

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.  
JUSTICE HAINEY

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TUESDAY, THE 7<sup>th</sup>  
DAY OF JUNE, 2016



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
2473304 ONTARIO INC.

(the "Applicant")

INITIAL ORDER

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

ON READING the affidavit of Mark Sun sworn June 6, 2016 and the Exhibits thereto (the "**Sun Affidavit**"), the report of Richter Advisory Group Inc. ("**Richter**") as the proposed monitor dated June 6, 2016 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Richter, in its capacity as the proposed monitor (the "**Monitor**") of the Applicant in these CCAA proceedings, ~~counsel for the directors of the Applicant~~, counsel for Canadian Imperial Bank of Commerce ("**CIBC**"), counsel for GSO Capital Partners, LP ("**GSO**") and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Dylan Chochla sworn June 6, 2016, filed, and on reading the consent of Richter to act as the Monitor

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, in accordance with the ABL Forbearance Agreement (as hereinafter defined), as described in the Sun Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment,

collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that, subject to the terms of the Forbearance Agreements (as hereinafter defined), including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the Forbearance Agreements) the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreements, including the terms therein that refer to the Approved CCAA Cash Flow, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include (subject to the provisions of the Forbearance Agreements), without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied (including royalties under license agreements relating to the sale of branded inventory) to the Applicant following the date of this Order.

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein or in the Forbearance Agreements, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Forbearance Agreements, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased

premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

14. THIS COURT ORDERS that, subject to paragraph 15(v) hereof, until and including July 7, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any

business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 38 and 39 hereof, prevent the Lenders (as hereinafter defined) from exercising any rights or remedies in accordance with their respective Forbearance Agreements.

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, intellectual property licenses, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names, trademarks and trade names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the Applicant for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

## **APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Lenders and their respective counsel of financial and other information as agreed to between the Applicant and each Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Lenders;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and similar legislation in other provinces, and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the Lenders with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by the Applicant as part of the costs of these proceedings, subject to any assessment by the Court. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant on a weekly basis or on such other basis agreed by the Applicant and the applicable payee and, in addition, the Applicant is hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, and counsel to the directors of the Applicant retainers in the amounts of \$175,000, \$55,000, \$120,000 and \$10,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, and counsel for the directors of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

## FORBEARANCE AGREEMENTS AND DIP FINANCING

32. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the following forbearance agreements (together, the “**Forbearance Agreements**”) is hereby ratified and approved:

- (a) the Forbearance Agreement dated as of June 6, 2016 (the “**ABL Forbearance Agreement**”) among the Applicant and Grafton-Fraser Inc., as borrowers, and CIBC, as lender and as agent (in that capacity, the “**ABL Lender**”); and
- (b) the Forbearance Agreement dated as of June 6, 2016 (the “**Term Forbearance Agreement**”) among Grafton-Fraser Inc., as borrower, the Applicant, as guarantor, the lenders that are parties to the Existing Credit Agreement (as defined in the Term Forbearance Agreement), as lenders (collectively, the “**GSO Lenders**”), and GSO, as administrative agent for itself and the GSO Lenders (the GSO Lenders and GSO being collectively referred to as the “**Term Lenders**”, and together with the ABL Lender, the “**Lenders**”);

and the Applicant is hereby directed to comply with and perform the provisions of (i) the ABL Forbearance Agreement and the credit agreement dated as of February 12, 2016 by and among Grafton-Fraser Inc. and the Applicant, as borrowers, and the ABL Lender, as amended by the ABL Forbearance Agreement (the “**ABL Credit Agreement**”), and (ii) the Term Forbearance Agreement and the guarantee agreement dated as of February 12, 2016 and entered into by the Applicant in favour of GSO as administrative agent for itself and the GSO Lenders and the Term Lenders (the “**Term Guarantee**”).

33. THIS COURT ORDERS that the Applicant’s compliance with and performance of the Blocked Account Agreements (as defined in the ABL Credit Agreement) from and after the date of this Initial Order, as required pursuant to Section 4.1.12 of the ABL Forbearance Agreement, is hereby authorized and approved and the Applicant is hereby directed to comply with the provisions of the Blocked Account Agreements in accordance with the terms of the ABL Forbearance Agreement.

34. THIS COURT ORDERS that the Applicant shall be entitled, subject to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, to continue to obtain and borrow,

repay and re-borrow additional monies under the credit facility (the “**ABL Facility**”) from the ABL Lender pursuant to the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant’s working capital requirements, provided that borrowings by the Applicant under the ABL Facility shall not exceed the amounts contemplated in the ABL Forbearance Agreement. For greater certainty, the ABL Lender shall be entitled to apply receipts and deposits made to the Applicant’s bank accounts, whether directly or pursuant to the Blocked Account Agreements, against the indebtedness of the Applicant to the ABL Lender in accordance with the ABL Credit Agreement, the ABL Forbearance Agreement and the Blocked Account Agreements, whether such indebtedness arose before or after the date of this Initial Order.

35. THIS COURT ORDERS that subject to the provisions of the Forbearance Agreements, the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Lenders under and pursuant to the ABL Credit Agreement, the Term Guarantee and the Forbearance Agreements as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. THIS COURT ORDERS that in addition to the existing liens, charges, mortgages and encumbrances in favour of the ABL Lender, as security for all of the obligations of the Applicant to the ABL Lender relating to advances made to the Applicant under the ABL Facility from and after the date of this Initial Order, the ABL Lender shall be entitled to the benefit of and is hereby granted a charge (the “**ABL Lender’s DIP Charge**”) on the Property (excluding the Term Priority Collateral as defined in the Intercreditor Agreement (as hereinafter defined)). The ABL Lender’s DIP Charge shall have the priority set out in paragraphs 43 and 45 hereof.

37. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the ABL Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ABL Lender’s DIP Charge.

38. THIS COURT ORDERS that, upon the earlier of the occurrence of a Terminating Event or the Termination Date (in each case as defined in the ABL Forbearance Agreement), the ABL Lender may:

- (a) cease making advances to the Applicant, provided that the ABL Lender will continue to fund the payment by the Applicant of employee wages and Priority Payables (as defined in the ABL Forbearance Agreement) for a period of not less than five (5) business days following the last day of the Forbearance Period (as defined in the ABL Forbearance Agreement), and
- (b) (i) set off and/or consolidate any amounts owing by the ABL Lender to the Applicant against the obligations of the Applicant to the ABL Lender under the ABL Credit Agreement, the Blocked Account Agreements, the ABL Forbearance Agreement or any other Loan Document (as defined in the ABL Credit Agreement) and make demand, accelerate payment and give other notices, provided the ABL Lender shall not set off or consolidate against amounts held back from distribution to the ABL Lender in respect of the Administration Charge, and (ii) upon not less than five (5) business days' notice to the Applicant, the Monitor and the Term Lenders, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the other Loan Documents, the ABL Lender's DIP Charge, or the *Personal Property Security Act* (Ontario) or similar legislation in any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the ABL Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS that, upon the occurrence of a Terminating Event (as defined in the Term Forbearance Agreement), the Term Lenders may:

- (a) set off and/or consolidate any amounts owing by the Term Lenders to the Applicant against the obligations of the Applicant to the Term Lenders under the Term Guarantee, the Term Forbearance Agreement or any security agreements, mortgages, deeds of trust, hypothecs or other collateral documents executed and delivered by the

Applicant in favour of the Term Lender (the “**Term Security Documents**”), and make demand, accelerate payment and give other notices; and

- (b) upon not less than five (5) business days’ notice to the Applicant, the Monitor and the ABL Lender, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Term Forbearance Agreement, the Term Guarantee or the Term Security Documents, or the *Personal Property Security Act* (Ontario) or similar legislation of any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

40. THIS COURT ORDERS that nothing in this Order shall amend, override or relieve the ABL Lender or the Term Lenders of any of the provisions of the intercreditor agreement among them dated as of February 12, 2016 (the “**Intercreditor Agreement**”).

41. THIS COURT ORDERS AND DECLARES that each of the ABL Lender and the Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), with respect to (i) any obligations outstanding as of the date of this Order or arising hereafter under the ABL Credit Agreement or the ABL Forbearance Agreement, and (ii) any obligations outstanding as of the date of this Order or arising hereafter under the Term Guarantee or the Term Forbearance Agreement.

42. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the Term Forbearance Agreement, and the granting of the ABL Lender’s DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the ABL Lender's DIP Charge over the Property so charged by them, as among them, shall be as follows:

First – Administration Charge;

Second – ABL Lender's DIP Charge; and

Third – Directors' Charge.

44. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the ABL Lender's DIP Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property so charged by them and, subject to the provisions of the Intercreditor Agreement, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than (subject to further Order of the Court) validly perfected and enforceable security interests, if any, in favour of Xerox Canada Ltd. (File No. 710539839 under the *Personal Property Security Registry* (Ontario)).

46. THIS COURT ORDERS that except as otherwise expressly provided for herein or in the Intercreditor Agreement, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the ABL Lender, the Term Lenders and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

47. THIS COURT ORDERS that the Charges and the Forbearance Agreements shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the ABL Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Forbearance Agreements shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party; and
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Forbearance Agreements or the creation of the Charges.

48. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SEALING ORDER**

49. THIS COURT ORDERS that Exhibit "N" to the Sun Affidavit and Confidential Appendix "A" of the Pre-Filing Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

#### **SERVICE AND NOTICE**

50. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition; English) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available

in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.richter.ca/en/folder/insolvency-cases/0-9/2473304-ontario-inc>

52. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant, the Monitor, the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

53. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

54. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

55. 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.

56. 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.

57. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the ABL Credit Agreement or the ABL Forbearance Agreement up to and including the date this order may be varied or amended.

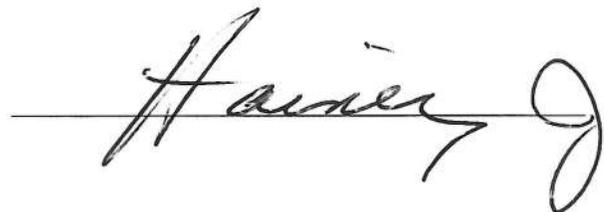
58. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JUN 07 2016

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Court File No.: CV-16-11419-00CL

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 2473304 ONTARIO INC.

(the "Applicant")

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

**Proceedings commenced in Toronto**

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**ORDER  
(INITIAL CCAA APPLICATION)  
(Returnable June 7, 2016)**

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**FASKEN MARTINEAU DuMOULIN LLP**  
333 Bay Street – Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Stuart Brotman (LSUC#43430D)**

Tel: 416 865 5419

Fax: 416 364 7813

[sbrotman@fasken.com](mailto:sbrotman@fasken.com)

**Dylan Chochla (LSUC#62137I)**

Tel: 416 868 3425

Fax: 416 364 7813

[dchochla@fasken.com](mailto:dchochla@fasken.com)

Lawyers for the Applicant, 2473304 Ontario Inc.