

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 11<sup>th</sup> DAY  
 )  
JUSTICE BROWN ) OF JULY, 2013

**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 THE JOHN FORSYTH SHIRT COMPANY LTD., FORSYTH HOLDINGS, INC.  
and FORSYTH OF CANADA, INC.**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**



**SANCTION ORDER**

**THIS MOTION**, made by The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc. and Forsyth of Canada, Inc. (collectively, the "**Applicants**"), for an order substantially in the form appended to the Applicants' Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** affidavit of Harris R. Hester sworn July 3, 2013, the Third Report of the Monitor dated July 4, 2013 (the "**Third Report**"), and the supplement to the Third Report of the Monitor dated July 9, 2013, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Workers United Canada Council Local 2643 and counsel for Wells Fargo Capital Finance Corporation Canada and Wells Fargo Capital Finance, LLC ("**Wells Fargo**"), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sara Szulc sworn July 4, 2013, filed,

## DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Sanction Order shall have the meaning ascribed to them in the Consolidated Plan of Compromise and Arrangement of the Applicants dated May 17, 2013 (as it may be restated, supplemented or amended from time to time, the “**Plan**”), which is attached as **Schedule “A”** to this Sanction Order.

## SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record be and is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice of the Plan, the Information Package (as defined in the Creditors’ Meeting Order) and the notice of the Creditors’ Meeting, and that the Creditors’ Meeting was duly convened, held, administered and conducted in conformity with the CCAA and all other Orders of this Court in the CCAA Proceedings.

## EXTENDING THE STAY PERIOD

4. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including September 30, 2013.

## SANCTION OF THE PLAN

5. **THIS COURT ORDERS AND DECLARES** that:
  - (a) the Plan has been approved by the Required Majority of Creditors present and voting either in person or by proxy at the Creditors’ Meeting in conformity with the CCAA and the terms of the Creditors’ Meeting Order;

- (b) the Applicants have acted in good faith and with due diligence, and have complied with the provisions of the CCAA and the Orders of this Court made in the CCAA Proceedings in all respects;
- (c) the Court is satisfied that the Applicants have not done nor purported to do anything that is not authorized by the CCAA; and
- (d) the Plan and the transactions contemplated by it are fair and reasonable.

6. **THIS COURT ORDERS AND DECLARES** that the Plan (including the compromises, arrangements and releases set out therein) is hereby sanctioned and approved pursuant to paragraph 6 of the CCAA and, upon the implementation of the Plan, it shall be effective and shall enure to the benefit of and be binding and effective on the Applicants, all Creditors and all other Persons, including their respective heirs, administrators, executors, legal personal representatives, successors and assigns, as provided for in the Plan and this Sanction Order.

#### **PLAN IMPLEMENTATION**

- 7. **THIS COURT ORDERS** that the Applicants and the Monitor, as the case may be, are hereby authorized and directed to take all steps and actions necessary or appropriate (as determined by the Applicants or the Monitor) to implement the Plan and the transactions contemplated therein in accordance with and subject to its terms, and such steps and actions are hereby approved.
- 8. **THIS COURT ORDERS** that, upon written notice to the Applicants and the filing with this Court by the Monitor of a certificate, in substantially the form attached as Schedule "A" to the Plan, signed by the Monitor, certifying that all of the conditions precedent set out in Section 7.2 of the Plan have been satisfied or waived, such conditions precedent shall be deemed to be satisfied or waived and the Plan Implementation Date shall be the date of such certificate, and the Monitor is hereby authorized to extend the Plan Implementation Date from the proposed date of August 2, 2013 to the date of the Monitor's Certificate.

9. **THIS COURT ORDERS** that, subject to the performance by the Applicants of their respective obligations under the Plan, and except to the extent expressly contemplated by the Plan or this Sanction Order, all obligations or agreements (including Leases) to which the Applicants are a party, other than agreements (including Leases) which were terminated or repudiated by the Applicants prior to the Plan Implementation Date in accordance with the CCAA Initial Order, are and will remain in full force and effect as at the Plan Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the CCAA Filing Date, and no Person who is a party to any such obligations or agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:

- (a) any defaults or events of default arising as a result of the insolvency of the Applicants prior to the Plan Implementation Date;
- (b) the fact that the Applicants have sought or obtained relief under the CCAA or that the Plan has been implemented by the Applicants;
- (c) the effect on the Applicants of the completion of any of the transactions contemplated by the Plan;
- (d) any compromises or arrangements effected pursuant to the Plan; or
- (e) any other event(s) which occurred on or prior to the Plan Implementation Date which would have entitled any Person thereto to enforce those rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicants after the CCAA Filing Date in respect of any Leases. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicants in respect of any Unaffected Obligation.

10. **THIS COURT ORDERS** that from and after the Plan Implementation Date, and subject to any express provisions to the contrary in any amending agreement (including in

respect of any Leases) entered into with the Applicants after the CCAA Filing Date, all Persons (except Wells Fargo) shall be deemed to have waived any and all defaults of the Applicants, or either of them, then existing or previously committed by the Applicants, or either of them, or caused by the Applicants, or either of them, or any of the provisions hereof or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, Lease, personal property lease or other agreement, written or oral, any amendments or supplements thereto, existing between such Person and the Applicants, or any of them. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including, without limitation, any notices of intention to proceed to enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn. For greater certainty, nothing in this paragraph shall waive any obligations of the Applicants in respect of any Unaffected Obligation.

11. **THIS COURT ORDERS** that, as of the Plan Implementation Date, each Unsecured Creditor shall be deemed to have consented and agreed to all of the provisions of the Plan in their entirety and, in particular, each Unsecured Creditor shall be deemed:
- (a) to have executed and delivered to the Monitor and to the Applicants all consents, releases or agreements required to implement and carry out the Plan in its entirety; and
  - (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Applicants as of the Plan Implementation Date (other than those entered into by the Applicants on or after the CCAA Filing Date) and the provisions of the Plan, the provisions of the Plan take precedence and priority and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

## ACCEPTANCE OF LATE CLAIMS

12. THIS COURT ORDERS that the Monitor be and hereby is authorized to accept for distribution purposes the seven claims that were received late by the Monitor, as set out in paragraph 52 of the Monitor's Third Report.

## RELEASES AND DISCHARGES

13. **THIS COURT ORDERS** that the releases referred to in Section 9.5 of the Plan are hereby sanctioned, approved, and given full force and effect subject to: (a) the rights of the Unsecured Creditors to receive distributions in respect of their claims in accordance with the Plan; and (b) the rights and obligations of the Unsecured Creditors under the Plan.
14. **THIS COURT ORDERS** that effective on the Plan Implementation Date the Applicants shall be forever released from all Unsecured Claims of Creditors other than in respect of the Applicants' obligations pursuant to the Plan. In consideration of the distributions made to them under the Plan and in consideration of any continuing Leases after the Interim Distribution Date, each Unsecured Creditor will be deemed to have, effective on the Plan Implementation Date, forever released and discharged: (i) the Applicants, (ii) the Monitor and its directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates; (iii) subject to subparagraph 5.1(2) of the CCAA in respect of directors, each and every past and present director, officer, employee, agent, affiliate, professional advisor (including legal counsel) and associate of the Applicants; and (iv) every Person who may claim contribution or indemnification against or from the Applicants, or either of them, from any and all demands, Claims, including Claims of any past and present officers, directors or employees for contribution and indemnity, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, including, without limitation, any and all Tax Claims, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other

occurrence existing or taking place on or prior to the Plan Implementation Date relating to, arising out of or in connection with the Applicants, the Assets, business or affairs of the Applicants, whenever and however conducted, the Plan or the CCAA Proceedings, other than Unaffected Obligations and the right to enforce the Applicants' obligations under the Plan.

15. **THIS COURT ORDERS AND DECLARES** that, notwithstanding any of the terms of the Plan or this Sanction Order, the Applicants shall not be released or discharged from their obligations in respect of Unaffected Obligations.
16. **THIS COURT CONFIRMS AND ORDERS** that, the provisions of the Claims Process and Bar Order are hereby confirmed and shall operate in addition to the provisions of this Sanction Order and the Plan and, without limiting the provisions of the Claims Process and Bar Order, an Unsecured Creditor that did not file a Proof of Claim and/or Lease Terms Form, as the case may be, in accordance with the provisions of the Claims Process and Bar Order, as applicable, is forever stayed and barred from making any Claim against the Applicants, or either of them, and shall not be entitled to any distribution under the Plan in respect of such Unsecured Creditor's Claim, and such Unsecured Creditor's Claim is forever extinguished.
17. **THIS COURT ORDERS** that effective on the Plan Implementation Date, the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgements, or other remedy or recovery with respect to any Claim that is satisfied, compromised, released, discharged or terminated pursuant to the Plan shall be permanently enjoined.

#### **THE MONITOR**

18. **THIS COURT ORDERS** that the Third Report, including the supplement to the Third Report, be and the same are hereby approved, and the actions of the Monitor described therein be and are hereby approved.
19. **THIS COURT ORDERS** that the activities and conduct of the Monitor in relation to the Applicants, the CCAA Proceedings, in calling for, conducting and administering the

Creditors' Meeting on June 26, 2013 (as more particularly described in the Third Report) and in calculating the Proven Distribution Claims in accordance with the Plan, be and are hereby ratified and approved.

20. **THIS COURT ORDERS** that, the appointment of BDO Canada Limited as Monitor and as an officer of this Court pursuant to the terms of the CCAA Initial Order shall not expire or terminate on the Plan Implementation Date and shall continue for the purposes of and shall be effective until further Order of this Court and the completion by the Monitor of all its duties in relation to the claims procedure and all matters relating thereto as set out in the Claims Process and Bar Order and the completion by the Monitor of all other matters for which it is responsible in connection with the Plan or pursuant to the Orders of this Court made in the CCAA Proceedings.

#### **CLAIMS AGAINST DIRECTORS AND OFFICERS**

21. **THIS COURT ORDERS** that, effective on the Interim Distribution Date, the releases and discharges contained in Section 9.5 of the Plan are effective and all steps, proceedings, demands, claims, actions, counterclaims, suits, judgments, executions, liens, administrative orders, declarations, assessments and other recoveries, except as provided for in subparagraph 5.1(2) of the CCAA, against any or all past, present and future directors and officers of the Applicants, or either of them, in respect of any liability, obligation, demand, cause of action or matter referred to in the Plan are thereupon stayed, extinguished and forever barred and such directors and officers shall have no liability in respect thereof.

#### **CCAA INITIAL ORDER AND OTHER ORDERS**

22. **THIS COURT ORDERS** that:
- (a) except to the extent that the CCAA Initial Order has been varied by or is inconsistent with this Sanction Order or any further Order of this Court, the provisions of the CCAA Initial Order shall remain in full force and effect until the Plan Implementation Date; and



- (b) all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by or are inconsistent with this Sanction Order or any further Order of this Court.

#### GENERAL

23. **THIS COURT ORDERS** that the Applicants, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan.
24. **THIS COURT ORDERS** that the Second Amending Agreement to the DIP Commitment Letter between the Applicants and Wells Fargo dated July 9, 2013, amending the terms of the DIP facility and extending the maturity of the DIP facility to September 30, 2013, be and is hereby approved.

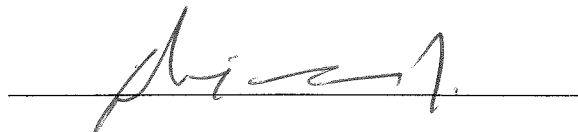
#### EFFECT, RECOGNITION AND ASSISTANCE OF OTHER COURTS

25. **THIS COURT ORDERS** that this Sanction Order and any other Order in this proceeding shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom they may otherwise be enforceable.
26. **THIS COURT HEREBY REQUESTS** the aid and recognition (including assistance pursuant to section 17 of the CCAA, as applicable) of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Sanction Order.
27. **THIS COURT ORDERS** that this Sanction Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Sanction Order.

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



JUL 11 2013



**SCHEDULE "A"**

**CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT OF  
THE JOHN FORSYTH SHIRT COMPANY LTD., FORSYTH HOLDINGS, INC.  
and FORSYTH OF CANADA, INC.**

See attached..

Court File No. CV-13-10009-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
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CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT OF  
THE JOHN FORSYTH SHIRT COMPANY LTD., FORSYTH HOLDINGS,  
INC. AND FORSYTH OF CANADA, INC.

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May 17, 2013

CONSOLIDATED PLAN OF COMPROMISE AND ARRANGEMENT PURSUANT TO  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)  
DATED FOR REFERENCE MAY 17, 2013

ARTICLE 1  
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Plan (including the Schedule hereto), unless otherwise stated or the subject matter or context should otherwise require, the following capitalized terms and phrases used but not defined herein have the following meanings:

“**Administration Charge**” has the meaning given to it in paragraph 31 of the CCAA Initial Order;

“**Affirmative Votes**” means the votes of the Eligible Voting Creditors with Proven Voting Claims, who have voted in favour of the Plan at the Creditors’ Meeting, and “**Affirmative Vote**” shall mean any one of them;

“**Applicable Law**” means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all laws, rules, statutes, regulations, treaties, orders, judgements and decrees, and all official requests, directives, rules, guidelines, orders, policies, practices and other requirements of any Authorized Authority;

“**Applicants**” means The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc. and Forsyth of Canada, Inc. and “**Applicant**” shall mean any one of them;

“**Assets**” means all of the property, assets, business and undertaking of the Applicants;

“**Authorized Authority**” means, in relation to any Person, transaction or event, any:

- (a) federal, provincial, state, municipal or local governmental body (whether administrative, legislative, executive or otherwise), both domestic and foreign;
- (b) agency, authority, commission, instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any Taxing Authority;
- (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions; or
- (d) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, transaction or event;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

**"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;

**"Canadian Dollars", "CDN \$" or "\$"** means dollars denominated in lawful currency of Canada;

**"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

**"CCAA Filing Date"** means February 22, 2013, being the date of the CCAA Initial Order;

**"CCAA Initial Order"** means the Order granted by the Court in the CCAA Proceedings on February 22, 2013, as amended, restated, varied or extended from time to time by subsequent Orders of the Court;

**"CCAA Proceedings"** means the proceedings commenced by the Applicants under the CCAA on February 22, 2013 in the Court under Court File No. CV-13-10009-00CL;

**"Charges"** has the meaning given to it in paragraph 38 of the CCAA Initial Order;

**"Claim"** means any right or claim of any Person that may be asserted or made in whole or in part against the Applicants, or either of them, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including, without limitation, by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or Assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including, without limitation, any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, and **"Claims"** means all of them;

**"Claims Bar Date"** means 5:00 p.m. (Toronto time) on June 21, 2013, as set out in the Claims Process and Bar Order, as such date may be extended in respect of any particular Claim by agreement of the Monitor and the Applicants and/or by Order of the Court;

**"Claims Process and Bar Order"** means the Order of the Court dated May 31, 2013, as amended, restated or varied from time to time by subsequent Order of the Court;

**"Contract Repudiation Claim"** means any Claim arising from the restructuring, repudiation, rescission or termination of any contract or other arrangements or

agreements of any nature whatsoever, whether written or oral, pursuant to a Notice of Repudiation or Termination received by any Person prior to the Repudiation Deadline, but excludes any Landlord Repudiation Claim and Employee Claim;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Creditor**” means any Person having a Pre-Filing Claim or Restructuring Claim, together with his, her or its heirs, executors, administrators, legal representatives, successors and assigns, and where the context requires and subject to the Claims Process and Bar Order and Section 5.4 of the Plan, includes the assignee or transferee of such Claim, a successor in interest to such Claim, or a trustee, receiver, interim receiver, receiver and manager, liquidator or other Person acting on behalf of such Person, and, for greater certainty, includes a Landlord, and “**Creditors**” means all of them;

“**Creditors’ Meeting**” means the meeting of Unsecured Creditors called for the purposes of considering and/or voting in respect of the Plan, which has been set by the Creditors’ Meeting Order to take place at 10:00 a.m. (Toronto time) on June 26, 2013, and any postponements, adjournments or amendments thereof;

“**Creditors’ Meeting Order**” means the Order of the Court dated May 31, 2013, as amended, restated or varied from time to time by subsequent Order of the Court;

“**Crown**” means Her Majesty the Queen in right of Canada or any province thereof;

“**DIP Lender**” means Wells Fargo Capital Finance Corporation Canada and Wells Fargo Capital Finance, LLC, in their capacity as DIP lenders to the Applicants;

“**DIP Charge**” has the meaning given to it in paragraph 35 of the CCAA Initial Order;

“**D&O Charge**” has the meaning given to it in paragraph 21 of the CCAA Initial Order;

“**Disallowed Claim**” means a Disputed Claim or any portion thereof which has been finally disallowed in accordance with the Claims Process and Bar Order;

“**Dispute Notice**” means the dispute notice, in substantially the form attached as Schedule “F” to the Claims Process and Bar Order, delivered by an Unsecured Creditor to the Monitor who has received a Notice of Revision or Disallowance and who intends to dispute such Notice of Revision or Disallowance pursuant to the Claims Process and Bar Order or the Plan;

“**Disputed Claim**” means, as applicable: (a) that portion of an Unsecured Claim which has not been allowed or accepted as proven by the Monitor for distribution purposes, which is the subject of a Dispute Notice, and which has not been resolved by the Monitor, by agreement or by further Order of the Court; or (b) in respect of any Lease Terms which have not been allowed or accepted as proven by the Monitor for distribution purposes, which are the subject of a Dispute Notice, and which have not been resolved by the Monitor, by agreement or by further Order of the Court, the amount which is the difference between the calculation of the distribution to a Landlord: (i) based on the

Lease Terms accepted by the Monitor; and (ii) based on the Lease Terms asserted by a Landlord in a Dispute Notice, and “**Disputed Claims**” means all of them;

“**Disputed Claims Reserve**” means the reserve, if any, established on the Interim Distribution Date and maintained by the Monitor, in which the Monitor shall deposit the amounts which would be distributed to Holders of Disputed Claims if such Disputed Claims were to become Proven Distribution Claims for their entire amount, pending the final determination or resolution of such Disputed Claims for distribution purposes under this Plan;

“**Document Package**” means a document package which shall include a copy of the appropriate Instruction Letter, the Proof of Claim or the Lease Terms Form, as applicable, the Claims Process and Bar Order, the Creditors’ Meeting Order, and such other materials as the Monitor may consider appropriate or desirable;

“**EBDAT**” means earnings before depreciation, amortization and taxes calculated in accordance with the provisions of Schedule “B” attached hereto;

“**Eligible Voting Creditor**” means an Unsecured Creditor who holds a Proven Voting Claim or a Disputed Claim, and “**Eligible Voting Creditors**” means all of them;

“**Employee Claimant**” means any Person holding an Employment Claim, and “**Employee Claimants**” means all of them;

“**Employment Claims**” means any Claim arising from the employment of any person with any of the Applicants, or arising from the termination of the employment of any employee of any of the Applicants arising from or accrued in relation to any date prior to the CCAA Filing Date, whether or not such Claim fell due on or before the CCAA Filing Date and for greater certainty shall include but shall not be restricted to Claims for vacation pay, termination, severance, any obligations arising at common law, under the *Employment Standards Act* (Ontario), or other similar legislation, and any claims under paragraphs 81.3 or 81.3 of the BIA; and “**Employment Claim**” means any one of them;

“**Final Distribution Date**” means a date to be chosen by the Monitor, in consultation with the Applicants, which shall be a date which is within thirty (30) days of the later of: (i) the date on which the Monitor certifies to the Court that the last Disputed Claim has been finally determined or settled; and (ii) January 15, 2016;

“**Holder**” means an Unsecured Creditor who has filed a Proof of Claim or Lease Terms Form, as applicable, with the Monitor in accordance with the Claims Process and Bar Order, or, subject to Section 5.4 of the Plan, any assignee or transferee thereof, and “**Holders**” means all of them;

“**ITA**” means the *Income Tax Act* (Canada), R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended;

“**Interim Distribution Date**” means January 15, 2014;

“Landlord” means:

- (a) a landlord, head landlord or owner of real property, whether or not in direct privity with the Applicants, who has a Pre-Filing Claim or Restructuring Claim in respect of any premises leased or otherwise occupied by the Applicants pursuant to a Lease to which such landlord, head landlord or owner is a party or by which such landlord, head landlord or owner is bound or otherwise enjoys or may enjoy the benefit of, and includes:
  - (i) any mortgagee of such premises who has taken possession of such premises or is collecting Rent in respect of such premises; and
  - (ii) any Person who has taken an assignment of rents or assignment of Lease in respect of such premises, whether as security or otherwise;
- (b) any Person whose Pre-Filing Claim or Restructuring Claim would be duplicative of or derivative from the Pre-Filing Claim or Restructuring Claim of such landlord, head landlord or owner; and
- (c) any Person who has a Pre-Filing Claim or Restructuring Claim in such Person’s capacity as co-owner, partner, shareholder or trust beneficiary of a Person which is the landlord, head landlord or owner of any premises leased or otherwise occupied by the Applicants and includes:
  - (i) any holder of a Lien against such ownership, partnership, shareholder or beneficial interest who is entitled to receive any dividends or distribution thereon;
  - (ii) any Person who has taken an assignment of such ownership, partnership, shareholder or beneficial interest; and
  - (iii) any Person whose Pre-Filing Claim or Restructuring Claim would be duplicative of or derivative from the Pre-Filing Claim or Restructuring Claim of such first named Person,

and “Landlords” means all of them;

“Landlord Repudiation Claim” means any Claim of any Landlord: (a) with respect to the waiver or reduction of any benefits to the Landlord, financial or otherwise, arising out of, or by virtue of, the granting of or entering into an agreement providing amendments to a Lease on or after the CCAA Filing Date, and prior to the Repudiation Deadline; or (b) arising from or in any way related to the abandonment by the Applicants of any Repudiated Leased Premises or the restructuring, repudiation, resiliation or termination of any Lease on or after the CCAA Filing Date by the Applicants pursuant to a Notice of Repudiation or Termination, including, without limitation, any damages or losses of any kind, direct or indirect, consequential or otherwise, incurred or suffered by such Landlord in respect of any such abandonment of Repudiated Leased Premises or any such restructuring, repudiation, resiliation or termination of any Lease, and including any



physical damage caused by the Applicants or any of its agents in abandoning Repudiated Leased Premises and in removing any signage or other equipment from such Repudiated Leased Premises, but excludes: (i) any Claim of a Landlord existing before the CCAA Filing Date; (ii) any Contract Repudiation Claim; and (iii) any Unaffected Obligation, and "**Landlord Repudiation Claims**" means all of them;

"**Lease**" means any lease, sublease, licence, sublease, agreement to lease, offer to lease or other agreement or arrangement, whether written, oral or otherwise pursuant to which the Applicants, or any one of them, have or had a right to occupy premises, and includes all amendments and supplements thereto and all ancillary documents relating thereto existing as at the CCAA Filing Date, and for greater certainty, excludes any lease of personal property;

"**Lease Terms**" means the information pertaining to a Lease that has been submitted to the Monitor by a Landlord pursuant to a Lease Terms Form, which information reflects, *inter alia*, only those terms of the Lease that were in effect as of the CCAA Filing Date;

"**Lease Terms Form**" means the lease terms form, in substantially the form attached as Schedule "D" to the Claims Process and Bar Order, which is required to be submitted to the Monitor by any Landlord who has an Unsecured Claim by the Claims Bar Date in accordance with the Claims Process and Bar Order;

"**Lien**" means any mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law which has been duly and properly registered or perfected in accordance with applicable legislation on the CCAA Filing Date or otherwise in accordance with the CCAA Initial Order;

"**Monitor**" means BDO Canada Limited, in its capacity as Court-appointed monitor of the Applicants in the CCAA Proceedings, and not in its corporate or personal capacity;

"**Monitor's Certificate**" has the meaning given to it in Section 7.3 of the Plan;

"**Negative Votes**" means the votes of the Eligible Voting Creditors with Proven Voting Claims, who have voted against the Plan at the Creditors' Meeting, and "**Negative Vote**" shall mean any one of them;

"**Notice of Repudiation or Termination**" means a written notice in any form issued on or after the CCAA Filing Date and prior to the Repudiation Deadline by the Applicants advising a Person of the restructuring, repudiation, resiliation or termination of any contract, Lease, employment agreement, or other arrangements or agreements of any nature whatsoever, whether written or oral, and any agreements related thereto, including, without limitation, the repudiation of any obligations under a Lease required to be performed by the Applicants before, on or concurrent with the surrender or vacating of the leased premises on the expiry of the term of the Lease prior to the Plan Implementation Date;

**“Notice of Revision or Disallowance”** means a notice of revision or disallowance, in substantially the form attached as Schedule “E” to the Claims Process and Bar Order, as submitted to the Monitor by a Creditor in accordance with the Claims Process and Bar Order;

**“Order”** means any order of the Court in the CCAA Proceedings, and **“Orders”** means all of them;

**“Person”** shall be broadly interpreted and includes an individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, corporation, unincorporated association or organization, syndicate, committee, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Authorized Authority;

**“Plan”** means this Consolidated Plan of Compromise and Arrangement, as it may be restated, supplemented or amended from time to time in accordance with the provisions the Plan, the Claims Process and Bar Order and the Creditors’ Meeting Order;

**“Plan Implementation Date”** means the Business Day immediately following the Business Day on which all conditions to implementation of the Plan as set out in Section 7.2 of the Plan have been satisfied, fulfilled or waived, and the Monitor has filed the Monitor’s Certificate with the Court confirming the foregoing;

**“Pre-Filing Claim”** means any Claim which is based in whole or in part on facts which existed prior to the CCAA Filing Date, together with any other rights or Claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the BIA had the Applicants become bankrupt prior to the CCAA Filing Date, together with any other rights or Claims, whether or not asserted, made after the CCAA Filing Date in any way, directly or indirectly related to any action taken or power exercised prior to the CCAA Filing Date, and which for greater certainty, includes any Tax Claim;

**“Pro Rata”** means, in respect to an Unsecured Creditor, the amount determined by the following formula:

$$\text{Pro Rata Share} = (A/B)$$

A = the amount of such Unsecured Creditor’s Proven Distribution Claim;

B = the aggregate amount of all Unsecured Claims that are Proven Distribution Claims and Disputed Claims;

**“Promissory Note”** shall mean the Promissory Note as described and with the characteristics as provided for in Section 4.2(c) hereof;

**“Proof of Assignment”** means a notice of transfer or assignment of a Claim executed by the Creditor and the transferee or assignee, together with such other evidence of such transfer or assignment as may be reasonably required by the Monitor and/or the Applicants;

**“Proof of Claim”** means a proof of claim, in substantially the form attached as Schedule “B” to the Claims Process and Bar Order, which is required to be submitted to the Monitor by any Creditor, except a Landlord, who has an Unsecured Claim by the Claims Bar Date in accordance with the Claims Process and Bar Order, and **“Proofs of Claim”** means all of them;

**“Proven Lease Terms”** means the Lease Terms of a Landlord for voting and/or distribution purposes, as the case may be, which have become finally determined or allowed in accordance with the Claims Process and Bar Order, the Creditors’ Meeting Order, and/or the Plan, as applicable;

**“Proven Distribution Claim”** means the amount of an Unsecured Claim as finally determined or allowed for distribution purposes in accordance with the provisions of the Claims Process and Bar Order, the Creditors’ Meeting Order, and/or the Plan, as applicable, and **“Proven Distribution Claims”** means all of them;

**“Proven Voting Claim”** means the amount of an Unsecured Claim as finally determined or allowed for voting purposes in accordance with the provisions of the Claims Process and Bar Order, the Creditors’ Meeting Order and/or the Plan, as applicable, and **“Proven Voting Claims”** means all of them;

**“Proxy”** means a proxy, in substantially the form attached as Schedule “C” to the Creditors’ Meeting Order, or such other form acceptable to the Monitor or chair of the Creditors’ Meeting, and **“Proxies”** means all of them;

**“Rent”** means solely for the purposes of calculating a Landlord Voting Amount and a Landlord Repudiation Claim, the amount set out in the corresponding Proven Lease Terms, expressed on a monthly basis, that is in respect of the minimum, basic, net, or base rent, together with such additional rent as set out in the corresponding Proven Lease Terms, and where rent or additional rent is expressed in the Proven Lease Terms for a period of time and other than monthly, it shall be converted *pro rata* to a monthly basis;

**“Repudiated Leased Premises”** means any premises leased or otherwise occupied by the Applicants pursuant to a Lease in which the Applicants have delivered to the applicable Landlord a Notice of Repudiation or Termination, but shall not include: (a) any premises in respect of which the Applicants have expressly withdrawn, with the written consent of the Landlord, a previously delivered Notice of Repudiation or Termination; or (b) any premises surrendered or vacated by the Applicants on the expiry of the term of the Lease;

**“Repudiation Deadline”** means 5:00 p.m. (Toronto time) on June 4, 2013;

**“Required Majority of Creditors”** means: (a) the number of Affirmative Votes exceeding fifty percent (50%) of the Votes Cast; and (b) the value of Proven Voting Claims attributable to the Affirmative Votes equal to or exceeding sixty-six and two-thirds percent (66-2/3%) of the value of Proven Voting Claims attributable to the Votes Cast;

**“Restructuring Claim”** means any Landlord Repudiation Claim and Contract Repudiation Claim, and **“Restructuring Claims”** means all of them;

**“Sanction Order”** means an Order sanctioning the Plan and giving all necessary directions regarding its implementation, which shall contain the provisions set forth in Section 7.1 of the Plan;

**“Second Distribution Date”** means January 15, 2015;

**“Secured Claims”** means all Claims secured by a Lien, provided that no Landlord Repudiation Claims arising under a Lease shall be treated under the Plan as Secured Claims, and **“Secured Claim”** means any one of them;

**“Secured Creditors”** means Creditors with Claims that are Secured Claims, and **“Secured Creditor”** means any one of them;

**“Special Crown Claims”** means Claims of the Crown, for all amounts that were outstanding at the CCAA Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

“**Stay Period**” has the meaning given to it in the CCAA Initial Order;

“**Tax**” or “**Taxes**” means any and all amounts subject to a withholding or remitting obligation and any and all taxes, duties, fees, and other governmental charges, duties, impositions and liabilities of any kind whatsoever whether or not assessed by the Taxing Authorities (including any Claims by any of the Taxing Authorities), including all interest, penalties, fines, fees, other charges and additions with respect to such amount;

“**Tax Claim**” means any Claim against the Applicants for any Taxes in respect of any taxation year or period ending on or prior to the CCAA Filing Date, and in any case where a taxation year or period commences on or prior to the CCAA Filing Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the CCAA Filing Date and up to and including the CCAA Filing Date. For greater certainty, a Tax Claim shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto;

“**Taxing Authorities**” means Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada and any political subdivision thereof, and any Canadian or foreign governmental authority, and “**Taxing Authority**” means any one of the Taxing Authorities;

“**Unaffected Obligations**” has the meaning given to such term in Section 3.2 of the Plan, and “**Unaffected Obligation**” means any one of them;

“**Unsecured Claims**” means all Pre-Filing Claims and Restructuring Claims, but excludes any Unaffected Obligations, and excludes any Claims of Harris Hester, Oliver Morante and Rick Droppo, each of whom have waived their entitlement to Claim to a distribution under this Plan, and “**Unsecured Claim**” means any one of them;

“**Unsecured Creditors**” means Creditors with Claims that are Unsecured Claims, wherever situate, including, without limitation, Creditors in Canada, the United States of America and elsewhere, and “**Unsecured Creditor**” means any one of them; and

“**Votes Cast**” means the sum of the Affirmative Votes and the Negative Votes of the Eligible Voting Creditors with Proven Voting Claims present at the Creditors’ Meeting in person or by Proxy.

## 1.2 Article and Section Reference

The terms “**this Plan**”, “**hereof**”, “**hereunder**”, “**herein**”, and similar expressions refer to this Plan, and not to any particular article, section, subsection, paragraph or clause of this Plan and include any variations, amendments, modifications or supplements hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to an article, section, subsection, paragraph or clause of this Plan.

**1.3 Extended Meanings**

In this Plan, where the context so requires, any word importing the singular number shall include the plural and vice versa, and any word or words importing gender shall include all genders.

**1.4 Interpretation Not Affected by Headings**

The division of this Plan into articles, sections, subsections, paragraphs and clauses and the insertion of a table of contents and headings are for convenience of reference and shall not affect the construction or interpretation of this Plan.

**1.5 Date of Any Action**

In the event that any date on which any action is required to be taken hereunder by any Person is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

**1.6 Currency**

Unless otherwise stated herein, all references to currency in this Plan are to lawful money of Canada. For the purposes of voting or distribution, any Claim or Lease Terms shall be denominated in Canadian Dollars and all distributions under this Plan shall be paid in Canadian Dollars. Any Claim or Lease Terms in a currency other than Canadian Dollars must be converted to Canadian Dollars, and such amount shall be regarded as having been converted at the spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian Dollars as at noon on the CCAA Filing Date, which rate for greater certainty for the conversion of US Dollars to Canadian Dollars is CDN \$1.0217:US \$1.00.

**1.7 Statutory References**

Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulations in force from time to time to the date of this Plan and any statute or regulation that supplements or supersedes such statute or regulation to the date of this Plan.

**1.8 Successors and Assigns**

This Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns, as the case may be, of any Person named or referred to in or bound by this Plan.

**1.9 Governing Law**

This Plan and each of the documents contemplated or delivered under or in connection with this Plan, shall be governed by, and are to be construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of this Plan and all proceedings taken in

connection with this Plan and its revisions shall be subject to the exclusive jurisdiction of the Court.

**1.10 Inclusive Meaning**

As used in this Plan, the words “include”, “includes”, “including” or any other derivation thereof means, in any case, those words as modified by the words “without limitation”.

**1.11 Severability**

If any provision of this Plan is or becomes illegal, invalid or unenforceable on or following the Plan Implementation Date in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect the legality, validity or enforceability of the remaining provisions of this Plan, or the legality, validity or enforceability of that provision in any other jurisdiction.

**1.12 Timing Generally**

Unless otherwise specified, all references to time herein, and in any document issued pursuant hereto, shall mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Toronto time) on such Business Day.

**1.13 Time of Payments and Other Actions**

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 payment to the next succeeding Business Day if the last day of the period is not a Business Day. Wherever any payment to be made or action to be taken under this Plan is required to be made or to be taken on a day other than a Business Day, such payment shall be made or action taken on the next succeeding Business Day.

**1.14 Interpretation of Accounting Terms**

All accounting terms not otherwise defined herein shall have the meanings ascribed to them, from time to time, in accordance with Canadian generally accepted accounting principles as now in effect, including those prescribed by the Canadian Institute of Chartered Accountants.

**1.15 Schedule**

The following is a Schedule to this Plan, which is incorporated by reference into this Plan and forms an integral part hereof:

- Schedule “A” – Form of Monitor’s Certificate
- Schedule “B” – Calculation of EBDAT
- Schedule “C” – Form of Promissory Note

**ARTICLE 2  
PURPOSE OF PLAN**

**2.1 Purpose**

The purpose of this Plan is to effect a compromise and arrangement of all Unsecured Claims against the Applicants, in order to enable the business of the Applicants to continue, in the expectation that a greater benefit will be derived from the continued operation of the business of the Applicants than would result from the bankruptcy, the immediate sale or forced liquidation of the Applicants' Assets.

**ARTICLE 3  
CLAIMS**

**3.1 Affected Persons**

On the Plan Implementation Date, this Plan shall be binding upon the Applicants and the Unsecured Creditors in respect of their Unsecured Claims and their respective heirs, executors, administrators, legal representatives, successors and assigns, but, for greater certainty, the Plan shall not affect any Unaffected Obligations.

**3.2 Claims Unaffected by the Plan**

This Plan shall not compromise the following Claims and rights that arise in respect thereof (collectively, the "Unaffected Obligations"):

- (a) Claims of Secured Creditors;
- (b) Claims arising in the ordinary course of business for utilities, goods, materials or services provided to and received by the Applicants at the request of the Applicants from and after the CCAA Filing Date, which Claims shall be paid by the Applicants in accordance with terms previously agreed upon by the Applicants with suppliers of such utilities, goods, materials and services;
- (c) Claims for unpaid Rent (as such term is defined in the CCAA Initial Order) of any Landlord against the Applicants payable pursuant to the terms of the CCAA Initial Order for the period from and after the CCAA Filing Date;
- (d) subject to any agreement with a Landlord, Claims of a Landlord arising after the CCAA Filing Date pursuant to or in respect of a Lease which is: (i) not subject to a Notice of Repudiation or Termination; and (ii) which is otherwise continuing in full force and effect as of the Plan Implementation Date with or without modification, amendment or variation with the consent of the Landlord after the CCAA Filing Date, but excluding any Claims that arose under any such Lease prior to the CCAA Filing Date or any Claims with respect to the waiver or reduction of any benefits to the Landlord, financial or otherwise, arising out of, or by virtue of the granting of or entering into an agreement providing amendments to a Lease;



- (e) subject to any agreement with a Landlord, Claims of a Landlord arising from the non-performance of any obligations of the Applicants to be performed by the Applicants under the CCAA Initial Order or any other Orders made in the CCAA Proceedings in respect of any Lease which is subject to a Notice of Repudiation or Termination, for which notice of such Claim is given to the Applicants in writing no later than five (5) Business Days prior to the hearing of the Sanction Order;
- (f) Claims secured by the DIP Charge;
- (g) Claims secured by the Administration Charge;
- (h) Special Crown Claims;
- (i) Claims of Harris Hester and Oliver Morante;
- (j) that portion of a Claim arising from a cause of action for which the Applicants are covered by insurance, only to the extent of such coverage; and
- (k) Claims of the Monitor, and all legal, real estate, accounting, tax, financial or other advisers to and consultants of the Applicants and the Monitor incurred by the Applicants and the Monitor in connection with the CCAA Proceedings and the restructuring of the Applicants, including the development and implementation of this Plan.

### **3.3 No Vote or Distribution in Respect of Unaffected Obligations**

No holder of an Unaffected Obligation shall be entitled to vote on or receive any distributions under this Plan in respect of such Unaffected Obligation.

### **3.4 Claims Filed By Holders of Unaffected Obligations**

Where a Proof of Claim or Lease Terms Form has been filed with the Applicants or the Monitor by any Person in respect of an Unaffected Obligation, whether pursuant to the Claims Process and Bar Order or otherwise, such Proof of Claim or Lease Terms Form will be deemed to be disallowed for voting and distribution purposes with no further action required by the Applicants or the Monitor and neither the Applicants nor the Monitor shall have any further obligation in respect of such Proof of Claim or Lease Terms Form.

### **3.5 Set-Off**

Except as otherwise contractually agreed, the law of set-off applies to all Claims made against the Applicants and to all actions instituted by it for the recovery of debts due to the Applicants in the same manner and to the same extent as if the Applicants were plaintiffs or defendants, as the case may be.

### 3.6 Special Crown Claims

All Special Crown Claims in respect of all amounts that were outstanding at the CCAA Filing Date or related to the period ending on the CCAA Filing Date shall be paid in full to the Crown within six (6) months of the Sanction Order as required by subparagraph 18.2(1) of the CCAA.

### 3.7 Funding of Cash Distributions under the Plan

Notwithstanding any other provision of this Plan, the Applicants shall fund the Monitor with amounts sufficient to enable the Monitor to make distributions to Unsecured Creditors under this Plan due on or before the Interim Distribution Date and the Second Distribution Date at least three (3) Business Days prior to the due date for each such distribution. The Applicants shall fund directly to Unsecured Creditors distributions under this Plan that fall due after the Second Distribution Date.

## ARTICLE 4 TREATMENT OF UNSECURED CREDITORS

### 4.1 Voting for Creditors

Each Unsecured Creditor with one or more Unsecured Claims shall be entitled to vote on this Plan at the Creditors' Meeting, to the extent of the amount of its Proven Voting Claim. Claims of all Unsecured Creditors shall be treated as a single class.

### 4.2 Distribution to Unsecured Creditors (other than Employee Claimants)

Following the Plan Implementation Date, the Monitor or the Applicants, as applicable, shall make the following distributions to each Unsecured Creditor, other than Employee Claimants, holding a Proven Distribution Claim, which, together with any other distribution to each Unsecured Creditor required hereunder, shall be in full and final satisfaction, compromise, settlement, release and discharge of each such Proven Distribution Claim:

- (a) to any Unsecured Creditor, other than Employee Claimants, holding a Proven Distribution Claim in an amount of \$5,000 or less or for which such Unsecured Creditor files a Proven Distribution Claim in an amount of \$5,000 or less, the lesser of the amount of its Proven Distribution Claim or \$1,000, to be paid on or before the Interim Distribution Date in full satisfaction of such Claim;
- (b) to any Unsecured Creditor, other than Employee Claimants, holding a Proven Distribution Claim in an amount greater than \$5,000 but equal to or less than \$3,000,000:
  - (i) payment of an amount equal to 10% of such Unsecured Creditor's Proven Distribution Claim to be paid on or before the Interim Distribution Date; and

- (ii) payment of an amount equal to 10% of such Unsecured Creditor's Proven Distribution Claim to be paid on or before the Second Distribution Date;
- (c) to any Unsecured Creditor, other than Employee Claimants, holding a Proven Distribution Claim in an amount greater than \$3,000,000:
  - (i) payment of an amount equal to 10% of the first \$3,000,000 of such Unsecured Creditor's Proven Distribution Claim to be paid on or before the Interim Distribution Date; and
  - (ii) a Promissory Note issued on the Plan Implementation Date by the Applicants on a joint and several basis in favour of such Unsecured Creditor in a form substantively similar to Schedule "C" attached hereto and having the following characteristics:
    - (1) the face value of the Promissory Note shall be for the amount of the Unsecured Creditor's Proven Distribution Claim less the aggregate of the payment made or to be made to the applicable Unsecured Creditor pursuant to Subsection 4.2(c)(i) of this Plan;
    - (2) the Promissory Note shall require payments to the applicable Unsecured Creditor of: (i) \$50,000 per quarter starting April 1, 2014, for a period of 12 quarters; plus (ii) 50% of the EBDAT of the Applicants on a consolidated basis per year, for a period of 5 years, starting with the fiscal year ending December 31, 2014 and payable 15 days after the completion of the calculation of EBDAT in accordance with Schedule "B" hereof for the relevant fiscal year, after deducting from such EBDAT: (A) the aforementioned \$50,000 quarterly payments made during the relevant fiscal year; and (B) the payments referred to in Subsections 4.2(b), 4.3(b), 4.3(c) and 4.3(d) of this Plan made during the relevant fiscal year; and
    - (3) the Promissory Note shall bear no interest.

#### **4.3 Employee Claims**

Following the Plan Implementation Date, the Monitor or the Applicants, as applicable, shall make the following distributions to each Employee Claimant with a Proven Distribution Claim, in full and final satisfaction, compromise, settlement release and discharge of each such Proven Distribution Claim:

- (a) to an Employee Claimant holding a Proven Distribution Claim in respect of an Employment Claim in amount equal to or less than the aggregate of \$1,000, including any such Employee Claimant proving a Claim for

\$1,000 or less, the entire amount of such Claim to be paid on or before the Interim Distribution Date;

- (b) to each Employee Claimant holding a Proven Distribution Claim in an amount greater than \$1,000 but equal to or less than \$3,250: (i) a payment of \$1,000 on account of such Proven Distribution Claim on or before the Interim Distribution Date; (ii) an additional payment equal to the lesser of \$1,000 or the balance of such Proven Distribution Claim on or before the Second Distribution Date; and (iii) the balance, if any, of such Proven Distribution Claim on or before January 15, 2016 to a maximum of \$3,250;
- (c) to each Employee Claimant holding a Proven Distribution Claim greater than \$3,250 but less than or equal to \$16,250:
  - (i) a payment on or before the Initial Distribution Date equal to the greater of: (A) \$1,000; or (B) 10% of the amount of such Employee Claimant's Proven Distribution Claim; and
  - (ii) a payment on or before the Second Distribution Date equal to the greater of: (A) \$1,000; or (B) 10% of the amount of such Employee Claimant's Proven Distribution Claim; and
  - (iii) an additional amount paid on or before January 15, 2016 equal to \$3,250 less the aggregate payments made to such Employee Claimant under Subsections 4.3(c)(i) and (ii) of this Plan; and
- (d) to any Employee Claimant holding a Proven Distribution Claim exceeding \$16,250, two payments equal to 10% of such Employee Claimant's Proven Distribution Claim paid on or before the Interim Distribution Date and the Second Distribution Date, respectively.

#### 4.4 Limitation on Payments

The distributions provided for under Sections 4.2 and 4.3 hereof, other than the distributions under the Promissory Notes, shall be made subject to the following conditions and restrictions:

- (a) no distributions may be made at any time that any payments due under the Promissory Notes are in arrears, but such distributions shall occur forthwith after such payments under the Promissory Notes have been brought into good standing;
- (b) distributions under this Plan that are scheduled to be made on or before the Interim Distribution Date shall not exceed, in the aggregate, \$650,000, and if the quantum of Proven Distribution Claims would otherwise result in aggregate distributions exceeding \$650,000 for that period then such distributions shall be reduced on a pro rata basis based on the amount that

would otherwise be received by each Unsecured Creditor during that period to an aggregate of \$650,000;

- (c) distributions scheduled to be made on or before the Second Distribution Date but after the Interim Distribution Date, excluding the distributions described in Subsection 4.2(c) of this Plan, shall not exceed, in the aggregate, \$300,000, and if the quantum of Proven Distribution Claims would otherwise result in aggregate distributions exceeding \$300,000 for that period then such distribution shall be reduced on a Pro Rata basis among Unsecured Creditors to an aggregate of \$300,000; and
- (d) distributions scheduled to be made on or before January 15, 2016 but after the Second Distribution Date, excluding the distributions described in Subsection 4.2(c) of this Plan, shall not exceed, in the aggregate, \$80,000, and if the quantum of Proven Distribution Claims would otherwise result in aggregate distributions exceeding \$80,000 for that period then such distribution shall be reduced on a Pro Rata basis among Unsecured Creditors to an aggregate of \$80,000.

#### **4.5 Unsecured Creditors with Unsecured Claims against Individual Applicants**

Unsecured Creditors holding an Unsecured Claim against any of the Applicants shall be treated as an Unsecured Claim against the Applicants on a joint and several basis for the purposes of the Plan, it being the intention that the obligations under the Plan shall be joint and several obligations of the Applicants and all distributions hereunder shall be made in full and final satisfaction, compromise, settlement, release, and discharge of all Unsecured Claims.

### **ARTICLE 5 PROVISIONS GOVERNING DISTRIBUTIONS**

#### **5.1 Loss of Right to Receive Distributions**

Unless otherwise ordered by the Court or agreed to by the Applicants and the Monitor in writing, any Unsecured Creditor that has not submitted a Proof of Claim or Lease Terms Form, as the case may be, in accordance with the procedure set out in the Claims Process and Bar Order prior to the Claims Bar Date will not be entitled to receive any distributions under this Plan in respect of its Unsecured Claim.

#### **5.2 Distributions**

- (a) Notwithstanding any date of a distribution indicated herein, an Unsecured Creditor holding a Disputed Claim will not receive a distribution under this Plan in respect of such Disputed Claim until the Disputed Claim is finally determined or settled pursuant to the Claims Process and Bar Order, the Creditors' Meeting Order, this Plan or further Order of the Court. Distributions in respect of a Disputed Claim determined to be a Proven Distribution Claim shall be paid in accordance with Section 4.2 or 4.3 of this Plan, if and as applicable, or as soon as practicable.

- (b) Except as otherwise provided herein or as ordered by the Court, distributions on account of Proven Distribution Claims to Unsecured Creditors pursuant to Sections 4.2 and 4.3 of this Plan and payable on or before (i) the Second Distribution Date shall be made on or before the Second Distribution Date but after the Interim Distribution Date; and (ii) January 15, 2016 shall be made on or before January 15, 2016 but after the Second Distribution Date.
- (c) All cash distributions to be made under this Plan to an Unsecured Creditor by the Monitor or by the Applicants, as applicable, shall be made by cheque and will be sent, via regular mail, to such Unsecured Creditor at the address set out on the Unsecured Creditor's Proof of Claim or Lease Terms Form, as the case may be, or such other address as provided to the Monitor by such Unsecured Creditor in accordance with Section 10.6 of this Plan.
- (d) Distributions of amounts held in the Disputed Claims Reserve in respect of the Disputed Claims which become Disallowed Claims shall be made by the Monitor in accordance with Section 5.5 of this Plan.

### **5.3 Interest on Unsecured Claims**

Unless otherwise specifically provided for in this Plan or in the Sanction Order, no interest or penalties shall accrue or be paid on an Unsecured Claim or a Proven Distribution Claim from and after or in respect of the period following the CCAA Filing Date and no Holder of an Unsecured Claim or Proven Distribution Claim will be entitled to any interest in respect of such Unsecured Claim or Proven Distribution Claim accruing on or after or in respect of the period following the CCAA Filing Date. All interest accruing on any Unsecured Claim or Proven Distribution Claim after or in respect of the period following the CCAA Filing Date shall be forever extinguished and released under this Plan.

### **5.4 Distributions in respect of Transferred or Assigned Claims**

With respect to distributions to Unsecured Creditors under this Plan, neither the Applicants nor the Monitor, as applicable, shall be obligated to deliver any distributions under this Plan to any transferee or assignee of an Unsecured Claim as the Creditor in respect of or Holder of such Unsecured Claim unless a Proof of Assignment is delivered to the Monitor and the Applicants no later than five (5) Business Days prior to the Interim Distribution Date, the Second Distribution Date, any subsequent interim distribution date(s) or the Final Distribution Date, as applicable.

### **5.5 Disputed Claims**

- (a) The fact that a Proof of Claim or Lease Terms Form is allowed for voting purposes shall not preclude the Monitor from disputing such Proof of Claim or Lease Terms Form for distribution purposes. Distributions in relation to any Disputed Claim in existence at the Plan Implementation Date will be held in escrow by the Monitor pending settlement or final determination of the Disputed Claim in accordance with the Claims Process and Bar Order, this Plan or other order of the Court.

- (b) On the Interim Distribution Date, the Monitor shall establish the Disputed Claims Reserve by withholding on account of Disputed Claims, that amount which would be distributed to Holders of Disputed Claims if such Disputed Claims were to become Proven Distribution Claims, for their entire amount on the Interim Distribution Date. Such Disputed Claims Reserve shall be held in escrow by the Monitor until a final determination or settlement has been made in respect of the Disputed Claims, at which time any surplus funds arising from any Disallowed Claims, after releasing for distribution all amounts in respect of Disputed Claims that have become Proven Distribution Claims, shall be released by the Monitor from the Disputed Claims Reserve and distributed to Unsecured Creditors with Proven Distribution Claims on a Pro Rata basis, provided, however, that any such further distributions to Unsecured Creditors with Proven Distribution Claims need only be made by the Monitor when the aggregate amount available for distribution from the Disputed Claims Reserve, together with the aggregate amount of undeliverable or unclaimed distributions determined in accordance with Section 5.6 of this Plan, is not less than CDN \$1,500.00. If on the Final Distribution Date, and provided that all payments due under the Promissory Notes are current, the aggregate amount available for distribution from the Disputed Claims Reserve, together with the aggregate amount of undeliverable or unclaimed distributions determined in accordance with Section 5.6 of this Plan, is less than CDN \$1,500.00, such funds shall be released by the Monitor to the Applicants, free and clear of any Claims of the Holders in respect thereof, any other Unsecured Creditors and their respective successors and assigns.

#### 5.6 Undeliverable and Unclaimed Distributions

- (a) If any Unsecured Creditor entitled to a cash distribution pursuant to this Plan cannot be located on any distribution date, or if any delivery or distribution to be made pursuant to Section 4.2 or 4.3 of this Plan is returned as undeliverable, such cash shall be set aside by the Monitor and deposited in a segregated, interest-bearing account to be maintained by the Monitor or, if after the Second Distribution Date, by the Applicants.
- (b) If such Unsecured Creditor is located within six (6) months after such distribution date, such cash (less the allocable portion of taxes, if any, paid by the Applicants on account of such Creditor), shall be distributed to such Creditor.
- (c) If such Unsecured Creditor cannot be located or if any delivery or distribution to be made pursuant to Section 4.2 or 4.3 of this Plan is returned as undeliverable, or in the case of any distribution made by cheque, the cheque remains uncashed, for a period of more than six (6) months after the distribution date, or the date of delivery or mailing of the cheque, whichever is later, the Claim of such Creditor with respect to such undelivered or unclaimed distribution shall be discharged and forever barred, notwithstanding any federal or provincial laws to the contrary and any such cash allocable to the undeliverable or unclaimed distribution, shall be distributed to Unsecured Creditors with Proven Distribution Claims on a Pro Rata basis, free and clear of and from any claim to such monies by or on behalf of such

Creditor who shall be deemed to have released such Claim, provided, however, that any such further distributions to Unsecured Creditors with Proven Distribution Claims need only be made when the aggregate amount available for distribution, together with the aggregate amount available for distribution from the Disputed Claims Reserve in accordance with Subsection 5.5(b) of this Plan, is not less than CDN \$1,500.00. Nothing contained in this Plan shall require the Applicants and/or the Monitor to attempt to locate any Holder of any undeliverable or unclaimed distributions.

## 5.7 Tax Matters

- (a) **Allocation of Distributions.** All distributions made pursuant to this Plan in respect of an Unsecured Claim shall be applied first in consideration for the outstanding principal amount of such Claim and secondly, in consideration for accrued and unpaid interest and penalties, if any, which form part of such Claim. Notwithstanding any other provision of this Plan, including Subsection 5.5(b) of this Plan, each Unsecured Creditor that is to receive a distribution or payment pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Authorized Authority on account of such distribution.
- (b) **Withholding Rights.** All distributions hereunder shall be subject to any withholding and reporting requirements imposed by any Applicable Law or any Taxing Authority and the Monitor, on behalf of the Applicants, shall be entitled to deduct and withhold from any distributions hereunder payable to an Unsecured Creditor or to any Person on behalf of any Unsecured Creditor, such amounts as the Monitor, on behalf of the Applicants, is: (i) required to deduct and withhold with respect to such payment under the ITA or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded; or (ii) required to withhold under Section 116 of the ITA or any corresponding provisions of provincial law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes as having been paid to the Unsecured Creditor in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate Taxing Authority.

## ARTICLE 6 CREDITORS' MEETING

### 6.1 Creditors' Meeting and Conduct

The Creditors' Meeting to consider and vote on this Plan shall be held and conducted by the Applicants and the Monitor in accordance with the terms of the Creditors' Meeting Order.

### 6.2 Acceptance of Plan

If the Required Majority of Creditors is obtained at the Creditors' Meeting, this Plan shall be approved and shall be deemed to have been agreed to, accepted and approved by the



Unsecured Creditors and shall be binding upon all Unsecured Creditors in respect of their Unsecured Claims.

**ARTICLE 7**  
**CONDITIONS OF PLAN IMPLEMENTATION**

**7.1 Sanction Order**

In the event that this Plan is approved by the Required Majority of Creditors at the Creditors' Meeting, the Applicants shall promptly apply to the Court for the Sanction Order effective on the Plan Implementation Date or such other date as specified therein. The Sanction Order shall, *inter alia*, substantially provide that:

- (a) (i) this Plan has been approved by the Required Majority of Creditors in conformity with the CCAA; (ii) the Applicants have complied with the provisions of the CCAA and the Orders made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Applicants have not done nor purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated by it are fair and reasonable;
- (b) this Plan (including the compromises, arrangements and releases set out herein) is sanctioned and approved pursuant to paragraph 6 of the CCAA and is binding and effective as set out herein on the Applicants, all Creditors and all other Persons as provided for in this Plan or in the Sanction Order;
- (c) subject to the performance by the Applicants of their obligations under this Plan, and except to the extent expressly contemplated by this Plan or the Sanction Order, all obligations or agreements (including Leases) to which the Applicants are a party, other than agreements (including Leases) which were terminated or repudiated by the Applicants prior to the Plan Implementation Date in accordance with the CCAA Initial Order, are and will remain in full force and effect as at the Plan Implementation Date, unamended except as they may have been amended by agreement of the parties subsequent to the CCAA Filing Date, and no Person who is a party to any such obligations or agreements shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:
  - (i) any defaults or events of default arising as a result of the insolvency of the Applicants prior to the Plan Implementation Date;
  - (ii) the fact that the Applicants have sought or obtained relief under the CCAA or that this Plan has been implemented by the Applicants;
  - (iii) the effect on the Applicants of the completion of any of the transactions contemplated by this Plan;

- (iv) any compromises or arrangements effected pursuant to this Plan; or
  - (v) any other event(s) which occurred on or prior to the Plan Implementation Date which would have entitled any Person thereto to enforce those rights and remedies, subject to any express provisions to the contrary in any agreements entered into with the Applicants after the CCAA Filing Date in respect of any Leases. For greater certainty, nothing in this Subsection 7.1(c)(v) shall waive any obligations of the Applicants in respect of any Unaffected Obligation;
- (d) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery with respect to any Claim that is satisfied, compromised, released, discharged or terminated pursuant to this Plan shall be permanently enjoined;
  - (e) the releases referred to in Section 9.5 of this Plan are confirmed and all steps or proceedings, including, without limitation, administrative orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any or all past, present and future directors and officers of the Applicants in respect of any Claim are permanently enjoined;
  - (f) all Charges established by the CCAA Initial Order (other than the Administrative Charge and the DIP Charge) or any other Order of the Court, shall be terminated, released and discharged effective on the Plan Implementation Date;
  - (g) the Stay Period has been extended until the Plan has been approved and sanctioned, and the activities of the Monitor have been approved;
  - (h) the activities of the Monitor in conducting and administering the Creditors' Meeting are approved; and
  - (i) the Monitor is discharged upon the filing of a certificate of the Monitor confirming, *inter alia*, resolution of all Disputed Claims and the making of the final distributions under the Plan which are to be made by the Monitor.

## 7.2 Conditions of Plan Implementation

This Plan is subject to the following conditions for the benefit of the Applicants:

- (a) all approvals, orders, determinations or consents required pursuant to Applicable Law shall have been obtained on terms and conditions satisfactory to the Applicants, acting reasonably, and shall remain in full force and effect on the Plan Implementation Date;
- (b) all necessary corporate action and proceedings of the Applicants shall have been taken to approve this Plan and to enable the Applicants to execute, deliver and

perform their obligations under the agreements, documents and other instructions to be executed and delivered by it pursuant to this Plan;

- (c) all agreements, resolutions, documents and other instruments, which are necessary to be executed and delivered by the Applicants in order to implement this Plan and perform their obligations under this Plan shall have been executed and delivered;
- (d) this Plan shall have been approved by the Required Majority of Creditors;
- (e) the Sanction Order, in form and substance satisfactory to the Applicants, acting reasonably, and which shall contain the matters set out in Section 7.1 of this Plan, shall have been granted by the Court on or before July 11, 2013 or such other date as may be consented to by the Monitor or approved by the Court, and such Sanction Order as at the Plan Implementation Date shall be in full force and effect, not stayed or amended (unless with the consent of the Applicants, acting reasonably);
- (f) the Sanction Order and the Claims Process and Bar Order shall have been recognized by a court of competent jurisdiction in the United States of America;
- (g) all applicable appeal periods in respect of the Sanction Order shall have expired and in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;
- (h) the Plan Implementation Date shall have occurred on or before August 2, 2013 or such later date as may be consented to by the Monitor or approved by the Court;
- (i) the CCAA Initial Order shall be in full force and effect, not stayed or amended after the date hereof (except with the consent of the Applicants, acting reasonably); and
- (j) funding arrangements shall have made to pay the amounts owing to the DIP Lender pursuant to the debtor-in-possession financing facility.

Each of the conditions set out in this Section 7.2 (except Subsections (d) and (e) above) may be waived by the Applicants, in whole or in part, in their sole discretion by written notice to the Monitor. If a condition set out above has not been satisfied as at the date specified for its fulfillment or waived in accordance with this Section 7.2, this Plan shall automatically terminate, in which case the Applicants shall not be under any further obligation to implement this Plan.

### **7.3 Monitor's Certificate**

Upon written notice from the Applicants to the Monitor that the conditions set out in Section 7.2 of this Plan have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, file with the Court a certificate which states that all conditions precedent set out in Section 7.2 of this Plan have been satisfied or waived, in

substantially the form as the certificate attached as Schedule "A" to this Plan (the "Monitor's Certificate").

## ARTICLE 8 AMENDMENTS TO THE PLAN

### 8.1 Amendments to Plan Prior to Approval

The Applicants reserve the right to file any variation or modification of, or amendment or supplement to, this Plan by way of a supplementary or amended and restated plan or plans of compromise or arrangement or both filed with the Court at any time or from time to time prior to the conclusion of the Creditors' Meeting, in which case any such supplementary or amended and restated plan or plans of compromise or arrangement or both shall, for all purposes, be and are deemed to be a part of and incorporated into this Plan. The Applicants shall give notice in writing by publication or otherwise to all Eligible Voting Creditors of the details of any variations, modifications, amendments or supplements prior to the vote being taken at the Creditors' Meeting to approve this Plan, as varied, modified, amended or supplemented. For greater certainty, the Applicants may propose a modification of or amendment or supplement to this Plan at the Creditors' Meeting.

### 8.2 Amendments to Plan Following Approval

After such Creditors' Meeting (and both prior to and subsequent to the obtaining of the Sanction Order), the Applicants may at any time and from time to time vary, amend, modify or supplement this Plan without the need for obtaining an Order of the Court or providing notice to the Unsecured Creditors, if the Applicants and the Monitor, acting reasonably and in good faith, determine that such variation, amendment, modification or supplement is of a technical or administrative nature that would not be materially prejudicial to the interests of any of the Unsecured Creditors under this Plan and is necessary in order to give effect to the substance of this Plan or the Sanction Order.

## ARTICLE 9 PLAN IMPLEMENTATION AND EFFECT OF THE PLAN

### 9.1 Implementation

On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 7.2 of this Plan, this Plan shall be implemented by the Applicants and shall be binding upon all Unsecured Creditors in accordance with the terms of this Plan and the Sanction Order.

### 9.2 Effect of the Plan Generally

The payment, compromise or satisfaction of any Unsecured Claims under this Plan, if sanctioned and approved by the Court, shall be binding upon each Unsecured Creditor, his, her or its heirs, executors, administrators, legal personal representatives, successors and assigns, as the case may be, for all purposes and this Plan will constitute: (a) full, final and absolute settlement of all rights of the Unsecured Creditors against the Applicants in respect of the

Unsecured Claims; and (b) an absolute release and discharge of all indebtedness, liabilities and obligations of or in respect of the Unsecured Claims against the Applicants, including any interest or costs accruing thereon (whether before or after the CCAA Filing Date).

### 9.3 Compromise Effective for All Purposes

No Person who has a Unsecured Claim as a guarantor, surety, indemnitor or similar covenant in respect of any Unsecured Claim which is compromised under this Plan or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of an Unsecured Claim which is compromised under this Plan shall be entitled to any greater rights than the Unsecured Creditor whose Unsecured Claim was compromised under this Plan. Accordingly, the payment, compromise or other satisfaction of any Unsecured Claim under this Plan, if sanctioned and approved by the Court shall, be binding upon such Unsecured Creditor, its heirs, executors, administrators, successors and assigns for all purposes and, to such extent, shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, surety, indemnitor, director, joint covenantor, principal or otherwise.

### 9.4 Consents and Leases

As of the Plan Implementation Date, each executory contract and Lease to which the Applicants, or either of them, are a party as at the CCAA Filing Date, as it may have been modified, amended or varied after the CCAA Filing Date with the consent of the Landlord, remains in full force and effect as at the Plan Implementation Date (other than in respect of Unsecured Claims arising from such contract or Lease which are affected by this Plan) unless such contract or Lease: (a) is the subject of a Notice of Repudiation or Termination; or (b) has expired or terminated pursuant to its own terms.

### 9.5 Plan Releases

Effective on the Plan Implementation Date:

- (a) the Applicants shall be forever released from all Unsecured Claims; and
- (b) each Unsecured Creditor in consideration of the distributions made under this Plan and in consideration of those continuing Leases, as applicable, after the Interim Distribution Date, will be deemed to have forever released and discharged: (i) the Applicants; (ii) the Monitor and its directors, officers, employees, agents, affiliates, professional advisors (including legal counsel) and associates; (iii) subject to subparagraph 5.1(2) of the CCAA in respect of directors, each and every past and present director, officer, employee, agent, affiliate, professional advisor (including legal counsel) and associate of the Applicants; and (iv) any person who may claim contribution or indemnification against or from the Applicants, or either of them, from any and all demands, Claims, including Claims of any past and present officers, directors or employees for contribution and indemnity, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled

to assert, including, without limitation, any and all Tax Claims, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date relating to, arising out of or in connection with the Applicants, the Assets, business or affairs of the Applicants, whenever and however conducted, this Plan or the CCAA Proceedings, other than Unaffected Obligations and the right to enforce the Applicants' obligations under this Plan.

#### 9.6 Waiver of Defaults

From and after the Plan Implementation Date, and subject to any express provisions to the contrary in any amending agreement (including in respect of any Leases) entered into with the Applicants, or any of them, after the CCAA Filing Date, all Persons (except Wells Fargo Capital Finance Corporation Canada and Wells Fargo Capital Finance, LLC) shall be deemed to have waived any and all defaults of the Applicants, or either of them, then existing or previously committed by the Applicants, or either of them, or caused by the Applicants, or either of them, or any of the provisions hereof or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, express or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, Lease, personal property lease or other agreement, written or oral, any amendments or supplements thereto, existing between such Person and the Applicants, or any of them. Any and all notices of default, acceleration of payments and demands for payments under any instrument, or other notices, including without limitation, any notices of intention to proceed to enforce security, arising from any of such aforesaid defaults shall be deemed to have been rescinded and withdrawn. For greater certainty, nothing in this Section 9.6 shall waive any obligations of the Applicants in respect of any Unaffected Obligation.

#### 9.7 Consents and Releases

From and after the Plan Implementation Date, all Unsecured Creditors shall be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Unsecured Creditor shall be deemed to have executed and delivered to the Applicants all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety.

#### 9.8 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### ARTICLE 10 GENERAL PROVISIONS

#### 10.1 Different Capacities

Unsecured Creditors whose Unsecured Claims are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, each such

Unsecured Creditor shall be entitled to participate hereunder in each such capacity. Any action taken by an Unsecured Creditor in any one capacity shall not affect the Unsecured Creditor in any other capacity, unless expressly agreed by the Unsecured Creditor in writing or unless the Unsecured Claims overlap or are otherwise duplicative.

#### **10.2 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan may be deemed to occur without any additional act or formality other than as may be expressly set out herein, each of the Persons affected hereby shall make, do, and execute or cause to be made, done or executed all such further acts, deeds, agreements, assignments, transfers, conveyances, discharges, assurances, instruments, documents, elections, consents or filings as may be reasonably required by the Applicants in order to implement this Plan.

#### **10.3 Paramountcy**

Without limiting any other provision hereof, from and after the Plan Implementation Date, in the event of any conflict between this Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed, or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, Lease, personal property lease or other agreement, written or oral and any and all amendments or supplements thereto existing between the Applicants, or either of them, and any other Person affected by this Plan, the terms, conditions and provisions of this Plan shall govern and shall take precedence and priority; provided, however, that this paragraph shall not affect any agreements between the Applicants and the DIP Lender.

#### **10.4 Revocation, Withdrawal, or Non-Consummation**

The Applicants reserve the right to revoke or withdraw this Plan at any time prior to the Plan Implementation Date and to file subsequent plans of compromises or arrangement. If the Applicants revoke or withdraw this Plan, or if the Sanction Order is not issued: (a) this Plan shall be null and void in all respects; (b) any Unsecured Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Unsecured Claim to an amount certain), assumption or termination, repudiation of contracts or Leases effected by this Plan, any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan, and no action taken in preparation for consummation of this Plan, shall: (i) constitute or be deemed to constitute a waiver or release of any Unsecured Claims by or against the Applicants or any Person; (ii) prejudice in any manner the rights of the Applicants or any Person in any further proceedings involving the Applicants; or (iii) constitute an admission of any sort by any of the Applicants or any Person.

#### **10.5 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to the Applicants and will not be responsible or liable for any obligations of the Applicants. The Monitor will have the powers granted to it by this Plan, by the CCAA and by any Order, including the CCAA Initial Order.

## 10.6 Notices

Any notice or communication to be delivered hereunder will be in writing and will reference this Plan and may, subject to as hereinafter provided, be made or given by mail, personal delivery or by facsimile or email transmission addressed to the respective parties as follows:

- (a) if to the Applicants:

The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc.  
and Forsyth of Canada, Inc.  
6789 Airport Road  
Mississauga, ON L4V 1N2

Attention: Harris Hester  
Telephone: (905) 362-4000  
Fax: (905) 362 4001  
E-mail: [hhester@forsythshirt.com](mailto:hhester@forsythshirt.com)

with a copy to:

Aird & Berlis LLP  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: D. Robb English  
Fax: (416) 863-1500  
Telephone: (416) 863-1515  
E-mail: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

- (b) if to a Creditor:

to the last known address (including fax number or email address) for such Creditor specified in the Proof of Claim or Lease Terms Form, as the case may be, filed by such Creditor or, in the absence of such Proof of Claim or Lease Terms Form, to the last known address for such Creditor set out in the books and records of the Applicants or such other address as the Creditor may from time to time notify the Monitor in accordance with this Section.



(c) if to the Monitor:

BDO Canada Limited,  
in its capacity as Monitor of  
The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc.  
and Forsyth of Canada, Inc.  
123 Front Street, Suite 1200  
Toronto, ON M5J 2M2

Attention: Blair Davidson / Steven Welker  
Telephone: (416) 865-0210 / (416) 775-7812  
Fax: (416) 865-0904  
E-mail: [bdavidson@bdo.ca](mailto:bdavidson@bdo.ca) / [swelker@bdo.ca](mailto:swelker@bdo.ca)

with a copy to:

Davis LLP  
1 First Canadian Place  
100 King Street West, Suite 6000  
Toronto, ON M5X 1E2

Attention: Bruce Darlington  
Tel: (416) 365-3529  
Fax: (416) 369-5210  
E-mail: [bdarlington@davis.ca](mailto:bdarlington@davis.ca)

or to such other address as any party may from time to time notify the others in accordance with this Section. All such notices and communications which are delivered will be deemed to have been received on the date of delivery. All such notices and communications which are faxed or emailed will be deemed to be received on the date faxed or emailed if sent before 5:00 p.m. (Toronto time) on a Business Day and otherwise will be deemed to be received on the Business Day next following the day upon which such fax or email was sent. Any notice or other communication sent by mail will be deemed to have been received on the third (3<sup>rd</sup>) Business Day after the date of mailing.

Dated at Toronto, Ontario this 17<sup>th</sup> day of May, 2013.

SCHEDULE "A" – FORM OF MONITOR'S CERTIFICATE

Court File No. CV-13-10009-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF THE JOHN FORSYTH SHIRT COMPANY LTD., FORSYTH HOLDINGS, INC.  
AND FORSYTH OF CANADA, INC.

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to the order of this Honourable Court dated February 22, 2013 (the "CCAA Initial Order"), The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc. and Forsyth of Canada, Inc. (the "Applicants") filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- B. Pursuant to the CCAA Initial Order, BDO Canada Limited was appointed the Monitor of the Applicants (the "Monitor") with the powers, duties and obligations set out in the CCAA Initial Order;
- C. The Applicants have filed a Consolidated Plan of Compromise and Arrangement under the CCAA dated May 17, 2013, as it may be restated, supplemented or amended from time to time (the "Plan"), which Plan has been approved by the Required Majority of Creditors and the Court;
- D. The Applicants have advised the Monitor that, to the best of their knowledge, the conditions precedent set out in Section 7.2 of the Plan have been satisfied or waived in accordance with the Plan; and
- E. Unless otherwise indicated herein, initially capitalized terms used herein have the meaning set out in the Plan.

THE MONITOR HEREBY CERTIFIES that the conditions precedent set out in Section 7.2 of the Plan have been satisfied or waived in accordance with the Plan on the \_\_\_\_ day of \_\_\_\_\_, 2013 and that accordingly, the Plan Implementation Date is the \_\_\_\_ day of \_\_\_\_\_, 2013.

DATED at Toronto, Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2013.

**BDO CANADA LIMITED**, in its capacity as Court-appointed Monitor of The John Forsyth Shirt Company Ltd., Forsyth Holdings, Inc. and Forsyth of Canada, Inc., and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name: Blair Davidson  
Title: President

## SCHEDULE "B" – CALCULATION OF EBDAT


For all purposes in this Plan and the Promissory Notes, the calculation of EBDAT shall be the consolidated EBDAT of the Applicants for each applicable fiscal year, plus:


- (i) twice the amount of any management compensation paid by salary bonus or otherwise to Harris Hester or Oliver Morante in excess of 100% of the amount of such compensation paid to those individuals in the year prior to the implementation of the Plan plus an increment not to exceed 10% per fiscal year; and plus
- (ii) noncash non-recurring losses in such fiscal period; and plus
- (iii) any amounts paid in such fiscal year on account of Claims of Harris Hester and Oliver Morante; and less
- (iv) noncash gains in such fiscal period; and less
- (v) capital expenditures in such fiscal period to a maximum threshold of \$100,000.



The foregoing calculation of EBDAT must be:

1. completed and reported to beneficiaries of Promissory Notes within 60 calendar days after the applicable fiscal year-end of the Applicants; and
2. certified by the Applicants' independent financial auditors applying generally accepted accounting principles in Canada (as the same may change from time to time in Canada).

## SCHEDULE "C" – FORM OF PROMISSORY NOTE

CDNS 

Due: 

FOR VALUE RECEIVED, the undersigned corporations (collectively, the "Debtors") hereby acknowledge themselves indebted on a joint and several basis and promise to pay to or to the order of  (the "Holder") the principal sum of \$ in lawful money of Canada without interest as hereinafter set forth. The aforesaid principal amount shall be indefeasibly satisfied by paying to the Holder up to:

- A. 12 equal payments of \$50,000, each such payment made on the first day of each quarter-year beginning April 1, 2014; and
- B. 5 annual payments equal to 50% of the EBDAT of the Debtors calculated pursuant to the Plan of Compromise and Arrangement of the Debtors dated May 17, 2013 (the "Plan"), each such payment made 15 days after the completion of the calculation of EBDAT in accordance with Schedule "B" of the Plan for the relevant fiscal year beginning with the fiscal year ending December 31, 2014.

Upon the payment of all amounts owing hereunder, the Holder shall surrender this promissory note to the Debtors upon the request of any of them.

If the Debtors default in the payment, when due, of any amount under this promissory note, all principal outstanding under this promissory note shall become immediately due and payable to the Holder without notice to or demand upon the Debtors.

After any default in the payment, when due, of any amount under this promissory note, all principal outstanding under this promissory note shall bear interest from the date of such default, calculated and payable monthly in arrears on the last day of each month, at a rate per annum equal to the greater of: (i) 5%; and (ii) the rate, as at the date of such payment default under this promissory note, applicable to the Debtors under the terms of the Fifth Amended and Restated Loan Agreement between the Debtors and Wells Fargo Capital Finance Corporation Canada and Wells Fargo Capital Finance, LLC dated October 20, 2012 (as the same may be amended, restated, supplemented or replaced from time to time). Interest as aforesaid shall accrue and be payable both before and after judgment, with interest on overdue interest at the aforesaid rate.

The Debtors may prepay the said principal sum in whole at any time without notice or bonus and discounted pursuant to the following formula:

$$\text{Prepayment Amount} = P / (1.05^N)$$

where: P = the principal amount outstanding at the date of the prepayment

N = the number of quarter-years remaining to maturity of this promissory note

The obligations of the Debtors hereunder shall be absolute and unconditional and shall not be subject to any counter-claim, set-off or other claim whatsoever of the Debtors against the Holder. This promissory note shall enure to the benefit of the Holder and her/his/its heirs, executors, successors, administrators, personal legal representatives and assigns and shall be binding upon the Debtors and their successors and assigns.

This promissory note shall be governed by the laws in force in the Province of Ontario and shall not be changed, modified, discharged or cancelled orally or in any manner other than by agreement in writing signed by the Holder or its successors or assigns.

DATED at Toronto, this <\*> day of <\*>, 201<\*>.

**THE JOHN FORSYTH SHIRT  
COMPANY LTD.**

**FORSYTH HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Authorized signing officer.

By: \_\_\_\_\_  
Name:  
Authorized signing officer.

**FORSYTH OF CANADA, INC.**

By: \_\_\_\_\_  
Name:  
Authorized signing officer.

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 THE JOHN FORSYTH SHIRT COMPANY LTD., et al.

Court File No. CV-13-10009-00CL

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

Proceeding commenced at Toronto

**SANCTION ORDER**

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