

**THE KING'S BENCH  
WINNIPEG CENTRE**

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 POLAR WINDOW OF CANADA LTD., ACCURATE  
DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021)  
INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS,  
12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS,  
POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914  
CANADA LTD.

(the "Applicants")

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

**CERTIFIED COPY  
of**

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**INITIAL ORDER**

**DATE OF HEARING: TUESDAY, FEBRUARY 10, 2023 AT 10:00  
A.M. BEFORE THE HONOURABLE MR. JUSTICE BOCK**

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**File No. 0037903.00035**

**THE KING'S BENCH**  
**WINNIPEG CENTRE**

THE HONOURABLE     )  
                                  )  
MR. JUSTICE BOCK    )

Friday, the 10<sup>th</sup> day of February, 2023

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  
POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8  
INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO  
WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS &  
DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA  
LTD.

(the "**Applicants**")

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

**CERTIFIED COPY**  
**of**  
**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the affidavit of Stephen Segal sworn February 6, 2023 ("**Segal Affidavit**") and the Exhibits thereto, and the Pre-filing Report of Deloitte Restructuring Inc. ("**Deloitte**") dated February 6, 2023 (the "**Pre-filing Report**"), the Affidavit of <sup>TBS</sup> Laila Alnadi<sup>Laila Alnadi</sup> sworn February 9, 2023 and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the

submissions of counsel for the Applicants, counsel for Deloitte, counsel for The Toronto-Dominion Bank (“TD”), counsel for Sallyport Commercial Finance ULC (“Sallyport”), no one else appearing although duly served as appears from the Affidavit of Service of Lila Alnadi sworn February 9, 2023 and on reading the consent of Deloitte to act as the Monitor (as hereinafter defined),

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the supporting materials 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 each a company to which the CCAA applies.

## **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 or plans of compromise or arrangement (hereinafter referred to as the “Plan”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”). Subject to further Order of this Court, the Applicants shall continue to carry

on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as they deem 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 Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Segal Affidavit or replace it with another substantially similar central 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 Applicants 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 Applicants, 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 12986647 Canada Ltd. o/a Allsco Windows & Doors ("**Allsco**"), 12986591 Canada Ltd. o/a Alweather Windows & Doors ("**Alweather**"), and

12986914 Canada Ltd. (“6914”) are hereby authorized and entitled to continue to utilize Sallyport Commercial Finance ULC (“Sallyport”) for the factoring of their accounts receivable and that such utilization shall not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law, and without limiting the foregoing:

- a) With respect to the Account Sale and Purchase Agreement (the “Sallyport Agreement”) between Sallyport, Allsco, Alweather and 6914 dated May 20, 2021, all Accounts (as defined in the Sallyport Agreement) sold thereunder shall be sold free and clear of all encumbrances, including but not limited to all Charges (as hereinafter defined) granted in these proceedings; and
- b) Sallyport shall be permitted to operate the Reserve Account (as defined in the Sallyport Agreement) in accordance with the terms of the Sallyport Agreement and, if necessary, the Stay Period (as defined hereinafter) be and is hereby lifted for such purpose.

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

- a) All outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- b) The fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

8. THIS COURT ORDERS that except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) All expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- b) Payment for goods or services actually supplied to the Applicants following the date of this Order.

9. THIS COURT ORDERS that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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



Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, monthly on the first 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.

11. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are 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 Applicants to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their respective Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000.00 in any one transaction or \$500,000.00 in the aggregate;
- (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 refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

13. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' 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 Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim 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 of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, 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 Applicants 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 APPLICANTS OR THE PROPERTY**

15. THIS COURT ORDERS that until and including February 20, 2023, or such later date as this Court may order (the "**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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court .

16. THIS COURT ORDERS that during the Stay Period, except with the written consent of the Applicants and the Monitor, or with leave of this Court, no Proceedings shall be commenced or continued against or in respect of Polar Holding Canada, LLC, 7440783 Manitoba Ltd., Stephen Segal, Tim Morris or Brant Enderle (together the "**Guarantors**") or any of their respective current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceedings thereof (collectively, the "**Guarantors' Property**"), arising upon or as a result of any default under the terms of any document entered into in connection with any of the Guarantors' guarantees of any of the commitments or loans of any of the Applicants (the "**Guarantors' Default Events**"). Without limitation, the operation of any provision of a contract or agreement between any of the Guarantors and any other Person (as hereinafter defined) that purports to effect or cause a termination or cessation of any rights of any of the Guarantors, or to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend, amend or modify

such contract or agreement, in each case as a result of one or more Guarantors' Default Events, is hereby stayed and restrained during the Stay Period.

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

17. 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 Applicants (or any them) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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, or (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for a lien.

### **NO INTERFERENCE WITH RIGHTS**

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

### **CONTINUATION OF SERVICES**

19. THIS COURT ORDERS during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

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

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

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

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

23. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000.00, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 42 and 44 herein.

24. 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 Applicants' 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 22 of this Order.

### **APPOINTMENT OF MONITOR**

25. THIS COURT ORDERS that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, and without altering in any way the limitations and obligations of the Applicants set out herein, is hereby directed and empowered, but not required, to:

- a) Monitor the Applicants' receipts and disbursements;
- b) Report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- c) Assist the Applicants, to the extent required by the Applicants, in their dissemination, to TD in its capacity as the DIP Lender (the "DIP

**Lender**”) and its counsel on a bi-weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- d) Advise the Applicants in their preparation of the Applicants’ cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the DIP Lender;
- e) Advise the Applicants in their development of the Plan and any amendments to the Plan;
- f) Assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors’ or shareholders’ meetings for voting on the Plan;
- g) Have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants’ businesses and financial affairs or to perform its duties arising under this Order;
- h) Be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- i) Hold funds in trust or in escrow, to the extent required; and
- j) Perform such other duties as are required by this Order or by this Court from time to time.

27. 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.

28. 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 Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), 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.

29. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability

with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. 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.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel to the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$50,000.00, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

32. 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 this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000.00, 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 42 and 44 hereof.

#### **DIP FINANCING**

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender (the "**DIP Facility**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$200,000.00 unless permitted by further Order of this Court. The DIP Facility shall not be used to pay any indebtedness owing by any of the Applicants' which arose prior to the date on which this Order is pronounced.

35. THIS COURT ORDERS that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of February 6, 2023 (the "**Commitment Letter**"), filed.

36. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges,

hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to:

- a. pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, and
- b. pay to the Lender all amounts paid in the prior week to the Applicants, other than advances under the Commitment Letter or amounts to be held in trust by an Applicant, but including any amounts released from trust, which amounts paid to the Lender shall be applied to the amount advanced to the Applicants pursuant to a forbearance and amending agreement dated January 26, 2023 between the DIP Lender and the Applicants and defined in the Commitment Letter as the "Bulge Facility,"

notwithstanding any other provision of this Order.

37. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property to secure all obligations under the Definitive Documents and under the Bulge Facility incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive Documents. The DIP Lender's Charge shall secure all obligations of the Applicants under the Commitment Letter. The DIP Lender's Charge shall not secure an obligation that exists before this

Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 42 and 44 hereof.

38. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- a) The DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- b) Upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three (3) days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants (or any of them); and
- c) The foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

39. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants (or any of them) under the CCAA, or any proposal filed by the Applicants (or any of them) under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents and the Bulge Facility.

#### **KERP CHARGE**

40. THIS COURT ORDERS that the key employee retention plan ("KERP")

described in the Segal Affidavit is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof.

41. THIS COURT ORDERS that KERP participants shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property which charge shall not exceed \$300,000.00 and that the KERP Charge shall have the priority set out in paragraphs 42 and 44 hereof.

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

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

First – Administration Charge (to the maximum amount of \$500,000.00);

Second – DIP Lender's Charge with the exception that the DIP Lender's Charge shall be subordinate to Sallyport's security interest up to the sum of \$72,916.69 in respect of the Equipment Collateral (as defined in the Equipment Addendum to the Sallyport Agreement);

Third – Directors' Charge (to the maximum amount of \$300,000.00);  
and

Fourth – KERP Charge (to the maximum amount of \$300,000.00)

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



44. 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, hypothecs, liens, mortgages, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, save and except for those claims contemplated by section 11.8(8) of the CCAA and those secured creditors who would be materially affected by this Order and who were not given notice of this motion (the "**Unserved Secured Creditors**"), without prejudice to the Applicants', the Monitor's and the Chargees' (as hereinafter defined) abilities to seek an order from this Court to rank in priority to the Encumbrances of Unserved Secured Creditors, on notice.

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

46. THIS COURT ORDERS that the Administration Charge, the Directors' Charge, the KERP Charge, the Commitment Letter, the Definitive Documents, the Bulge Facility and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the

declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an **"Agreement"**) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- a) Neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c) The payments made by the Applicants pursuant to this Order, the Commitment Letter, the Bulger Facility or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

48. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the National Post a notice containing the information prescribed under the CCAA, (ii) within

five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

50. THIS COURT ORDERS that counsel for the Applicants shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicants; the Monitor; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Applicants to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Monitor at the address indicated in paragraph 51 herein. **For greater certainty,**

creditors and other interested Persons who have received notice in accordance with paragraph 48(B) of this Order and/or have been served in accordance with paragraph 53 of this Order, and who do not send a request, in writing, to counsel for the Applicants to be added to the Service List, shall not be required to be further served in these proceedings.

### **SEALING**

52. THIS COURT ORDERS that Confidential Exhibit "A" to the Segal Affidavit be filed under seal, kept confidential and is not to form part of the public record, and shall remain stored with this Court separate and apart from all other contents of the Court File, in a sealed envelope attached to a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order, and/or shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge, and shall only be made available or form part of the public record after these restructuring proceedings have been completed or further Order of this Court.

### **GENERAL**

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

54. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from

acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

55. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

57. THIS COURT ORDERS that any interested party (including the Applicants 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.

58. THIS COURT ORDERS that this Order and all of its provisions are effective as of

12:01 a.m. Central Standard Time on the date of this Order.

February 10, 2023



BOCK, J.

CERTIFIED A TRUE COPY



DEPUTY REGISTRAR

I, J.J. BURNELL, OF THE FIRM OF MLT AIKINS LLP LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

Sam Gabor of Gowling WLG (Canada) LLP, counsel for TD

Ian Sutherland of McDougall Gauley LLP, counsel for the Monitor

Shahrazad Hamraz of Loopstra Nixon LLP, counsel for Sallyport

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK.