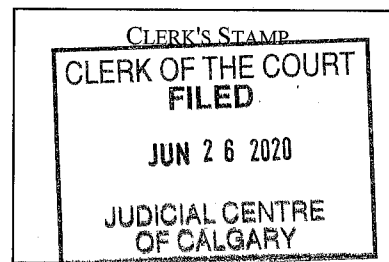


FORM 7  
[RULE 3.8]



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE

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 THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
KORITE INTERNATIONAL INC.**

DOCUMENT

**ORIGINATING APPLICATION**

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:	Tuesday, June 30, 2020
Time:	11:00 a.m.
Where:	Calgary Courts Centre 601 – 5 <sup>th</sup> Street SW, Calgary, AB T2P 5P7
Before:	The Honourable Madam Justice K. M. Horner, 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.

**Basis for this claim:**

***The Parties***

1. Korite International Inc. ("**Korite**" or the "**Applicant**") is a company to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies.
2. The Applicant meets the statutory requirements to be eligible for relief under the CCAA, in that the Applicant is insolvent and owes more than \$5,000,000.00 to creditors.
3. The primary business of Korite is the mining and refining of ammolite gemstones and ammonite fossils, the finishing of ammolite gemstones into jewelry and ammonite fossils into finished specimens, and the sale of these products to both wholesale distributors and end users. Ammonites and ammolite products are sold through various distribution channels throughout the world. Key channels include the cruise industry onboard ship and in port locations, the Shopping Channel in Canada, Feng Shui markets in China, online in China and North America, and North American retail. Ammonite fossils are sold through auction houses, at tradeshow and directly to collectors and museums.
4. Korite is a wholly-owned subsidiary of Korite Holdings Inc. ("**Holdings**").
5. Korite is a vertically integrated company. Korite currently mines ammolite near Lethbridge, Alberta. It is then sorted by grade, and shipped to Korite's manufacturing facilities in Calgary and to Chinese processors where the rough ammolite is processed into finished ammolite gemstones. The finished gemstones are mounted into various jewelry settings such as earrings, rings and pendants in both Calgary and in China. Processing of rough ammolite in Calgary is generally limited to the highest grades of ammolite and finished jewelry. Ammonites from Korite's mines or purchased from third parties are finished in Calgary. Once finished products are ready for sale, they are either sold or consigned to Korite's customers.

***Korite's Assets and Liabilities***

6. As at April 30, 2020, Korite has total consolidated assets with a book value of approximately \$20 million, comprised of consolidated current assets of approximately \$13.6 million, and consolidated non-current assets of approximately \$6.4 million.
7. As at April 30, 2020, Korite had estimated total consolidated liabilities of approximately \$16.4 million. As part of that indebtedness, Korite has two principal creditors:
  - (a) Korite owes approximately \$10.2 million to its primary secured creditor, Canadian Imperial Bank of Commerce ("**CIBC**"), under a senior secured revolving credit facility (involving a letter of credit sub facility) outstanding in the amount of approximately \$3.0 million, a senior term loan outstanding in the amount of approximately \$4 million, and a subordinated secured term loan outstanding in the amount of approximately \$3.2 million (collectively, the "**Facilities**"), which were granted pursuant to a credit agreement (the "**Credit Agreement**") and are secured by a general security agreement, a debenture, a general assignment of insurance proceeds and a general assignment of material contracts. Payment of the indebtedness owed pursuant to the Facilities is unconditionally guaranteed by Holdings, secured by a pledge of Holdings' equity interests in Korite, and is also subject to a limited guarantee by Tim A. Bowman, the sole director of Korite, secured by an investment property pledge agreement;
  - (b) Korite owes, pursuant to a promissory note secured by a general security agreement, approximately \$3.6 million to the Vendor Creditors (being a group of entities and individuals that are Korite's secondary secured creditors) which is outstanding in the amount of approximately \$3.6 million and is due and payable, with interest, on August 31, 2020. The Vendor Creditors have subordinated all amounts owing to them under and all security delivered to them in connection with the promissory note, in favour of the indebtedness owing to and the security delivered to CIBC under the Facilities. Korite claims set-off from the indebtedness owed to the Vendor Creditors, pursuant to an indemnity claim in an amount equal to approximately \$2.17 million.

8. In addition to the foregoing indebtedness, accounts payable and accrued liabilities for Korite were approximately \$1.7 million.
9. By way of letter dated April 21, 2020, CIBC advised Korite that it continued to be in default under the terms and conditions of the Credit Agreement, which defaults were not waived by CIBC.

***Events Leading to the Applicant's Current Circumstances***

10. Two primary factors over the last ten months have been the key drivers of the current financial position of the Applicant: the Covid-19 pandemic and unrest in Hong Kong. A large percentage of Asian sales are conducted at tradeshows in Hong Kong. Since August, 2019, such tradeshows were cancelled due to violent protests and airport closures, with the loss of over \$2.4 million in anticipated sales. It is unknown when these activities will resume. Other sales in China were similarly affected. The pandemic has shut down retail stores, the cruise industry, and tourism and travel markets. The Shopping Channel has had to cancel live shows. Since March 9, 2020, the company has had no new sales to the retail and cruise channel and nominal sales in the tourism channel with a loss of over \$6.1 million in anticipated sales. Moreover, major cruise lines and retailers have stopped paying their suppliers, which are Korite's wholesale customers. As a result, Korite is not receiving payments for most cruise channel sales and retail sales made prior to the pandemic. The timing of the re-opening of these sales channels is uncertain. While retail is slowly reopening, there have not yet been new orders from retailers. Without these revenue streams, Korite cannot sustain itself and must restructure its balance sheet and operating costs.
11. Credit Facility A and Credit Facility C are demand loans. Credit Facility B matured on February 29, 2020. As noted above, on April 21, 2020, CIBC advised Korite that it remains in default of the Credit Agreement. No further credit is available to Korite under the Facilities. Further, the Promissory Note matures on August 31, 2020. In these circumstances, and due to the COVID-19 pandemic and unrest in Hong Kong resulting in losses of over \$8.5 million in anticipated sales since August 2019, Korite seeks creditor protection pursuant to the CCAA.

12. The Applicant requires a stay of proceedings so that it can continue operations until the Comeback Hearing, whereat the Applicant currently intends to seek the approval of this Honourable Court to undertake a sale and investment solicitation process (the "**SISP**"), which it currently anticipates will allow for the timely repayment of its creditors and the maximization of asset value, for the benefit of all stakeholders.
13. The provisions of the CCAA and the equitable jurisdiction of this Court.
14. Such further and other grounds as counsel may advise and this Court may permit.

**Remedy sought:**

15. The Applicant seeks an initial order pursuant to the Court's authority under the CCAA on the terms substantially set out in the form of Order attached hereto as Schedule "A" (the proposed "**Initial Order**"), and which shall include, but not be limited to, the following relief:
  - (a) deeming service of this application for the Initial Order to be good and sufficient;
  - (b) declaring the Applicant to be a company to which the CCAA applies;
  - (c) staying, for an initial period of not more than ten (10) days, all proceedings and remedies taken or that might be taken in respect of the Applicant or any of its business or property, except as otherwise set forth in the Initial Order;
  - (d) authorizing the Applicant to carry on business in a manner consistent with the preservation of its property and business;
  - (e) appointing BDO Canada Limited as Monitor (the "**Monitor**" or "**BDO**") of the Applicant in these proceedings;
  - (f) authorizing the Applicant to pay the reasonable fees and disbursements of the professional advisors of the Applicant, including the Applicant's legal counsel, the Monitor, and the Monitor's legal counsel;

- (g) granting an Administration Charge and a Directors' Charge (as defined in the Affidavit filed herewith) against the property of the Applicant, on the terms and priority as outlined in the proposed Initial Order;
  - (h) scheduling a comeback hearing ten (10) days from the date of the Initial Order (if granted (the "**Comeback Hearing**"));
  - (i) requesting the aid and recognition of local, national and foreign administrative bodies to give effect to the Order granted; and
  - (j) such further and other relief as to this Honourable Court may seem just.
16. For clarity, the Applicant is not seeking approval of any interim financing at this time (although the same is referenced in the Affidavit of Tim A. Bowman sworn June 24, 2020 in support of this Application).

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

- 17. The Affidavit of Tim A. Bowman sworn the 24<sup>th</sup> day of June, 2020, filed;
- 18. The Consent of BDO Canada Limited to act as Monitor of the Applicant;
- 19. The Pre-Filing Report of the Proposed Monitor; and
- 20. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

- 21. The CCAA; and
- 22. Such further and other Acts and regulations as counsel may advise.

**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-  
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

**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:**

Tuesday, June 30, 2020

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

\_\_\_\_\_  
The Honourable Madam Justice K. M. Horner

**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 Originating Application, the Affidavit of Tim A. Bowman; and the Affidavit of Service of ●, filed; **AND UPON** reading the consent of BDO Canada Limited to act as Monitor; **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order; **AND UPON** hearing counsel for the Applicant; **AND UPON** reading



the Pre-Filing Report of BDO Canada Limited; **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.

5. 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 this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) 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 date of this Order.
  
6. 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 date of this Order.
  
7. 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
    - (iv) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, 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 date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.
8. 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 date of this Order (“**Rent**”), but shall not pay any rent in arrears.
9. 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 date of this Order;
  - (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.

## RESTRUCTURING

10. The Applicant shall, subject to such requirements as are imposed by the CCAA, 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 July 10, 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.

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

14. 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.
15. 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**

16. 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**

17. 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 date of this Order 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**

18. 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 date of this Order, nor shall any person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 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 date of this Order 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**

20. 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.
21. 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 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.
22. 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 20 of this Order.



## **APPOINTMENT OF MONITOR**

23. 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 co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
24. 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) advise the Applicant in its preparation of the Applicant's cash flow statements;
  - (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
  - (e) 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;
  - (f) 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;

- (g) 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;
  - (h) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicant and any other Person; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.
25. 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.
26. The Monitor shall provide any creditor of the Applicant 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.

27. 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.
28. 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.
29. The Monitor and its legal counsel shall pass their accounts from time to time.
30. 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 31 and 33 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES**

31. The priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:  
  
First – Administration Charge (to the maximum amount of \$100,000); and  
  
Second – Directors' Charge (to the maximum amount of \$50,000).

32. The filing, registration or perfection of the Directors' Charge or the Administration 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.
33. Each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to the security of all secured creditors who have been given notice of this application, but behind all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person that has not been served with notice of this application. The Applicant and beneficiaries of the Charges shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority (it being the intention of the Applicant to seek priority of the Charges ahead of all such Encumbrances) at the Comeback Hearing (as defined below).
34. 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 Directors' Charge or the Administration Charge unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.
35. The Directors' Charge and the Administration 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**”) 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 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; and
  - (iii) the payments made by the Applicant pursuant to this Order 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**

36. 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 and the Directors’ Charge amongst the various assets comprising the Property.

## **SERVICE AND NOTICE**

37. 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 date of this Order (A) make this Order publicly available in the manner prescribed

under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against 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.

38. 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**").
39. 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.
40. 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.
41. 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.
42. An application in these proceedings is hereby scheduled to be heard before this Honourable Court on July 9, 2020 (the "**Comeback Hearing**"). The Applicant is entitled to serve any court materials in connection with the Comeback Hearing on the Service List by courier, personal delivery or electronic transmission in accordance with this Order.

## GENERAL

43. 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.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.

49. 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