

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE AND  
ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. and W.C. WOOD  
CORPORATION INC. (together the "Applicants" or "W.C. Wood")

**FIRST REPORT OF BDO DUNWOODY LIMITED IN ITS CAPACITY AS  
MONITOR OF W.C. WOOD CORPORATION, LTD. and W.C. WOOD  
CORPORATION INC.**

Dated May 24, 2009

**INTRODUCTION**

1. By Order dated May 19, 2009 (the "**Initial Order**"), BDO Dunwoody Limited was appointed Monitor in these proceedings (the "**Monitor**"). A copy of the Initial Order is attached as **Schedule 1** to this Report.
2. The purpose of this Report is to:
  - (a) Report to the Court as to the activities of the Monitor since the Initial Order;
  - (b) Report to the Court on the projected statement of cash flows provided by the Applicants to the Court, as amended; and
  - (c) Report to the Court and make recommendations on the Accommodation and Debtor-in-Possession (DIP) Financing Agreement (the "**DIP Financing Agreement**") between CIT Business Credit Canada Inc. ("**CIT**") as agent for the Lenders (as defined therein) and the Lenders, as lenders, and the Applicants and certain of their related parties, as borrowers.

### MONITOR'S ACTIVITIES

3. The key activities of the Monitor since the date of the Initial Order include the following:
  - (a) reviewing the Applicants' cash flow projections, as discussed below;
  - (b) working with the Applicants to provide CIT and the Lenders with information on the projected cash flows and borrowing base calculations;
  - (c) approving disbursements on account of pre-filing employee obligations and critical supplier accounts payable;
  - (d) approving advance requests under existing facilities with CIT and the Lenders; and
  - (e) meeting with management of the Applicants to explain the CCAA proceedings and discuss the sale of the Mexican Business, as that term is defined in the Initial Order.

### CASH FLOWS

4. The Monitor has reviewed the 13-week statements of projected US and Canadian cash flows dated May 16, 2009 which were attached as Exhibit "A" to the May 18, 2009 affidavit of Michael Hadjinian, sworn and filed in support of the application for the Initial Order (the "**Original Cash Flows**"). The Monitor has also reviewed the Applicants' revised statements of projected US and Canadian cash flows dated May 22, 2009, copies of which are attached at **Schedule 2** to this Report (the "**Revised Cash Flows**").
5. The Monitor notes the following significant revisions in the Revised Cash Flows as compared to the Original Cash Flows:
  - (a) information updated with actual results for the week ended May 16, 2009;
  - (b) projected results added for the week ending August 15, 2009 as the 13<sup>th</sup> week;
  - (c) a decrease to the raw material inventory and a corresponding increase in the finished goods inventory in the US cash flows to reflect the amounts included in the results for the week ended May 16, 2009;
  - (d) accelerated timing of collection of accounts receivable in the Canadian cash flows;
  - (e) addition of fees and revised terms pursuant with the DIP Financing Agreement;

- (f) added reserves to the Canadian cash flows of CDN \$62,000, and to the US cash flows of US \$160,000 to reflect the Directors' Charge and the Administration Charge (as those terms are defined in the Initial Order) totaling CDN \$250,000; and
  - (g) revisions as a result of certain recommendations made by the Monitor pursuant to our review.
6. The timing of accounts receivable collections in Canada appears to be optimistic (based on the Applicants' recent historical results). The increase to the projected finished goods inventory in the US is based on the Applicants' book inventory as at May 16, 2009. We recommend that CIT's field audits include test counts and/or a physical count of the inventory be completed by the end of the month to confirm the actual values of the raw material and finished goods inventories.
7. In summary, nothing has come to the Monitor's attention to suggest that the Revised Cash Flows are unreasonable.

#### **DIP FINANCING**

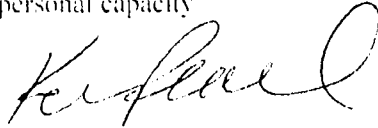
8. CIT and the Lenders under the DIP Financing Agreement are the existing lenders to the Applicants, pursuant to a credit agreement date January 14, 2008, as amended. CIT and the Lenders are believed to be the first-ranking general secured creditors of the Applicants, but the Monitor has not yet had a chance to have the security held by these lenders formally vetted. As is their right, the Lenders have declined to extend further credit to the Applicants under pre-existing facilities.
9. The DIP Financing Agreement would extend the existing facilities provided by the Lenders, but would include certain additional fees and an increase to the interest rates accruing on the facilities. The key terms of the DIP Financing Agreement are as follows:
- (a) **Term:** the term ends on the earliest of:
    - (i) September 30, 2009;
    - (ii) the implementation of a CCAA plan of arrangement;
    - (iii) further default; and
    - (iv) the making of any court order which terminates the Applicants' CCAA or US Bankruptcy Code Chapter 11 proceedings, amends any order in such proceedings without CIT's consent, requires liquidation, and/or places control of the Applicants' business in the hands of a court officer;
  - (b) **Amount:** CDN \$12,000,000 for W.C. Wood Corporation, Ltd. and US \$12,000,000 for W.C. Wood Corporation, Inc.;

- (c) **Interest Rates:** increased to prime plus 5.0% from the current prime plus 3.0%;
  - (d) **Fees:**
    - (i) A new forbearance fee of \$100,000, half of which is due upon execution of the DIP Financing Agreement and half which is due at upon repayment of the DIP loans;
    - (ii) A new monitoring fee of \$3,000 per month; and
    - (iii) The letter of credit fee is increased from 2.25% to 4.5%;
  - (e) **Reserves:** Directors' Charge and the Administration Charge are permitted to rank in priority to the CIT security, and therefore, by the terms of the existing facilities, CIT can take a reserve in respect of these CCAA charges;
  - (f) **Terms of Default:** in addition to defaults under the existing facilities, new events of default include, without limitation, the following:
    - (i) should availability be less than \$1;
    - (ii) should availability be less than 85% of the availability set out in the forecasted cash flows for a given period;
    - (iii) should net sales be less than a certain percentage of forecast net sales, which threshold percentage begins at 75% for the first three weeks after the Initial Order, and rises by 2.5% per week on a trailing 4 week basis, until it reaches 85% in the seventh week after the Initial Order and thereafter;
    - (iv) should there be any change in the Applicants' senior management; and
    - (v) should any order of a court or action of any party terminate or amends any order in the Applicants' CCAA or US Bankruptcy Code Chapter 11 proceedings without CIT's consent, place control of the Applicants' business in the hands of a court officer other, and/or compromise CIT's rights as secured creditor.
10. The Applicants have negotiated the DIP Financing Agreement because they have not been able to attract any new lenders or investors. The Monitor expects that even if financing from a third-party were available, it would be even more expensive in terms of fees and interest rates. For these reasons the Monitor feels the DIP Financing Agreement is reasonable, and recommends that it be approved by the Court. A copy of the DIP Financing Agreement is attached at **Schedule 3** to this Report.

Dated May 24, 2009

BDO DENWOODY LIMITED,  
in its capacity as Court-Appointed Monitor of  
W.C. WOOD CORPORATION, LTD. and  
W.C. WOOD CORPORATION INC., and  
not in its personal capacity

Per:



Ken Pearl

Vice President

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## **SCHEDULE 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE Madam )  
JUSTICE Repall ) TUESDAY, THE 19th  
 ) DAY OF MAY, 2009

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

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT OF W.C. WOOD CORPORATION, LTD. AND  
W.C. WOOD CORPORATION INC. (together the "Applicants" or "W.C. Wood")

**INITIAL ORDER**

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

ON READING the affidavit of Michael Hadjinian sworn May 18, 2009 and the Exhibits thereto (the "Hadjinian Affidavit") and on hearing the submissions of counsel for each Applicant, the Applicants' Lenders, CIT Business Credit Canada Inc., The CIT Group/Business Credit, Inc., Bank of Montreal and Bank of Montreal Chicago Branch (the "Lenders"), and the proposed Monitor, BDO Dunwoody Limited ("BDO") no one else appearing on this Application, and on reading the consent of BDO to act as the Monitor,

**SERVICE**

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

## **APPLICATION**

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

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that each Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, each Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that each Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, each Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. Each Applicant shall 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. THIS COURT ORDERS that each Applicant shall be entitled to continue to utilize the cash management system currently in place as described in the Hadjinian Affidavit (the "Cash Management System") and shall continue to use the Lockbox Accounts described in the Hadjinian Affidavit unless and until the DIP Financing becomes effective with the DIP Lender as set forth in paragraph 35, below, and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by each Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as



hereinafter defined) other than each Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses 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;
- (b) payments to vendors deemed by the Applicants to be critical vendors, with consent of the Monitor and consent of the Lenders, including the payment of Cdn \$100,000 to the Wood family described in the Hadjinian Affidavit; and
- (c) the fees and disbursements of any Assistants retained or employed by each Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, each Applicant shall be entitled but not required to pay all reasonable expenses incurred by each Applicant in carrying on the Business in the ordinary course after the date and time of 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 each Applicant following the date of this Order.

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

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

9. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), that Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between each Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all

Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

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

## **RESTRUCTURING**

11. THIS COURT ORDERS that each Applicant shall, subject to such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, subject to paragraph 11(c), if applicable;
- (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) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed

upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

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

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

13. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, 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 repudiation, 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.

#### **SALE OF MEXICAN BUSINESS**

14. THIS COURT ORDERS that the sale process described in the Hadjinian Affidavit in relation to sale of the Mexican Business is hereby approved and the Applicants are hereby permitted to take any and all steps that are necessary and appropriate to negotiate an Agreement of Purchase and Sale in relation to the Mexican Business in a manner that is generally in accordance with the terms described in the Hadjinian Affidavit.

*subject to approval by this Court of any Agreement of Purchase and Sale. JOT*

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

*of* 15. THIS COURT ORDERS that until and including June 18, 2009 or such later date as this Court may order (the "Stay Period"), no proceeding suit, complaint, action, arbitration, application, ~~proceeding~~, enforcement process, right or remedy (judicial or extra-judicial, statutory or non-statutory) (each, a "Proceeding") shall be commenced or continued against or in respect of any of the Applicants or the Monitor or in any way affecting the Business or the Property, except with the written consent of each Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory, against or in respect of either or both Applicants or the Monitor or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which each Applicant is not lawfully entitled to carry on; (ii) exempt the Applicants from compliance with

statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or, (iv) prevent the registration of a claim for lien.

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

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

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with either or both Applicants or statutory or regulatory mandates for the supply of goods and/or services, 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 Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that each 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 normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

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

19. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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

21. THIS COURT ORDERS that each Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a) and 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of each 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 \$75,000 and an additional charge to the extent claims exceed the amount covered by the Directors' Charge, above, in relation to vacation pay arrears (not termination or severance) that would otherwise be entitled to a WEPPA priority (the "Additional Directors' Charge") which shall not exceed an aggregate amount of \$325,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge and Additional Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each Applicant's directors and officers shall only be entitled to the

benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

#### **APPOINTMENT OF MONITOR**

24. THIS COURT ORDERS that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that each Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by each Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

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

- (a) monitor each Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on an agreed basis to be detailed in the DIP Term Sheet, of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel as required by the DIP Lender in the DIP Term Sheet;
- (e) advise the Applicants in the development of the Plan and any amendments to the Plan;



- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of each Applicant and to the Business and the Property to the extent required 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) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

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

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

pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants is confidential or commercially sensitive, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and each Applicant may agree.

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

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to each Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants promptly when due.

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

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$175,000, as security for their professional fees and disbursements incurred at the standard rates

and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

33. THIS COURT AUTHORIZES AND DIRECTS the Monitor to apply to the United States Bankruptcy Court for the District of Delaware (the "US Bankruptcy Court") for an Order recognizing these CCAA proceedings as foreign main proceedings and, in the alternative, foreign non-main proceedings with respect to each Applicant and giving full force and effect to this Order in the United States of America.

*SP* ✓ **DIP FINANCING**

34A. *THIS COURT ORDERS that paragraphs 34 to 39 of this Order shall not be effective until further Order of this Court. ✓*

34. THIS COURT ORDERS that each Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the Lenders, with CIT Business Credit Canada Inc., as Agent (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the amount specified in the Commitment Letter, defined below, unless permitted by further Order of this Court.

*UP* 35. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter to be entered into between the Applicant and the DIP Lender (the "Commitment Letter"), ~~which shall be effective upon filing of a certification of the Monitor approving the terms of the Commitment Letter.~~ ✓

36. THIS COURT ORDERS that the Applicants are authorized and empowered, following the effective date of the Commitment Letter described in paragraph 35, 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 Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform, following the effective date of the Commitment Letter described in paragraph 35, all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to

the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. THIS COURT ORDERS that upon the effective date of the Commitment Letter described in paragraph 35, the Agent on behalf of the DIP Lender and the DIP Lender shall be entitled to the benefit of and is granted a charge (the "DIP Lender's Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. THIS COURT ORDERS that, notwithstanding any other provision of this Order, following the effective date of the Commitment Letter described in paragraph 35:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon two (2) days notice to each Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents

and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 40 and 42 of this Order; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS AND DECLARES that the DIP Lender, following the effective date of the Commitment Letter described in paragraph 35, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents, and the DIP Lender shall not be stayed pursuant to paragraphs 15-18 and 20 herein; however, it shall seek leave of the Court prior to any enforcement steps.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$175,000);

Second – Directors' Charge (to the maximum amount of \$75,000);

Third – DIP Lender's Charge, if any; and

Fourth – Additional Directors' Charge, if any (to the maximum amount of \$325,000).

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

42. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, if any (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

43. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, if any, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender if there is a DIP Lender's Charge, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

44. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge, if any 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 DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which either or both Applicants is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

46. THIS COURT ORDERS that each Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than employees and creditors to which each Applicant owes less than \$1,000, at their addresses as they appear on each Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

47. THIS COURT ORDERS that each Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to each Applicant's creditors or other interested parties at their respective addresses as last shown on the records of each Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

48. THIS COURT ORDERS that each Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at [www.bdo.ca](http://www.bdo.ca).

#### **GENERAL**

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

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

51. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

53. THIS COURT ORDERS that any interested party (including each 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.

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

Stupall, J.

