

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.**

Applicants

**MOTION RECORD
(returnable Tuesday, October 9, 2018)**

**(Proposed Distribution to Wells Fargo, Approval of Liquidation Agreement and
CCAA Stay Extension)**

October 2, 2018

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.**

Applicants

**NOTICE OF MOTION
(returnable Tuesday, October 9, 2018)
(Proposed Distribution to Wells Fargo, Approval of Liquidation Agreement and
CCAA Stay Extension)**

Kraus Brands Inc., Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., Kraus USA Inc., and Strudex Inc. (collectively, the “**Applicants**”, with the partnerships listed in Schedule “A” hereto, collectively, the “**Kraus Group**”), the Applicants in these proceedings, will make a motion to the Honourable Mr. Justice Penny sitting on the Commercial List on **Tuesday October 9, 2018, at 10:00 a.m.**, or as soon after that time as the motion can be heard, at the Court House at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order substantially in the form attached hereto as Schedule “B” (“**Distribution Order**”), *inter alia*:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record and dispensing with further service thereof;

- (b) authorizing and directing Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as court-appointed monitor of the Kraus Group ("**Monitor**"), to make a distribution to Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**"), in partial satisfaction of its secured claim against the Kraus Group;
- (c) approving a certain asset marketing agreement ("**Asset Marketing Agreement**"), made between Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., and Strudex Inc. (collectively, the "**Broadloom Vendors**") and Hilco Industrial Acquisitions Canada ULC ("**Hilco**") and dated as of October 2, 2018, in the form attached as Exhibit B to the Affidavit of Christopher Emmott, sworn October 2, 2018 ("**Third Emmott Affidavit**"), and the transactions contemplated thereunder;
- (d) authorizing Hilco to conduct the sale of the Assets (as defined in the Asset Marketing Agreement) in accordance with the Distribution Order and the Asset Marketing Agreement;
- (e) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Penny, dated September 11, 2018 ("**Initial Order**")), as amended and restated by order dated September 18, 2018, to and including January 9, 2019 ("**Stay Extension**");
- (f) approving the first report of the Monitor, dated September 17, 2018 ("**First Report**"), and the second report of the Monitor, to be served ("**Second Report**") and the activities of the Monitor as set out therein;

- (g) approving the Monitor's fees and disbursements and those of the Monitor's counsel, Miller Thomson LLP, as set out in the Second Report; and
- (h) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Overview

- (a) The Kraus Group is a Waterloo, Ontario based manufacturer of premium carpet for the commercial and residential market ("**Broadloom Business**"). It is also a distributor across North America of flooring products produced by other manufacturers ("**TPS Business**").
- (b) On September 11, 2018, the Applicants were granted creditor protection and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), pursuant to the Initial Order and Deloitte was appointed monitor of the Kraus Group in the CCAA proceedings.
- (c) On September 12, 2018, the United States Bankruptcy Court (District of Delaware) ("**US Bankruptcy Court**") granted a provisional order recognizing the within CCAA proceedings as a foreign main proceeding, and granting a stay of execution against the Kraus Group's assets. The provisional order was made a final order by order of the US Bankruptcy Court dated October 1, 2018.

Sale of TPS Business

- (d) On September 18, 2018, the Applicants sought and obtained an approval and vesting order (i) approving a certain asset purchase agreement made between Kraus Canada LP, Kraus Properties LP and Kraus USA Inc. (collectively, the “**Kraus Sellers**”) and Q.E.P. Co., Inc. and Roberts Company Canada, Ltd. (collectively, the “**Purchaser**”), and dated September 10, 2018 (“**Purchase Agreement**”), (ii) authorizing the Kraus Group to complete the sale of the Purchased Assets (as defined in the Purchase Agreement); and (iii) vesting title in and to the Purchased Assets to the Purchaser (“**Sale Approval and Vesting Order**”).
- (e) The Sale Approval and Vesting Order was recognized by the US Bankruptcy Court on October 1, 2018.
- (f) The sale of the TPS Business is scheduled to close on October 5, 2018, and, upon the filing of a form of Monitor’s certificate, the Purchased Assets will vest in the Purchaser free and clear of claims and encumbrances.
- (g) On the closing of the sale of the TPS Business, the Monitor (as escrow agent) will receive payment of the purchase price under the Purchase Agreement. The purchase price is less than the amounts owing by the Kraus Group to Wells Fargo.

Distribution to Wells Fargo

- (h) As of August 31, 2018, the Kraus Group is indebted to its senior secured creditors, Wells Fargo and Red Ash Capital Partners II Limited Partnership (“**Red Ash**”), in the aggregate amount of at least \$148,170,248.
- (i) Contemporaneous with the commencement of these CCAA proceedings, the Kraus Group negotiated and entered into a form of forbearance agreement with Wells Fargo (“**Forbearance Agreement**”).
- (j) Pursuant to the Forbearance Agreement, Wells Fargo agreed to extend certain credit accommodations to the Kraus Group provided that, among other things, that the Kraus Group implement the Purchase Agreement and use the net sale proceeds to repay the Wells Fargo debt as soon as practicable and, in any event, by October 12, 2018.
- (k) The Monitor has obtained a legal opinion from its independent legal counsel stating that, subject to the usual qualifications and assumptions, Wells Fargo’s security with respect to the Kraus Group’s indebtedness to Wells Fargo is valid and enforceable.
- (l) In the above circumstances it is appropriate that a distribution of available sale proceeds be made to Wells Fargo in partial reduction of the Kraus Group indebtedness;

Approval of Asset Marketing Agreement

- (m) The Kraus Group, with the assistance of Deloitte Corporate Finance Inc., sought to sell the Broadloom Business as a going concern. Unfortunately, no going concern or *en bloc* purchaser was secured for the Broadloom Business.
- (n) The Broadloom Vendors and Hilco have negotiated and executed (subject to court approval) the Asset Marketing Agreement pursuant to which Hilco proposes to market and sell certain assets of the Broadloom Business ("**Broadloom Assets**").
- (o) The Asset Marketing Agreement contemplates the sale of the Broadloom Assets commencing on October 9, 2018 (assuming the agreement is approved by the Court), and to conclude no later than March 31, 2019, or the date the Assets are removed from the Kraus Group's facilities in Waterloo, Ontario.
- (p) The terms of the Asset Marketing Agreement and the process and transactions contemplated thereunder are fair and commercially reasonable and consistent with industry standards.
- (q) The process and transactions contemplated under the Asset Marketing Agreement are designed to maximize the liquidation value of the Broadloom Assets for the benefit of the Kraus Group's stakeholders.

- (r) Engaging a professional liquidator to prepare an advertising and marketing plan and provide qualified and experienced personnel to supply auction and sale accounting and other services on a defined timeline will maximize the net recovery on the assets.
- (s) Approval of the proposed liquidation process for the Broadloom Assets, including the Asset Marketing Agreement, is supported by the Monitor.

Stay Extension

- (t) The Kraus Group is seeking the Stay Extension to, among other things: (i) provide sufficient time to close the TPS Transaction and transition the TPS Business to the Purchaser pursuant to the transition services agreement made between the parties; (ii) conduct a commercially reasonable and court-approved liquidation of the assets of the Broadloom Business; (iii) seek an orderly and timely conclusion to these proceedings, with consideration being given as to whether any further insolvency proceedings may be required or desirable with respect to the Kraus Group; and, (iv) to otherwise afford the Kraus Group and the Monitor sufficient time to distribute assets to creditors in accordance with their legal entitlement and to finalize the administration of these proceedings.
- (u) The Kraus Group, with the assistance of the Monitor, has prepared a cash flow forecast for the period October 9, 2018 to January 9, 2019, which indicates that the Kraus Group will have sufficient liquidity to fund both

operating costs and the costs of its CCAA proceedings during the Stay Extension.

- (v) The Kraus Group has acted, and continues to act, in good faith and with due diligence in pursuing the closing of the TPS Transaction and liquidation of the assets of the Broadloom Business.

Approval of Monitor's Activities and Fees

- (w) The Applicants also seek approval of the Monitor's First Report and Second Report and its activities as set out therein.
- (x) As set out in the Second Report, the Monitor and its counsel, Miller Thomson LLP, have incurred fees in the course of their respective duties as Monitor and counsel, and such fees ought to be approved.

Other Grounds

- (y) The grounds set out in the Third Emmott Affidavit, and the exhibits thereto;
- (z) The grounds set out in the Second Report, and the Appendices thereto, filed;
- (aa) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (bb) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

- (cc) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Third Emmott Affidavit;
- (b) The First Report and the Second Report and the appendices thereto; and
- (c) Such other material as counsel may advise and this Honourable Court may permit.

October 2, 2018

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TAB A

Schedule “A” – Partnerships

Kraus Brands LP

Kraus Canada LP

Kraus Carpet LP

Kraus Properties LP

Strudex LP

TAB B

Schedule “B”

Court File No.: CV-18-604759-00CL

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

THE HONOURABLE)	TUESDAY, THE 9TH
)	
MR. JUSTICE PENNY)	DAY OF OCTOBER, 2018

**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
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.**

Applicants

**ORDER
(Distribution to Wells Fargo, Approval of Liquidation Agreement
and CCAA Stay Extension)**

THIS MOTION, made by the Applicants and the partnerships listed in Schedule “A” hereto (collectively, the “**Kraus Group**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”), for an order, among other things, (i) authorizing and directing Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as court-appointed monitor of the Kraus Group (“**Monitor**”), to make a distribution to Wells Fargo Capital Finance Corporation Canada (“**Wells Fargo**”), in partial satisfaction of its secured claim against the Kraus Group; (ii) approving the asset marketing agreement (“**Asset Marketing Agreement**”), made between certain of the Applicants (“**Broadloom Vendors**”) and Hilco Industrial Acquisitions Canada ULC (“**Agent**”) and dated as of October 2, 2018 in the form attached as Exhibit B to the

Affidavit of Christopher Emmott, sworn October 2, 2018 ("**Third Emmott Affidavit**"); (iii) extending the Stay Period (as defined in paragraph 14 of the order of the Honourable Mr. Justice Penny, dated September 11, 2018 ("**Initial Order**")), as amended and restated by order dated September 18, 2018, to and including January 9, 2019 ("**Stay Extension**"); (iv) approving the First Report of the Monitor, dated September 17, 2018 ("**First Report**"), and the Second Report of the Monitor, dated October ●, 2018 ("**Second Report**") and the activities of the Monitor as set out therein; and (v) approving the Monitor's fees and disbursements and those of the Monitor's counsel, Miller Thomson LLP, as set out in the Second Report was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING, the notice of motion dated October 2, 2018, the Third Emmott Affidavit, the First Report, and the Second Report, and on hearing the submissions of counsel for the Kraus Group, counsel for the Monitor, and counsel for Wells Fargo and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion, the motion record, and the Second Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Asset Marketing Agreement.

APPROVAL OF ASSET MARKETING AGREEMENT

3. **THIS COURT ORDERS** that the Asset Marketing Agreement be and it is hereby authorized and approved and that the execution of the Asset Management Agreement by the Broadloom Vendors is hereby authorized and approved with such minor amendments as the Broadloom Vendors (with the consent of the Monitor) and the Agent may agree to in writing.

SALE

4. **THIS COURT ORDERS** that the Agent is authorized to market and sell the Assets, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whatsoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation the Administration Charge, the Directors’ Charge, as such charges are defined in the Initial Order, and any other charges hereafter granted by this Court in these proceedings (collectively the “**CCAA Charges**”), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the Gross Proceeds

and any amounts due and payable by the Agent to the Broadloom Vendors under the Asset Management Agreement, in the same order and priority as they existed on October 9, 2018 ("**Sale Commencement Date**").

5. **THIS COURT ORDERS** that subject to the terms of this Order and the Initial Order, or any greater restrictions in the Asset Marketing Agreement, the Agent shall have the right to enter and use the Location and all related Location services and all furniture, trade fixtures, and equipment located at the Location and other assets of the Broadloom Vendors as designated under the Asset Management Agreement for the purpose of conducting the sale, and for such purposes the Agent shall be entitled to the benefit of the Kraus Group's stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

6. **THIS COURT ORDERS** that until the earlier of the date the Assets are removed from the Location or March 31, 2019, the Agent shall have the right to use the Kraus Group's trademarks and logos relating to and used in connection with the Assets solely for the purpose of advertising and conducting the sale in accordance with the terms of the Asset Marketing Agreement and this Order.

7. **THIS COURT ORDERS** that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "B" hereto ("**Monitor's Certificate**"), and subject to payment in full by the Agent to the Broadloom Vendors of the Gross Proceeds and all other amounts due to the Broadloom Vendors under the Asset Marketing Agreement, all of the Kraus Group's right, title, and interest in and to any Assets shall vest absolutely in the Agent, free and clear of and from any and all Claims,

including without limiting the generality of the foregoing, the Encumbrances, and such Encumbrances will instead attach to the Gross Proceeds, and all other amounts due and payable to the Broadloom Vendors under the Asset Marketing Agreement, in the same order and priority as they existed on the Sale Commencement Date. Nothing in this paragraph 7 shall discharge the obligations of the Agent pursuant to the Asset Marketing Agreement, or the rights or claims of the Broadloom Vendors in respect thereof including, without limitation, the obligations of the Agent to account for and remit the Gross Proceeds to the Broadloom Vendors.

8. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

AGENT LIABILITY

9. **THIS COURT ORDERS** that the Agent shall act solely as an agent to the Broadloom Vendors and that it shall not be liable for any claims against the Broadloom Vendors other than as expressly provided in the Asset Marketing Agreement (including the Agent's indemnity obligations thereunder). More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Location, of the assets located therein or associated therewith or of the Kraus Group's employees located at the Location or any other property of the Kraus Group;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or

equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Kraus Group shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Location during and after the Term in connection with the sale, except in accordance with the Asset Marketing Agreement.

AGENT AN UNAFFECTED CREDITOR

10. **THIS COURT ORDERS** that the Asset Marketing Agreement shall not be repudiated, resiliated or disclaimed by the Broadloom Vendors nor shall the claims of the Agent pursuant to the Asset Marketing Agreement be comprised or arranged pursuant to any plan of arrangement or compromise among the Kraus Group and its creditors ("**Plan**"). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

11. **THE COURT ORDERS** that the Broadloom Vendors are hereby authorized and directed to remit, in accordance with the Asset Marketing Agreement, all amounts that become due to the Agent thereunder.

12. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credit or reimbursed to, or retained by, the Agent pursuant to the Asset Marketing Agreement including, without limitation, any amounts to be reimbursed by the Broadloom Vendors to the Agent pursuant to the Asset Marketing Agreement, and the Broadloom Vendors will pay such amounts to the Agent in accordance with the Asset Marketing Agreement, and at all times the Agent will retain such amounts, free and

clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Asset Marketing Agreement.

CLIENT ACCOUNT

13. **THIS COURT ORDERS** that no individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) shall take any action, including any collection or enforcement steps, with respect to the Gross Proceeds and the Gross Proceeds deposited into the Client Account pursuant to the Asset Marketing Agreement.

14. **THIS COURT ORDERS** that the Gross Proceeds deposited in the Client Account by or on behalf of the Agent or Broadloom Vendors pursuant to the Asset Marketing Agreement shall be and be deemed to be held in trust for the Broadloom Vendors and the Agent, as the case may be and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such Gross Proceeds including, without limitation, by reason of any claims, disputes, rights of offset, set off, or claims for contribution or indemnity that it may have against or relating to the Kraus Group.

DISTRIBUTION TO WELLS FARGO

15. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and directed to forthwith distribute the amount of \$● to Wells Fargo, in partial repayment of amounts owing by the Kraus Group to Wells Fargo relating to advances made under the credit agreement dated August 6, 2013 between Kraus Canada LP, Strudex LP, Kraus Carpet LP and Kraus USA Inc. and Wells Fargo (“**Wells Fargo Distribution**”).

16. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Kraus Group or any part thereof and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Kraus Group or any part thereof;

the Wells Fargo Distribution shall be binding on any trustee in bankruptcy that may be appointed in respect of the Kraus Group and shall not be void or voidable by creditors of the Kraus Group, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation and shall, upon the receipt thereof by Wells Fargo, be free of all claims, liens, security interests, charges or encumbrances granted by or relating to the Kraus Group.

STAY EXTENSION

17. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 14 of the Initial Order) be and it is hereby extended until and including January 9, 2018.

APPROVAL OF MONITOR REPORTS

18. **THIS COURT ORDERS** that the First Report and the Second Report, and the activities of the Monitor referred to therein, be and they are hereby approved.

APPROVAL OF FEES

19. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, Miller Thomson LLP, as disclosed in the Second Report, be and they are hereby approved.

GENERAL

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies have jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist the Kraus Group, 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 Kraus Group 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 Kraus Carpet Inc. in any foreign proceeding, or to assist the Kraus Group and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE “A”

Partnerships

Kraus Brands LP

Kraus Canada LP

Kraus Carpet LP

Kraus Properties LP

Strudex LP

Schedule “B”

Monitor’s Certificate

Court File No.: CV-18-604759-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.**

Applicants

MONITOR’S CERTIFICATE

RECITALS

A. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the asset marketing agreement (“**Asset Marketing Agreement**”), dated as of October 2, 2018, between certain of the Applicants (“**Broadloom Vendors**”) and Hilco Industrial Acquisitions Canada ULC (“**Agent**”), in the form attached as Exhibit B to the Affidavit of Christopher Emmott, sworn October 2, 2018.

B. Pursuant to an Order of the Court dated October 9, 2018, the Court ordered that all of the Assets shall vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the sale has ended, and (ii) the Gross Proceeds and all other amounts due and payable to the Broadloom Vendors under the Asset Marketing Agreement have been paid in full to the Broadloom Vendors.

C. Deloitte Restructuring Inc., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of the Kraus Group certifies that it has been informed by the Agent and the Broadloom Vendors that:

1. The sale has ended; and
2. The Gross Proceeds and all other amounts due and payable to the Broadloom Vendors under the Asset Marketing Agreement have been paid in full to the Broadloom Vendors.

DATED as of this ___ day of ___, 201__.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-appointed
Monitor of the Kraus Group, and not in its
personal capacity

By: _____
Name:
Title:

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

Proceeding commenced in Toronto

ORDER

**(Distribution to Wells Fargo, Approval of
Liquidation Agreement and Stay Extension)**

CASSELS BROCK & BLACKWELL LLP

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Lawyers for the Applicants

<div>ONTARIO</div> <div>SUPERIOR COURT OF JUSTICE</div> <div>COMMERCIAL LIST</div>	
<div>PROCEEDINGS COMMENCED AT TORONTO</div>	
<div>NOTICE OF MOTION</div> <div>(returnable October 9, 2018)</div>	
<div>Cassels Brock & Blackwell LLP</div> <div>2100 Scotia Plaza</div> <div>40 King Street West</div> <div>Toronto, ON M5H 3C2</div> <div>David S. Ward LSUC#: 33541W</div> <div>Tel: 416.869.5960</div> <div>Fax: 416.640.3154</div> <div>dward@casselsbrock.com</div> <div>Larry Ellis LSUC#: 49313K</div> <div>Tel: 416.869.5406</div> <div>Fax: 416.640.3144</div> <div>lellis@casselsbrock.com</div> <div>Erin Craddock LSUC# 62828J</div> <div>Tel: 416.860.6480</div> <div>Fax: 416.644.9324</div> <div>ecraddock@casselsbrock.com</div> <div>Lawyers for the Applicants</div>	

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.**

Applicants

**AFFIDAVIT OF CHRISTOPHER EMMOTT
(sworn October 2, 2018)**

I, Christopher Emmott, of the City of London, in the United Kingdom, MAKE OATH
AND SAY:

1. I am a Director of Kraus Carpet Inc., one of the applicants herein. I have knowledge of the matters hereinafter deposed, which knowledge is either personal to me, obtained from a review of the documents referred to herein or, where indicated, based on information and belief upon being advised by others, in which case I verily believe such information to be true.

2. I swear this affidavit in support of a motion by Kraus Brands Inc., Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., Kraus USA Inc., and Strudex Inc. (collectively, the "**Applicants**", with the partnerships listed in **Exhibit "A"** hereto, collectively, the "**Kraus Group**") for an order ("**Distribution Order**"):

(a) authorizing and directing Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as court-appointed monitor of the Kraus Group ("**Monitor**"), to

make a distribution to Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**"), in partial satisfaction of its secured claim against the Kraus Group ("**Wells Fargo Distribution**");

- (b) approving the asset marketing agreement ("**Asset Marketing Agreement**"), dated as of October 2, 2018, between Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., and Strudex Inc. (collectively, the "**Broadloom Vendors**") and Hilco Industrial Acquisitions Canada ULC ("**Agent**") in the form attached as Exhibit "B" hereto and the transactions contemplated thereunder;
- (c) extending the Stay Period (as defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Penny, dated September 11, 2018 ("**Initial Order**")), as amended and restated by order dated September 18, 2018, to and including January 9, 2019 ("**Stay Extension**"); and
- (d) approving the first report of the Monitor, dated September 17, 2018 ("**First Report**"), and the second report of the Monitor, to be served ("**Second Report**") and the activities of the Monitor as set out therein.

I. Background

3. The Kraus Group is a Waterloo, Ontario based manufacturer of premium residential and commercial broadloom carpet ("**Broadloom Business**"). It is also a distributor across North America of flooring products produced by other manufacturers. ("**TPS Business**").

4. The Kraus Group's financial decline and insolvency is attributable to a variety of factors including relatively significant fixed costs associated with maintaining manufacturing facilities in Waterloo, Ontario ("**Waterloo Premises**") and a North American-wide distribution network. Those fixed costs could not be reduced or downsized to correspond with a change in consumer preferences and an overall decline in market demand.

5. The Applicants were granted creditor protection and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") on September 11, 2018. Pursuant to the Initial Order, Deloitte was appointed monitor of the Kraus Group in the CCAA proceedings.

6. The Initial Order was amended and restated by the Amended and Restated Initial Order of the Honourable Mr. Justice Penny dated September 18, 2018. Attached and marked as **Exhibit "C"** is a copy of the Amended and Restated Initial Order.

7. On September 12, 2018, the United States Bankruptcy Court (District of Delaware) ("**US Bankruptcy Court**") granted a provisional order recognizing the within CCAA proceedings as a foreign main proceeding, and granting a stay of execution against the Kraus Group's assets ("**US Provisional Order**"). Attached and marked as **Exhibit "D"** is a copy of the US Provisional Order.

8. The US Provisional Order became a final order by order of the US Bankruptcy Court, dated October 1, 2018 ("**Final Recognition Order**"). A copy of the Final Recognition Order is attached and marked as **Exhibit "E"**.

9. Further details regarding the background of these CCAA proceedings are set out in the Affidavit of Christopher Emmott, sworn September 10, 2018 ("**First Emmott Affidavit**").

II. TPS Transaction

10. On September 18, 2018, the Court granted an order (i) approving an asset purchase agreement ("**Purchase Agreement**") between Kraus Canada LP, Kraus Properties LP and Kraus USA Inc. (collectively, the "**Kraus Sellers**") and Q.E.P. Co., Inc. and Roberts Company Canada, Ltd. (collectively, the "**Purchaser**"), (ii) authorizing the Kraus Sellers to complete the sale ("**TPS Transaction**") of the Purchased Assets (as defined in the Purchase Agreement); and (iii) vesting title in and to the Purchased Assets to the Purchaser ("**Sale Approval and Vesting Order**").

11. On September 11, 2018, Kraus Carpet Inc., in its capacity as the authorized foreign representative of the Kraus Group in the CCAA proceedings, filed a motion ("**Sale Recognition Motion**") for an order recognizing and enforcing the Sale Approval and Vesting Order, authorizing the sale of the TPS Business to the Purchaser and granting certain other related relief in the US Bankruptcy Court.

12. On October 1, 2018, the US Bankruptcy Court granted an order recognizing the Sale Approval and Vesting Order and authorizing the sale of the TPS Business to the Purchaser. A copy of the US Bankruptcy Court's October 1, 2018 order is attached hereto and marked as **Exhibit "F"**.

13. The TPS Transaction is scheduled to close on October 5, 2018.

14. On the closing of the sale of the TPS Business, the Monitor (as escrow agent) will receive payment of the purchase price under the Purchase Agreement. The purchase price is less than the amounts owing by the Kraus Group to Wells Fargo.

III. Distribution to Wells Fargo

15. As of August 31, 2018, the Kraus Group was indebted to its senior secured creditors Wells Fargo and Red Ash Capital Partners II Limited Partnership ("**Red Ash**") in the aggregate amount of at least \$148,170,248.

16. As described in the First Emmott Affidavit, Wells Fargo has a first priority security interest in all present and after-acquired real and personal property of the Kraus Group.

17. The Kraus Group is in default of its debt agreement with Wells Fargo. Immediately prior to the within CCAA proceedings, the Kraus Group negotiated and entered into a forbearance agreement with Wells Fargo ("**Forbearance Agreement**").

18. Pursuant to the Forbearance Agreement, Wells Fargo agreed to extend certain credit accommodations to the Kraus Group provided that, among other things, the Kraus Group operate in accordance with certain agreed upon cash flow projections, and that the Kraus Group implement the Purchase Agreement and use proceeds from the TPS Transaction, in an amount satisfactory to Wells Fargo, to repay the Wells Fargo debt as soon as practicable and in any event by October 12, 2018.

19. The Kraus Group is seeking court approval for the Wells Fargo Distribution, which represents the net proceeds from the TPS Transaction. The amount of the Wells Fargo Distribution will be finalized prior to the hearing of this motion.

20. I am advised by the Monitor and do verily believe that the Monitor has obtained a legal opinion from its independent counsel stating that, subject to the typical qualifications and assumptions, Wells Fargo's security with respect to the indebtedness of the Kraus Group to Wells Fargo is valid and enforceable.

IV. Approval of Asset Marketing Agreement

21. In the months prior to these CCAA proceedings, the Kraus Group, with the assistance of Deloitte Corporate Finance Inc., made extensive efforts to sell the Broadloom Business as a going concern. Unfortunately, no going concern or *en bloc* purchaser was secured for the Broadloom Business.

22. The Broadloom Vendors recently retained the Agent to market and sell certain assets of the Broadloom Business ("**Broadloom Assets**") pursuant to the Asset Marketing Agreement. Attached hereto and marked as **Exhibit "B"** is a copy of the Asset Marketing Agreement.

23. The Agent has experience conducting liquidations of industrial machinery, equipment, and inventory. I am advised by John Sharpe, Managing Director of the Agent, and do verily believe that since its founding in 2000, the Agent has sold over \$5 billion in assets in various industries including construction, steel fabrication, woodworking and textiles.

24. The Asset Marketing Agreement contemplates the sale of the Broadloom Assets will commence on the date the Asset Market Agreement is approved by the Court (assuming court approval is obtained) and conclude no later than March 31, 2019, or the date on which the Assets are removed from the Waterloo Premises.

25. The Asset Marketing Agreement provides that the Agent will act as the Broadloom Vendors' exclusive marketing and sale agent for the sale of the Broadloom Assets. To sell the Broadloom Assets, the Agent will develop an advertising and marketing plan and will use webcast auctions and other sale strategies as agreed to by the Broadloom Vendors and the Agent, with the consent of the Monitor.

26. Some of the other key terms of the Asset Management Agreement include:

- (a) the sale of the Broadloom Assets will be for cash or other immediately available funds to the highest bidder(s) on an "as is, where is" basis and will be "final sales";
- (b) the Agent will deposit all gross proceeds from the sale(s) in a separate account maintained by the Agent and will remit proceeds to the Broadloom Vendors, less any amounts due to the Agent under the Asset Management Agreement, within 30 days of the sale of each Broadloom Asset;
- (c) the Broadloom Vendors will grant the Agent a license to use the Waterloo Premises to perform its obligations under the Asset Marketing Agreement without any cost to the Agent;
- (d) the Broadloom Vendors will provide employees to stage the Broadloom Assets and provide technical assistance and support with the marketing and inspection of the Broadloom Assets; and
- (e) the Broadloom Vendors will grant the Agent a license to use certain of the Kraus Group's business names and other marks and logos in the Agent's

advertising and promotional activities until the end of the Asset Marketing Agreement.

27. As consideration for the Agent's services under the Asset Marketing Agreement, the Agent will be entitled to a 16% fee (18% for online sales) on proceeds from the sale of the Broadloom Assets ("**Sales Fee**"). The Sales Fee will be in addition to the sale price of the Broadloom Assets and will be paid by the purchaser of the assets. The Sales Fee will be held by the Agent upon collection of the sale proceeds from any buyer(s).

28. The Broadloom Vendors will reimburse the Agent for any expenses that the Agent incurs in connection with the services it performs pursuant to the Asset Marketing Agreement.

29. I believe that the proposed sale of the Broadloom Assets under the Asset Marketing Agreement is the best way to maximize the value of the Broadloom Assets for the benefit of the Kraus Group's stakeholders.

30. Engaging a professional liquidator to prepare an advertising and marketing plan and provide qualified and experienced personnel to supply auction and sale accounting and related services on a set timeline will maximize the net recovery on the Broadloom Assets.

V. Cash Flow Forecast

31. The Kraus Group has, with the assistance of the Monitor, prepared a forecast of its receipts, disbursements and financing requirements for the period October 9, 2018 to January 9, 2019 ("**Cash Flow Forecast**"). I understand that a copy of the Cash Flow Forecast will be appended to the Second Report.

32. The Cash Flow Forecast indicates that the Kraus Group will have sufficient liquidity to fund its post-filing obligations and the costs of its CCAA proceedings during the extension of the Stay Period.

33. The Cash Flow Forecast has been prepared with the assistance of the Monitor and will be accompanied by the prescribed representations in accordance with the CCAA.

VI. Stay Extension

34. The Kraus Group is seeking the Stay Extension to, among other things: (i) provide sufficient time to close the TPS Transaction and transition the TPS Business to the Purchaser pursuant to the transition services agreement between the parties; (ii) conduct a commercially reasonable and court-approved liquidation of the assets of the Broadloom Business; (iii) seek an orderly and timely conclusion to these proceedings, with consideration being given as to whether any further insolvency proceedings may be required or desirable with respect to the Kraus Group; and (iv) to otherwise afford the Kraus Group and the Monitor sufficient time to distribute assets to creditors in accordance with their legal entitlements and to finalize the administration of these proceedings.

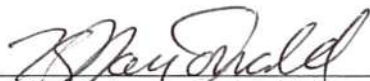
35. It is my believe that the Kraus Group has acted, and continues to act, in good faith and with due diligence during these CCAA proceedings including closing the TPS Transaction, transitioning the TPS Business to the Purchaser and liquidating the Broadloom Assets.

36. I do not believe that any of the Kraus Group's creditors will be materially prejudiced if the Stay Period is extended as requested.

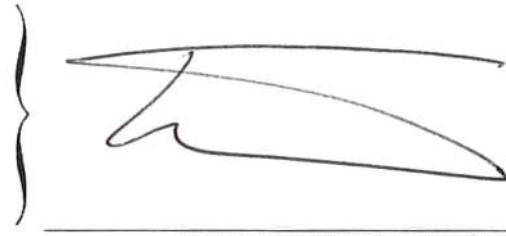
37. I understand that the Monitor, Wells Fargo and Red Ash support the requested Stay Extension.

38. I swear this affidavit in support of the motion for the Distribution Order and for no other or improper purpose.

SWORN BEFORE ME at the City of
Waterloo, Province of Ontario on the 2nd
day of October, 2018



Commissioner for Taking Affidavits
(or as may be)



CHRISTOPHER EMMOTT

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

TAB A

This is Exhibit "A" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in cursive script, appearing to read "Erin MacDonald", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

**Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.**

Exhibit “A” – Partnerships

Kraus Brands LP

Kraus Canada LP

Kraus Carpet LP

Kraus Properties LP

Strudex LP

TAB B

This is Exhibit "B" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in cursive script, appearing to read "Erin MacDonald", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

ASSET MARKETING AGREEMENT

This Asset Marketing Agreement (this "Agreement") is dated as of the 2 day of October, 2018, by and between Hilco Industrial Acquisitions Canada ULC ("Hilco"), on the one hand, Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., and Strudex Inc. (collectively, the "Company"), on the other hand.

WHEREAS, Hilco is in the business of marketing and selling assets on behalf of its clients;

WHEREAS, on September 11, 2018, the Company sought and obtained an order (the "Initial Order") under the *Companies' Creditors Arrangement Act* (Canada) from the Ontario Superior Court of Justice (Commercial List) (the "CCAA Proceeding"). Pursuant to the Initial Order, Deloitte Restructuring Inc. has been appointed Monitor (in such capacity, the "Monitor") in the CCAA Proceeding; and

WHEREAS, the Company is the owner and possessor of certain assets and desires to engage Hilco, with the consent of the Monitor, as its exclusive agent to sell such assets as more fully described herein.

Therefore, in consideration of the covenants contained herein, Hilco and the Company (individually, each "Party," and together, the "Parties") do hereby agree as follows:

I. Engagement and Agreement to Market Assets

A. The Company hereby engages Hilco as its exclusive marketing and sales agent, and Hilco hereby accepts such engagement, with respect to (but not limited to) certain assets classes identified in Exhibit A attached hereto and by this reference incorporated herein (the "Assets"), which Assets are located at 65 Northfield Dr W, Waterloo, ON N2L 0A8 (the "Location").

B. For purposes of selling the Assets, Hilco shall utilize webcast auctions and such other sale strategies as the Parties mutually agree, with the consent of the Monitor.

II. Exclusivity

In order to permit successful marketing and sale of the Assets, the Company grants to Hilco the exclusive right to sell the Assets for a period beginning on the date upon which this Asset Marketing Agreement is approved by the Ontario Superior Court of Justice (Commercial List) (the "Court") and continuing until the earlier of (a) March 31, 2019 and (b) the date on which the Assets are removed from the Location (such period, the "Term"). The Company acknowledges that Hilco or its affiliated entities may be engaged to sell or market similar assets by other persons or entities, and that any such engagement shall not constitute or be deemed to be a violation of this Agreement. All inquiries regarding the Assets made to the Company, its representatives or related parties to the Company, shall be redirected to Hilco. For certainty, nothing herein shall prevent the Company from retaining specific advisors, with unique expertise, to assist the Company and the Agent with the sale of the Assets.

III. Method of Sale and Certain Covenants

A. In connection with the services to be provided by Hilco hereunder, Hilco will:

- (i) develop an advertising and marketing plan for the sale of the Assets;
- (ii) implement the advertising and marketing plan as deemed necessary or appropriate by Hilco to maximize the net recovery on the Assets;
- (iii) prepare for the sale of the Assets, including gathering specifications and photographs for pictorial brochures and arranging the Assets in a manner, which in Hilco's judgment would be designed to enhance the net recovery on the Assets;
- (iv) provide fully qualified and experienced personnel who will prepare for and sell the Assets in accordance with the terms of this Agreement;
- (v) provide a complete auction crew to handle computerized accounting functions necessary to provide auction buyers with invoices and the Company with a complete accounting of all Assets sold at the auction
- (vi) oversee the removal of Assets by buyers from the Location;
- (vii) sell the Assets for cash or other immediately available funds to the highest bidder(s) on an "AS IS," "WHERE IS" and "all sales are final" basis and in accordance with the terms of this Agreement;
- (viii) charge and collect on behalf of Company from all purchasers any purchase price together with all applicable taxes in connection therewith;
- (ix) deposit all collected Gross Proceeds into a separate account maintained by Hilco and remit such proceeds to the Company by transferring them to the account described on Exhibit B attached hereto and by this reference incorporated herein (the "Client Account"), less any amounts due to Hilco hereunder, within thirty (30) days after the sale of each Asset. "Gross Proceeds" shall be defined as cumulative collected gross receipts from the sale of the Assets, exclusive of sales taxes and buyer's premiums; and
- (x) submit an initial sales report to the Company and the Monitor within fourteen (14) days after the sale of the Assets and a final complete sales report to the Company and the Monitor within fourteen (14) days after the end of the Term.

B. In connection with the services to be provided by Hilco hereunder, the Company, at the Company's expense, shall perform the following actions and hereby grants to Hilco the following rights and authority:

- (i) The Company shall provide sufficient employees to stage the Assets and prepare the Location for the sale, including providing technical assistance and support with the marketing and inspection of the Assets, as directed by Agent and otherwise assist in granting potential buyers access for inspections of the Assets at the Location prior to sale and for the removal of the Assets from the Location after the sale.
- (ii) The Company hereby grants Hilco a license to use the names "Kraus Brands Inc.", "Kraus Canada Ltd.", "Kraus Carpet Inc.", "Kraus Properties Inc.", "Kraus USA Inc.", and "Strudex Inc." and similar derivations thereof (collectively, the "Kraus Business Names"), and any marks and logos related thereto, in all of its advertising and promotional activities related to this Agreement. Hilco's license to use such names, marks and logos shall continue until the end of the Term of this Agreement.
- (iii) The Company hereby grants Hilco a license to allow Hilco to enter and use the Location. Specifically, Hilco shall have the right to enter and use the Location during the Term solely for the purposes of performing its obligations under this Agreement, including (without limitation) taking photographs and preparing the marketing material for the Assets, and selling and overseeing the removal of the Assets. Hilco shall have quiet enjoyment of the Location during its use of the Location with no interference from any labor unions or any other third parties. Hilco will use the Location as licensee and shall not be obligated to pay any rent, taxes, utilities, or other charges therefore. The Company agrees to continue to provide and pay for all utilities during the course of Hilco's use. The Company agrees to maintain and bear the cost of any existing security personnel on the Location during the term of this Agreement. The Company acknowledges that Hilco is not an insurer of the Company's personal property. Hilco shall have the right to abandon at the Location any Asset not sold.
- (iv) The parties hereto agree, and the Company hereby expressly acknowledges, that Hilco shall not be responsible for the removal or disposition of any environmentally hazardous chemicals, pollutants, waste, solvents or substances howsoever occurring found at the Location or in the Assets or obtaining or maintaining any Environmental Permits. The Company shall be responsible for ensuring that the Company possesses and is in compliance with all Environmental Permits that are required for the operation of the Company's business. As used in this Agreement, "Environmental Laws" means all domestic, federal, state, provincial and local statutes, regulations, ordinances, rules, regulations, policies and by-laws, all court orders and decrees and arbitration awards, and the common law, which pertain to environmental matters or contamination of any type whatsoever; and "Environmental Permits" means licenses, permits,

registrations, governmental approvals, agreements and consents which are required under or are issued pursuant to Environmental Laws. The Company hereby agrees to defend, indemnify and hold Hilco harmless from any and all claims, losses, damages and liabilities of any kind whatsoever which arise from or are in connection with any hazardous chemicals, pollutants, waste, solvents or substances howsoever occurring found at the Location or in the Assets, Environmental Laws or Environmental Permits. (v) The Company acknowledges that with respect to any export transaction involving any of the Assets sold hereunder, and unless the Company and purchaser agree otherwise, the Company shall be the Canadian principal party in interest. Accordingly, the Company authorizes Hilco to provide the Company's business identification number ('BIN') to purchasers, their agents, customs officials or similar parties for the purposes of completing a bill of lading, commercial invoice, NAFTA Certificate of Origin, Import/Export License or customs bond, or any other information or documentation necessary to facilitate the respective purchaser's export of the purchased Assets.

IV. Commission Payable to Hilco; Expense Reimbursement

A. In consideration of its services hereunder, Hilco shall be entitled to charge and retain for its own account an industry standard buyer's premium of sixteen percent (16%) of the Gross Proceeds (eighteen percent (18%) for online sales) for Assets that are sold. For purposes of clarification, the buyer's premium is a fee charged in addition to the sale price of the Assets and is paid for by the buyer. All buyer's premiums shall be withheld by Hilco upon collection of proceeds from applicable buyer(s).

B. Hilco shall advance and shall be entitled to reimbursement by the Company for all Expenses regardless whether or not any Assets are sold, provided that the Expenses shall not exceed \$60,000 without the prior consent of the Company and the Monitor. "Expenses" mean expenses incurred by Hilco in connection with Hilco's performance of its services hereunder, including, but not limited to, advertising, promotion and sales costs, lodging, travel, labor associated with project management oversight, labor and other costs and expenses associated with previewing and removing the Assets, and other miscellaneous costs and expenses. The Company agrees that all Expenses may be withheld from Gross Proceeds of the sale of any Assets.

C. Within ten (10) calendar days after expiration of the Term or earlier termination of this Agreement, Hilco may provide the Company and the Monitor with a list of third parties (each, a "Prospect") that Hilco has engaged in negotiations with respect to the Assets covered hereunder. If Hilco provides a Prospect list and within one hundred and eighty (180) days after the expiration of the Term of this Agreement or earlier termination (if applicable), the Company and one or more Prospects should enter into one or more written agreements to purchase all or any portion of the Assets, Hilco shall be entitled to fee(s) calculated in accordance with the terms of this Agreement. Each fee shall be paid by the Company to Hilco within five (5) business days after applicable closing between the Company and each Prospect.

V. Representations and Covenants of the Company and Hilco

A. The Company represents and warrants to Hilco and covenants that: (i) subject to approval in the CCAA Proceeding, if required, the Company has all legal right and authority to sell the Assets; (ii) except as may be required in the CCAA Proceeding, the Company has taken all necessary actions required to authorize the execution, delivery and performance of this Agreement and the related documents contemplated hereby, and no further consent or approval is required for the Company to enter into and deliver the Agreement and to perform its obligations under the Agreement; (iii) except as may be required in the CCAA Proceeding, no court order, decree or by-law of any domestic, federal, provincial, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for the Company's consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefore; (iv) the Company has the authority to grant the license to Hilco to utilize the Location and to use the Kraus Business Names as well as marks and logos related thereto as provided for under this Agreement; (v) Hilco shall have access to the Assets and the Location in accordance with this Agreement; (vi) to the best of the Company's knowledge and belief, the Asset representations and descriptions on Exhibit A are accurate, true and complete; and (vii) upon sale by Hilco, all Assets shall be free and clear of all liens, claims, and encumbrances of any kind whatsoever. The Company further represents and warrants to Hilco that any amounts due and payable hereunder shall be free and clear of any liens, claims, or encumbrances of any kind whatsoever.

B. Hilco represents and warrants to the Company that (i) Hilco is an unlimited liability company duly organized, validly existing and in good standing under the laws of Nova Scotia and (ii) Hilco has taken all necessary actions required to authorize the execution, delivery and performance of this Agreement and the related documents contemplated hereby, and no further consent or approval is required for Hilco to enter into and deliver the Agreement and to perform its obligations under the Agreement.

VI. Indemnification

A. Hilco understands that the Assets will be sold "AS IS" and "WHERE IS", and the Company does not make any representations or warranties with respect to the Assets except as specifically stated in Section V of this Agreement. The Company hereby agrees to indemnify and hold Hilco harmless from any and all claims, causes of actions, damages, losses, or liabilities (including, without limitation, reasonable attorney's fees) of any kind arising from or related to (i) the Company's breach of any of its obligations, representations and warranties hereunder, (ii) its performance or failure to perform hereunder, or (iii) the Company's failure to pay any personal property taxes or Sales Tax (as defined below) associated with the Assets. The Company further agrees to indemnify and hold Hilco harmless from any and all claims, causes of actions, damages, losses, or liabilities (including, without limitation, reasonable attorney's fees) of any kind arising from or related to the demonstration and sale of the Assets or any inaccurate statements or representations concerning the Assets made by the Company to Hilco.

B. Hilco hereby agrees to indemnify and hold the Company harmless from any and all claims, causes of actions, damages, losses, or liabilities (including, without limitation, reasonable attorney's fees) by any buyer or prospective buyer of the Assets based on Hilco's

breach of any of its obligations, representations or warranties hereunder or its performance or failure to perform hereunder.

VII. Insurance

The Company agrees to procure and maintain, during the Term of this Agreement, fire and other perils insurance in appropriate amounts in respect of all Assets until sold and removed from the Location.

VIII. Taxes

Hilco shall be responsible for collecting any federal and provincial sales taxes (including but not limited to harmonized sales tax, goods and services tax, or retail sales tax) and all other taxes, duties, fees or other like charges of any jurisdiction properly payable in connection with the sale and transfer of the Assets by Hilco (collectively referred to as the "Sales Tax"), if any. Hilco shall forthwith pay to the Company the Sales Tax as collected by Hilco and the Company shall be responsible for filing and making the remittance of the Sales Tax. If in the future there is any issue in respect of Hilco's assessment and collection of Sales Tax, Hilco shall be responsible for any shortfall in the collection and payment of Sales Tax, together with any penalties and interest related thereto, and Hilco shall indemnify the Company in respect thereof.

IX. General Provisions

A. Hilco shall not subcontract the whole of its obligations under this Agreement, but shall be permitted to utilize independent contractors and subcontractors for performing various obligations, including (without limitation) as part of the auction crew and overseeing the removal of the Assets.

B. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

C. Hilco shall be entitled to compensation for services rendered under this Agreement and this Agreement shall be binding upon the Company and any successor or assignee.

D. The Parties agree, and the Company hereby expressly acknowledges, that Hilco has not guaranteed the Company any return from the sale of the Assets.

E. The Company and Hilco shall deal with each other fairly and in good faith so as to allow both Parties to perform its duties and earn the benefits of this Agreement.

F. TECHNOLOGY DISCLAIMER: HILCO DOES NOT WARRANT THAT THE FUNCTIONS, FEATURES OR CONTENT CONTAINED IN ANY WEBSITE USED IN CONNECTION WITH THE SALE OF THE ASSETS, INCLUDING ANY THIRD-PARTY SOFTWARE, PRODUCTS OR OTHER MATERIALS USED IN CONNECTION WITH ANY

SUCH WEBSITE, WILL BE TIMELY, SECURE, UNINTERRUPTED, OR THAT DEFECTS WILL BE CORRECTED.

G. The Company recognizes and acknowledges that the services to be provided by Hilco pursuant to this Agreement are, in general, transactional in nature, and Hilco will not be billing the Company by the hour nor maintaining time records. It is agreed that Hilco is not requested or required to maintain such time records and that its compensation will be fixed on the percentages set forth herein.

H. Any correspondence or required notice shall be addressed as follows:

If to Hilco: Hilco Industrial Acquisition Canada ULC
c/o Hilco Global
5 Revere Drive, Suite 206
Northbrook, Illinois 60062
Email: rlawlor@hilcoglobal.com
Attn: Ryan Lawlor

If to the Company: Kraus Canada Ltd.
65 Northfield Drive West, Waterloo
Ontario N2L 0A8
44 7780 964 759
Email: chris.emmott@hilcocapital.com
Attn: Chris Emmott

If to the Monitor: Deloitte Restructuring Inc. in its capacity as Monitor
of the Kraus Group
33 Yonge Street,
2nd floor – Suite #200 & 201
Toronto, Ontario
M5E 1G4 Canada
Email: paucasey@deloitte.ca
Attn: Paul Casey

with a copy to:

Miller Thomson LLP
Scotia Plaza
40 King Street West
Suite 5800
P.O. Box 1011
Toronto, Ontario
M5H 3S1 Canada
Email: gazeff@millerthomson.com
Attn: Gregory Azeff

I. This Agreement shall be deemed drafted by the Parties, and there shall be no presumption against either Party in the interpretation of this Agreement.

J. By executing or otherwise accepting this Agreement, the Company and Hilco acknowledge and represent that they are represented by and have consulted with independent legal counsel with respect to the terms and conditions contained herein.

K. The Company shall provide Hilco with:

- all reasonably requested Asset information to the extent in the Company's possession;
- titles, if applicable, to all of the Assets; and
- information on prospect interest and evidence of all Asset inquiries, to the extent that the Company has such information and evidence.

L. This Agreement may be executed in original counterparts, and if executed and delivered via facsimile shall be deemed the equivalent of an original.

M. This Agreement creates no third-party beneficiaries.

N. This Agreement and any dispute arising from or in relation to this Agreement are governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province. Each Party irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario.

O. Hilco recognizes that it may come into possession of information relating to the business of the Company that is not available to the general public or that reasonably or logically may be considered to be confidential or proprietary ("Confidential Information"). Hilco shall hold confidential and not use (except as necessary to perform its obligations under this Agreement) or disclose, and shall cause its employee, agents, directors, and other representatives to hold confidential all Confidential Information. Upon the Company's request, all such information shall be returned to the Company in any physical medium. Confidential Information shall not include information that is or becomes publicly available through no wrongful act of the Hilco, is furnished to others by the Company without similar restrictions on their right to use or disclose, is known by Hilco without any proprietary restrictions at the time of receipt of such information from the Company or becomes rightfully known to Hilco without proprietary restrictions from a source other than the Company or is independently developed by Hilco by persons who did not have access, directly or indirectly, to the Confidential Information.

X. Miscellaneous

This Agreement may not be transferred or assigned without the express written consent of the other Parties, provided that Hilco shall be permitted to joint venture with certain third parties. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement. The Parties hereto are acting as

independent contractors and nothing contained herein shall be deemed to create any other type of partnership, joint venturer or other relationship. This Agreement may not be modified or amended except by an instrument in writing executed by an authorized representative of each party to this Agreement. If any part or subpart of this agreement is found or held to be invalid, that invalidity shall not affect the enforceability and binding nature of any other part of this agreement. No Party shall be considered in default hereunder to the extent that performance by such Party is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party. The Parties do hereby agree that this Agreement and related documents be drawn up in the English language only. Les Parties aux présentes ont convenu que cette convention et les documents s'y rattachant soient rédigés en langue anglaise seulement.

* * *

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date written below.

HILCO INDUSTRIAL ACQUISITION CANADA ULC



By: Ryan Lawlor
Title: VP & AGC, Managing Member
Date: 10/2/18

**KRAUS CANADA LTD., KRAUS CARPET INC., KRAUS
PROPERTIES INC. AND STRUDEX INC.**

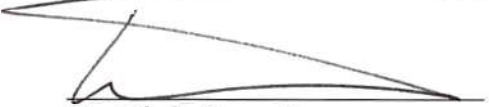
By: Chris Emmott
Title: Director
Date: _____

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date written below.

HILCO INDUSTRIAL ACQUISITION CANADA ULC

By: Ryan Lawlor
Title: VP & AGC, Managing Member
Date: _____

**KRAUS CANADA LTD., KRAUS CARPET INC., KRAUS
PROPERTIES INC. AND STRUDEX INC.**



By: Chris Emmott
Title: Director
Date: 2 / 10 / 18.

EXHIBIT A

ASSETS CATEGORIES

1. All of the Companies' assets related to the manufacture of broadloom carpet.
2. All of the Companies' assets related to the preparation and processing of synthetic yard.
3. All of the Companies' assets related to the manufacture of synthetic yarn.
4. All of the Companies' common services and infrastructure assets, including but not limited to mobile equipment, which are used at any stage of the manufacture or distribution of broadloom.
5. All of the Companies' office equipment, fixtures, fittings and office furniture.

EXHIBIT B

CLIENT ACCOUNT INFORMATION

TAB C

This is Exhibit "C" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in black ink, appearing to read "Kennedy Erin MacDonald", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

JUSTICE PENNY

)
)
)

TUESDAY, THE 11TH
DAY OF SEPTEMBER, 2018

as amended and restated on

TUESDAY, THE 18TH
DAY OF SEPTEMBER, 2018



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
KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC.,
KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of Christopher Emmott sworn September 10, 2018, and the exhibits thereto ("**Initial Affidavit**"), and the pre-filing report of the proposed monitor, Deloitte Restructuring Inc. ("**Monitor**"), dated September 10, 2018 ("**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule "A" hereto ("**Partnerships**") and counsel for the Monitor, and counsel for Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**") such other counsel as were present and wished to be heard, no one appearing for any other

party although duly served as appears from the affidavits of service, filed, and on reading the consent of Deloitte Restructuring Inc. to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships (together with the Applicants, the "**Kraus Group**") shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Kraus Group 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 ("**Property**"). Subject to further Order of this Court, the Kraus Group shall continue to carry on business in a manner consistent with the preservation of its business ("**Business**") and Property. The Kraus Group is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Kraus Group shall be entitled to continue to utilize the cash management system currently in place as described in the Initial Affidavit or replace it with another substantially similar cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Kraus Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Kraus Group, 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 the Kraus Group shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of 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;
- (b) the fees and disbursements of any Assistants retained or employed by the Kraus Group in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing to vendors determined by the Kraus Group to be necessary in order to ensure an uninterrupted supply of goods and/or services to the Kraus Group that are material to the continued operation of the Business, provided that such payments shall not exceed in an aggregate amount of \$10 million and are approved in advance by the Monitor.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Kraus Group shall be entitled but not required to pay all reasonable expenses incurred by the Kraus Group in carrying on the Business in the ordinary course on or after the date of this Order, and in carrying out the provisions of this Order, and any other Order of this Court, 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 Kraus Group on or after the date of this Order.

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

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

claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Kraus Group.

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

10. THIS COURT ORDERS that, except as specifically permitted herein, the Kraus Group 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 Kraus Group 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 or pursuant to this Order or any other Order of this Court.

RESTRUCTURING

11. THIS COURT ORDERS that the Kraus Group 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 of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1 million in the aggregate in any series of related transactions;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of restructuring 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 Kraus Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Kraus Group shall provide each of the relevant landlords with notice of the Kraus Group'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 Kraus Group'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 Kraus Group, or by further Order of this Court upon application by the Kraus Group on at least two (2) days notice to such landlord and any such secured creditors. If the Kraus Group disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Kraus Group's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Kraus Group 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 Kraus Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE KRAUS GROUP OR THE PROPERTY

14. THIS COURT ORDERS that until and including October 11, 2018, or such later date as this Court may order ("**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Kraus Group or the Monitor, or affecting the Business or the Property, except with the written consent of the Kraus Group and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Kraus Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Kraus Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Kraus Group and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Kraus Group to carry on any business which the Kraus Group is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Kraus Group 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 Kraus Group, 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 Kraus Group, and that the Kraus Group 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 Kraus Group in accordance with normal payment practices of the Kraus Group or such other practices as may be agreed upon by the supplier or service provider and each of the Kraus Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease 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 Kraus Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Kraus Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Kraus Group 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 Kraus Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the Kraus Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

21. THIS COURT ORDERS that the directors and officers of the Kraus Group shall be entitled to the benefit of and are hereby granted a charge ("**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

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

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that Deloitte Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Kraus Group with the powers and obligations set out in the CCAA or set forth herein and that the Kraus Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Kraus Group pursuant to this Order, and shall co-operate fully with the Monitor in the

exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor the Kraus Group'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 Kraus Group, to the extent required by the Kraus Group, in its dissemination to Wells Fargo of financial and other information as required by the Forbearance Agreement (as defined in the Initial Affidavit);
- (d) advise the Kraus Group in its development of the Plan and any amendments to the Plan;
- (e) assist the Kraus Group, to the extent required by the Kraus Group, 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 Kraus Group, to the extent that is necessary to adequately assess the Kraus Group's business and financial affairs 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; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

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

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

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Kraus Group with information provided by the Kraus Group 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 Kraus Group 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 Kraus Group may agree.

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

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Kraus Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Kraus Group as part of the costs of these proceedings. The Kraus Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis and, in addition, the Kraus Group is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Kraus Group, retainers in the aggregate amount of \$100,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Kraus Group's 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 \$1 million, 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 32 and 34 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge (collectively the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1 million); and

Second – Directors' Charge (to the maximum amount of \$1 million).

33. THIS COURT ORDERS that the filing, registration or perfection of 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.

34. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

35. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Kraus Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Kraus Group also obtains the prior written consent of the Monitor, and any other Persons entitled to the benefit of the Charges ("**Chargees**"), or further Order of this Court.

36. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall create or be deemed to constitute a breach by the Kraus Group of any Agreement to which it 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 creation of the Charges; and
- (c) 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.

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

SERVICE AND NOTICE

38. THIS COURT ORDERS that the Monitor shall (a) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Kraus Group of more than \$1,000, and (iii) 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.

39. THIS COURT ORDERS that the E-Service Protocol of the Commercial List ("**Protocol**") is approved and adopted by reference herein and, in this proceeding, the

service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.insolvencies.deloitte.ca/en-ca/Kraus ("**Website**").

40. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding ("**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy or timeliness of making any changes to the Service List.

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

42. THIS COURT ORDERS that the Kraus Group and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Kraus Group's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or

judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

43. THIS COURT ORDERS that the Kraus Group or the Monitor may from time to time apply to this Court for advice and directions regarding the discharge of their respective powers and duties hereunder or the interpretation of this Order.

44. 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 Kraus Group, the Business or the Property.

45. 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 Kraus Group, 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 Kraus Group 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 Kraus Carpet Inc. in any foreign proceeding, or to assist the Kraus Group and the Monitor and their respective agents in carrying out the terms of this Order.

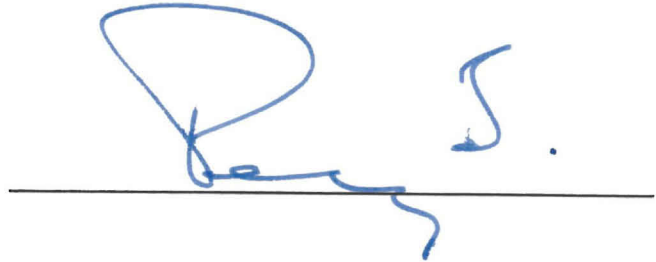
46. THIS COURT ORDERS that each of the Kraus Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Kraus Carpet Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

47. THIS COURT ORDERS that any interested party (including the Kraus Group 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.

48. THIS COURT ORDERS that Confidential Exhibit "A" to the Initial Affidavit and Appendix "D" to the Pre-Filing Report, as well as Exhibits C and E to the Affidavit of Susan Mingie, sworn September 10, 2018, attached as Appendix "C" to the Pre-Filing Report, be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

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



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

SEP 18 2018

PER / PAR: *RW*

Schedule "A" – Partnerships

Kraus Brands LP

Kraus Canada LP

Kraus Carpet LP

Kraus Properties LP

Strudex LP

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 KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS CARPET INC., KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.

Court File No. CV-18-604759-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

AMENDED AND RESTATED INITIAL ORDER

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2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

David S. Ward LSUC#: 33541W
Tel: 416.869.5960
Fax: 416.640.3154
dward@casselsbrock.com

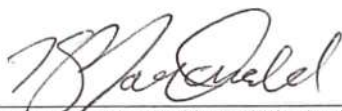
Larry Ellis LSUC#: 49313K
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Erin Craddock LSUC# 62828J
Tel: 416.860.6480
Fax: 416.644.9324
ecraddock@casselsbrock.com

Lawyers for the Applicants

TAB D

This is Exhibit "D" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in cursive script, appearing to read "Erin MacDonald", written in black ink.

Commissioner for Taking Affidavits (or as may be)

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X	:	
In re:	:	Chapter 15
	:	
Kraus Carpet Inc., <u>et al.</u> , ¹	:	Case No. 18-12057 (KG)
	:	
Debtors in a Foreign Proceeding.	:	Jointly Administered
	:	
	:	RE: D.I. 5
-----X		

**PROVISIONAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN
PROCEEDING AND CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)² of Kraus Carpet Inc. (the “Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), pursuant to sections 105(a) 362, 365(e), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) for (a) entry of a provisional order recognizing the CCAA Proceeding as a foreign main proceeding and granting a stay of execution against the Debtors’ assets and applying section 362 and 365(e) of the Bankruptcy Code on an interim basis under section 1519 of the Bankruptcy Code and (ii) a final order recognizing the CCAA Proceeding as a foreign main proceeding and granting related

¹ The Debtors in these chapter 15 cases and the last four digits of each Debtor’s U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors’ mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

relief; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with sections 157 and 1334 of title 28 of the United States Code, sections 109 and 1501 of the Bankruptcy Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and due and proper notice of the provisional relief sought in the Motion having been provided under the circumstances; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the "Emmott Declaration"), and the verified chapter 15 petitions, filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

D. Venue for this proceeding is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

E. On September 11, 2018, these chapter 15 cases were commenced by the Foreign Representative's filing of a verified voluntary *Chapter 15 Petition for Recognition of a Foreign Proceeding* ("Verified Petition") for each Debtor. Attached to the Verified Petition was an order (the "CCAA Order") of the Canadian Court in the CCAA Proceeding appointing the Foreign Representative and granting additional relief.

F. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the CCAA Proceeding is a "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the CCAA Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code, (d) upon recognition of the CCAA Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in these Chapter 15 cases pursuant to section 1520(a)(1) of the Bankruptcy Code, and (e) that application of section 365(e) on an interim basis to prevent contract counterparties from terminating their

prepetition contracts with the Debtors is entirely consistent with the injunctive relief afforded by the automatic stay under section 362.

G. The Foreign Representative has demonstrated that (a) the commencement or continuation of any proceeding or action in the United States against the Debtors and their business and all of its assets should be stayed pursuant to sections 105(a), 1519, and 1521 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the CCAA Proceeding for the benefit of all stakeholders and (b) the relief requested in the Motion will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

H. The Foreign Representative has demonstrated that without the protections of section 365(e) of the Bankruptcy Code, there is a material risk that key contracts will not be preserved and that counterparties to certain of the Debtors' agreements will take the position that the commencement of the CCAA Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder.

I. The Foreign Representative has demonstrated that such termination or acceleration of the Debtors' contracts, if permitted and valid, would result in irreparable damage to the value of the Debtors' assets in the United States, and cause substantial harm to the Debtors' creditors and other parties in interest.

J. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' assets and property in the absence of the relief requested in the Motion.

K. The interests of the public and public policy of United States will be served by entry of this Order.

L. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. The CCAA Order is hereby given full force and effect on an interim basis, including, without limitation, the stay of proceedings to the extent set forth in the CCAA Order, and shall be given full force and effect in the United States until otherwise ordered by this Court.
3. While this Order is in effect, the Foreign Representative and the Debtors are entitled to the full protections and rights pursuant to section 1519(a)(1) of the Bankruptcy Code, which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States.
4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code are hereby made applicable in this case to the Debtors and their property within the territorial jurisdiction of the United States.
5. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its authorized representatives and agents, are hereby enjoined from:
 - a) execution against any of the Debtors' assets;

- b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;
- c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors' or any of their property;
- d) transferring, relinquishing, or disposing of any property of the Debtors by any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e) commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities; and
- f) terminating contracts or otherwise accelerating obligations or exercising remedies thereunder.

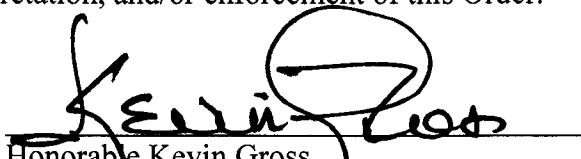
6. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

7. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: Sept. 12, 2018
Wilmington, Delaware


Honorable Kevin Gross
United States Bankruptcy Judge

TAB E

This is Exhibit "E" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in black ink, appearing to read "Erin MacDonald", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X	:	
In re:	:	Chapter 15
	:	
Kraus Carpet Inc., <u>et al.</u> , ¹	:	Case No. 18-12057 (KG)
	:	
Debtors in a Foreign Proceeding.	:	Jointly Administered
	:	
	:	RE: D.I. 5 and 17, 4/
-----X		

**FINAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING
AND CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)² of Kraus Carpet Inc. (the “Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), pursuant to sections 105(a) 362, 365(e), 1517, 1519, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”) for (i) entry of a provisional order (“Provisional Order”), recognizing the CCAA Proceeding as a foreign main proceeding and granting a stay of execution against the Debtors’ assets and applying section 362 and 365(e) of the Bankruptcy Code on an interim basis under section 1519 of the Bankruptcy Code and (ii) entry of a final order recognizing the CCAA Proceeding as a foreign main proceeding and granting related relief; and the Court having jurisdiction to consider the

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² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Motion and the relief requested therein in accordance with sections 157 and 1334 of title 28 of the United States Code, sections 109 and 1501 of the Bankruptcy Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to section 157(b) of title 28 of the United States Code; and due and proper notice of the relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having entered the Provisional Order [Docket No. 17] on September 12, 2018; and a hearing having been held to consider the relief requested in the Motion (the "Hearing") on a final basis; and the appearances of all interested parties having been noted in the record of the Hearing; and upon the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the "Emmott Declaration"), and the verified Chapter 15 petitions, filed contemporaneously with the Motion, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012.

C. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

D. Venue for this proceeding is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

E. On September 11, 2018, these chapter 15 cases were commenced by the Foreign Representative's filing of a verified voluntary Chapter 15 Petition for Recognition of a Foreign Proceeding ("Verified Petition") for each Debtor. Attached to the Verified Petition was an order (the "CCAA Order") of the Canadian Court in the CCAA Proceeding appointing the Foreign Representative and granting additional relief.

F. The CCAA Proceeding is a "foreign proceeding" pursuant to section 101(23) of the Bankruptcy Code.

G. The Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

H. These Chapter 15 cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

I. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

J. The CCAA Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

K. Canada is the center of main interests of each of the Debtors, and accordingly, the CCAA Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

L. The Foreign Representative is entitled to all the relief available pursuant to section 1520 of the Bankruptcy Code including, without limitation, application of the automatic stay pursuant to section 362 of the Bankruptcy Code.

M. The Foreign Representative is further entitled to application of section 365(e) of the Bankruptcy Code pursuant to section 1521 of the Bankruptcy Code.

N. The Foreign Representative has demonstrated that application of section 365(e) of the Bankruptcy Code, as made applicable by sections 1521(a)(7) and 105(a) of the Bankruptcy Code, is necessary to provide the Debtors with the ability to assume or reject a contract or compel a contract counterparty to perform under a contract and that, absent protections pursuant to section 365(e), there is a material risk that one or more of their contract counterparties may terminate agreements or discontinue performance on the incorrect assumption that such non-Debtor counterparty is not bound by any decision made in the CCAA Proceeding and any such termination or discontinuance of performance could impose severe economic consequences on the Debtors and will interfere with efforts to realize maximum value from the Debtors’ assets.

O. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Verified Petitions and the Motion are granted as set forth herein.
2. The CCAA Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.
3. The CCAA Order is hereby enforced on a final basis and given full force and effect in the United States, including, without limitation, the stay of proceedings to the extent set forth in the CCAA Order.
4. All relief afforded to foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to the CCAA Proceeding, the Debtors, and the Foreign Representative as applicable.
5. Sections 362 and 365(e) of the Bankruptcy Code shall hereby apply with respect to the Debtors and the property of Debtors that is within the territorial jurisdiction of the United States.
6. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its authorized representatives and/or agents are hereby enjoined from:
 - a) execution against any of the Debtors' assets;
 - b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;
 - c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of its property;
 - d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;

e) commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities; and

f) terminating contracts or otherwise accelerating obligations or exercising remedies thereunder provided.

7. Subject to sections 1520 and 1521 of the Bankruptcy Code, the CCAA Proceeding, and the CCAA Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the U.S. to the same extent as in Canada, and each is binding on all creditors of the Debtors and any of their successors and assigns.

8. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

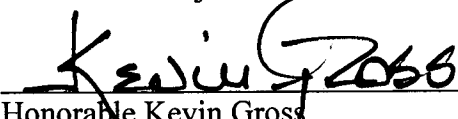
9. Notwithstanding any applicable Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

11. The Foreign Representative, the Debtors, and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

13. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief, any adversary proceeding brought in and through these chapter 15 bankruptcy cases, and any request by an entity for relief from the provisions of this Order that is properly commenced and within the jurisdiction of this Court.

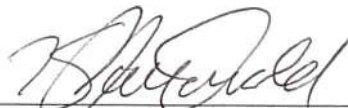
Dated: October 1, 2018
Wilmington, Delaware



Honorable Kevin Gross
United States Bankruptcy Judge

TAB F

This is Exhibit "F" referred to in the Affidavit of Christopher Emmott sworn October 2, 2018

A handwritten signature in black ink, appearing to read 'Kennedy Erin MacDonald', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Kennedy Erin MacDonald, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 12, 2020.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X		
In re:	:	Chapter 15
	:	
Kraus Carpet Inc., <u>et al.</u> , ¹	:	Case No. 18-12057(KG)
	:	
Debtors in a Foreign Proceeding.	:	Jointly Administered
	:	
-----X		Re: D.I. 2, 9, 10, 21, 38 & 42

ORDER GRANTING MOTION OF FOREIGN REPRESENTATIVE PURSUANT TO SECTIONS 105(a), 363, 365, 1501, 1507, 1520, AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, 6006, AND 9014, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE APPROVAL AND VESTING ORDER; (II) AUTHORIZING THE SALE OF THE DEBTORS' TPS BUSINESS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of Kraus Carpet Inc. (the "Foreign Representative"), in its capacity as the authorized foreign representative of the above captioned debtors (the "Debtors") in a Canadian proceeding (the "CCAA Proceeding") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "CCAA") pending before the Ontario Superior Court of Justice (the "Canadian Court"), for entry of an order pursuant to sections 105(a) 363, 365, 1501, 1507, 1520, and 1521 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local

¹ The Debtors in these chapter 15 cases and the last four digits of each Debtor's U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors' mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

² Capitalized terms used herein but not otherwise defined have the meanings given to them in the applicable Acquisition Agreement (as defined below) or, if not defined in the Acquisition Agreement, the meanings given to them in the Motion.

Rules): (a) recognizing the Sale Approval and Vesting Order entered by the Canadian Court (the "Canadian Sale Order"); (b) authorizing and approving the sale (the "Sale") of the Debtors' TPS Business (the "Assets"), pursuant to the terms and conditions set forth in (i) that certain Asset Purchase Agreement (the "Asset Purchase Agreement") between Kraus Canada LP, Kraus Properties LP, Kraus USA, Inc., and Kraus Carpet LP on the one hand and Q.E.P. Co., Inc. and Roberts Company Canada Ltd. (Q.E.P. Co., Inc. and Roberts Company Canada Ltd., individually and collectively, the "Purchaser") on the other hand; and (ii) that certain Purchase and Sale Agreement (the "Real Estate Purchase Agreement", together with the Asset Purchase Agreement, individually and collectively, the "Acquisition Agreement") between Kraus USA, Inc., and Purchaser, in each case free and clear of liens, claims, encumbrances, and other interests, in each case free and clear of liens, claims, encumbrances, and other interests other than Permitted Encumbrances; and (c) granting certain relief related thereto; and upon the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the "Emmott Declaration"), and the *Declaration of Susan Mingie in Support of the Motion of Foreign Representative Pursuant to Sections 105(a), 353, 365, 1501, 1507, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, and 9014, for Entry of an Order (I) Recognizing and Enforcing the Approval and Vesting Order; (II) Authorizing the Sale of the Debtors' TPS Business Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests; and (III) Granting Related Relief* (the "Mingie Declaration"); and the arguments of counsel made, and the evidenced adduced, at a hearing before this Court (the "Sale Hearing"); and upon the record of the Sale Hearing and the above-

captioned chapter 15 cases, and after due deliberation thereon, and good cause appearing therefor, and in accordance with Bankruptcy Rule 7052, it is hereby

FOUND AND DETERMINED THAT³:

A. The Canadian Court has duly entered the Canadian Sale Order approving and authorizing the Debtors' execution of the Acquisition Agreement and consummation of the Sale of the Assets.

B. This Court has jurisdiction and authority to hear and determine the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.

C. Based on the affidavits of service filed with, and representations made to, this Court: (i) notice of the Motion, the Sale Hearing, and the Sale was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (ii) no other or further notice of the Motion, the Sale Hearing, the Sale, or the entry of this Order is necessary or shall be required.

D. The Foreign Representative provided notice and a reasonable opportunity to object and be heard with respect to the Sale, the Motion, and the relief requested therein to the necessary parties in interest, including the following: (i) counsel to Wells Fargo Capital Finance Corporation Canada (the Debtors' prepetition senior secured lender); (ii) Red Ash Capital Partners II Limited Partnership (the Debtors' prepetition junior secured lender; (iii) any party

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

known to hold or assert a lien on any of the Assets; (iv) counsel to the Debtors in the Canadian Proceeding on behalf of the Debtors; (v) the Office of the United States Trustee for the District of Delaware; and (vi) all parties who have requested notice in these chapter 15 cases pursuant to Bankruptcy Rule 2002.

E. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

F. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 365, 1501, 1514, 1520, and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

G. Based on information contained in the Motion, the Emmott Declaration, the Mingie Declaration, and the record made at the Sale Hearing, Deloitte Corporate Finance conducted a marketing process to solicit interest in the Assets and the sale process was non-collusive, duly noticed and provided a reasonable opportunity for other entities to make an offer to purchase the Assets. The Canadian Court authorized the Sale pursuant to the terms of the Acquisition Agreement and entered the Canadian Sale Order. The Foreign Representative has recommended the Sale in accordance with the Acquisition Agreement, and it is appropriate that the Assets be sold, transferred, assigned, and vested in the Purchaser on the terms set forth in the Acquisition Agreement.

H. The Debtors entry into and performance under the Acquisition Agreement and related agreements (i) constitute a sound and reasonable exercise of the Debtors' business judgment, (ii) provide value to and are beneficial to the Debtors, and are in the best interests of

the Debtors and their stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale include, but are not limited to, the following: (I) the Acquisition Agreement constitutes the highest and best offer received for the Assets; (II) the Acquisition Agreement presents the best opportunity to maximize the value of the Assets on a going concern basis and avoid decline and devaluation of the Assets; (III) unless the Sale and all of the other transactions contemplated by the Acquisition Agreement and related agreements are concluded expeditiously, as provided for pursuant to the Acquisition Agreement, recoveries to creditors may be diminished; and (IV) the value received for the Assets will be maximized through the sale pursuant to the Acquisition Agreement and related agreements.

I. The consideration provided by the Purchaser for the Assets under the Acquisition Agreement constitutes fair consideration and reasonably equivalent value for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

J. No bulk sales law or any similar law of any state or other U.S. jurisdiction shall apply in any way to the Sale.

K. Purchaser is not, and will not be, a mere continuation, and is not holding itself out as a mere continuation, of any of the Debtors and there is no continuity between Purchaser and the Debtors. The Sale does not amount to a consolidation, merger or *de facto* merger of Purchaser and any of the Debtors.

L. Time is of the essence in consummating the Sale. To maximize the value of the Assets, it is essential that the Sale occur and be recognized and enforced in the United States promptly. The Foreign Representative on behalf of the Debtors has demonstrated compelling

circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale as contemplated by the Acquisition Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004(h) and 6006(d), and accordingly the transaction contemplated by the Acquisition Agreement can be closed immediately upon entry of this Order.

M. Based upon information contained in the Motion, the Emmott Declaration, the Mingie Declaration, the other pleadings filed in the above-captioned cases, and the record made at the Sale Hearing, the Acquisition Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and Purchaser in good faith, without collusion and from arms'-length bargaining positions. Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Neither the Debtors, the Foreign Representative, nor Purchaser has engaged in any conduct that would cause or permit the Acquisition Agreement or the consummation of the Sale to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between Purchaser and the Debtors.

N. The Acquisition Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors.

O. The Foreign Representative, on behalf of itself and the Debtors, may sell the Assets free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances and other interests of any kind or nature whatsoever against the Debtors or the Assets, other than Permitted Encumbrances, because with respect to each creditor

asserting any such interest, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

P. The total consideration to be provided under the Acquisition Agreement reflects Purchaser's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Assets free and clear of all Claims (including, without limitation, any potential derivative, vicarious, transferee or successor liability Claims), other than Permitted Encumbrances.

Q. The transfer of the Debtors' rights under the Transferred Contracts as and to the extent provided in the Canadian Sale Order is integral to the Acquisition Agreement, is in the best interests of the Debtors and represents the reasonable exercise of the Debtors' business judgment.

R. As of the filing of the Monitor's Certificate in the CCAA Proceeding and the delivery thereof to the Purchaser, the transfer of the Assets to Purchaser will be a legal, valid and effective transfer of the Assets, and will vest Purchaser with all right, title and interest of the Debtors in and to the Assets, free and clear of all Claims, other than the Permitted Encumbrances..

S. The Foreign Representative and Debtors (i) have full power and authority to execute the Acquisition Agreement and all other documents contemplated thereby, and the Sale has been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of power and authority necessary to consummate the transactions contemplated by the Acquisition Agreement, and (iii) upon entry of this Order, other than any consents identified in the Acquisition Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale.

T. The Debtors are the sole and rightful owners of the Assets, and no other Person has any ownership right, title, or interest therein.

U. The Acquisition Agreement is a valid and binding contract between the Debtors and Purchaser and shall be enforceable pursuant to its terms. The Acquisition Agreement and the Sale itself, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors, the Foreign Representative in this Chapter 15 case, any chapter 7 or chapter 11 trustee appointed in any successor cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

V. The Purchaser would not have entered into the Acquisition Agreement and would not consummate the Sale and related transactions contemplated thereby, thus adversely affecting the Debtors, their creditors, and other parties in interest, if the Sale of the Assets to the Purchaser was not free and clear of all liens, claims, encumbrances and other interests (other than Permitted Encumbrances), or if Purchaser would, or in the future could, be liable for any such claims, including, as applicable, certain liabilities related to the Business and Assets that will not be assumed by Purchaser, as described in the Acquisition Agreement.

W. A sale of the Assets other than one free and clear of all liens, claims encumbrances and other interests would yield substantially less value than the Sale; thus, the Sale free and clear of all liens, claims, encumbrances and other interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, their creditors, and other parties in interest.

X. The interests of the Debtors' creditors in the United States are sufficiently protected.

Y. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to section 1521(b) of the Bankruptcy Code.

Z. The CCAA Proceeding is a “foreign main proceeding” as that term is defined in section 1502(4) of the Bankruptcy Code, and the Foreign Representative is a “foreign representative” as that term is defined in section 101(24) of the Bankruptcy Code.

AA. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

BB. Any and all findings of fact and conclusions of law announced by this Court at the Sale Hearing are incorporated herein.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.
3. The Canadian Sale Order is recognized in full and given full force and effect in the United States.
4. The Acquisition Agreement, the Sale pursuant to the terms of the Acquisition Agreement, the transfers and assignments of the Assets located within the United States on the terms set forth in the Acquisition Agreement, the Canadian Sale Order, this Order, all other transactions contemplated therein, the consummation of all transactions contemplated therein and all of the terms and conditions thereof are hereby approved and authorized pursuant to sections 105, 363, 365, 1501, 1514, 1520 and 1521 of the Bankruptcy Code and applicable law. The

failure specifically to include any particular provision of the Acquisition Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Acquisition Agreement be authorized and approved in its entirety. The consideration provided by Purchaser under the Acquisition Agreement is fair and reasonable.

5. Pursuant to section 1521(b) of the Bankruptcy Code and the Canadian Sale Order, the distribution of the proceeds of the Sale is entrusted to the Monitor in the CCAA Proceeding.

6. All objections to the entry of this Order that have not been withdrawn, waived, or settled, or otherwise resolved pursuant to the terms hereof, are denied and overruled on the merits, with prejudice.

7. Pursuant to sections 105, 363, 365, 1501, 1514, 1520 and 1521 of the Bankruptcy Code, the Canadian Sale Order, and this Order, the Debtors, the Purchaser and the Foreign Representative (as well as their officers, employees and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Assets to the Purchaser in accordance with the Acquisition Agreement, the Canadian Sale Order and this Order; (b) provide services in accordance with the Transition Services Agreement; (c) execute and perform in accordance with the Escrow Agreement; and (d) perform, consummate, implement and close fully the Acquisition Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Acquisition Agreement and the Sale and to take such additional steps and all further actions as may be (i) reasonably requested by Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to Purchaser, or reducing to possession, the Assets, or (ii) necessary or appropriate to the performance of the obligations contemplated by the Acquisition Agreement, all without further order of the Court.

8. All Persons that are currently in possession of some or all of the Assets located in the United States or are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Assets to Purchaser on the Closing Date.

9. The fourteen-day stay provided for in Bankruptcy Rules 6004(h) and 6006(d) shall be, and hereby is, waived in connection with this Order.

Transfer of the Assets Free and Clear

10. Pursuant to sections 105(a), 363, 365, 1501, 1514, 1520 and 1521 of the Bankruptcy Code, on the date of closing pursuant to the terms of the Acquisition Agreement, the Assets shall be transferred and absolutely vest in the Purchaser, without further instrument of transfer or assignment, all rights, title, and interest of the Debtors to the Assets, and such transfer shall: (a) be a legal, valid, binding and effective transfer of the Assets to the Purchaser; (b) vest Purchaser with all right, title and interest of the Debtors in the Assets, and (c) be free and clear, other than Permitted Encumbrances, of any and all Claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, options, warrants, trusts or deemed trusts (whether contractual, statutory, or otherwise), encumbrances, obligations, interests, liabilities, demands, guarantees, restrictions, contractual commitments, rights, including without limitation, rights of first refusal and rights of set-off, liens, executions, levies, penalties, charges, financial or monetary claims, adverse claims, or rights of use, puts or forced sale provisions exercisable as a consequence of or arising from the closing of the Sale, whether arising prior to or subsequent to the commencement of the Canadian Proceeding and these chapter 15 cases, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, legal, equitable, possessory or otherwise, actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, complaint, suit, investigation, dispute, petition or proceeding by or

before any governmental authority or person at law or in equity whether imposed by agreement, understanding, law, equity or otherwise, and any claim or demand resulting therefrom.

11. Pursuant to sections 105(a), 363(f), 365, 1501, 1514, 1520 and 1521 of the Bankruptcy Code, upon the closing of the Sale: (a) the Assets shall be sold, transferred, or otherwise conveyed to the respective Purchaser free and clear of all liens, claims, encumbrances and other interests, other than Permitted Encumbrances (as defined in the Acquisition Agreement); (b) no holder of a lien, claim, encumbrance or other interest against the Debtors shall interfere, and each and every holder of a lien, claim, encumbrance or other interest against the Debtors is enjoined from interfering, with the Purchaser's rights and title to or use and enjoyment of the Assets; and (c) the Acquisition Agreement, the Sale, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors or any successor thereof. All persons or entities holding liens, claims, encumbrances or other interests in, to or against the Assets are forever barred and enjoined from asserting such liens, claims, encumbrances or other interests against the Purchaser or its affiliates and their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives and their respective affiliates, successors and assigns or such Assets from and after closing of the Sale. All liens and encumbrances relating to, accruing, or arising any time prior to the closing date of the sale shall attach to the proceeds generated from the sale of the Assets.

12. Each and every federal, state, and local governmental agency or department is authorized and directed to accept (and not impose any fee, charge, or tax in connection therewith for) any and all documents and instruments necessary or appropriate to consummate the Sale and other transactions contemplated by the Acquisition Agreement.

13. Effective as of Closing under the Acquisition Agreement, the Canadian Sale Order and this Order shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Assets to the Purchaser free and clear of all liens, claims, encumbrances and other interests.

14. Except as otherwise provided in the Acquisition Agreement, Purchaser and its successors and assigns shall have no liability for, and all Persons (and their respective successors and assigns) including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, employees, former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Claims against the Debtors or the Assets, are hereby forever barred, estopped and permanently enjoined from asserting or pursuing any Claims, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature or character whatsoever, against Purchaser, its Affiliates, successors or assigns, its property or the Assets, including, without limitation, taking any of the following actions with respect to a Claim (other than an Assumed Liability): (a) commencing or continuing in any manner any action or other proceeding against Purchaser, its Affiliates, successors or assigns, assets or properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order against Purchaser, its Affiliates, successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Claims against Purchaser, its successors or assigns, assets or properties; (d) asserting a Claim as a setoff, right of subrogation or recoupment of any kind against any obligation due Purchaser or its successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the

provisions of this Order or the agreements or actions contemplated or taken in respect thereof. No such Persons shall assert or pursue against Purchaser or its Affiliates, successors or assigns any such Claim.

15. This Order (a) shall be effective as a determination that, as of the Closing Date, all Claims, other than Permitted Encumbrances, have been unconditionally released, discharged and terminated as to Purchaser and the Assets, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing Persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Acquisition Agreement.⁴

16. If any Person that has filed in any federal, state or local filing, recording, registry or other office located in the United States, financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtors or the Assets shall not have delivered to the Foreign Representative prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the Person has with respect to the Debtors or the Assets or otherwise, then with regard to the Assets that are purchased by Purchaser pursuant to

⁴ For the avoidance of doubt, the provisions of section 1146(a) of the Bankruptcy Code do not apply to the Sale.

the Acquisition Agreement and this Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the Person with respect to the Assets and (b) Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Assets including, without limitation: (i) payment, satisfaction, and cancellation of record of Deed to Secure Debt and Assignment of Rents and Leases from Barrett Carpet Mills, Inc., a Georgia corporation, to Wells Fargo Capital Finance Corporation Canada, an Ontario corporation, dated August 6, 2013, filed for record August 14, 2013 at 1:23 p.m., recorded in Deed Book 5930, Page 225, Records of Whitfield County, Georgia; and (ii) termination of record of UCC Financing Statement No. 155-2013-0443 having Barrett Carpet Mills, Inc., as Debtor, and Wells Fargo Capital Finance Corporation Canada, as Secured Party, filed for record April 12, 2013 at 10:32 a.m. in Whitfield County, Georgia, and entered in the Central Indexing System of Georgia; as continued by UCC Financing Statement Amendment No. 155-2018-0012 having Barrett Carpet Mills Inc., as Debtor, and Wells Fargo Bank, National Association, as Secured Party, filed for record January 4, 2018 at 2:44 p.m. in Whitfield County, Georgia, and entered in the Central Indexing System of Georgia; as further continued by UCC Financing Statement Amendment No. 155-2018-0390 having Barrett Carpet Mills, Inc., as Debtor, and Wells Fargo Capital Finance Corporation Canada, as Secured Party, filed for record March 22, 2018 at 9:53 a.m. in Whitfield County, Georgia, and entered in the Central Indexing System of Georgia. Each and every federal, state or local government agency, department or office located in the United States is authorized to accept this Order for filing or recording in such government or agency's filing or recording system.

17. Purchaser is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors; (b) have, *de facto* or otherwise, merged with or into any or all Debtors; or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

18. The transactions contemplated by the Acquisition Agreement are undertaken by Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale shall neither affect the validity of the Sale nor the transfer of the Assets to Purchaser, free and clear of Claims, unless such authorization is duly stayed before the Closing pending such appeal.

19. Neither the Debtors nor Purchaser has engaged in any conduct that would cause or permit the Acquisition Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

20. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Bankruptcy Rules or Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. The Debtors, the Purchaser, and the Foreign Representative are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order. For the avoidance of doubt, the Debtors, the Purchaser, and the Foreign Representative may, in their discretion and without further delay, take any action and perform any act authorized under the Canadian Sale Order or this Order.

21. The terms and provisions of the Acquisition Agreement, the Canadian Sale Order, and this Order shall be binding in all respects upon, or shall inure to the benefit of, the Debtors, the Purchaser, the Foreign Representative, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, the Purchaser, the Foreign Representative, and the Debtors' creditors, including any foreign representative(s) of the Debtors, trustee(s), examiner(s) or receiver(s) appointed in any proceeding, including without limitation any proceeding under any chapter of the Bankruptcy Code, CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their creditors, or any trustee(s), examiner(s) or receiver(s).

22. Subject to the terms and conditions of the Canadian Sale Order and the Acquisition Agreement, the Acquisition Agreement, and any related agreements, documents or other instruments, may be modified, amended or supplemented by the parties thereto, in a writing signed each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Acquisition Agreement or any related agreements, documents or other instruments and is otherwise in accordance with the terms of the Canadian Sale Order.

23. No bulk sales law, or similar law of any state or other U.S. jurisdiction shall apply in any way to the transactions contemplated by the Acquisition Agreement, the Sale Motion or this Order.

24. The provisions of this Order and of the Acquisition Agreement are non-severable and mutually dependent.

Additional Provisions

25. The failure to include any particular provision of the Canadian Sale Order, the Acquisition Agreement, or any related agreements in this Order shall not diminish or impair the effectiveness of that provision, it being the intent of this Court that the Canadian Sale Order, the Acquisition Agreement, and any related agreements, with such amendments thereto as may be made by the parties in accordance with the Canadian Sale Order, this Order and the Acquisition Agreement be approved and authorized in their entirety.

26. Nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtor or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any asset that is not an Asset.

27. Other than as explicitly set forth herein, this Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of this Order, including without limitation, enforcement of the injunctions contained herein as well as, in the United States and as to those Assets located in the United States to, among other things, (i) interpret, enforce and implement the terms and provisions the Acquisition Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith) and (ii) to adjudicate disputes related to the Acquisition Agreement (and such other related agreements, documents or other instruments).

Dated: Wilmington, Delaware
October 1, 2018



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

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 KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS
CARPET INC., KRAUS PROPERTIES INC., KRAUS USA INC., and STRUDEX INC.

Court File No. CV-18-604759-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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TAB 3
(to be filed)

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 KRAUS BRANDS INC., KRAUS CANADA LTD., KRAUS
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(Distribution Motion)**

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