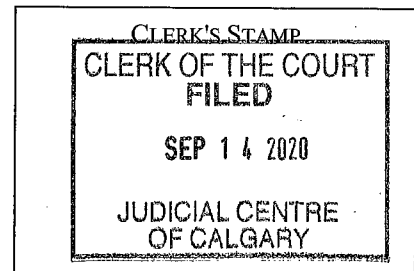


FORM 7  
[RULE 3.8]



COURT FILE NUMBER 2001-07942  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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

**AND IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
KORITE INTERNATIONAL INC.**

DOCUMENT

**APPLICATION (RE: STAY EXTENSION,  
VACATION PAY CHARGE AND SEALING  
ORDER)**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855-2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76784-6

### **NOTICE TO THE RESPONDENTS**

This application is made against you. You are a respondent.  
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: Wednesday, September 23, 2020  
Time: 10:00 a.m.  
Where: Calgary Courts Centre  
601 – 5<sup>th</sup> Street SW, Calgary, AB T2P 5P7  
Before: The Honourable Madam Justice G. A. Campbell  
as scheduled on the Commercial List

Go to the end of this document to see what you can do and when you must do it.

**Remedy Claimed or Sought:**

1. The applicant, Korite International Inc. ("**Korite**" or the "**Applicant**") is seeking an Order, pursuant to *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), substantially in the form attached hereto as **Schedule "A"** including the following relief, *inter alia*:
  - (a) abridging the time for service of this Application and supporting materials to the time actually given and deeming service of the Application and supporting materials to be good and sufficient;
  - (b) extending the stay of proceedings, as ordered and defined in paragraph 14 of the Initial Order granted herein on June 30, 2020 ("**Initial Order**") to November 6, 2020;
  - (c) sealing the confidential supplement to the third report of the monitor, BDO Canada Limited (the "**Monitor**"), to be filed (the "**Confidential Supplement**"), and sealing Confidential Exhibit "3" to the Affidavit No. 5 of Tim A. Bowman sworn September 14, 2020;
  - (d) amending the Second Amended and Restated Initial Order granted by the Honourable Madam Justice G. A. Campbell on July 21, 2020 (the "**Second Amended and Restated Order**") to include a charge against the assets of Korite in favour of certain key employees of Korite to secure accrued vacation pay entitlements owed to them (the "**Vacation Pay Charge**");
  - (e) approving the Vacation Pay Charge; and
  - (f) such further and other relief as this Honourable Court deems appropriate.

**Grounds for making this Application**

2. On June 30, 2020, the Applicant was granted certain relief under the CCAA pursuant to the Initial Order granted by the Honourable Madam Justice Horner (the "**Initial Order**"),

which, among other things, granted a stay of proceedings in favour of Korite until and including July 10, 2020 (the "**Stay Period**").

3. Pursuant to the Initial Order, BDO Canada Limited was appointed Monitor of the Applicant.
4. On July 9, 2020, the Applicant was granted certain relief under the CCAA pursuant to an Amended and Restated Initial Order granted by the Honourable Madam Justice B.E.C. Romaine (the "**Amended and Restated Initial Order**"), and the Stay Period was extended to and including September 23, 2020.
5. On July 21, 2020, the Applicant was granted certain relief under the CCAA pursuant to a Second Amended and Restated Initial Order, and the Stay Period remained extended to and including September 23, 2020.
6. Since the granting of the Initial Order, Korite has taken significant steps to advance the restructuring, including but not limited to:
  - (a) cooperating with the Monitor to facilitate its monitoring of Korite's business and operations;
  - (b) communicating with various stakeholder groups and/or their advisors, including counsel for Canadian Imperial Bank of Commerce ("**CIBC**"), the Vendor Creditors (as defined in the Affidavit of Tim A. Bowman sworn June 24, 2020 in these proceedings), trade creditors, employees, contractors and others;
  - (c) working with the Monitor and Assurgo Enterprises Inc. ("**Assurgo**") to pursue the sale and investment solicitation process which was approved by this Honourable Court on July 21, 2020; and
  - (d) continuing to operate and manage the business and operations of Korite in the ordinary course, subject to the terms of the Initial Order, as amended.
7. The timeline pursuant to the sale and investment solicitation process approved by this Court on July 21, 2020 (the "**SISP**") contemplates a final agreement deadline of October 16,

2020, with Korite's application to this Court for approval of the contemplated transaction as soon as reasonably practicable thereafter, and closing of a successful transaction(s) within ten days of the approval order becoming a final order. The requested extension of the Stay corresponds to the closing of a successful transaction(s) pursuant to the SISP.

8. Korite is working in good faith and with due diligence in these proceedings, it is in the best interests of the Korite and all of its stakeholders that the Stay Period be extended, and it is appropriate in the circumstances to so order.
9. The Confidential Supplement is anticipated to contain details of offers received through the SISP, disclosure of which would be prejudicial to Korite's ability to maximize the value of its assets and business for the benefit of its creditors. As such, the Confidential Supplement contains commercially sensitive information and Korite seeks an Order sealing the Confidential Supplement on the Court file until the conclusion of these proceedings.
10. The Monitor supports the request for the extension of the Stay Period and for a sealing order over the Confidential Supplement.
11. Certain key employees within the management team of Korite have accrued vacation pay entitlements, and are at risk of not receiving payment in full of the same. Korite and Assurgo are both of the view that the continued cooperation of these key employees is critical to a successful SISP outcome, particularly given that Phase II of the SISP involves Qualified Bidders meeting with and traveling to the Korite mine site with management personnel. The proposed Vacation Pay Charge would secure charges against the assets of Korite in the amount of the accrued vacation pay already owed to those key employees. Any of the key employees that resign or are terminated with cause prior to the conclusion of these CCAA proceedings will not be entitled to the Vacation Pay Charge.
12. Provided that bids received in Phase I of the SISP are sufficient to carry on with Phase II of the SISP, the Monitor has advised that it will be supportive of the proposed Vacation Pay Charge.
13. Confidential Exhibit "3" to the Affidavit No. 5 of Tim A. Bowman sworn September 14, 2020 contains confidential personal information regarding the vacation pay accrued and

owed to the Key Employees as defined therein and disclosure of the same would be prejudicial to those Key Employees. Korite seeks a Sealing Order over Confidential Exhibit "3".

**Affidavits or other evidence to be used in support of this application:**

14. The Affidavit of Tim A. Bowman sworn the 24<sup>th</sup> day of June, 2020, filed;
15. The Affidavit No. 5 of Tim A. Bowman sworn the 14<sup>th</sup> day of September, 2020, filed;
16. The Third Report of the Monitor, to be filed;
17. The Confidential Supplement to the Third Report of the Monitor, to be filed; and
18. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

19. The *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 as amended (the "CCAA"); and
20. Such further and other Acts and regulations as counsel may advise.

**Any irregularity complained of or objection relied on:**

21. None.

**How the application is proposed to be heard or considered:**

22. Before the Honourable Madam Justice G. A. Campbell in an application in chambers on the Commercial List as scheduled.

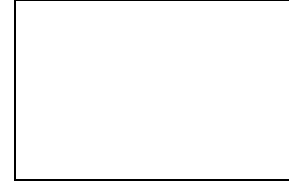
**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the

Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**

Clerk's Stamp:



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE OF

2001-07942  
COURT OF QUEEN'S BENCH OF ALBERTA  
CALGARY

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  
KORITE INTERNATIONAL INC.

DOCUMENT

**ORDER (STAY EXTENSION, VACATION  
PAY CHARGE AND SEALING)**

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

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Chris Simard and Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76784.6

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

Wednesday, September 23, 2020

**NAME OF JUDGE WHO MADE  
THIS ORDER:**

\_\_\_\_\_  
The Honourable Madam Justice G. A. Campbell

**LOCATION OF HEARING:**

\_\_\_\_\_  
Calgary Courts Centre  
601 – 5th Street SW, Calgary, AB T2P 5P7  
\_\_\_\_\_

**UPON** the application of Korite International Inc. (the "**Applicant**"); **AND UPON** having read the Notice of Application; the Affidavit of Tim A. Bowman sworn June 24, 2020 and the

Affidavit No. 5 of Tim A. Bowman sworn September 14, 2020 (the "**Bowman Affidavit No. 5**"), all filed; the Affidavit of Service of Allison Badger, to be filed; the Amended and Restated Initial Order, dated July 9, 2020 (the "**Amended and Restated Initial Order**"); and the Second Amended and Restated Initial Order, dated July 21, 2020 (the "**Second Amended and Restated Initial Order**"); **AND UPON** reading the Third Report of the Monitor dated September 10, 2020 (the "**Third Report**") and the Confidential Supplement to the Third Report of the Monitor dated September 10, 2020 (the "**Confidential Supplement**"); **AND UPON** hearing counsel for the Applicant, counsel for Canadian Imperial Bank of Commerce ("**CIBC**"), counsel for the Monitor and counsel for other interested parties appearing at the application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

**INTERPRETATION**

2. Unless otherwise stated, capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to such terms in the Second Amended and Restated Initial Order.

**EXTENSION OF STAY**

3. The Stay Period as ordered and defined in paragraph 14 of the Initial Order granted herein on June 30, 2020, is hereby extended until and including November 6, 2020.

**SEALING**

4. The Confidential Supplement and Confidential Exhibit "3" to the Affidavit No. 5 of Tim A. Bowman sworn September 14, 2020 shall be sealed on the Court file, kept confidential, and not form part of the public record, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, until the conclusion of these proceedings pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.



5. The Clerk of the Court shall file the Confidential Supplement and Confidential Exhibit "3" in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 2001-07942. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER GRANTED BY THE HONOURABLE MADAM JUSTICE G. A. CAMPBELL ON SEPTEMBER 23, 2020 AND ARE NOT TO BE PLACE ON THE PUBLIC RECORD OR MADE PUBLICALLY ACCESSIBLE, UNTIL THE CONCLUSION OF THESE PROCEEDINGS PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED.

6. Notwithstanding the foregoing, each of Korite and the Monitor, as the case may be, are empowered and authorized, but not directed, to provide the Confidential Supplement, Confidential Exhibit "3", (or any portion thereof, or information contained therein), to any interested party if they consider it to be reasonable to do so in the circumstances, subject to the imposition of confidentiality arrangements with Korite or the Monitor, as the case may be.

#### **VACATION PAY CHARGE**

7. The Key Employees of Korite (as defined in Confidential Exhibit "3" to the Affidavit No. 5 of Tim A. Bowman shall be entitled to the benefit of and are granted a charge (the "**Vacation Pay Charge**") on the Property (as defined in the Initial Order) as security for payment of accrued vacation pay entitlements owed to those key employees, in the amounts as set out in Confidential Exhibit "3", in the total amount of \$105,255.41.
8. Any of the key employees that resign or are terminated with cause prior to the conclusion of these CCAA proceedings shall not be entitled to the Vacation Pay Charge.
9. The Vacation Pay Charge shall have the priority set out in the Third Amended and Restated Initial Order.

**AMENDMENT OF SECOND AMENDED AND RESTATED INITIAL ORDER**

10. The Second Amended and Restated Initial Order shall be amended in the form attached hereto as **Schedule "1"** (the "**Third Amended and Restated Initial Order**").

**SERVICE OF ORDER**

11. Korite shall serve this Order on the persons listed on the service list by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no persons other than those on the service list are required to be served with a copy of this Order.

---

J.C.Q.B.A. or Clerk of the Court

**SCHEDULE "1"**

Clerk's Stamp:



COURT FILE NUMBER

2001-07942

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF

CALGARY

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  
KORITE INTERNATIONAL INC.

DOCUMENT

**THIRD AMENDED AND RESTATED**

**CCAA INITIAL ORDER**

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

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Chris Simard and Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76784.6

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

Wednesday, September 23, 2020

**NAME OF JUDGE WHO MADE  
THIS ORDER:**

\_\_\_\_\_  
The Honourable Madam Justice G. A. Campbell

**LOCATION OF HEARING:**

\_\_\_\_\_  
Calgary Courts Centre  
601 – 5th Street SW, Calgary, AB T2P 5P7

**UPON** the application of Korite International Inc. (the "**Applicant**"); **AND UPON** having read the Notice of Application; the Affidavit of Tim A. Bowman sworn June 24, 2020, the Affidavit No. 2 of Tim A. Bowman sworn June 29, 2020 (the "**Bowman Affidavit No. 2**"), the

Affidavit No. 3 of Tim A. Bowman sworn July 3, 2020, <sup>^</sup> the Affidavit No. 4 of Tim A. Bowman sworn July 15, 2020, and the Affidavit of Tim A. Bowman sworn September 14, 2020, all filed; the Affidavit of Service of <sup>^</sup> Allison Badger, to be filed; the Initial Order of this Court (the "**Initial Order**") dated June 30, 2020 (the "**Initial Order Date**") and the Amended and Restated Initial Order of this Court (the "**Amended and Restated Initial Order**") dated July 9, 2020; **AND UPON** reading the Pre-Filing Report of BDO Canada Limited (the "**Monitor**") <sub>^</sub> dated June 25, 2020, the First Report of the Monitor dated July 8, 2020, <sup>^</sup> the Second Report of the Monitor dated July 17, 2020, and the Third Report of the Monitor dated September ●, 2020, to be filed; **AND UPON** hearing counsel for the Applicant, counsel for Canadian Imperial Bank of Commerce ("**CIBC**"), counsel for the Monitor and counsel for other interested parties appearing at the application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

**APPLICATION**

2. The Applicant is a company to which the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") applies.

**PLAN OF ARRANGEMENT**

3. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicant shall:
  - (a) remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate

including all proceeds thereof (the “**Property**”);

- (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property; and
- (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
- (d) To the extent permitted by law, the Applicant shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after the Initial Order Date:
  - (i) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Order Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (ii) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges, including for periods prior to the Initial Order Date.

5. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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

- (b) payment for goods or services actually supplied to the Applicant following the Initial Order Date.
6. The Applicant shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance,
    - (ii) Canada Pension Plan, and
    - (iii) income taxes,but only where such statutory deemed trust amounts arise after the Initial Order Date, or are not required to be remitted until after the Initial Order Date, unless otherwise ordered by the Court;
  - (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the Initial Order Date, or where such Sales Taxes were accrued or collected prior to the Initial Order Date but not required to be remitted until on or after the Initial Order Date; and
  - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.
7. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges,

utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the Initial Order Date (“**Rent**”), but shall not pay any rent in arrears.

8. Except as specifically permitted in this Order, the Applicant is hereby directed, until further order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the Initial Order Date;
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.
  
9. Notwithstanding paragraph 9 hereof, the Applicant is hereby authorized and directed to make ongoing interest payments to CIBC from and after the date of this Order, including as shown in the cash flow statement attached as Exhibit "2" to the Bowman Affidavit No. 2.

## **RESTRUCTURING**

10. The Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 35) have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicant (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with

section 36 of the CCAA;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, its arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

11. The Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, the Applicant shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA,



then:

- (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and
- (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

13. Until and including November 6, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.
14. Notwithstanding the foregoing, nothing in this Order shall prevent or otherwise hinder CIBC's ability to make an application to this Court to terminate these CCAA proceedings. For greater clarity, upon a motion by CIBC to terminate these CCAA proceedings, CIBC will not be required to lift the stay of proceedings granted herein.

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

15. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Applicant to carry on any business that the Applicant is not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or
  - (e) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.
16. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve its rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

## **NO INTERFERENCE WITH RIGHTS**

17. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

18. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicant, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant;

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicant or exercising any other remedy provided under such agreements or arrangements. The Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the Initial Order Date are paid by the Applicant in accordance with the payment practices of the Applicant, or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

19. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Order Date, nor shall any person, other than the Interim Lender where applicable, be under any obligation on or after the Initial Order Date to advance or re-advance any monies or otherwise extend any credit to the Applicant.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 17 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any

claim against the directors or officers that arose before the Initial Order Date and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

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

21. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicant after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
22. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.
23. Notwithstanding any language in any applicable insurance policy to the contrary:
  - (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
  - (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that it does not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

### **APPOINTMENT OF MONITOR**

24. BDO Canada Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the

Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;
  - (c) assist the Applicant, to the extent required by the Applicant, in its dissemination of financial and other information to the Interim Lender and its counsel, as agreed to between the Applicant and the Interim Lender, which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender;
  - (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender on a regular basis, in accordance with the Term Sheet and as agreed to by the Interim Lender;
  - (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
  - (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books,

records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicant or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicant and any other Person; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

26. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

27. The Monitor shall provide any creditor of the Applicant, including the Interim Lender, with information provided by the Applicant in response to reasonable requests for

information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
29. The Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in accordance with such parties' retainer agreements, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
30. The Monitor and its legal counsel shall pass their accounts from time to time.
31. The Monitor, counsel to the Monitor, if any, and the Applicant's counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000 as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall

have the priority set out in paragraphs 39 and 41 hereof.

## **INTERIM FINANCING**

32. The Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from 5024639 Ontario Inc. (the “**Interim Lender**”) in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$702,000 unless permitted by further order of this Court.
33. Such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the Interim Lender dated as of June 23, 2020, as it may be amended from time to time with the consent of the Monitor (the “**Term Sheet**”).
34. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
35. The Interim Lender shall be entitled to the benefits of and is hereby granted a charge (the “**Interim Lender's Charge**”) on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The Interim Lender’s Charge shall not secure any obligation existing before this the date this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.
36. Notwithstanding any other provision of this Order:



- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
  - (b) upon the occurrence of an event of default under the Definitive Documents or the Interim Lender's Charge, the Interim Lender, subject to the provisions of the Definitive Documents with respect to the giving of notice, and in accordance with the Definitive Documents, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Term Sheet, Definitive Documents, and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the Interim Lender to the Applicant against the obligations of the Applicant to the Interim Lender under the Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
  - (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.
37. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the Definitive Documents.

### **VACATION PAY CHARGE**

38. The Key Employees, as defined in Confidential Exhibit "3" to the Affidavit No. 5 of Tim A. Bowman sworn September 14, 2020, shall be entitled to the benefits of and are hereby granted a charge (the “Vacation Pay Charge”) on the Property, which charge shall not exceed an aggregate amount of \$105,255.41, as security for the vacation pay owed to the

Key Employees, in the amounts set out in Confidential Exhibit "3". Any of the Key Employees that resign or are terminated with cause prior to the conclusion of these CCAA proceedings shall not be entitled to the Vacation Pay Charge. The Vacation Pay Charge shall have the priority set out in paragraphs 39 and 41 hereof.

## **VALIDITY AND PRIORITY OF CHARGES**

39. The priorities of the Directors' Charge, the Administration Charge, the Sales Agent Charge (as defined in the Order of this Court dated July 21, 2020 granted in these proceedings), ^ the Interim Lender's Charge and the Vacation Pay Charge, as among them, shall be as follows:
- First – Administration Charge (to the maximum amount of \$100,000);
- Second – Directors' Charge (to the maximum amount of \$50,000);
- Third – Interim Lender's Charge (to the maximum amount of \$702,000); ^
- Fourth - Sales Agent Charge (as defined in the Order of this Court dated July 21, 2020 granted in these proceedings); and
- Fifth – Vacation Pay Charge (to the maximum amount of \$105,255.41).
40. The filing, registration or perfection of the Directors' Charge, the Administration Charge, the Interim Lender's Charge, ^ the Sales Agent Charge or the Vacation Pay Charge (collectively, the “**Charges**”) shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
41. Each of the Directors' Charge, the Administration Charge, the Interim Lender's Charge (all as constituted and defined herein), ^ the Sales Agent Charge (as defined in the Order of this Court dated July 21, 2020 granted in these proceedings) and the Vacation Pay Charge shall constitute a charge on the Property and, subject always to section 34(11) of the CCAA, such Charges shall rank in priority to all other security interests, trusts, liens,

charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

42. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the Directors' Charge, the Sales Agent Charge, the Administration Charge, and the Vacation Pay Charge, or further order of this Court.
43. The Directors' Charge, the Administration Charge, the Term Sheet, the Definitive Documents, the Interim Lender's Charge, the Sales Agent Charge and the Vacation Pay Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:
- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
    - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, including

the Term Sheet or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;

- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicant entering into the Term Sheet, or the execution, delivery or performance of the Definitive Documents; and
- (iii) the payments made by the Applicant pursuant to this Order, including pursuant to the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

#### **ALLOCATION**

44. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Directors' Charge, the Interim Lender's Charge, <sup>△</sup> the Sales Agent Charge and the Vacation Pay Charge amongst the various assets comprising the Property.

#### **SERVICE AND NOTICE**

45. The Monitor shall (i) without delay, publish in the *Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the Initial Order Date (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against either of the Applicant of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.
46. The Monitor shall establish a case website in respect of the within proceedings at <https://www.bdo.ca/en-ca/extranets/korite/> (the "**Monitor's Website**").

47. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicant and the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the service list (the "**Service List**") to be maintained by the Monitor.
48. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's website.
49. The Applicant and, where applicable, the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by sending true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses last shown on the records of the Applicant, or as otherwise updated on the Service List.

## **GENERAL**

50. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
51. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
52. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.
53. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative

bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

54. The Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
55. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
56. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Daylight Time on the date of this Order.

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Justice of the Court of Queen's Bench of Alberta