

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

TRUE COPY

APPROVAL AND VESTING ORDER

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FILED
KING'S BENCH

JUL 28 2023

LAW COURTS
WINNIPEG

THE KING'S BENCH

Winnipeg Centre

THE HONOURABLE MISTER) FRIDAY, THE 21ST
)
JUSTICE BOCK) DAY OF JULY, 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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of the undertaking, property and assets 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. (collectively, the "**Applicants**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Monitor, in its capacity as court-appointed monitor of the Applicants and not in its personal or corporate capacity, and Stephen Segal (in trust for a corporation or corporations to be formed) (the "**Purchaser**") and appended to the Second Report of the Monitor dated July 20, 2023 (the "**Second Report**"), and vesting in the Purchaser the Applicants' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Second Report and on hearing the submissions of counsel for the Monitor, the Applicants, The Toronto-Dominion Bank ("**TD**"), the Purchaser, Canada Revenue

Agency, Oscar Bidco, Inc. o/a Oldcastle Building Envelope, Dean Borys and the Dean Borys Family Trust (2018), National Flooring Limited Partnership and its general partner, 7252359 Manitoba Ltd., Chandos Construction, Kawneer Company Canada, and Sallyport Commercial Finance ULC, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Alecia Iwanchuk sworn July 18, 2023 and the Affidavit of Craig Frith sworn July 21, 2023; all filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE TRANSACTION

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Monitor is hereby authorized and approved, with such minor amendments as the Monitor and the Purchaser may deem necessary. The Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that the Monitor shall incur no liability or obligation as a result of carrying out 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 *Companies' Creditors Arrangement Act* (Canada) or any applicable legislation.

VESTING OF PROPERTY

4. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicants' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all 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 Amended and Restated Initial Order of the Honourable Justice Bock dated February 14, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", but which term shall not include the permitted encumbrances listed at Schedule B herein) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims, the aggregate of the Deposit and the Cash at Close (as those terms are defined in the Sale Agreement) (collectively, the "**Net Proceeds**") from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, 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 Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

8. 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 the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

RELEASE

9. THIS COURT ORDERS that, conditional on the closing of the Transaction contemplated hereby and the Purchaser's payment of the Additional Consideration (as that term is defined in the Sale Agreement) to First West Credit Union Capital Corp. and Sallyport Commercial Finance, LLC and effective immediately upon filing of the Monitor's Certificate contemplated herein, Stephen Segal, Brant Enderle and Tim Morris (together the "**Principals**") are hereby forever and permanently released and discharged from any and all claims, liabilities or obligations in connection with any of the Principals' guarantees of any of the commitments, loans or obligations of any of the Applicants. Notwithstanding the foregoing, this release shall not release or discharge any statutory obligations that the Principals may have in their capacity as Directors or Officers of the Applicants (should they, in fact, be or have been a Director or Officer of the Applicants) or release or discharge any claims or entitlements that a Person may have against any Director's or Officer's liability insurance or the Director's Charge as contained in the Amended and Restated Order.

SEALING OF THE CONFIDENTIAL SUPPLEMENT

10. THIS COURT ORDERS that the Confidential Supplement and the appendices thereto be filed under seal, kept confidential, and not form part of the public record. The Confidential Supplement shall be kept separate and apart from the other contents of the Court file in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by the Registrar of this Court and the Honourable Mr. Justice Bock (or another Justice of the Court of King's Bench). The Confidential Supplement 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.

MISCELLANEOUS MATTERS

11. 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 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 or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

July ____, 2023

Ted Bock
Digitally signed by Ted
Bock
Date: 2023.07.27 12:10:46
-05'00'

BOCK, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

J.J. Burnell, MLT Aikins LLP, counsel for the Applicants

Tom Cumming, Gowling WLG, counsel for The Toronto-Dominion Bank

Shayne Kukulowicz, Cassels Brock & Blackwell LLP, counsel for the Purchaser

Penny Piper, Department of Justice (Canada), counsel for Canada Revenue Agency

Jared Wheeler, Holloway Thliveris LLP, counsel for Oscar Bidco, Inc. o/a Oldcastle Building Envelope

Brian Roach, Tapper Cuddy LLP, counsel for Dean Borys and the Dean Borys Family Trust (2018)

Ross McFadyen, Thompson Dorfman Sweatman LLP, counsel for National Flooring Limited Partnership and its general partner, 7252359 Manitoba Ltd.

Jonathan Hillson, Bennett Jones LLP, counsel for Chandos Construction

Kelsey Meyer, Bennett Jones LLP, counsel for Kawneer Company Canada

Graham Phoenix, Loopstra Nixon LLP, counsel for Sallyport Commercial Finance ULC

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK

Schedule A – Form of Monitor's Certificate

Court File No. CI 23-01-39360

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.

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MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Bock of the Manitoba Court of King's Bench (the "**Court**") dated February 10, 2023, Deloitte Restructuring Inc. was appointed as the Monitor (the "**Monitor**") of the undertaking, property and assets 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. (collectively, the "**Applicants**").

B. Pursuant to an Order of the Court dated July 21, 2023, the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Monitor, in its capacity as court-appointed monitor of the Applicants and not in its personal or corporate capacity, and Stephen Segal (in trust for a corporation or corporations to be formed) (the "**Purchaser**") and provided for the vesting in the Purchaser of the Applicants' 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 Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Monitor and the Purchaser; 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 Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; 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 undertaking, property and assets of the Applicants, and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Permitted Encumbrances

All security granted by of the Debtors in favour of Sallyport Commercial Finance ULC (“Sallyport”) in connection with the factoring services pursuant to the Account Sale and Purchase Agreement with Sallyport dated May 31, 2021, as amended, or otherwise, including but not limited to all registrations made in connection therewith in favour of Sallyport pursuant to *The Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (New Brunswick) and the *Personal Property Security Act* (Nova Scotia).