

**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

(Sale Approval and Vesting Order)

September 17, 2018

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TO: SERVICE LIST

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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Applicants

**NOTICE OF MOTION
(returnable September 18, 2018)
(Motion for Sale Approval and Vesting Order)**

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 September 18, 2018, at 2:15 p.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" ("**Sale Approval and Vesting Order**"):

- (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) approving the transaction ("**TPS Transaction**") contemplated by the asset 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**"), dated September 10, 2018, as may be further supplemented or amended ("**Purchase Agreement**");
 - (c) vesting all of the Kraus Sellers' rights, title and interest in and to the Purchased Assets, as set out and described in the Purchase Agreement, in the Purchaser, free and clear of and from all Claims (as defined in the Sale Approval and Vesting Order), except for those permitted encumbrances, easements and restrictive covenants listed on Schedule "E" to the Sale Approval and Vesting Order;
 - (d) approving a certain transition services agreement (in support of the Purchase Agreement) made between the Kraus Sellers and the Purchaser for the provision of services to ensure the orderly transition of the sale of the TPS Business (defined below) to the Purchaser ("**Transition Services Agreement**");
 - (e) an Amended and Restated Initial Order, substantially in the form attached as Schedule "C" to this notice of motion, providing for certain amendments to the Initial Order including enhanced priority for the court-ordered charges;
-

- (f) approving the Pre-Filing Report of Deloitte Restructuring Inc. ("**Deloitte**") dated September 10, 2018, ("**Pre-Filing Report**") and the activities and conduct described therein;
- (g) if necessary, sealing from the public record any commercially-sensitive information and/or documents that may be filed on this motion; 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 vertically-integrated manufacturer of premium carpet for the commercial and residential market. It is also a distributor in North America of flooring products produced by other manufacturers ("**TPS Business**").
- (b) The Applicants are insolvent. As of August 31, 2018, the Kraus Group owes Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**") and Red Ash Capital Partners II Limited Partnership ("**Red Ash**") the aggregate amount of at least \$148,170,248.
- (c) 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 ("**Initial Order**") of the Honourable Mr. Justice Penny, dated September

11, 2018, and Deloitte was appointed monitor of the Kraus Group in the CCAA proceedings ("**Monitor**").

- (d) Also on September 11, 2018, a motion will be filed by Kraus Carpet Inc. with the United States Bankruptcy Court (District of Delaware) for the entry of a provisional order recognizing the within CCAA proceedings as a foreign main proceeding and granting a stay of execution against the debtors' assets in the United States.
- (e) The Purchase Agreement was concluded following a comprehensive and extensive sales process ("**Sale Process**") conducted by Deloitte Corporate Finance ("**DCF**").
- (f) Given the breadth, duration and results of the Sales Process, it can be demonstrated that no better or higher offer could be obtained that would generate more value for affected creditors.
- (g) Provided that the TPS Transaction can be achieved, and subject to the terms of a certain Forbearance Agreement described in the affidavit of Christopher Emmott, sworn September 10, 2018 ("**Emmott Affidavit**"), Wells Fargo is prepared to continue to extend funds under the Wells Credit Agreement. Failure to complete the TPS Transaction, however, would constitute a breach of the Forbearance Agreement and would result in the termination of forbearance.

Sale Process, Purchase Agreement and Transition Services Agreement

- (h) In or around March 2018, Red Ash (in consultation with Kraus Group management) engaged DCF for the purpose of soliciting offers to purchase the TPS Business.
 - (i) DCF proceeded to conduct the Sale Process, as described in the Pre-Filing Report and the Emmott Affidavit, pursuant to which DCF contacted an extensive list of potential strategic and financial buyers ("**Potential Purchasers**").
 - (j) Potential Purchasers were provided with a confidential information memorandum, upon execution of a non-disclosure agreement.
 - (k) On April 13, 2018, DCF received three expressions of interest from Potential Purchasers ("**EOI Potential Purchasers**") as a result of the Sale Process. DCF and the Kraus Group then invited the EOI Potential Purchasers to take part in the second phase of the Sale Process which included access to an electronic data room and presentations from the Kraus Group's management.
 - (l) On May 24, 2018, following the completion of the second phase of the Sale Process, DCF received a letter of interest from Q.E.P. Co., Inc.
 - (m) Thereafter, DCF and Q.E.P. Co., Inc. engaged in extensive negotiations regarding the purchase price.
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- (n) On August 9, 2018, Q.E.P. Co., Inc. signed the final LOI.
 - (o) The sale of the TPS Business to the Purchaser pursuant to the Purchase Agreement involves the following consideration:
 - (i) the Purchase Price (as defined in the Purchase Agreement); and
 - (ii) the assumption of the Assumed Liabilities (as defined in the Purchase Agreement).
 - (p) The Purchase Agreement is conditional upon the receipt of approval and vesting orders from the Canadian and United States Courts. The Applicants intend to seek the appropriate relief from the United States Bankruptcy Court.
 - (q) The purchase price to be paid pursuant to the Purchase Agreement represents the highest realizable price through the Sale Process. The TPS Transaction represents the best possible transaction in the circumstances for the benefit of the Kraus Group and its stakeholders.
 - (r) The TPS Transaction would benefit Wells Fargo and Red Ash in their capacity as secured creditors and, given the Purchaser's intention to restructure and continue the operation of the TPS Business, will benefit other stakeholders including, importantly, the approximately 160 employees who will continue to be employed by the Purchaser.
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- (s) As part of the proposed sale of the Kraus Group's TPS Business, the Kraus Sellers have agreed to provide transition services to the Purchaser pursuant to the Transition Services Agreement. These transition services are necessary to ensure that the TPS Business is successfully transferred to the Purchaser as a going concern, including the preservation of customer relationships that are integral to the value of the business.

 - (t) The Applicants submit that the Purchase Agreement and Transition Services Agreement should be approved because:
 - (i) a comprehensive Sale Process was conducted that did not generate any offer greater than the secured debt held by Wells Fargo and Red Ash. Indeed, the offers received during the Sale Process were significantly less than the secured debt. It does not appear that a sale can be achieved on terms that are more favourable than those provided for in the TPS Transaction;

 - (ii) no creditor is prepared to continue to fund the operations of the Applicants. If a sale to the Purchaser cannot be achieved the Applicants will cease operations and liquidate their assets; and

 - (iii) a liquidation analysis completed by the Monitor, filed as Confidential Appendix "D" to the Pre-Filing Report demonstrates that Wells Fargo and Red Ash would incur an even greater shortfall on the secured debt should the assets and business of the Kraus Group be liquidated.
-

- (u) Pursuant to the Sale Approval and Vesting Order the Monitor shall be entitled to retain the net proceeds from the TPS Transaction on behalf of the Applicants to be dealt with by further order of this Court.
- (v) The consideration to be received in the transaction is fair and reasonable.
- (w) The process leading to the TPS Transaction was fair and reasonable in the circumstances and was overseen by DCF.
- (x) In all of the circumstances, the TPS Transaction is in the best interests of the creditors and other stakeholders of the Applicants.
- (y) The Monitor recommends that this court approve the Purchase Agreement.
- (z) The moving parties understand that the affected secured creditors, Wells Fargo and Red Ash, support the relief sought herein.
- (aa) The Applicants also seek an order approving the Pre-Filing Report and the activities and conduct described therein.

Amendment to Initial Order

- (bb) The Initial Order granted the Administration Charge and the Directors' Charge priority to all Encumbrances (as defined in the Initial Order) in favour of any other person other than (a) validly perfected security interest under a PPSA held by a person that was not served with the notice of
-

application, and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

- (cc) The proposed Amended and Restated Initial Order provides for the charges to rank in priority to all Encumbrances.
- (dd) The Applicant will provide notice to those parties that may be affected by the enhanced priority of the charges.

Other

- (ee) The provisions of the CCAA including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
- (ff) 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;
- (gg) Section 137(2) of the Courts of Justice Act, R.S.O. 1990, c. C-43, as amended; and
- (hh) 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 Emmott Affidavit and the exhibits attached thereto;
 - (b) The Pre-Filing Report;
-

- (c) The confidential exhibits appended to the Emmott Affidavit and the Pre-Filing Report, which exhibits were ordered sealed by this Honourable Court;
- (d) The Initial Order dated September 11, 2018
- (e) The Transition Services Agreement, to be filed; and
- (f) Such other material as counsel may advise and this Honourable Court may permit.

September 11, 2018

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Lawyers for the Applicants

Schedule "A" – Partnerships

Kraus Brands LP

Kraus Canada LP

Kraus Carpet LP

Kraus Properties LP

Strudex LP

Schedule "B"

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

THE HONOURABLE) TUESDAY, THE 18TH
MR. JUSTICE PENNY) DAY OF SEPTEMBER, 2018

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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Applicants

**APPROVAL AND VESTING ORDER
(PURCHASE AGREEMENT)**

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 approving the sale transaction ("**Transaction**") contemplated by an asset purchase agreement dated as of September 10, 2018 ("**Purchase Agreement**") between Kraus Canada LP, Kraus Properties LP, Kraus USA Inc. (collectively, the "**Vendors**" and each, a "**Vendor**") and Q.E.P. Co., Inc. and Roberts Company Canada Inc. (together, the "**Purchasers**" and each, a "**Purchaser**") and appended to the affidavit of Christopher Emmott sworn September 10, 2018 ("**Emmott Affidavit**"), and vesting in the Purchasers all of the Vendors' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement) free and clear of any claims and encumbrances, except certain Permitted Encumbrances (as defined in the Purchase Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING, the Notice of Motion, the Emmott Affidavit, the pre-filing report ("**Pre-Filing Report**") of Deloitte Restructuring Inc., in its capacity as the Court-appointed monitor ("**Monitor**") of the Kraus Group, and on hearing the submissions of counsel for the Kraus Group, and counsel for the Monitor, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Pre-Filing 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 AND DECLARES** that the Purchase Agreement, the Transaction and all associated steps and transactions effected thereby are hereby approved, and the execution of the Purchase Agreement by the Vendors is hereby authorized and approved, with such minor amendments as the Vendors and Purchasers may deem necessary and mutually agree upon. The Vendors are hereby authorized and directed to complete the Transaction and to take such additional steps and execute such additional documents and instruments as may be necessary or desirable for the completion of the Transaction.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchasers substantially in the form attached as Schedule "B" hereto ("**Monitor's Certificate**"), all of the Vendors' right, title and interest in and to the Property described in the Purchase Agreement and listed on Schedule "C" hereto shall vest absolutely in the Purchasers, free and clear of and from any and all right, title, interest, benefits, priorities, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the initial order of the Honourable Justice Penny dated September 11, 2018 ("**Initial Order**")

in this CCAA proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any liens, security interests or interests perfected through filing financing statements or other documents with the Secretary of State for the State of Delaware or any other registry or filing office in a state of the United States; (iv) any mortgage, deed of trust, lien, security interest, fixture filing or other interest perfected through filing with the Clerk of the Superior Court of Whitfield County, Georgia or any other registry of deeds, court clerk or filing authority of any county, municipality or state of the United States and (v) those Claims listed on Schedule "D" hereto, (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

4. **THIS COURT ORDERS** that upon the registration at the Clerk of the Superior Court for Whitfield County, Georgia of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* with respect to the Property described in the Purchase Agreement and listed on Schedule "C" hereto, the Clerk is hereby directed to enter the Purchasers as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule "D" hereto.

5. **THIS COURT ORDERS** that in the event that the Monitor does not deliver the Monitor's Certificate confirming that the conditions to closing set out in the Purchase Agreement have been satisfied or waived by the Vendors and the Purchasers by ●, 2018, which date may be extended without further court order by mutual consent of the Purchasers and the Vendors, the Transaction will be deemed terminated with immediate effect and this Approval and Vesting Order shall be of no further force and effect.

6. **THIS COURT ORDERS** that in addition to the powers of the Monitor under the Initial Order and the CCAA, the Monitor is authorized to act as escrow agent in respect

of the Holdbacks under the Purchase Agreement and is directed to administer the Holdbacks and any escrow accounts in respect thereof in accordance with the escrow agreement attached as Schedule "F" hereto ("**Escrow Agreement**"), which Escrow Agreement may not be varied or amended except by mutual consent of the Vendors and the Purchasers.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property ("**Net Proceeds**") shall stand in the place and stead of the Property, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the Net Proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Vendors and the Monitor are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees pertaining to the Purchased Assets. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use of such information by the Vendors.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more

of the Kraus Group and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made by one or more of the Kraus Group;

the entering into of the Purchase Agreement and the vesting of the Property in the Purchasers pursuant to this Order 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 they constitute nor be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions whether under the CCAA, the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation or otherwise, nor shall they constitute oppressive or unfairly prejudicial conduct, whether pursuant to any applicable federal or provincial legislation or otherwise.

11. **THIS COURT ORDERS** that the Monitor, Vendors and Purchasers may each apply to this Court from time to time for advice and direction with respect to any matter arising from or under this Order.

12. **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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Kraus Group, 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

Studex LP

SCHEDULE "B"

Form of Monitor's Certificate

Court File No.: CV-18-604756-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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Applicants

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice ("**Court**") dated September 11, 2018 ("**Initial Order**"), Deloitte Restructuring Inc. was appointed as the monitor ("**Monitor**") of the Applicants and the Partnerships listed on Schedule "A" to the Initial Order (collectively, the "**Kraus Group**").

B. Pursuant to an Order of the Court dated September 18, 2018 ("**Approval and Vesting Order**"), the Court approved the asset purchase agreement made as of September 10, 2018 ("**Purchase Agreement**") between Kraus Canada LP, Kraus Properties LP and Kraus USA Inc. ("**Vendors**") and Q.E.P. Co., Inc. and Roberts Company Canada Ltd. ("**Purchasers**") and provided for the vesting in the Purchasers of the Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets pursuant to the Purchase Agreement; (ii) that the conditions to Closing as set out in the Purchase Agreement have been satisfied or

waived by the Vendors and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement or the Approval and Vesting Order.

THE MONITOR CERTIFIES the following:

1. The Purchasers has paid the Purchase Price for the Purchased Assets pursuant to the Purchase Agreement, subject to the Holdbacks under the Purchase Agreement and the Escrow Agreement;
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Vendors and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**DELOITTE RESTRUCTURING INC., in its
capacity as Monitor of the Applicants,
and not in its personal capacity**

Per: _____

Name:

Title:

SCHEDULE "C"

Purchased Assets

[To be completed]

SCHEDULE "D"

Claims to be deleted and expunged from title to Real Property

[To be completed]

SCHEDULE "E"

**Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

[To be completed]

SCHEDULE "F"
Escrow Agreement

[To be completed]

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 in Toronto

**APPROVAL AND VESTING ORDER
(PURCHASE AGREEMENT)**

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Schedule "C"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 11TH
JUSTICE PENNY) DAY OF SEPTEMBER, 2018

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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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; and
- (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.

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
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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
