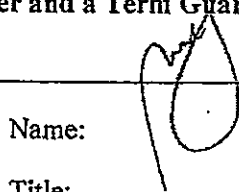
Name:

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

Title:

**2473304 ONTARIO INC., as an ABL  
Borrower and a Term Guarantor**

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



Name:

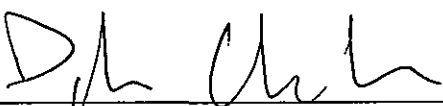
**Mark G. Sun  
Vice President & CFO  
Grafton-Fraser Inc.**

Title:



# **EXHIBIT "K"**

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

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

RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 2646)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : GRAFTON-FRASER INC.

FILE CURRENCY : 15JAN 2017

ENQUIRY NUMBER 20170116131130.36 CONTAINS 12 PAGE(S), 4 FAMILY(IES).

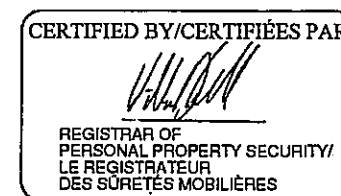
THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

FASKEN MARTINEAU DUMOULIN LLP/ADAM SIMON

333 BAY STREET, SUITE 2400  
TORONTO ON M5H2T6

CONTINUED...

2



(crfj3 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 2647)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LITEN

00 FILE NUMBER  
719663706

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO OF PAGES SCHEDULE NUMBER UNDER PERIOD  
001 2 20160816 1605 1532 1006 P PPSA 3

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME GRAFTON FRASER INC.

04 ADDRESS 44 APEX ROAD TORONTO ONTARIO CORPORATION NO. 1735825  
ON M6A 2V2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / CANADIAN DEALER LEASE SERVICES INC.  
09 ELLEN CHAMANT

ADDRESS 250 YONGE ST, SUITE 2601, BOX 50 TORONTO ON M5B 2L7

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X 55145 11AUG2019


11 MOTOR YEAR MAKE MODEL VIN  
12 VEHICLE 2016 MAZDA CX-9 UM3TCBDY6G0111704

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING CSRS  
17 AGENT ADDRESS 4126 NORLAND AVE BURNABY BC V5G 3S8

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 3

CERTIFIED BY / CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY /  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(ej11s 09/2013)



TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : GRAFON-FRASER INC.  
 FILE NUMBER : 15JAN 2017

FORM TO FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER 719663706

01 CALLION PAGE 002 OF PAGES 2  
 MOTOR VEHICLE REGISTRATION NUMBER 20160816 1605 1532 1006  
 REGISTERED UNDER REGISTRATION PERIOD

02 DEBTOR NAME  
 DATE OF BIRTH  
 FIRST GIVEN NAME  
 INITIAL  
 SURNAME  
 ONTARIO CORPORATION NO.

03 DEBTOR NAME  
 BUSINESS NAME  
 ADDRESS  
 ONTARIO CORPORATION NO.

04 DEBTOR NAME  
 BUSINESS NAME  
 ADDRESS  
 ONTARIO CORPORATION NO.

05 DEBTOR NAME  
 DATE OF BIRTH  
 FIRST GIVEN NAME  
 INITIAL  
 SURNAME  
 ONTARIO CORPORATION NO.

06 DEBTOR NAME  
 BUSINESS NAME  
 ADDRESS  
 ONTARIO CORPORATION NO.

07 DEBTOR NAME  
 BUSINESS NAME  
 ADDRESS  
 ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT  
 BANK OF NOVA SCOTIA-DLAC  
 ADDRESS  
 SCOTIA PLAZA, 44 KING STREET W  
 TORONTO ON M5H 1H1

09 COMPANIAL CLASSIFICATION  
 CONSUMER  
 MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED  
 MAINTENANCE OR MAINTURITY DATE

10 MOTOR YEAR MAKE MODEL V.I.N.

11 VEHICLE

12 GENERAL

13 GENERAL

14 CONTRACT

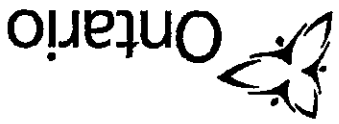
15 DESCRIPTION

16 REGISTERING AGENT

17 ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...



CERTIFIED BY/CERTIFIES PAR  
 REGISTAR OF  
 LE REGISTREUR  
 PERSONAL PROPERTY SECURITY/  
 DES SURETES MOBILIERES  
 (c) (s 09/2013)

RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 4  
( 2649)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
712571193

CAUTION PILING	PAGE NO	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	1		20151211 1111 1590 9308	P PPSA	7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME GRAFTON-FRASER INC.

04 ADDRESS 44 APEX ROAD TORONTO ONTARIO CORPORATION NO. ON M6A 2V2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

09 LIEN CLAIMANT ADDRESS 595 BAY ST., SUITE 500 TORONTO ON M5G 2C2

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
CODES INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 MOTOR YEAR MAKE MODEL VIN

12 VEHICLE


13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING FASKEN MARTINEAU DUMOULIN LLP (L. KENNEDY/K.BARTON/233314.00088)

17 AGENT ADDRESS BAY ADELAIDE CENTRE, BOX 20 TORONTO ON M5H 2T6

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 5

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fs 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 5  
( 2650)

TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON GRAFTON-FRASER INC.  
FILE CURRENCY 15JAN 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
675686367

CAUTION FILING	PAGE NO	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	01	001		20120117 1707 1462 5917	P PPSA	6

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME GRAFTON FRASER INC

04 ADDRESS 44 APEX RD TORONTO ONTARIO CORPORATION NO. ON M6A2V2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / XEROX CANADA LTD

09 LIEN CLAIMANT ADDRESS 33 BLOOR ST. E. 3RD FLOOR TORONTO ON M4W3H1

10 COLLATERAL CLASSIFICATION  
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE  
X X X

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING PPSA CANADA INC. - (3992)

17 AGENT ADDRESS 110 SHEPPARD AVE EAST, SUITE 303 TORONTO ON M2N6Y8

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR

  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj/1s 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 6  
( 2651)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
635312304

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO OF PAGES SCHEDULE NUMBER UNDER PERIOD  
01 001 2 20070515 1330 1590 4800 P PPSA 8

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME GF ACQUISITION CORP.  
04 ADDRESS 44 APEX ROAD TORONTO ONTARIO CORPORATION NO. ON M6A 2V2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME  
07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT  
09 LIEN CLAIMANT ADDRESS 280 PARK AVENUE, 11TH FLOOR, NEW YORK NY 10017

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

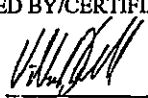
11 MOTOR YEAR MAKE MODEL VIN  
12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING OSLER, HOSKIN & HARCOURT LLP (T. ELLIOTT/L. GIDARI/1099908)  
17 AGENT ADDRESS 1 FIRST CANADIAN PLACE TORONTO ON M5X 1B8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 7

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fs 09/2013)





RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 7  
( 2652)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
635312304

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CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	002	2		20070515 1330 1590 4800		

01

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

02

03

04

05

06

07

08

09

10

11

12

13

14

15

16

17

DEBTOR NAME

BUSINESS NAME

ADDRESS

DATE OF BIRTH

FIRST GIVEN NAME

INITIAL

SURNAME

BUSINESS NAME

ADDRESS

ONTARIO CORPORATION NO.

ONTARIO CORPORATION NO.

SECURED PARTY / LIEN CLAIMANT

ADDRESS

BUILDING EAST

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO. FIXED MATURITY DATE

YEAR MAKE

MODEL

VIN

MOTOR VEHICLE

GENERAL COLLATERAL DESCRIPTION


REGISTERING AGENT

ADDRESS

\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*

CONTINUED...

8

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crlts 09/2013)



RUN NUMBER : 016  
 RUN DATE : 2017/01/16  
 ID : 20170116131130.36

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 8  
 ( 2653)

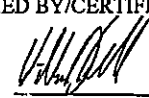
TYPE OF SEARCH BUSINESS DEBTOR  
 SEARCH CONDUCTED ON GRAFTON-FRASER INC.  
 FILE CURRENCY 15JAN 2017

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF PAGES	TOTAL MOTOR VEHICLE REGISTRATION NUMBER	REGISTERED UNDER
01	001	20070524 1634 1590 5263	
21	FILE NUMBER	635312304	
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT
23	REFERENCE	FIRST GIVEN NAME	INITIAL SURNAME
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	GF ACQUISITION CORP.
25	OTHER CHANGE REASON/ DESCRIPTION	AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM GF ACQUISITION CORP. TO GRAFTON-FRASER INC. AS A RESULT OF AN AMALGAMATION OF GF ACQUISITION CORP. AND GRAFTON-FRASER INC. ON MAY 24, 2007	
02/05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME INITIAL SURNAME
03/06	DEBTOR/ TRANSFEREE	BUSINESS NAME	GRAFTON-FRASER INC.
04/07	ADDRESS	44 APEX ROAD	TORONTO ONTARIO CORPORATION NO. ON M6A 2V2
29	ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE		
08	ADDRESS		
09	COLLATERAL CLASSIFICATION		
10	CONSUMER	MOTOR VEHICLE	DATE OF NO FIXED
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED	AMOUNT MATURITY OR MATURITY DATE
11	MOTOR VEHICLE	YEAR MAKE	MODEL V. I. N.
12	GENERAL COLLATERAL DESCRIPTION		
13	REGISTERING AGENT OR SECURED PARTY/LIEN CLAIMANT	OSLER, HOSKIN & HARCOURT LLP (T. ELLIOTT/L. GIDARI/1099908)	
14	ADDRESS	1 FIRST CANADIAN PLACE	TORONTO ONTARIO M5X 1B8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 9

CERTIFIED BY/CERTIFIÉES PAR  
  
 REGISTRAR OF PERSONAL PROPERTY SECURITY/  
 LE REGISTREUR DES SÛRETÉS MOBILIÈRES

(cr)2s 09/2013



RUN NUMBER : 016  
 RUN DATE : 2017/01/16  
 ID : 20170116131130.36

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 9  
 ( 2654)


TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
 FILE CURRENCY : 15JAN 2017

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION	PAGE	TOTAL	MOTOR	VEHICLE	REGISTRATION	REGISTERED	
FEELING	NO.	PAGES	SCHEDULE		NUMBER	UNDER	
01	001	001			20080911 1204 1862 8943		
21	RECORD REFERENCE	FILE NUMBER	635312304				
22		PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL	CORRECT	
			X	D ASSIGNMENT	YEARS	PERIOD	
23	REFERENCE		FIRST GIVEN NAME	INITIAL	SURNAME		
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	GRAFTON-FRASER INC.				
25	OTHER CHANGE						
26	REASON/						
27	DESCRIPTION						
28							
02/	DEBTOR/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME		
05	TRANSFEREE	BUSINESS NAME					
03/							
06							
04/07		ADDRESS			ONTARIO CORPORATION NO.		
29	ASSIGNOR	GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT					
08	SECURED PARTY/LEEN CLAIMANT/ASSIGNEE	GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT					
09	ADDRESS	280 PARK AVE., 11TH FLOOR, BUILDING EAST NEW YORK				NY 10017	
	COLLATERAL CLASSIFICATION						
	CONSUMER						
	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	
10					AMOUNT	DATE OF MATURITY OR NO FIXED MATURITY DATE	
11	MOTOR	YEAR	MAKE	MODEL	V. I. N.		
12	VEHICLE						
13	GENERAL						
14	COLLATERAL						
15	DESCRIPTION						
16	REGISTERING AGENT OR	DAVIES WARD PHILLIPS & VINEBERG LLP (SHALOMI ABRAHAM)					
17	SECURED PARTY/	ADDRESS	44TH FLOOR, 1 FIRST CANADIAN PLACE TORONTO				
	LEEN CLAIMANT				ON	M5X 1B1	

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 10

CERTIFIED BY/CERTIFIÉES PAR  
  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj2fs 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 10  
( 2655)


TYPE OF SEARCH BUSINESS DEBTOR  
SEARCH CONDUCTED ON GRAFTON-FRASER INC.  
FILE CURRENCY 15JAN 2017

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION ELLING	PAGE NO. OR	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20140618 0907 1862 4301	
21	RECORD REFERENCED	FILE NUMBER	635312304		
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL	CORRECT PERIOD
		X	B RENEWAL	B	
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	GRAFTON-FRASER INC.		
25	OTHER CHANGE	REASON/ DESCRIPTION			
26					
27					
28					
02/ 05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
03/ 06		BUSINESS NAME			
04/07		ADDRESS	ONTARIO CORPORATION NO.		
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
08					
09		ADDRESS			
	COLLATERAL CLASSIFICATION	CONSUMER	MOTOR VEHICLE	DATE OF	NO. FIXED
		GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR MATURITY DATE
10					
11	MOTOR	YEAR	MAKE	MODEL	V. I. N.
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR	DAVIES WARD PHILLIPS & VINEBERG LLP (BROOKE JAMISON)			
17	SECURED PARTY/ LIEN CLAIMANT	ADDRESS	155 WELLINGTON STREET WEST	TORONTO	ON MSV 3J7

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 11

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTREUR  
DES SÛRETÉS MOBILIÈRES

(crj2fs 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 11  
( 2656)


TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20140618 0907 1862 4302	
21	FILE NUMBER	635312304			
22	PAGE AMENDED	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
		X	D ASSIGNMENT		
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	GRAFTON-FRASER INC.		
25	OTHER CHANGE				
26	REASON/				
27	DESCRIPTION				
28					
02/	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
05	DEBTOR/				
03/	TRANSFeree	BUSINESS NAME			
06					ONTARIO CORPORATION NO.
04/07	ADDRESS				
29	ASSIGNOR	GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT			
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE	GSO CAPITAL PARTNERS LP, AS ADMINISTRATIVE AGENT			
09	ADDRESS	345 PARK AVENUE, 31ST FLOOR	NEW YORK	NY	10154
	COLLATERAL CLASSIFICATION				
	CONSUMER	MOTOR VEHICLE	DATE OF	NO. FIXED	
	GOODS	INVENTORY EQUIPMENT ACCOUNTS OTHER	INCLUDED	AMOUNT MATURITY OR	MATURITY DATE
10					
11	MOTOR	YEAR	MAKE	MODEL	V.I.N.
12	VEHICLE				
13	GENERAL				
14	COLLATERAL				
15	DESCRIPTION				
16	REGISTERING AGENT OR	DAVIES WARD PHILLIPS & VINEBERG LLP (BROOKE JAMISON)			
17	SECURED PARTY/	ADDRESS	155 WELLINGTON STREET WEST	TORONTO	ON MSV 3J7
	LIEN CLAIMANT				

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 12

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(e)2/s 09/2013)



RUN NUMBER : 016  
RUN DATE : 2017/01/16  
ID : 20170116131130.36

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE


REPORT : PSSR060  
PAGE : 12  
( 2657)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : GRAFTON-FRASER INC.  
FILE CURRENCY : 15JAN 2017

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
719663706	20160816 1605 1532 1006			
712571193	20151211 1111 1590 9308			
675686367	20120117 1707 1462 5917			
635312304	20070515 1330 1590 4800	20070524 1634 1590 5263	20080911 1204 1862 8943	20140618 0907 1862 4301
	20140618 0907 1862 4302			

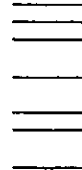
8 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crf3 09/2013)



Search ID#: Z08724734



Business Debtor Search For:

GRAFTON-FRASER INC.

Search ID #: Z08724734

Date of Search: 2017-Jan-16

Time of Search: 10:07:28

---

Registration Number: 15121123969

Registration Type: SECURITY AGREEMENT

Registration Date: 2015-Dec-11

Registration Status: Current

Expiry Date: 2022-Dec-11 23:59:59

---

Exact Match on: Debtor

No: 1

---

Debtor(s)

Block

Status

1 GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO, ON M6A 2V2

Current

Secured Party / Parties

Block

Status

1 CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT  
595 BAY ST., SUITE 500  
TORONTO, ON M5G 2C2

Current

Collateral: General

Block

Description

Status

1 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

Current

Result Complete

Search ID#: Z08724734

**Block**

3 GSO CAPITAL PARTNERS LP, AS ADMINISTRATIVE AGENT  
345 PARK AVENUE, 31ST FLOOR  
NEW YORK, NY 10154

**Status**

Current by  
14061813504

**Particulars**

**Block**

**Additional Information**

1 THE COMPLETE NAME OF SECURED PARTY NO. 0001 IS AS FOLLOWS: GSO  
SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT

**Status**

Current

**Block**

**Additional Information**

2 AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM GF  
ACQUISITION CORP. TO GRAFTON-FRASER INC. AS A RESULT OF AN  
AMALGAMATION OF GF ACQUISITION CORP. AND GRAFTON-FRASER INC. ON MAY  
24, 2007.

**Status**

Current By  
07052433823

**Block**

**Additional Information**

3 Registration fully assigned from GSO Special Situations Fund LP, as Administrative Agent  
to GSO CP Holdings LP, as Administrative Agent.

**Status**

Current By  
08091120557

**Block**

**Additional Information**

4 Registration fully assigned from GSO CP Holdings LP, as Administrative Agent to GSO  
Capital Partners LP, as Administrative Agent.

**Status**

Current By  
14061813504



Search ID#: Z08724734

Business Debtor Search For:

GRAFTON-FRASER INC.

Search ID #: Z08724734

Date of Search: 2017-Jan-16

Time of Search: 10:07:28



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Registration Number: 07051518228

Registration Type: LAND CHARGE

Registration Date: 2007-May-15

Registration Status: Current

Registration Term: Infinity

---

Exact Match on: Debtor

No: 2

---

Amendments to Registration

07052433823

Amendment

2007-May-24

08091120557

Amendment

2008-Sep-11

14061813504

Amendment

2014-Jun-18

---

Debtor(s)

Block

Status

1 GF ACQUISITION CORP.  
44 APEX ROAD  
TORONTO, ON M6A 2V2

Deleted by  
07052433823

Block

Status

2 GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO, ON M6A 2V2

Current by  
07052433823

Secured Party / Parties

Block

Status

1 GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE  
280 PARK AVENUE, 11 FLOOR, BUILDING EAST  
NEW YORK, NY 10017

Deleted by  
08091120557

Block

Status

2 GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE, 11 FLOOR, BUILDING EAST  
NEW YORK, NY 10017

Deleted by  
14061813504

Search ID#: Z08724734

**Block**

3 GSO CAPITAL PARTNERS LP, AS ADMINISTRATIVE AGENT  
345 PARK AVENUE, 31ST FLOOR  
NEW YORK, NY 10154

**Status**

Current by  
14061813285

**Collateral: General**

**Block**

**Description**

**Status**

1	ALL PRESENT AND AFTER-ACQUIRED PEROSNAL PROPERTY OF THE DEBTOR.	Current
2	PROCEEDS: GOODS, INVENTORY, CHATTEL PAPER, DOCUMENTS OF TITLE,	Current
3	INSTRUMENTS, MONEY, INTANGIBLES, ACCOUNTS AND INVESTMENT	Current
4	PROPERTY (ALL AS DEFINED IN THE PERSONAL PROPERTY SECURITY	Current
5	ACT (ALBERTA)) AND INSURANCE PROCEEDS.	Current

**Particulars**

**Block**

**Additional Information**

**Status**

1	THE COMPLETE NAME OF SECURED PARTY NO. 0001 IS AS FOLLOWS: GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT	Current
---	--	---------

**Block**

**Additional Information**

**Status**

2	AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM GF ACQUISITION CORP. TO GRAFTON-FRASER INC. AS A RESULT OF AN AMALGAMATION OF GF ACQUISITION CORP. AND GRAFTON-FRASER INC. ON MAY 24, 2007.	Current By 07052433799
---	---	---------------------------

**Block**

**Additional Information**

**Status**

3	Registration fully assigned from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.	Current By 08091120192
---	--	---------------------------

**Block**

**Additional Information**

**Status**

4	Registration fully assigned from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent.	Current By 14061813285
---	---	---------------------------

Search ID#: Z08724734

**Business Debtor Search For:**

GRAFTON-FRASER INC.

Search ID #: Z08724734

Date of Search: 2017-Jan-16

Time of Search: 10:07:28

---

Registration Number: 07051518194

Registration Type: SECURITY AGREEMENT

Registration Date: 2007-May-15

Registration Status: Current

Expiry Date: 2023-May-15 23:59:59

---

Exact Match on: Debtor

No: 2

---

**Amendments to Registration**

07052433799

Amendment

2007-May-24

08091120192

Amendment

2008-Sep-11

14061813285

Amendment And Renewal

2014-Jun-18

---

**Debtor(s)**

**Block**

1 GF ACQUISITION CORP.  
44 APEX ROAD  
TORONTO, ON M6A 2V2

**Status**

Deleted by  
07052433799

**Block**

2 GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO, ON M6A 2V2

**Status**

Current by  
07052433799

**Secured Party / Parties**

**Block**

1 GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE A  
280 PARK AVENUE, 11 FLOOR, BUILDING EAST  
NEW YORK, NY 10017

**Status**

Deleted by  
08091120192

**Block**

2 GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE, 11 FLOOR, BUILDING EAST  
NEW YORK, NY 10017

**Status**

Deleted by  
14061813285

Search ID#: Z08724734

Search ID #: Z08724734

Date of Search: 2017-Jan-16

Time of Search: 10:07:28

**Business Debtor Search For:**

GRAFTON-FRASER INC.

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.

Be sure to read the reports carefully.



BC OnLine: PPRS SEARCH RESULT 2017/01/16  
Lterm: XPSP0054 For: PD93949 CYBERBAHN 09:25:07

Index: BUSINESS DEBTOR

Search Criteria: GRAFTON-FRASER INC.

\*\*\*\*\* P P S A S E C U R I T Y A G R E E M E N T \*\*\*\*\*

Reg. Date: MAY 15, 2007 Reg. Length: 8 YEARS  
Reg. Time: 10:44:02 Expiry Date: MAY 15, 2023  
Base Reg. #: 673469D Control #: B7925875

\*\*\* Expiry date includes subsequent registered renewal(s).  
Block#

+++ Secured Party: GSO SPECIAL SITUATIONS FUND LP, AS  
ADMINISTRATIVE AGENT  
280 PARK AVE, 11TH FL, BLD E  
NEW YORK NY 10017

D0001 Base Debtor: GF ACQUISITION CORP  
(Business) 44 APEX RD  
TORONTO ON M6A 2V2

General Collateral:  
ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR  
AND, WITHOUT LIMITATION, ALL FIXTURES, CROPS, AND LICENCES.  
THE FULL ADDRESS OF THE SECURED PARTY IS:  
280 PARK AVENUE, 11TH FLOOR, BUILDING EAST, NEW YORK, NEW YORK 10017.

Registering  
Party: MILLER THOMSON LLP  
1000 840 HOWE STREET  
VANCOUVER BC V6Z 2M1

----- A M E N D M E N T / O T H E R C H A N G E -----

Reg. #: 692841D Reg. Date: MAY 24, 2007  
Reg. Time: 14:35:07  
Control #: B8028643  
Base Reg. Type: PPSA SECURITY AGREEMENT  
Base Reg. #: 673469D Base Reg. Date: MAY 15, 2007

Details Description:  
AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM  
GF ACQUISITION CORP. TO GRAFTON-FRASER INC. AS A RESULT  
OF AN AMALGAMATION OF GF ACQUISITION CORP. AND  
GRAFTON-FRASER INC. ON MAY 24, 2007.

Block#

\*\*\* ADDED \*\*\*  
=D0002 Bus. Debtor: GRAFTON-FRASER INC  
44 APEX RD  
TORONTO ON M6A 2V2

Registering  
Party: MILLER THOMSON LLP  
1000 840 HOWE STREET  
VANCOUVER BC V6Z 2M1

Continued on Page 2

Search Criteria: GRAFTON-FRASER INC.

----- S E C U R E D P A R T Y T R A N S F E R -----

Reg. #: 584510E

Reg. Date: SEP 11, 2008

Reg. Time: 12:02:55

Control #: B8911291

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 673469D

Base Reg. Date: MAY 15, 2007

Block#

\*\* DELETED \*\*

+++ Secured Party: GSO SPECIAL SITUATIONS FUND LP, AS  
ADMINISTRATIVE AGENT  
280 PARK AVE, 11TH FL, BLD E  
NEW YORK NY 10017

\*\*\* ADDED \*\*\*

+++ Secured Party: GSO CP HOLDINGS LP, AS ADMINISTRATIVE  
AGENT  
280 PARK AVE, 11TH FL, BLDG E  
NEW YORK NY 10017

Registering

Party: LAWSON LUNDELL LLP  
1600 925 WEST GEORGIA STREET  
VANCOUVER BC V6C 3L2

----- S E C U R E D P A R T Y T R A N S F E R -----

Reg. #: 022741I

Reg. Date: JUN 18, 2014

Reg. Time: 09:16:29

Control #: D2484662

Base Reg. Type: PPSA SECURITY AGREEMENT

Base Reg. #: 673469D

Base Reg. Date: MAY 15, 2007

Block#

\*\* DELETED \*\*

+++ Secured Party: GSO CP HOLDINGS LP, AS ADMINISTRATIVE  
AGENT  
280 PARK AVE, 11TH FL, BLDG E  
NEW YORK NY 10017

\*\*\* ADDED \*\*\*

S0003 Secured Party: GSO CAPITAL PARTNERS LP, AS  
ADMINISTRATIVE AGENT  
345 PARK AVENUE, 31ST FLOOR  
NEW YORK NY 10154

Registering

Party: LAWSON LUNDELL LLP  
1600 925 WEST GEORGIA STREET  
VANCOUVER BC V6C 3L2

Continued on Page 3





# Saskatchewan Personal Property Registry Search Result

Searching Party: THOMSON REUTERS CANADA LIMITED  
Search Date: 16-Jan-2017 11:06:00  
Search Type: Standard

Search #: 202379034  
Client Reference:  
Control #:

**Search Criteria**

Search By: Business Debtor Name  
Business Name  
GRAFTON-FRASER INC.

---

The following list displays all matches & indicates the ones that were selected.

2 Registration(s) Found: Exacts (2) - Similar (0)

Selected	Match	Registration #	Debtor Name	City
Yes	Exact	300170103	GRAFTON-FRASER INC.	TORONTO
Yes	Exact	301426712	Grafton-Fraser Inc.	Toronto





**Saskatchewan  
Personal Property Registry  
Search Result**

**Current - Exact**

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 15-May-2007 11:26:31

**Registration #:** 300170103  
**Expiry Date:** 15-May-2023

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** ASSIGNMENT BY SECURED PARTY

**Notations**

**Trust Indenture:** No

**Registrant**

<b>Party ID:</b> 150150499 - 1	<b>Address:</b> 1500 - 1881 Scarth Street
<b>Entity Type:</b> Business	Regina, Saskatchewan
<b>Name:</b> MCDOUGALL GAULEY LLP	S4P4K9 Canada

**Secured Party**

<b>Item #:</b> 3	<b>Address:</b> 345 PARK AVENUE, 31ST FLOOR
<b>Party ID:</b> 152111334 - 1	NEW YORK, New York
<b>Entity Type:</b> Business	10154
<b>Name:</b> GSO CAPITAL PARTNERS LP, AS ADMINISTRATIVE AGENT	United States of America

**Debtor Party**

<b>Item #:</b> 1	<b>Address:</b> 44 APEX ROAD
<b>Party ID:</b> 150368053 - 1	TORONTO, Ontario
<b>Entity Type:</b> Business	M6A2V2
<b>Name:</b> GF ACQUISITION CORP.	Canada
<b>* Item #:</b> 2	<b>Address:</b> 44 APEX ROAD
<b>Party ID:</b> 150376986 - 1	TORONTO, Ontario
<b>Entity Type:</b> Business	M6A2V2
<b>Name:</b> GRAFTON-FRASER INC.	Canada

**General Property**

All of the Debtor's present and after-acquired personal property.

Amendment to change the name of the debtor from GF Acquisition Corp. to Grafton-Fraser Inc. as a result of an amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc. on May 24, 2007.

**History - Setup**

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 15-May-2007 11:26:31

**Registration #:** 300170103  
**Transaction #:** 1  
**Expiry Date:** 15-May-2015

**Event Type:** Setup  
**Transaction Reason:** Regular

**Notations**

**Trust Indenture:** No

**Registrant**

<b>Party ID:</b> 150150499 - 1	<b>Address:</b> 1500 - 1881 Scarth Street
<b>Entity Type:</b> Business	Regina, Saskatchewan
<b>Name:</b> MCDOUGALL GAULEY LLP	S4P4K9 Canada



**Saskatchewan  
Personal Property Registry  
Search Result**

**Secured Party**

<b>Item #:</b> 1	<b>Address:</b> 280 PARK AVENUE, 11TH FLOOR
<b>Party ID:</b> 150368060 - 1	<i>BUILDING EAST</i>
<b>Entity Type:</b> Business	NEW YORK, New York
<b>Name:</b> GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT	10017 United States of America

**Debtor Party**

<b>Item #:</b> 1	<b>Address:</b> 44 APEX ROAD
<b>Party ID:</b> 150368053 - 1	TORONTO, Ontario
<b>Entity Type:</b> Business	M6A2V2
<b>Name:</b> GF ACQUISITION CORP.	Canada

**General Property**

All of the Debtor's present and after-acquired personal property.

**History - Amendment**

**Amendment Date:** 24-May-2007 16:02:02

**Registration #:** 300170103  
**Transaction #:** 2

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** AMALGAMATION OF DEBTOR

**Registrant**

<b>Party ID:</b> 150150499 - 1	<b>Address:</b> 1500 - 1881 Scarth Street
<b>Entity Type:</b> Business	Regina, Saskatchewan
<b>Name:</b> MCDOUGALL GAULEY LLP	S4P4K9 Canada

**Debtor Party**

<b>Action:</b> Add	<b>Address:</b> 44 APEX ROAD
<b>Item #:</b> 2	TORONTO, Ontario
<b>Party ID:</b> 150376986 - 1	M6A2V2
<b>Entity Type:</b> Business	Canada
<b>Name:</b> GRAFTON-FRASER INC.	

**General Property**

All of the Debtor's present and after-acquired personal property.

Amendment to change the name of the debtor from GF Acquisition Corp. to Grafton-Fraser Inc. as a result of an amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc. on May 24, 2007.

**History - Amendment**

**Amendment Date:** 11-Sep-2008 11:17:32

**Registration #:** 300170103  
**Transaction #:** 3

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** AMENDMENT TO ASSIGN THE SECURITY INTEREST REFERRED TO IN THE ORIGINAL REGISTRATION FROM GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT TO GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT.

**Registrant**

<b>Party ID:</b> 150150499 - 1	<b>Address:</b> 1500 - 1881 Scarth Street
<b>Entity Type:</b> Business	Regina, Saskatchewan
<b>Name:</b> MCDOUGALL GAULEY LLP	S4P4K9



**Saskatchewan  
Personal Property Registry  
Search Result**

**Registrant**

Canada

**Secured Party**

<b>Action:</b> Delete	<b>Address:</b> 280 PARK AVENUE, 11TH FLOOR
<b>Item #:</b> 1	<i>BUILDING EAST</i>
<b>Party ID:</b> 150368060 - 1	NEW YORK, New York
<b>Entity Type:</b> Business	10017
<b>Name:</b> GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT	United States of America
<b>Action:</b> Add	<b>Address:</b> 280 PARK AVENUE, 11TH FLOOR
<b>Item #:</b> 2	<i>BUILDING EAST</i>
<b>Party ID:</b> 150737779 - 1	NEW YORK, New York
<b>Entity Type:</b> Business	10017
<b>Name:</b> GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT	United States of America

**History - Amendment**

**Amendment Date:** 18-Jun-2014 08:38:57

**Registration #:** 300170103  
**Transaction #:** 4  
**Expiry Date:** 15-May-2023

**Event Type:** Amendment  
**Transaction Reason:** Regular

**Transaction Description:** ASSIGNMENT BY SECURED PARTY

**Life Time:** Life Time Amended

**Registrant**

<b>Party ID:</b> 150150499 - 1	<b>Address:</b> 1500 - 1881 Scarth Street
<b>Entity Type:</b> Business	Regina, Saskatchewan
<b>Name:</b> MCDUGALL GAULEY LLP	S4P4K9
	Canada

**Secured Party**

<b>Action:</b> Delete	<b>Address:</b> 280 PARK AVENUE, 11TH FLOOR
<b>Item #:</b> 2	<i>BUILDING EAST</i>
<b>Party ID:</b> 150737779 - 1	NEW YORK, New York
<b>Entity Type:</b> Business	10017
<b>Name:</b> GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT	United States of America
<b>Action:</b> Add	<b>Address:</b> 345 PARK AVENUE, 31ST FLOOR
<b>Item #:</b> 3	NEW YORK, New York
<b>Party ID:</b> 152111334 - 1	10154
<b>Entity Type:</b> Business	United States of America
<b>Name:</b> GSO CAPITAL PARTNERS LP, AS ADMINISTRATIVE AGENT	



**Saskatchewan  
Personal Property Registry  
Search Result**

**Current/Setup - Exact**

**Registration Type:** Personal Property Security Agreement  
**Registration Date:** 11-Dec-2015 15:25:35

**Registration #:** 301426712  
**Expiry Date:** 11-Dec-2022

**Event Type:** Setup  
**Transaction Reason:** Regular

**Notations**

**Trust Indenture:** No

**Registrant**

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<b>Party ID:</b> 150002305 - 1	<b>Address:</b> 1500 - 410 22nd Street East
<b>Entity Type:</b> Business	Saskatoon,,Saskatchewan
<b>Name:</b> MACPHERSON LESLIE & TYERMAN LLP	S7K5T6
	Canada

**Secured Party**

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<b>Item #:</b> 1	<b>Address:</b> 595 Bay Street
<b>Party ID:</b> 152465717 - 1	Suite 500
<b>Entity Type:</b> Business	Toronto, Ontario
<b>Name:</b> Canadian Imperial Bank of Commerce, as Agent	M5G2C2
	Canada

**Debtor Party**

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<b>*Item #:</b> 1	<b>Address:</b> 44 Apex Road
<b>Party ID:</b> 150377432 - 1	Toronto, Ontario
<b>Entity Type:</b> Business	M6A2V2
<b>Name:</b> Grafton-Fraser Inc.	Canada

**General Property**

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All of the Debtor's present and after-acquired property

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**End of Search Result**

<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2023-05-15
<b>Debtor Address</b>	44 Apex Road Toronto, Ontario Canada M6A 2V2
<b>Secured Parties (party code, name, address)</b>	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue, 31st Floor New York, NY Canada 10154
<b>General Collateral Description</b>	A security interest is taken in all of the debtor's present and after-acquired personal property.
<b>Additional Information</b>	Amendment to change the name of the debtor from GF Acquisition Corp. to Grafton-Fraser Inc. as a result of an amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc. on May 24, 2007.  Amendment to assign the security interest referred to in the original registration, as amended, from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.  Amendment to assign the security interest of the Secured Party from GSO CP Holdings LP, as Administrative Agent, to GSO Capital Partners LP, as Administrative Agent.
<b>Change History</b>	Registration Number: 201411136219 (2014-06-18 9:00:47 AM) Sections Changed: Secured Parties, Expiry Date, Additional Information  Registration Number: 200818082818 (2008-09-16 2:38:36 PM) Sections Changed: Secured Parties  Registration Number: 200817971317 (2008-09-15 12:30:40 PM) Sections Changed: Secured Parties, Additional Information  Registration Number: 200709257110 (2007-05-24 4:53:51 PM) Sections Changed: Business Debtors, Additional Information

END OF EXACT MATCHES

Search by Business Debtor

Date: 2017-01-16  
Time: 11:20:16 AM

Business Name: GRAFTON-FRASER INC.

1 exact match was found.

0 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. <u>Grafton-Fraser Inc.</u>	2

1. Grafton-Fraser Inc.

1.1 Grafton-Fraser Inc.: Registration 201523726507 (2015-12-11 3:08:39 PM)

Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2022-12-11
Debtor Address	44 Apex Road Toronto, ON Canada M6A 2V2
Secured Parties (party code, name, address)	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON Canada M5G 2C2
General Collateral Description	*The security interest is taken in all of the debtor's present and after-acquired personal property.

1.2 Grafton-Fraser Inc.: Registration 200708558108 (2007-05-15 12:25:19 PM)

This report lists registrations in the Personal Property Registry that match the following search criteria:

Province or Territory Searched: Nova Scotia  
 Type of Search: Debtors (Enterprise)

Search Criteria: GRAFTON-FRASER INC.

Date and Time of Search: 2017-01-16 13:14 (Atlantic)  
 Transaction Number: 14554106  
 Searched By: C186290

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	12429908	Grafton-Fraser Inc.	TORONTO
*	*	25333774	GRAFTON-FRASER INC.	Toronto

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that exactly matched the search criteria you specified.

- 0 registration(s) contained information that closely matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 12429908

Province or Territory: Nova Scotia  
 Registration Type: PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	12429908	2007-05-15 15:35	2015-05-15	NS2272-771
Amendment	12475067	2007-05-25 13:30	2015-05-15	NS2272-771
Amendment	14411458	2008-09-11 15:27	2015-05-15	NS2272-771
Amendment	14435473	2008-09-17 15:03	2015-05-15	NS2272-771
Amendment	22922041	2014-06-18 16:07	2015-05-15	SM001505.318
Renewal	22922058	2014-06-18 16:07	2023-05-15	

As listed in the Registration History section above, this registration has been the subject of an Amendment or Global Change to add or delete information. The following registration details provide the registration number for the Amendment that added or deleted information. If no "added by" or "deleted by"

registration number is provided, the information was added by the original registration and has not been deleted.

### Debtors

The Debtor below was deleted by registration number 12475067

Type: Enterprise  
GF ACQUISITION CORP.  
44 APEX ROAD  
TORONTO NS M6A 2V2  
Canada

The Debtor below was added by registration number 12475067

The Debtor below was deleted by registration number 14435473

Type: Enterprise  
Grafton-Fraser Inc.  
44 APEX ROAD  
TORONTO NS M6A 2V2  
Canada

The Debtor below was added by registration number 14435473

Type: Enterprise  
Grafton-Fraser Inc.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

### Secured Parties

The Secured Party below was deleted by registration number 14411458

Type: Enterprise  
GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE, 11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 14411458

The Secured Party below was deleted by registration number 22922041

Type: Enterprise  
GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE  
11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 22922041

Type: Enterprise  
GSO Capital Partners LP, as Administrative Agent  
345 Park Avenue, 31st Floor  
New York NY 10154  
USA

### General Collateral



A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.

### Additional Information

Added by registration number 12475067

Amendment to change the name of the debtor from GF Acquisition Corp. to Grafton-Fraser Inc. as a result of an amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc. on May 24, 2007.

Added by registration number 14411458

Amendment to assign the security interest referred to in the original registration (as amended) from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.

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### Registration Details for Registration Number: 25333774

Province or Territory: Nova Scotia  
Registration Type: PPSA Financing Statement

### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	25333774	2015-12-14 08:34	2022-12-14	

This registration has not been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### Debtors

Type: Enterprise  
GRAFTON-FRASER INC.  
44 Apex Road  
Toronto ON M6A 2V2  
Canada

### Secured Parties

Type: Enterprise  
CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT  
595 Bay St., Suite 500  
Toronto ON M5G 2C2  
Canada

### General Collateral

A security interest is taken in all of the debtor's present and after-acquired personal property.

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

Province or Territory Searched: Newfoundland and Labrador  
Type of Search: Debtors (Enterprise)

Search Criteria: GRAFTON-FRASER INC.

Date and Time of Search: 2017-01-16 13:15 (Atlantic)  
Transaction Number: 14554115  
Searched By: C186290

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	5697597	GRAFTON-FRASER INC.	TORONTO
*	*	13551015	GRAFTON-FRASER INC.	Toronto

An "\*" in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that exactly matched the search criteria you specified.

- 0 registration(s) contained information that closely matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 5697597

Province or Territory: Newfoundland and Labrador  
Registration Type: PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	5697597	2007-05-15 14:21	2015-05-15	NF581-299
Amendment	5723719	2007-05-25 09:47	2015-05-15	NF581-299
Amendment	6856752	2008-09-11 15:29	2015-05-15	NF581-299
Amendment	12056081	2014-06-18 16:10	2015-05-15	SM001505.318
Renewal	12056107	2014-06-18 16:10	2023-05-15	

As listed in the Registration History section above, this registration has been the subject of an Amendment or Global Change to add or delete information. The following registration details provide the registration number for the Amendment that added or deleted information. If no "added by" or "deleted by" registration number is provided, the information was added by the original registration and has not been

deleted.

### Debtors

The Debtor below was deleted by registration number 5723719

Type: Enterprise  
GF ACQUISITION CORP.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

The Debtor below was added by registration number 5723719

Type: Enterprise  
GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

### Secured Parties

The Secured Party below was deleted by registration number 6856752

Type: Enterprise  
GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE  
11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 6856752

The Secured Party below was deleted by registration number 12056081

Type: Enterprise  
GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE  
11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 12056081

Type: Enterprise  
GSO Capital Partners LP, as Administrative Agent  
345 Park Avenue, 31st Floor  
New York NY 10154  
USA

### General Collateral

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

### Additional Information

Added by registration number 5723719

AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM GF ACQUISITION CORP. TO

GRAFTON-FRASER INC. AS A RESULT OF AN AMALGAMATION OF GF ACQUISITION CORP. AND GRAFTON-FRASER INC. ON MAY 24, 2007.

Added by registration number 6856752

Amendment to assign the security interest referred to in the original registration (as amended) from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.

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### Registration Details for Registration Number: 13551015

Province or Territory: Newfoundland and Labrador  
Registration Type: PPSA Financing Statement

### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	13551015	2015-12-14 08:37	2022-12-14	

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### Debtors

Type: Enterprise  
GRAFTON-FRASER INC.  
44 Apex Road  
Toronto ON M6A 2V2  
Canada

### Secured Parties

Type: Enterprise  
CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT  
595 Bay St., Suite 500  
Toronto ON M5G 2C2  
Canada

### General Collateral

A security interest is taken in all of the debtor's present and after-acquired personal property.

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

Province or Territory Searched: New Brunswick  
 Type of Search: Debtors (Enterprise)  
 Search Criteria: GRAFTON-FRASER INC.  
 Date and Time of Search: 2017-01-16 13:16 (Atlantic)  
 Transaction Number: 14554116  
 Searched By: C186290

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	14856603	GRAFTON-FRASER INC.	TORONTO
*	*	26802256	GRAFTON-FRASER INC.	Toronto

An "\*" in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.  
 Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that exactly matched the search criteria you specified.

- 0 registration(s) contained information that closely matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 14856603

Province or Territory: New Brunswick  
 Registration Type: PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	14856603	2007-05-15 14:29	2015-05-15	NB6776-310
Amendment	14897839	2007-05-25 09:24	2015-05-15	NB6776-310
Amendment	16694143	2008-09-11 15:25	2015-05-15	NB6776-310
Amendment	24542425	2014-06-18 16:08	2015-05-15	SM001505.318
Renewal	24542433	2014-06-18 16:08	2023-05-15	

As listed in the Registration History section above, this registration has been the subject of an Amendment or Global Change to add or delete information. The following registration details provide the registration number for the Amendment that added or deleted information. If no "added by" or "deleted by" registration number is provided, the information was added by the original registration and has not been

deleted.

### Debtors

The Debtor below was deleted by registration number 14897839

Type: Enterprise  
~~GF ACQUISITION CORP.~~  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

The Debtor below was added by registration number 14897839

Type: Enterprise  
GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

### Secured Parties

The Secured Party below was deleted by registration number 16694143

Type: Enterprise  
~~GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT~~  
280 PARK AVENUE  
11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 16694143

The Secured Party below was deleted by registration number 24542425

Type: Enterprise  
~~GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT~~  
280 PARK AVENUE  
11TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA

The Secured Party below was added by registration number 24542425

Type: Enterprise  
GSO Capital Partners LP, as Administrative Agent  
345 Park Avenue, 31st Floor  
New York NY 10154  
USA

### General Collateral

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.

### Additional Information

Added by registration number 14897839  
AMENDMENT TO CHANGE THE NAME OF THE DEBTOR FROM GF ACQUISITION CORP. TO

GRAFTON-FRASER INC. AS A RESULT OF AN AMALGAMATION OF GF ACQUISITION CORP. AND GRAFTON-FRASER INC. ON MAY 24, 2007.

Added by registration number 16694143

Amendment to assign the security interest referred to in the original registration (as amended) from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.

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### Registration Details for Registration Number: 26802256

Province or Territory: New Brunswick  
Registration Type: PPSA Financing Statement

### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	26802256	2015-12-14 08:36	2022-12-14	

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### Debtors

Type: Enterprise  
GRAFTON-FRASER INC.  
44 Apex Road  
Toronto ON M6A 2V2  
Canada

### Secured Parties

Type: Enterprise  
CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT  
595 Bay St., Suite 500  
Toronto ON M5G 2C2  
Canada

### General Collateral

A security interest is taken in all of the debtor's present and after-acquired personal property.

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

Province or Territory Searched: Prince Edward Island  
 Type of Search: Debtors (Enterprise)  
 Search Criteria: GRAFTON-FRASER INC.  
 Date and Time of Search: 2017-01-16 13:14 (Atlantic)  
 Transaction Number: 14554103  
 Searched By: C186290

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	1808100	GRAFTON-FRASER INC.	TORONTO
*	*	3837263	GRAFTON-FRASER INC.	Toronto

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.  
 Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 2 registration(s) contained information that exactly matched the search criteria you specified.

- 0 registration(s) contained information that closely matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 1808100

Province or Territory: Prince Edward Island  
 Registration Type: PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	1808100	2007-05-16 14:27	2015-05-16	OSLER-GF(KB)
Amendment	1813498	2007-05-25 10:19	2015-05-16	PO1042/15693
Amendment	2110030	2008-09-11 15:31	2015-05-16	PO1042/15693
Amendment	3448460	2014-06-18 16:09	2015-05-16	SM001505.318
Renewal	3448479	2014-06-18 16:09	2023-05-16	

As listed in the Registration History section above, this registration has been the subject of an Amendment or Global Change to add or delete information. The following registration details provide the registration number for the Amendment that added or deleted information. If no "added by" or "deleted by" registration number is provided, the information was added by the original registration and has not been



deleted.

### Debtors

The Debtor below was deleted by registration number 1813498

Type: Enterprise  
~~GF ACQUISITION CORP.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada~~

The Debtor below was added by registration number 1813498

Type: Enterprise  
GRAFTON-FRASER INC.  
44 APEX ROAD  
TORONTO ON M6A 2V2  
Canada

### Secured Parties

The Secured Party below was deleted by registration number 2110030

Type: Enterprise  
~~GSO SPECIAL SITUATIONS FUND LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE  
41TH FLOOR  
BUILDING EAST  
NEW YORK NY 10017  
USA~~

The Secured Party below was added by registration number 2110030

The Secured Party below was deleted by registration number 3448460

Type: Enterprise  
~~GSO CP HOLDINGS LP, AS ADMINISTRATIVE AGENT  
280 PARK AVENUE  
41TH FLOOR, BUILDING EAST  
NEW YORK NY 10017  
USA~~

The Secured Party below was added by registration number 3448460

Type: Enterprise  
GSO Capital Partners LP, as Administrative Agent  
345 Park Avenue, 31st Floor  
New York NY 10154  
USA

### General Collateral

A SECURITY INTEREST IS TAKEN IN ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.

### Additional Information

Added by registration number 1813498

Amendment to change the name of the debtor from GF Acquisition Corp. to Grafton-Fraser Inc. as a result of an amalgamation of GF Acquisition Corp. and Grafton-Fraser Inc. on May 24, 2007.

Added by registration number 2110030

Amendment to assign the security interest referred to in the original registration (as amended) from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent.

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### Registration Details for Registration Number: 3837263

Province or Territory: Prince Edward Island  
Registration Type: PPSA Financing Statement

### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	3837263	2015-12-14 08:39	2022-12-14	

This registration has not been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### Debtors

Type: Enterprise  
GRAFTON-FRASER INC.  
44 Apex Road  
Toronto ON M6A 2V2  
Canada

### Secured Parties

Type: Enterprise  
CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT  
595 Bay St., Suite 500  
Toronto ON M5G 2C2  
Canada

### General Collateral


A security interest is taken in all of the debtor's present and after-acquired personal property.

**END OF REPORT**

# **EXHIBIT "L"**

***THIS IS EXHIBIT "L"***

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

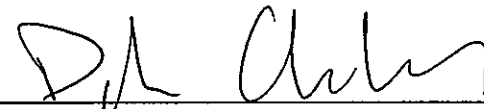
  
A Commissioner for Taking Affidavits  
Dylan Chocke

Carlton-Fraser Inc.  
Balance Sheet and Cash Flow  
2016 Full Year

Period	2014	2015	2016	2017	2018	2019	2020	2021	2022	
<b>Balance Sheet</b>	<b>ASSETS</b>									
	<b>Current Assets</b>									
	Cash	508,959	576,404	576,404	707,999	2,176,258	9,594,169	9,379,204	9,189,121	9,044,597
	Trade and Other Receivable	627,985	351,520	242,905	393,009	427,226	1,939,890	1,939,890	1,812,812	358,667
	Inventories	29,602,053	34,896,364	37,919,676	37,215,220	44,099,288	33,729,897	32,306,877	36,982,792	39,067,011
	Prepaid Expenses	944,239	815,465	3,104,310	3,104,310	708,496	577,967	577,967	515,299	676,576
	Total Current Assets	31,682,947	36,619,680	42,641,668	42,194,709	47,610,220	36,563,357	33,991,236	38,279,236	40,660,451
	Total Current Assets	31,682,947	36,619,680	42,641,668	42,194,709	47,610,220	36,563,357	33,991,236	38,279,236	40,660,451
	Non-Current Assets	8,620,713	8,711,058	9,238,040	9,465,611	9,550,033	9,435,873	9,379,204	9,189,121	9,044,597
	Property, Plant and Equipment	2,022,368	2,292,053	2,486,553	2,594,579	2,635,136	2,633,936	2,841,744	2,864,172	2,816,966
	Intangible - Finite Life	9,088,373	8,711,058	9,465,611	9,550,033	9,594,169	9,594,169	9,379,204	9,189,121	9,044,597
	Goodwill	13,800,000	13,800,000	13,800,000	13,800,000	13,800,010	13,800,010	13,800,010	13,800,010	13,800,010
Deferred Tax Assets	18,250,000	18,250,000	18,250,000	18,250,000	18,250,000	18,250,000	18,250,000	18,250,000	18,250,000	
Intercompany Assets	-	-	-	-	-	-	-	-	-	
Total Non-Current Assets	42,693,080	43,053,112	43,874,693	44,091,091	44,546,230	44,300,931	44,470,779	44,123,953	43,947,866	
Total Assets	74,376,027	79,672,691	86,426,261	86,285,800	92,156,450	80,864,288	78,462,016	82,403,189	84,608,317	
<b>LIABILITIES AND SHAREHOLDERS' EQU</b>										
<b>Current Liabilities</b>										
Trade and Other Payables	9,976,916	13,042,202	13,009,900	14,744,160	10,936,562	18,430,131	15,843,304	10,004,012	16,556,131	
Capitalized Loan Fees	(352,721)	(344,085)	(330,616)	(348,726)	(282,580)	(240,438)	(214,657)	(142,000)	(306,835)	
Deferred Revenue	932,975	874,485	811,368	747,052	675,226	678,394	678,278	1,006,234	838,822	
Bank Taxes Payable	(669,030)	(629,241)	(629,180)	(644,137)	(586,383)	(586,383)	(586,381)	(586,381)	(586,381)	
Bank Indebtedness	(386,030)	(453,414)	(453,414)	(479,248)	(528,419)	(594,801)	(694,801)	(711,193)	(728,460)	
Total Current Liabilities	10,090,014	12,444,158	12,804,016	13,777,999	17,602,659	17,542,739	15,124,785	16,642,445	17,418,817	
Non-Term Debt	35,148,935	35,148,935	32,648,935	32,648,935	32,648,935	24,300,454	21,917,715	19,718,305	21,720,844	
Long-Term Operating Loan	10,146,288	10,146,288	9,982,819	10,201,144	10,149,355	9,300,454	8,300,454	8,300,454	8,300,454	
Lease Liabilities	389,585	389,585	389,585	378,184	365,329	347,083	340,931	328,532	316,033	
Deferred Tax Liabilities	837,000	837,000	837,000	837,000	837,000	837,000	837,000	837,000	837,000	
Deferred Lease Credits	5,701,292	5,638,873	5,549,377	5,649,808	5,642,823	6,144,116	6,429,174	6,307,825	6,317,362	
Preferred Share Liability	22,250,000	22,250,000	22,250,000	22,250,000	22,250,000	22,250,000	22,250,000	22,250,000	22,250,000	
Accrued Dividends	5,552,876	5,645,184	5,522,876	5,945,184	6,000,868	6,452,876	6,543,184	6,845,184	7,052,876	
Intercompany Liabilities	(80,027,975)	(84,208,448)	(88,939,220)	(89,004,115)	(86,417,606)	(89,957,432)	(92,806,114)	(93,202,451)	(93,990,660)	
Total Non-Current Liabilities	80,027,975	84,208,448	88,939,220	91,702,680	89,004,115	89,957,432	92,806,114	93,202,451	93,990,660	
Total Liabilities	90,117,989	96,712,606	103,841,837	103,457,446	107,600,115	107,500,115	107,731,179	109,909,998	109,770,905	
<b>Shareholders' Equity</b>										
Share Capital	8,146,937	8,146,937	8,146,937	8,146,937	8,146,937	8,146,937	8,146,937	8,146,937	8,146,937	
Contributed Surplus	16,549,685	16,549,685	16,549,685	16,549,685	16,549,685	16,549,685	16,549,685	16,549,685	16,549,685	
Retained Earnings	(40,438,583)	(42,089,537)	(41,984,107)	(41,984,107)	(41,984,107)	(42,532,945)	(44,589,847)	(45,780,286)	(45,490,289)	
Total Shareholders' Equity	(15,741,961)	(17,063,915)	(17,464,086)	(18,297,485)	(18,309,585)	(18,836,323)	(19,892,280)	(20,888,662)	(20,793,667)	
Total Liabilities and Shareholder	74,376,027	79,672,691	86,426,261	86,285,800	92,156,450	80,864,288	78,462,016	82,403,189	84,608,317	
<b>Cash Flow Statement</b>										
<b>Cash Generated from Operating Activities</b>										
Income (Loss) for the period	(1,650,952)	(1,651,661)	(280,502)	(566,597)	(581,822)	(686,252)	(2,073,098)	(2,398,046)	(2,742,315)	
Non-cash Items	280,502	(351,661)	280,502	(566,597)	(581,822)	(686,252)	(2,073,098)	(2,398,046)	(2,742,315)	
Income Tax Expense	(672,600)	(129,300)	(106,300)	(243,300)	(377,800)	(114,100)	(271,600)	(773,200)	(874,419)	
Depreciation of Property, Plant and Equipment	265,543	267,518	269,112	467,791	467,791	323,425	368,360	266,217	264,241	
Amortization of Intangible Assets	7,911	(46,683)	(55,588)	(42,215)	(51,576)	(70,279)	(79,652)	(61,154)	(63,482)	
Write-down of Property, Plant and Equipment	2,911	7,911	7,911	7,911	7,911	6,916	7,681	(61,011)	5,000	
Change in Prepaid Expenses	13,468	17,468	14,324	14,324	14,324	(2,199)	5,779	268,778	8,919	
Change in Accounts Payable	(53,266)	(46,683)	(55,588)	(42,215)	(51,576)	(70,279)	(79,652)	(61,154)	(63,482)	
Change in Other Non-Cash Items	92,308	115,385	92,308	92,308	92,308	92,308	92,308	92,308	92,308	
Income Taxes Paid	(31,150)	(150,104)	(150,104)	18,225	(170,064)	(51,914)	(201,286)	(29,873)	(14,443)	
Net change in working capital	311,165	73,625	(150,104)	18,225	(170,064)	(51,914)	(201,286)	(29,873)	(14,443)	
Accounts receivable	311,165	(150,104)	(150,104)	18,225	(170,064)	(51,914)	(201,286)	(29,873)	(14,443)	
Inventories	(5,294,311)	(3,573,916)	550,604	704,475	(3,032,358)	(4,097,228)	(2,065,846)	(1,423,012)	(4,676,736)	
Trade and Other Payables	128,774	(2,602,002)	(1,829)	(46,030)	(160,225)	36,520	(130,529)	3,197	(2,786,924)	
Prepaid/Other	2,065,386	(3,188,689)	(1,069)	(1,734,587)	(4,003,989)	4,383,519	(2,601,822)	(3,763,986)	(5,187,258)	
Deferred Revenue	(61,490)	(61,069)	(42,124)	(22,211)	(19,315)	(22,736)	(44,338)	(63,822)	(63,444)	
Income Taxes Payable	19,744	(1,909)	(4,124)	(2,211)	(9,315)	(3,168)	(69)	(44,338)	(63,444)	
Net change in working capital	(1,833,731)	(2,974,691)	(2,864,780)	(2,386,674)	(1,321,041)	(3,428,220)	(1,809,873)	(2,076,664)	(2,737,877)	
Net cash provided by (used for) operating Activities	(3,762,468)	(3,129,202)	(2,174,893)	(3,569,922)	(4,311,050)	(3,854,417)	(2,874,902)	(2,605,816)	(2,547,127)	

# **EXHIBIT "M"**

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

  
\_\_\_\_\_  
*A Commissioner for Taking Affidavits*  
Dyke Choche

January 24, 2017

Mark Sun  
Vice-President & Chief Financial Officer  
Grafton-Fraser Inc.  
44 Apex Road  
Toronto, Ontario  
M6A 2V2

Dear Mark,

This letter confirms your engagement of Oberfeld Snowcap Inc. ("OSI") as your exclusive external real estate consultant for the purpose of renegotiating Grafton-Fraser Inc.'s ("GFI") existing leases for all or some its locations across Canada, reviewing and assessing GFI's lease portfolio, obtaining and negotiating consents to assign GFI's leases for all or some of its locations across Canada to a prospective purchaser, if applicable, and advising GFI with respect to the foregoing. Subject to the issuance of the Approval Order (as defined below), our engagement shall commence on or about January 25, 2017 and end on June 15, 2017, unless otherwise extended by the parties in writing (the "Term"). During the Term of this engagement, GFI will not engage any other consultant, advisor, real estate or leasing agent to act in a similar capacity to OSI.

In connection with these activities, GFI requests that OSI provide advisory and negotiation services regarding the documented business terms and conditions with the representatives of retail locations in order to reach a satisfactory agreement between the Landlord and GFI.

In consideration of the services provided by OSI hereunder, GFI agrees to pay OSI a fee in the amounts as follows:

- \$50,000 upon the issuance of the Approval Order (as defined below),
- \$50,000 payable by February 15, 2017, and
- an amount which is 2% of the annual rental savings to GFI resulting from the renegotiation of GFI's existing leases (the "Savings Fee"). The Savings Fee shall be no less than \$75,000 and no more than \$200,000.

GFI will pay all applicable taxes to OSI. All fees in respect of the Savings Fee will be paid within 30 days of receipt of an invoice from OSI. OSI will submit a detailed invoice in respect of the Savings Fee upon the completion of this engagement. Payments shall be in the form of Electronic Fund Transfers (EFT). The required banking information to make the EFT payment will be included on the invoice.

As OSI is retained in a consulting capacity, all final decisions taken upon the advice of OSI are your responsibility and OSI may not bind GFI to any commitment or agreement in any manner. GFI acknowledges and agrees that OSI shall not be liable or answerable for any detriment or loss incurred or suffered except for any detriment or loss incurred or suffered resulting from OSI's gross negligence or willful misconduct.

*JK*



The terms of this engagement as set forth in this letter are applicable and binding to the parties signing it, their successors, directors, representatives, assignees and heirs. OSI agrees and acknowledges that in the event of a merger, change of control or sale of all or substantially all of the assets of GFI, this engagement letter may be terminated or assigned to a purchaser.

The terms of this engagement as set forth in this letter, together with the confidentiality agreement dated November 16, 2016 between GFI and OSI (as amended) and the letter agreement dated November 30, 2016 between GFI and OSI, set out the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior negotiations, discussions, understandings, undertakings, statements, arrangements, promises, representations and agreements, both written or oral, between the parties relating to the subject matter hereof.

This engagement letter may only be amended, modified or supplemented by a written agreement signed by each party.

This engagement letter shall be governed by and interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada in force in such Province, excluding any rule or principle of the conflict of laws which might refer such interpretation, construction or enforcement to the laws of another jurisdiction. Each party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario, with respect to any matter arising under or related to this agreement.

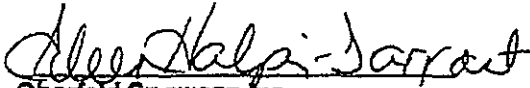
OSI acknowledges that GFI is exploring strategic alternatives which may include seeking relief under Canadian insolvency laws by way of an application to the Ontario Superior Court of Justice (Commercial List) the ("Court") for an initial order, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36 (the "CCAA"). If such an application is made, OSI agrees and acknowledges that the entering into of this engagement letter by GFI is subject to the issuance of an Order of the Court in the CCAA proceedings approving this engagement letter (the "Approval Order") and that should the Approval Order not be obtained, this engagement letter (including, without limitation, the payment of the amounts set out herein) shall have no force or effect.

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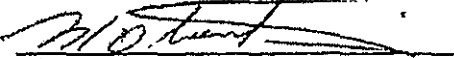


We look forward to working with you on this matter. Please sign and return a copy of this engagement letter signifying your agreement with the terms and provisions herein.

Yours very truly,

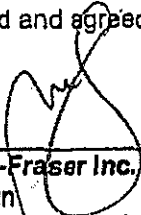


**Oberfeld Snowcap Inc.**  
Eileen Halpin-Tarrant  
President, Client Services



**Oberfeld Snowcap Inc.**  
Harley Oberfeld  
CEO

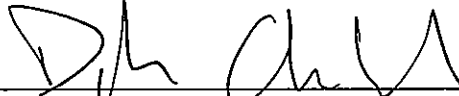
Accepted and agreed as of this \_\_\_\_\_ day of January, 2017.



**Grafton-Fraser Inc.**  
Mark Sun  
Vice-President & Chief Financial Officer

# **EXHIBIT "N"**

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

  
A Commissioner for Taking Affidavits  
Dyleen Choehla

**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, Willmington 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 constating 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@graftonfraser.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.

[Remainder of page intentionally left blank]

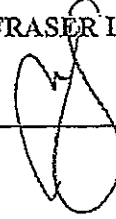
IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

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 <i>Personal Property Security Act</i> 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. Land charge.
3.	07051518228	GSO Capital Partners, LP, as Administrative Agent	Registration Date: May 15, 2007  Registration Period: Infinity	

**PPSA Manitoba**

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

WEEKDAY, THE #

JUSTICE

)

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)

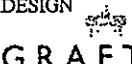


Intellectual Property



A. Trademarks

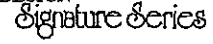




Trademarks Owned by the Seller in Canada



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/BLUE) 	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 733089 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 Inc.	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 Rnw 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 Inc.,	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  
TIPTOPTAILORSMENSWEAR.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  
SUITEEXCHANGE.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**

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.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE  )  
JUSTICE  )  
 )  
 )  
 )

MONDAY, THE 30<sup>th</sup>  
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 10, 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)(i);

“**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.

# **EXHIBIT "O"**

***THIS IS EXHIBIT "O"***

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

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

## CONSULTING AGREEMENT

This Consulting Agreement, dated as of January 24, 2017 (this "Agreement") is made by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the "Consultant"), and Grafton-Fraser Inc. (the "Company" or the "Merchant") with a principal place of business of 44 Apex Road North York, ON M8A 2V2

### RECITALS:

WHEREAS the Merchant intends to apply to the Ontario Superior Court of Justice (Commercial List) the ("Court") for an initial order (the "Initial Order"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C36 (the "CCAA") seeking, among other things the appointment of Richter Advisory Group Inc. ("Richter") to act as Monitor (the "Monitor") following execution of this Agreement;

AND WHEREAS the Initial Order will provide that the Merchant benefits from a stay of proceedings against its business and its property, as well as other protections in the proceedings under the CCAA (the "CCAA Proceedings");

AND WHEREAS, the Merchant operates retail stores in Canada and desires to retain the Consultant to act as exclusive consultant for the purpose of advising the Merchant, on an exclusive basis, with respect to a sale of the Merchandise (as defined below) and the Merchant's owned furniture fixtures and equipment (the "FF&E"), located at the Merchant's retail store locations identified by the Merchant on a list (the "Store Listing") to be provided by the Merchant to the Consultant no later than noon ET on February 2, 2017 (each individually, a "Closing Store", and collectively, the "Closing Stores", provided that the Merchant may elect to modify (by addition or removal) the Closing Stores listed the Store Listing at any time up to March 15, 2017 by delivering to the Consultant an updated Store Listing) as well as certain inventory currently located or to be located in the Merchant's distribution center which the Merchant requires to be sold through the Sale, by means of a promotional "store closing", "everything must go", "sale on everything", or similar themed sale, as approved in writing by the Merchant (the "Sale");

AND WHEREAS, the Consultant is willing to serve as the Merchant's exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement and the Approval Order (defined below);

AND WHEREAS the Merchant believes that entering in to this Agreement is in the best interest of the Merchant;

AND WHEREAS the Consultant and the Merchant agree and acknowledge that the entering into of this Agreement by the Merchant is subject to the issuance of an Order of the Court in the CCAA Proceedings substantially in the form attached hereto as Exhibit A, among other things approving this Agreement (the "Approval Order") and that should the Approval Order not be obtained, this Agreement shall have no force or effect;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Consultant and the Merchant hereto agree as follows:

I. Definitions

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

"Agreement" has the meaning set out in the Recitals hereto;

"Approval Order" has the meaning set out in the Recitals hereto;

"Budget" shall mean the Consultant Controlled Expense Budget from February 4, 2017 through April 30, 2017, in a form to be agreed to by the Merchant and Agent by February 3, 2017 which shall be modified as agreed to by the Merchant and Consultant as a result of the increase or decrease in the number of Closing Stores or increase or decrease in Sale Term;

"CCAA" has the meaning set out in the Recitals hereto;

"CCAA Proceeding" has the meaning set out in the Recitals hereto;

"Closing Store or Closing Stores" has the meaning set out in the Recitals hereto;

"Closing Store Employees" shall mean those employees of the Merchant retained to conduct the Sale following consultation with Consultant;

"Company" has the meaning set out in the Recitals hereto;

"Consultant" has the meaning set out in the Recitals hereto;

"Consultant Controlled Expenses" has the meaning set out in Section 3.1 hereof;

"Consultant Indemnified Parties" has the meaning set out in Section 8.3 hereof;

"Consulting Fee" has the meaning set out in Section 3.2 hereof;

"Consulting Services" has the meaning set out in Section 2.2 hereof;

"Court" has the meaning set out in the Recitals hereto;

"Final Settlement" has the meaning set out in the Recitals hereto;

"FF&E" has the meaning set out in the Recitals hereto;

"FF&E Fee" has the meaning set out in Section 3.3 hereof;

"Gross Proceeds" shall mean all proceeds of sales of Merchandise (excluding applicable sales tax) derived from the Sale, provided, however, that it is expressly understood and agreed, that Gross Proceeds shall not include proceeds of sales made prior to the Sale Commencement Date or after the Sale Termination Date (including items which were sold prior to the Sale Commencement Date but delivered following the Sale Commencement Date);

"Initial Order" has the meaning set out in the Recitals hereto;

"Leases" shall mean all leases, occupancy agreements, reciprocal easement or similar agreements pursuant to which Merchant has the right to occupy or utilize the Closing Stores;

"Merchandise" shall mean each item of saleable inventory, which for greater certainty shall not include gift cards, at the Closing Stores as of the Sale Commencement or received in Closing Stores subsequently;

"Merchant" has the meaning set out in the Recitals hereto;

"Merchant Indemnified Parties" has the meaning set out in Section 8.2 hereof;

"Monitor" has the meaning set out in the Recitals hereto;

"Richter" has the meaning set out in the Recitals hereto;

"Sale" has the meaning set out in the Recitals hereto;

"Sale Accounts" has the meaning set out in Section 4.1 hereof.

"Sale Commencement Date" shall mean, (i) with respect to each Closing Store included on the initial Store Listing, the first calendar day after issuance and entry of the Approval Order, authorizing and approving this Agreement and Merchant and Consultant's performance of their obligations arising hereunder, or such other date as shall be agreed by Merchant and Consultant, which is estimated to be on or about February 4, 2017 and (ii) with respect to each Closing Store added to the Store Listing prior to March 15, 2017; the third calendar day after such revised Store Listing is provided by the Merchant to the Consultant, or such other date as shall be agreed by Merchant and Consultant;

"Sale Expenses" shall mean all expenses incurred in connection with the Sale, including without limitation: (i) advertising expenses (including direct media costs, agency fees and production costs); (ii) payroll for Closing Store-level employees utilized in connection with the Sale, and related employee benefits and payroll taxes; (iii) maintenance and store cleaning costs; (iv) security costs; (v) credit card processing fees; (vi) employee bonuses determined by Merchant; (vii) all occupancy costs (e.g., rent, percentage rent, CAM charges, HVAC charges, real estate taxes, etc.) relative to the Closing Stores; (viii) insurance; (ix) telephone charges; and (x) all Supervisor Costs in accordance with Sections 2.3 hereof;

"Sale Guidelines" has the meaning provided for in Section 2.2(c) hereof;

"Sale Term" shall mean the period of time beginning with the Sale Commencement Date and ending on the Sale Termination Date;

"Sale Termination Date" shall mean the date determined by Merchant and Consultant to terminate the Sale at the Closing Stores, which shall be April 30, 2017, subject to amendment by agreement of the Merchant and the Consultant;

"Supervisor(s)" shall mean the individual(s) whom Consultant shall directly engage to provide Services to Merchant in connection with the Sale in accordance with Section 2.3 below;

"Store Listing" has the meaning set out in the Recitals hereto; and

"Supervisor Costs" shall have the meaning set forth in Section 2.3 of this Agreement.

2. Consulting Services

2.1 The Merchant will seek from the Court an authorization and approval of this Agreement and the conduct of the Sale by the Approval Order. Subject to the entry of and the terms of the Approval Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term.

2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Merchant with the following services (the "Consulting Services") with respect to the conduct of the Sale:

- a) provision of full-time Supervisors to supervise and conduct the Sale as further described in Section 2.3 below; provided that the determination of the number of Supervisors supplied for the Sale shall be determined by the Consultant following consultation with the Merchant;
- b) provide the Merchant with such oversight, supervision and guidance with respect to the conduct of the Sale and the liquidation and disposal of the Merchandise from the Closing Stores as may be required in order to maximize Gross Proceeds;
- c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with the theme of the Sale, it being understood that the Sale will be advertised as a "store closing", "sale on everything" or similar sale themes throughout the term of the Sale subject to the Merchant approval and in accordance with the sales guidelines substantially in the form attached to the Approval Order (the "Sale Guidelines");
- d) advise the Merchant as to appropriate pricing and discounting of the Merchandise, appropriate staffing levels for the Closing Stores (including Closing Store Employees) (and the Merchant agrees to take direction from the Consultant with regard to Closing Store Employee staffing levels), and appropriate bonus and incentive programs for Closing Store Employees;
- e) assist the Merchant in the formulation and implementation of a loss prevention strategies designed to protect the inventory from shrinkage;
- f) advise and assist the Merchant in the development and implementation of programs for the handling of open customer orders and customer deposit issues, including, where appropriate, fulfillment of such orders as may be designated by the Merchant; and
- g) provide such other related services deemed necessary or prudent by the Merchant and the Consultant under the circumstances giving rise to the Sale.

2.3 The Consultant shall provide qualified supervision to oversee the conduct of the Sale and Sale process in the Closing Stores as may be required to maximize sales, the expense for which is included in the Budget. In connection with the Sale, the Consultant shall

indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform Services during normal Closing Store operating hours and for the period of time prior to the Closing Stores opening and subsequent to the Closing Stores closing, as required in connection with the Sale, in the Consultant's discretion. In consideration of Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related wages, fees, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Budget (collectively, the "Supervisor Costs"). The Supervisor Costs set forth on the Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly, in connection with each weekly settlement as provided in Section 4.1 hereof, based upon invoices or other documentation reasonably satisfactory to the Merchant.

2.4 Title to all Merchandise and FF&E shall remain with Merchant at all times during the Sale Term until such Merchandise is sold. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Closing Stores shall be made in the name, and on behalf of the Merchant, and all sales during the Sale Term shall be final with no returns accepted or allowed. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, or credit card in accordance with Merchant's policies. The Closing Stores shall continue to honor returns with respect to items purchased prior to the Sale, in accordance with Merchant's policies and procedures in existence at the time of such purchase. From and after the Sale Commencement Date, the Closing Stores shall no longer offer formalwear for new rentals. Any existing rentals with a pick-up date at a Closing Store during the Sale Term shall be processed in the ordinary course. Any existing rentals with a pick-up date at a Closing Store after the Sale Termination Date shall be notified by Merchant of the cancellation of such rental and the customer shall be refunded by Merchant any deposit. Alterations and tailoring of Merchandise at the Closing Stores shall continue during the Sale Term, to the extent feasible.

### 3. Expenses: Consultant's Fees

3.1 Sale Expenses. In connection with the Sale, the Merchant shall be responsible for the payment of all expenses incurred in connection with the Sale, including all Sale Expenses. To control certain Sale Expenses, the Consultant and the Merchant have agreed on the Budget of certain delineated Sale Expenses, which includes Supervisor Costs and advertising and sign expenses (collectively the "Consultant Controlled Expenses"). In the event the Merchant elects to increase or decrease the number of Closing Stores on the Store Listing, the Consultant Controlled Expenses for (a) advertising and signage shall be increased or decreased accordingly to cover the additional out-of-pocket Sale Expenses and (b) Supervisor Costs shall only be increased or decreased upon mutual agreement of the parties. All Consultant Controlled Expenses shall be considered Sale Expenses and be borne by Merchant, except solely to the extent such expenses exceed the aggregate amount set forth in the Budget without the prior written consent of the Merchant. In the event that the Merchant shall not approve any such overage with respect to Consultant Controlled



Expenses and the Consultant nevertheless causes such Consultant Controlled Expenses to be incurred, then the Consultant shall fund such Consultant Controlled Expenses in excess of the aggregate amount on the Budget. It is anticipated that the Consultant may advance funds for certain categories of Consultant Controlled Expenses, and the Merchant shall reimburse the Consultant therefor (in connection with each weekly reconciliation provided for in Section 4.1 hereof) upon presentation of invoices and statements for such expenses, which reimbursement shall be in addition to any Consulting Fee and/or FF&E Fee earned and payable hereunder provided that such expenses do not exceed the aggregate amounts set forth in the Budget or otherwise approved by Merchant in accordance with this Section 3.1. The Merchant shall reimburse the Consultant weekly, in connection with each weekly settlement as provided in Section 4.1 hereof, for all Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with this Section 3.1.

3.2 Consulting Fee. In consideration of the Consulting Services provided hereunder in connection with the Sale, the Merchant shall pay to the Consultant a fee equal to one and twenty-five hundredths percent (1.25%) of the Gross Proceeds of Merchandise sold at the Closing Stores (the "Consulting Fee").

3.3 Fixtures Disposition. In addition to the Consulting Services provided for herein, with respect to FF&E located at the Closing Stores, the Consultant shall sell the FF&E so designated by the Merchant and in accordance with the Sales Guidelines, on an "as is where is" basis in any such Closing Stores for the Merchant's benefit, provided that the Merchant shall not be permitted to designate, and the Consultant shall not sell any FF&E that bears the "Tip Top", "George Richards", "Big & Tall", "Mr. Big & Tall" or "Kingsport" banners without first removing such markings, unless otherwise agreed. The Consultant shall advertise in the context of advertising for the Sale that items of FF&E at the Closing Stores are available for sale, and shall contact and solicit known purchasers and dealers of furniture and fixtures. In consideration of providing such services, the Consultant shall be paid twenty percent (20.0%) of the gross receipts (net only of applicable sales taxes, if any) from all sales or other dispositions of FF&E (the "FF&E Fee"). In addition, the Merchant shall reimburse the Consultant for the Consultant's reasonable out of pocket expenses incurred in connection with the sale or other disposition of the FF&E which have been previously approved in writing by the Merchant (including without limitation costs of commissions and advertising). The Consultant shall have no liability to the Merchant or any third party for its failure to sell any or all of the FF&E, and shall have the right to abandon such unsold FF&E, or any other furniture, fixtures, or equipment that is not FF&E hereunder, at the Closing Stores on the Sale Termination Date.

#### 4. Sale Proceeds; Weekly Settlement

4.1 Sale Proceeds; Sale Reconciliation. All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Closing Store management personnel and deposited into Merchant's existing Closing Store-level deposit accounts (the "Sale Accounts"). The Merchant shall, upon request, deliver to the Consultant account statements and such other information relating to the Sale Accounts reasonably requested by the Consultant. On Wednesday of each week, commencing on the second Wednesday following the Sale Commencement Date, the Consultant and the Merchant shall reconcile the results of the Sale for the prior week, including, without limitation, Gross Proceeds of Merchandise, sales of FF&E, Consultant Controlled Expenses, and any Consulting Fee (subject to clause (iii) below) and FF&E Fee earned and payable hereunder, and the Merchant shall pay to the

Consultant on a weekly basis, in connection with such weekly settlement, mutually agreed (i) Consultant Controlled Expenses incurred or paid by the Consultant for such prior week, (ii) anticipated Consultant Controlled Expenses for the next succeeding week of the Sale, and (iii) the Consultant's Consulting Fee and FF&E Fee on account of the prior week's sales of Merchandise and FF&E. Merchant shall within five (5) business days of completion of the Final Settlement pay the Consultant any remaining unpaid Consulting Fee and FF&E Fee and/or unreimbursed Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with Section 3.1 of this Agreement.

4.2 Cash and Credit Card Proceeds. Merchant shall have control over all Closing Store Employees and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's customary cash management practices and procedures, subject to Consultant's right to audit any such items. Merchant shall provide throughout the Sale Term its current credit card systems and servicing arrangements (including the Merchant's credit card terminals and processor(s), credit card processor coding and bank accounts) and other central administrative services necessary for the Sale, including without limitation customary POS administration, sales, audit, cash reconciliation, accounting, payroll processing during the course of the Sale, all borne as a Sale Expense by Merchant.

4.3 Final Settlement. As soon as possible following the conclusion of the Sale and in no event later than thirty (30) days following the end of the Sale Term, the parties shall complete a Final Settlement, subject to the Monitor's approval, of all amounts contemplated by this Agreement ("Final Settlement"), including, without limitation, the determination and payment of any fees due to Consultant and all reimbursements contemplated hereby.

5. Closing Store Employees

5.1 Closing Store Employees. The Consultant and the Merchant shall cooperate to retain the employees of the Merchant, as designated by the Consultant, to be utilized to conduct the Sale at the Closing Stores during the Sale Term. Such employees shall remain employees of the Merchant, and subject to paragraph 8.2 hereof the Consultant shall have no liability to the Closing Store Employees (including any of the Merchant's former employees) of any kind or nature whatsoever, including without limitation, with respect to severance pay, termination pay, vacation pay, pay in lieu of reasonable notice of termination, or any other expenses or liability arising from the Merchant's or the Merchant's employment of such Closing Store Employees prior to, during, and subsequent to the Sale. Consultant shall not change the terms of employment of any Closing Store Employees and Merchant shall remain the sole employer thereof.

6. Representation and Warranties of Consultant

6.1 The Consultant hereby represents warrants and covenants in favour of the Merchant as follows:

- a) The Consultant has taken all necessary action required to authorize the execution, performance and delivery of this agreement, and to consummate the transactions contemplated hereby;
- b) This Agreement is a valid and binding obligation of the Consultant enforceable in accordance with its terms;

c) No action or proceeding has been instituted or, to Consultant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein;

d) The Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada); and

e) The Consultant has a HST number that will be provided to Merchant.

7. **Representations and Warranties of Merchant**

7.1 The Merchant hereby represents warrants and covenants in favour of the Consultant as follows:

a) Subject to the Approval Order, the Merchant has taken all necessary actions required to authorize its execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;

b) Subject to the Approval Order, this Agreement is a valid and binding obligation of the Merchant enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies; and

c) No action or proceeding has been instituted or, to the Merchant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.

8. **Affirmative Duties of Consultant**

8.1 Except as may be provided otherwise in the Approval Order or any order of the Court, the Consultant shall advise the Merchant with respect to the legal requirements of effecting the Sale as a "store closing" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.

8.2 The Consultant, on a joint and several basis, shall indemnify and hold the Merchant and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, "Merchant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

i. the Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

ii. any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Merchant by the Consultant or any of the Consultant's officers, directors, employees, agents or representatives;

- iii. any claims by any party engaged by the Consultant as an employee or independent contractor arising out of such employment; except where due to the gross negligence or willful misconduct of the Merchant or from a breach of the terms hereof by the Merchant; and
- iv. the gross negligence or willful misconduct of the Consultant or any of its officers, directors, employees, agents or representatives, or any Supervisor.

8.3 The Merchant shall indemnify and hold the Consultant and its affiliates, and their respective officers, directors, employees, agents and independent contractors including the Supervisors (collectively, "Consultant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

- i. the Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- ii. any harassment or any other unlawful, tortious or otherwise actionable treatment of the Consultant Indemnified Parties by the Merchant or any of the Merchant Indemnified Parties;
- iii. any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Closing Store Employees (under a collective bargaining agreement or otherwise) or any other person, except where due to the gross negligence or willful misconduct of the Consultant or from a breach of the terms hereof by the Consultant; and
- iv. the gross negligence or willful misconduct of the Merchant or any of the Merchant Indemnified Parties.
- v. Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale term in accordance with applicable law.

## 9. Affirmative Duties of Merchant

9.1 The Merchant shall be solely liable for, and shall pay when due, (i) all expenses (including, without limitation, Sale Expenses) which are necessary to conduct the Sale, including, without limitation, all taxes, costs, expenses, accounts payable and other liabilities relating to the Sale, the Closing Stores, Closing Store Employees and any other consultants and representatives of Merchant, and (ii) all Consultant Controlled Expenses, Consultant's Fees and FF&E Fees payable hereunder.

9.2 The Merchant shall prepare and process all reporting forms, certificates, reports and other documentation required in connection with the payment of all applicable taxes to the appropriate taxing authorities.

9.3 Without limiting any other term or provision of this Agreement, subject to the provisions of the Initial Order and the Approval Order, during the Sale Term, the Merchant shall provide the Consultant, at no cost or expense to the Consultant, with (i) central administrative services necessary to administer the Sale, (ii) employees at the Closing Stores (to the extent reasonably agreed upon by the Merchant and the Consultant necessary to

effect the Sale), and (iii) peaceful use and occupancy of, and reasonable access (including reasonable before and after hours access and normal utilities/phone service) to, the Closing Stores and the Merchant's corporate offices for the purpose of preparing for, conducting, and completing the Sale as contemplated hereby. Merchant shall use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors.

9.4 Unless otherwise directed by the Merchant, the Consultant and the Merchant shall honour gift cards, existing return policies and merchandise credits at the Closing Stores, in accordance with store operation procedures to be mutually agreed upon between the Merchant and the Consultant, with the full amount of such gift cards, return credits and merchandise credits constituting Gross Proceeds hereunder. No gift cards shall be sold from the Closing Stores during the Sale Term unless otherwise approved by Merchant.

9.5 The Merchant shall collect all sales taxes and shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.

9.6 The Merchant shall permit Consultant to review, prior to their filing with the Court, any changes to the Approval Order and Sale Guidelines, both of which shall be in form and substance acceptable to Consultant, acting reasonably.

**10. Insurance; Risk of Loss**

10.1 The Merchant shall maintain throughout the Sale Term, (i) its existing insurance with respect to the Merchandise at the Closing Stores in amounts and on such terms and conditions as are consistent with the Merchant's ordinary course operations and (ii) casualty and liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the operation of the Closing Stores.

10.2 The Consultant shall maintain throughout the Sale Term, liability insurance policies (including, but not limited to, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Consultant's provision of Consulting Services at the Closing Stores.

10.3 Notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that the Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Closing Stores before, during and after the Sale Term, except to the extent any such claim arises from the gross negligence, willful misconduct, or unlawful acts of the Consultant.

10.4 Notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that (i) the Consultant shall not be deemed to be in possession or control of the Closing Stores or the Merchandise or other assets located therein or associated therewith, or of the Merchant's employees located at the Closing Stores, and (ii) the Consultant does not assume any of the Merchant's obligations or liabilities with respect to any of the matters addressed in clause (i) above, except to the extent any such claim arises from the gross negligence, willful misconduct or unlawful acts of the Consultant.

**11. Miscellaneous**

11.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by facsimile or by prepaid registered or certified mail, by facsimile, email or courier delivery as follows:

i. In the case of Consultant:

Gordon Brothers Canada ULC  
c/o Gordon Brothers Group, LLC  
800 Boylston Street  
27th Floor  
Boston, MA 02199  
Attention: Mackenzie Shea, Associate General Counsel  
Email: [mshea@gordonbrothers.com](mailto:mshea@gordonbrothers.com)

and

Merchant Retail Solutions ULC  
c/o Hiico Merchant Resources, LLC  
5 Revere Drive  
Suite 206  
Northbrook, IL 60062  
Attention: Ian Fredericks  
Email: [ifredericks@hilcoglobal.com](mailto:ifredericks@hilcoglobal.com)

ii. In the case of Merchant:

Grafton-Fraser Inc.  
44 Apex Road  
North York ON  
M6A 2V2  
Attention: Mark Sun, Vice President and Chief Financial Officer  
Email: [msun@graftonfraser.com](mailto:msun@graftonfraser.com)

With a copy to Fasken Martineau DuMoulin LLP:

333 Bay Street  
24<sup>th</sup> Floor  
Toronto, Ontario  
M5H 2T6  
Attention: Stuart Brotman/Natasha De Cicco  
Email: [sbrotman@fasken.com](mailto:sbrotman@fasken.com)/[ndecicco@fasken.com](mailto:ndecicco@fasken.com)

With a copy to Richter Advisory Group Inc.

181 Bay Street, Suite 3320  
Bay Wellington Tower  
Toronto, Ontario  
M5J 2T3  
Attention: Gilles Benchaya/Adam Sherman  
Email: [GBenchaya@richterconsulting.com](mailto:GBenchaya@richterconsulting.com)/[ASherman@richter.ca](mailto:ASherman@richter.ca)

11.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to any conflict of law provisions. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

11.3 Severability. In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.

11.4 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by the Merchant and the Consultant.

11.6 Assignment. Neither the Merchant nor the Consultant shall assign this Agreement without the express written consent of the other. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

11.7 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile or other electronic transmission including email of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

11.8 Independent Contractor. Nothing contained herein shall be deemed to create any relationship between the Consultant and the Merchant other than that of an independent contractor.

11.9 Survival. All representations, warranties, covenants, agreements and indemnities made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

11.10 Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

11.11 Further Assurances. The Merchant and the Consultant shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at the cost and expense of the requesting party, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, or any document, certificate or other instrument delivered pursuant hereto or thereto or required by applicable law.

11.12 Termination. This Agreement shall terminate upon the completion and approval of the Final Settlement (as provided in Section 4.1 above); provided, however, that either party may terminate this Agreement in the event that the other commits a material breach of its obligations hereunder. If either party seeks to terminate this Agreement by reason of a claim of a material breach, such party shall provide the other party with not less than five (5) days' prior written notice stating with specificity the nature of the claimed material breach, and the party receiving such notice shall have three (3) business days in which to cure such material breach, failing which this Agreement shall be deemed terminated. In addition, if the Sale is terminated prior to the Sale Termination Date, any other material breach or action by Merchant not authorized hereunder occurs, or any force majeure, then Consultant may, in its discretion, elect to terminate this Agreement. In the event this Agreement is terminated, the Consultant shall be entitled to be paid any Consulting Fee and FF&E Fee earned and accrued and any Consultant Controlled Expenses incurred through the date of termination.

11.13 Joint and Several Liability. All obligations of the Consultant under this Agreement are the joint and several obligations of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC.

11.14 Currency. Any amounts specified in this Agreement to be in Dollars or "\$" shall be deemed in all cases to be Canadian Dollars.

11.15 Disclosure. Gordon Brothers Credit Partners, LLC ("GBCP") is the investment manager of the 1903 Equity Fund, which holds a significant portion of the outstanding equity interests in Grafton-Fraser Inc. Gordon Brothers Canada ULC ("GBC"), part of the contractual joint venture that is party to this Agreement, is an affiliate of GBCP. GBC and GBCP are both under common control of Gordon Brothers Group, LLC.

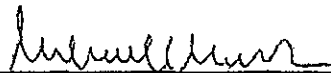
[Signatures Appear On Next Pages]



IN WITNESS WHEREOF, the Merchant and the Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

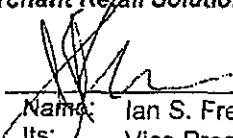
On behalf of itself  
For the Consultant

**Gordon Brothers Canada ULC**

By:   
Name: Melinda Chmura  
Its: vice President

and

**Merchant Retail Solutions ULC**

By:   
Name: Ian S. Fredericks  
Its: Vice President

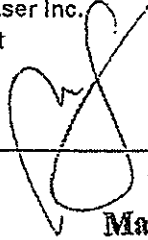
*Signature Page to GB/Hilco/GFI Consulting Agreement*

IN WITNESS WHEREOF, the Merchant and the Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

Grafton-Fraser Inc.  
As Merchant

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

Name:  
Its:



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

*Signature Page to GB/Hilco/GFI Consulting Agreement*

Exhibit A  
Approval Order

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE	)	●, THE ●TH
	)	
JUSTICE	)	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. (the "Applicant")**

**APPROVAL ORDER — CONSULTING AGREEMENT**

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA") for an order, inter alia, approving: (i) the transactions contemplated under the Consulting Agreement entered into between the Applicant and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "Consultant") on January ●, 2017 (the "Consulting Agreement") and certain related relief; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of ● sworn on January ●, 2017 including the exhibits thereto (the "Sun Affidavit"), and the Pre-Filing Report and the first report (the "Monitor's First Report") of Richter Advisory Group Inc., in its capacity as Monitor (the "Monitor"), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Consultant, ● and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service, filed:

## SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein 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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order and the Consulting Agreement, as applicable.

## APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sales Guidelines attached hereto as Schedule "A" hereto (the "**Sales Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Applicant is hereby approved, authorized, and ratified with such minor amendments as Applicant (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order, and the Initial Order, the Applicant is hereby authorized and directed to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

## THE SALE

4. **THIS COURT ORDERS** that the Applicant with the assistance of the Consultant is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sales Guidelines and to advertise and promote the Sale within the Closing Stores in accordance with the Sales Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Consulting Agreement.
5. **THIS COURT ORDERS** that subject to paragraph 12 of the Initial Order, the Applicant with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been

perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limitation the Directors' Charge, the Administration Charge, the Term Lenders' DIP Charge, the ABL Lender's DIP Charge or the KERP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "CCAA Charges"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "Encumbrances"), which Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts due and payable to the Consultant by the Applicant under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date and, subject to paragraph 17 of this Order, such proceeds shall be dealt with in accordance with paragraph 48 of the Initial Order.

6. **THIS COURT ORDERS** that subject to the terms of this Order and the Initial Order, the Sales Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Closing Stores and all related Closing Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of Applicant as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Initial Order as such stay of proceedings may be extended by further Order of the Court.
7. **THIS COURT ORDERS** that until the applicable Sale Termination Date for each Closing Store (which shall in no event be later than April 30, 2017), the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Consultant is assisting the Applicant and the Applicant has granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with

any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for Applicant's leased Closing Stores. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Applicant or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
9. **THIS COURT ORDERS** that except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Closing Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sales Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than the Applicant and the Monitor as provided under the Consulting Agreement or a Landlord as provided under the Sales Guidelines.
10. **THIS COURT ORDERS** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale of the Merchandise or FF&E in accordance with the terms of the Consulting Agreement, the Sales Guidelines, and this Order, provided that the Consultant provides the Applicant with a copy of any advertising prior to its use in the Sale.

#### **CONSULTANT LIABILITY**

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to Applicant and that it shall not be liable for any claims against Applicant other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sales Guidelines. More specifically:
  - (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores, of the assets located therein or

associated therewith or of Applicant's employees (including the Closing Store Employees) located at the Closing Stores or any other property of Applicant;

- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
  - (c) Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Closing Stores during and after the Sale Term in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.
12. **THIS COURT ORDERS** to the extent the Landlords (or any of them) may have a claim against Applicant arising solely out of the conduct of the Consultant in conducting the Sale for which Applicant has claims against the Consultant under the Consulting Agreement, Applicant shall be deemed to have assigned free and clear such claims to the applicable Landlord (the "**Assigned Landlord Rights**").

#### **CONSULTANT AN UNAFFECTED CREDITOR**

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by Applicant nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a "**Plan**"). The Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.
14. **THIS COURT ORDERS** that Applicant is hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.



15. **THIS COURT ORDERS** that, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.
16. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds Applicant:
- (i) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant,

shall be binding on any trustee in bankruptcy that may be appointed in respect to Applicant and shall not be void or voidable by any Person, including any creditor of Applicant, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

#### **FF&E PROCEEDS**

17. **THIS COURT ORDERS** that the Applicant is hereby authorized to transfer on a regular basis, as determined is appropriate in consultation with the Monitor, to an account of the Monitor the sale proceeds, on a motion supported by the Borrower, from the disposition of the FF&E and the Monitor is hereby authorized to hold such funds in trust for the Applicant in an account opened at a Canadian chartered bank

for this purpose, subject to further Order of the Court authorizing and directing the distribution of such proceeds. Any distribution of the sale proceeds generated from the sale of the FF&E shall be net of the fees and the out of pocket expenses related to the disposition of such FF&E reimbursed by the Applicant in accordance with the Consulting Agreement and approved by the Monitor.

#### **BULK SALES ACT AND OTHER LEGISLATION**

18. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.
19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist 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 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

**SCHEDULE A**  
**SALES GUIDELINES**

The following procedures shall apply to the Sale to be conducted at the Closing Stores of Grafton-Fraser Inc. (the "Merchant"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "Consultant") and the Merchant dated as of January ●, 2017 (the "Consulting Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Closing Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remain open during their normal hours of operation provided for in the respective Leases for the Closing Stores until the respective Sale Termination Date of each Closing Store. The Sale at the Closing Stores shall end by no later than April 30, 2017. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Closing Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall

Closing Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Consultant may solicit customers in the Closing Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Closing Store, the Merchant shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Applicant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Closing Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Closing Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Closing Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Closing Store during store business hours if the

FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.

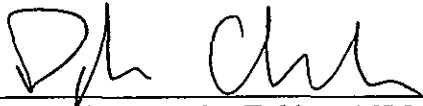
10. The Consultant shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Closing Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be ● who may be reached by phone at ● or email at ●. If the parties

are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines

# **EXHIBIT "P"**

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



*A Commissioner for Taking Affidavits*

*Dyan Chodke*



## 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)(i);

**“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 SISF 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**

1. 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.

# **EXHIBIT "Q"**

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

  
A Commissioner for Taking Affidavits  
Dylan Chacka

**Acquisition/Investment Opportunity**

**158-Store Men's Apparel Chain**

**Tip Top Tailors, George Richards Big & Tall, Mr. Big & Tall and  
Kingsport Big & Tall Clothiers**

Inquiries concerning this Investment/Acquisition  
Opportunity Document should be directed to:

**RICHTER**

Warren Levine  
514.934.8678

[wlevine@richterconsulting.com](mailto:wlevine@richterconsulting.com)

## Company Overview

Grafton-Fraser Inc. (the "Company") is a leading Canadian retailer of men's apparel founded in 1853 and currently operating 158 stores.

- Founded in 1853, Grafton-Fraser Inc. has established itself as Canada's leading retailer of men's apparel by offering a selection of menswear ranging from suits and tuxedos to casual outerwear and accessories. The company's brand has become synonymous with great value and a commitment to adapt to developing market trends.
- The Company currently operates leased stores in 9 of 10 Canadian provinces and leases a 38K square foot distribution centre in Toronto, ON (which also houses the Company's head office);
- For the 12 month period ended December 31, 2016, sales were in excess of \$150MM CAD.

## Key Acquisition/Investment Considerations

Various acquisition/investment opportunities are available to interested parties, including:

- A going concern investment in or acquisition of the Company, its assets or the business;
- Access to desirable locations ideally situated in power and lifestyle centres across Canada;
- Attractive leases, including turnkey sites with high quality fixtures;
- Licensing opportunity of a strong, well-recognized menswear brand in Canada;
- Core management team with a strong background in retail;
- Strong in-store management and sales teams;
- Strategically located DC in close proximity to key Ontario and Quebec markets;

## Transaction Process

- The Company is exploring a potential sale of the Company or business or an investment;
- Information on this sale or investment opportunity can be obtained in a virtual data room maintained by Richter upon the execution of a Confidentiality Agreement. Inquiries must be made to Richter and no communication should be made with any Company representative;
- Offers are anticipated to contain minimal conditions given the data room information provided;
- **Offers must be marked as "Strictly Confidential" and delivered by e-mail to the following on or before 5:00 P.M. Eastern Time (ET) on March 13, 2017:**

Richter  
Attention: Warren Levine  
Phone: 514.934.8678  
wlevine@richterconsulting.com

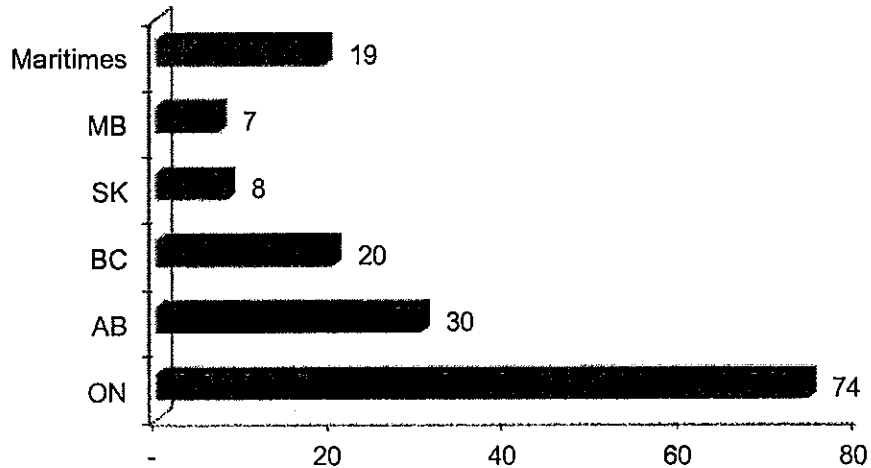
- **The Company reserves the right to, in its sole discretion:**
  - Not accept the highest, best or any offer, and to suspend or modify the process for any reason at any time;
  - Reject any or all offers and shall have no obligation to disclose any reason therefore.

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**Overview – Store Locations**

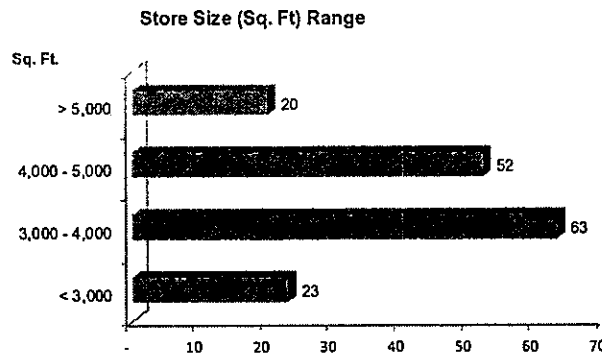
- The Company currently operates in 9 of 10 Canadian provinces:

**Stores by Province**



Province	Stores	Sq Ft.	Sq. Ft. Avg / Store	Avg. Occ./ Sq. Ft
Ontario	74	306,000	4,135	\$ 59
Alberta	30	117,000	3,900	60
BC	20	76,000	3,800	50
Saskatchewan	8	28,000	3,500	50
Manitoba	7	29,000	4,143	68
Nova Scotia	6	22,000	3,667	50
Newfoundland	6	13,000	2,167	56
New Brunswick	6	19,000	3,167	53
Prince Edward Island	1	2,000	2,000	58
<b>Total</b>	<b>158</b>	<b>612,000</b>	<b>3,873</b>	<b>\$ 58</b>

- Stores sizes ranges as follows:



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## Workforce

- The Company has approximately 450 full-time and 700 part-time store employees;
- There are 76 full-time head office employees, including 11 district managers;
- The distribution center employs 11 full-time employees.
- The Company is a non-unionized work place.

## Confidentiality and Disclaimer

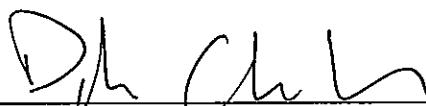
This document has been prepared based on information provided by Grafton-Fraser Inc. and is intended to provide preliminary information to interested parties to formulate the basis of their acquisition/investment and/or transaction intent. The information contained herein is confidential and proprietary to the Company. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in the investment and/or transaction decision.

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This document is not intended for general circulation and cannot be reproduced in any form without the written permission of the Company. No guarantees are made or implied with regards to any transactions that may ultimately result.

# **EXHIBIT "R"**

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

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

## Grafton-Fraser Inc.

## Cash Flow Forecast for the Period January 22 to March 11, 2017

(\$000's)	28-Jan-17	04-Feb-17	11-Feb-17	18-Feb-17	25-Feb-17	04-Mar-17	11-Mar-17	Total
<b>Receipts</b>								
Retail Receipts	\$ 2,241	\$ 2,195	\$ 2,237	\$ 2,208	\$ 2,231	\$ 2,540	\$ 2,823	\$ 16,475
GSO DIP Funding	-	4,400	500	300	200	100	-	5,500
<b>Total Receipts</b>	<b>2,241</b>	<b>6,595</b>	<b>2,737</b>	<b>2,508</b>	<b>2,431</b>	<b>2,640</b>	<b>2,823</b>	<b>21,975</b>
<b>Disbursements</b>								
Merchandise	(734)	(1,703)	(2,203)	(2,181)	(2,216)	(1,513)	(2,191)	(12,741)
Payroll	(475)	(727)	(250)	(932)	(250)	(908)	(250)	(3,791)
Rent	-	(3,170)	(117)	-	(11)	(3,082)	(242)	(6,622)
Sales Tax	(1,708)	-	-	-	-	-	-	(1,708)
Store Expenses and Other	(201)	(390)	(389)	(238)	(219)	(308)	(196)	(1,942)
Supplier & Other Deposits	-	(250)	-	-	-	-	-	(250)
Capex	-	-	-	(100)	-	-	-	(100)
Interest	-	(100)	-	-	-	(75)	-	(175)
Forbearance Fee	-	(200)	-	-	-	-	-	(200)
Professional Fees	(875)	(386)	(335)	(180)	(180)	(180)	(230)	(2,366)
JNY Payments	(1,283)	-	-	-	-	-	-	(1,283)
Vacation Escrow	(800)	-	-	-	-	-	-	(800)
<b>Total Disbursements</b>	<b>(6,075)</b>	<b>(6,925)</b>	<b>(3,295)</b>	<b>(3,631)</b>	<b>(2,877)</b>	<b>(6,067)</b>	<b>(3,109)</b>	<b>(31,978)</b>
<b>Net Cash Flow</b>	<b>\$ (3,834)</b>	<b>\$ (330)</b>	<b>\$ (557)</b>	<b>\$ (1,123)</b>	<b>\$ (446)</b>	<b>\$ (3,426)</b>	<b>\$ (286)</b>	<b>\$ (10,003)</b>
<b>Opening Revolver</b>	<b>\$ 12,826</b>	<b>\$ 16,660</b>	<b>\$ 16,990</b>	<b>\$ 17,548</b>	<b>\$ 18,671</b>	<b>\$ 19,116</b>	<b>\$ 22,543</b>	<b>\$ 12,826</b>
<b>Draw (Repayment)</b>	<b>3,834</b>	<b>330</b>	<b>557</b>	<b>1,123</b>	<b>446</b>	<b>3,426</b>	<b>286</b>	<b>10,003</b>
<b>Closing Revolver</b>	<b>\$ 16,660</b>	<b>\$ 16,990</b>	<b>\$ 17,548</b>	<b>\$ 18,671</b>	<b>\$ 19,116</b>	<b>\$ 22,543</b>	<b>\$ 22,829</b>	<b>\$ 22,829</b>
<b>Pre-Filing Revolver</b>	<b>\$ 9,127</b>	<b>\$ 2,532</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>DIP Revolver</b>	<b>7,533</b>	<b>14,458</b>	<b>17,547</b>	<b>18,670</b>	<b>19,116</b>	<b>22,542</b>	<b>22,829</b>	<b>22,829</b>
<b>Total CIBC Revolver</b>	<b>\$ 16,660</b>	<b>\$ 16,990</b>	<b>\$ 17,547</b>	<b>\$ 18,670</b>	<b>\$ 19,116</b>	<b>\$ 22,542</b>	<b>\$ 22,829</b>	<b>\$ 22,829</b>
<b>Opening DIP Term Loan</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,400</b>	<b>\$ 4,912</b>	<b>\$ 5,226</b>	<b>\$ 5,441</b>	<b>\$ 5,557</b>	<b>\$ -</b>
<b>Draws</b>	<b>-</b>	<b>4,400</b>	<b>500</b>	<b>300</b>	<b>200</b>	<b>100</b>	<b>-</b>	<b>5,500</b>
<b>Interest (PIK'd)</b>	<b>-</b>	<b>-</b>	<b>12</b>	<b>14</b>	<b>15</b>	<b>15</b>	<b>16</b>	<b>72</b>
<b>Ending DIP Term Loan</b>	<b>\$ -</b>	<b>\$ 4,400</b>	<b>\$ 4,912</b>	<b>\$ 5,226</b>	<b>\$ 5,441</b>	<b>\$ 5,557</b>	<b>\$ 5,572</b>	<b>\$ 5,572</b>


  
 Mark Sun, CFO

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 ("CCAA")**

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

**(the "Applicant")**

**Report on Cash-Flow Statement by the Debtor Company  
(Paragraph 10(2)b) of the CCAA)**

The management of Grafton-Fraser Inc. has developed the assumptions and prepared the attached statement of projected cash flow of the debtor company, as of January 23, 2017, consisting of the period from January 22 to March 11, 2017.

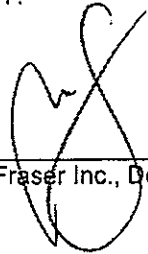
The hypothetical assumptions are reasonable and consistent with the purpose of the projections described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the debtor company and provide a reasonable basis for the projections. All such assumptions are disclosed in the notes attached.

Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 24<sup>th</sup> day of January 2017.

\_\_\_\_\_  
Mark G. Sun, CFO, Vice-President  
Name and title of signing officer

  
\_\_\_\_\_  
Grafton-Fraser Inc., Debtor company

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 ("CCAA")**

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

**(the "Applicant")**

**Report on Cash-Flow Statement by the Debtor Company  
(Paragraph 10(2)b) of the CCAA)**

**Purpose:**

("Grafton-Fraser Inc." or the "Company") is filing a Petition for the Issuance of an Initial Order pursuant to the *Companies' Creditors Arrangement Act* on January 25, 2017.

The purpose of this Statement of Projected Cash Flow is to present the estimated cash receipts and disbursements of Grafton-Fraser Inc. for the period from January 22 to March 11, 2017, relating to the filing of a Petition for the Issuance of an Initial Order under the *Companies' Creditors Arrangement Act* on January 25, 2017. This Statement of Projected Cash Flow has been prepared by the management based on available financial information at that date in accordance with Section 10(2)b) of the *Companies' Creditors Arrangement Act*. Readers are cautioned that this information may not be appropriate for other purposes.

**Projection Notes:**

The Statement of Projected Cash-Flow has been prepared using probable assumptions supported and consistent with the plans of the Company for the period from January 22 to March 11, 2017, considering the economic conditions that are considered the most probable by Management. As the cash-flow is based upon various assumptions regarding future events and circumstances, variances will exist and said variances may be material. Accordingly, we express no assurance as to whether the projections will be achieved.

**Assumptions:**

**(a) Projected Net Operating Receipts**

- The projected Net operating receipts are based on ongoing trading and reflect the impact of a proposed Liquidation Consulting Agreement between Grafton-Fraser Inc. and a contractual joint venture composed of Gordon Brothers Canada, ULC and Merchant Retail Solutions ULC ("Liquidation Consulting Agreement") to conduct an orderly wind-down of certain of the Company's underperforming stores, the whole based on management's best estimate and historical data.

**(b) Projected Cash Disbursements**

- The projected cash disbursements are based on historical data and assume ongoing operations in the ordinary course of business, as modified by the Liquidation Consulting Agreement and a proposed lease consulting agreement with Oberfeld Snowcap Inc. ("Oberfeld" or the "Lease Consultant"), to negotiate lease concessions with the Company's landlords.
- Restructuring fees include the fees of the Monitor and its counsel, the fees of the Company's counsel, as well as the secured lenders' advisors.

Dated at Toronto, in the Province of Ontario, this 24<sup>th</sup> day of January 2017.

\_\_\_\_\_  
Mark G. Sun, CFO, Vice-President  
Name and title of signing officer

  
\_\_\_\_\_  
Grafton-Fraser Inc., Debtor company

**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 ("CCAA")**

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

**(the "Applicant")**

**Proposed Monitor's Report on Cash-Flow Statement  
(Paragraph 10(2)b) of the CCAA)**

The attached statement of projected cash flow of Grafton-Fraser Inc., as of January 23, 2017 consisting of the period from January 22 to March 11, 2017 has been prepared by the management of the insolvent person for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the debtor company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that in all material respects:


- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, in the Province of Ontario, this 24<sup>th</sup> day of January 2017.

Richter Advisory Group inc. – Proposed Monitor  
Per:



Gilles Benchaya, CPA, CA, CIRP, LIT



Adam Sherman, MBA, CIRP, LIT



**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 ("CCAA")**

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

(the "Applicant")

**Proposed Monitor's Report on Cash- Flow Statement  
(Paragraph 10(2)b) of the CCAA)**

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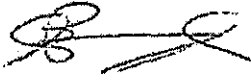
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- Restructuring fees include the fees of the Monitor and its counsel, the fees of the Company's counsel, as well as the secured lenders' advisors.

Dated at Toronto, in the Province of Ontario, this 24<sup>th</sup> day of January 2017.

Richter Advisory Group Inc. – Proposed Monitor

Per:



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Gilles Benchaya, CPA, CA, CIRP, LIT



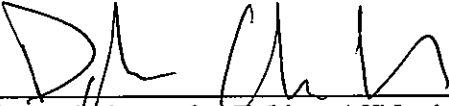
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Adam Sherman, MBA, CIRP, LIT

# **EXHIBIT "S"**

***THIS IS EXHIBIT "S"***

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

  
A Commissioner for Taking Affidavits  
Dyke Check

January 24, 2017

This is to advise that Richter Advisory Group Inc. hereby consents to act as Monitor under the *Companies' Creditors Arrangement Act* of Grafton- Fraser Inc.

Yours very truly,

**Richter Advisory Group Inc.**  
in its capacity as Proposed Monitor of  
Grafton-Fraser Inc.

Per:



Gilles Benchaya, CPA, CA, CIRP, LIT



Adam Sherman, MBA, CIRP, LIT

T. 416.488.2345

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Montreal, Toronto



**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 2 OF 2**

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*Lawyers for the Applicant*