

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.

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

NOTICE OF MOTION
(APPROVAL AND VESTING ORDER AND OTHER RELIEF)
DATE OF HEARING: FRIDAY, JULY 21, 2023 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK

McDougall Gauley LLP
500 616 Main Street
Saskatoon SK S7J 0H6

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CLIENT FILE NO. 549268.11

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.

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

NOTICE OF MOTION
(APPROVAL AND VESTING ORDER AND OTHER RELIEF)

Deloitte Restructuring Inc. (the "**Monitor**"), the court appointed monitor of the undertakings, properties, 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**"), will make a motion before the Honourable Mr. Justice Bock on Friday, the 21st day of July, 2023 at 10:00 o'clock in the forenoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion (the "**AVO**"):
 - (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on July 21, 2023 at 10:00 a.m., and dispensing with further service thereof;

- (b) approving the the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicants and Stephen Segal (in trust for a corporation or corporations to be formed) (the "**Purchaser**") and appended to the Second Report of the Monitor (the "**Second Report**");
- (c) authorizing and directing the Monitor to execute the Sale Agreement and 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;
- (d) declaring that, upon the delivery of the Monitor's Certificate (as that term is defined in the AVO) to the Purchaser, 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 Claims and Encumbrances (as those terms are defined in the AVO);
- (e) releasing Stephen Segal, Brant Enderle, and Tim Morris (together the "**Guarantors**") from any and all claims, liabilities, or obligations in connection with any of the Guarantors' guarantees relative to the obligations owed by the Applicants to their respective creditors (the "**Guarantees**");
- (f) sealing the Confidential Supplement to the Second Report of the Monitor (the "**Confidential Supplement**") until the filing of the Monitor's Certificate (as that term is defined in the AVO) or further order of the Court; and
- (g) such further and other relief as counsel may advise and this Honourable Court may permit.

2. An Order in substantially the form attached hereto as Schedule "B" to this Notice of Motion (the "**Distribution, Discharge, and CCAA Termination Order**"):

- (a) increasing the Administration Charge (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**") from \$500,000 to \$1,000,000;
- (b) extending the Stay Period (as that term is defined in the ARIO) from July 28, 2023 until the earlier of the filing of a certificate certifying that the Monitor has completed the other activities described in the Second Report (the "**Monitor's Certificate**") or September 1, 2023;
- (c) approving the Second Report and the Monitor's activities, actions, and conduct described therein;

- (d) approving the professional fees of the Monitor, the Monitor's legal counsel, and the Applicants' legal counsel;
- (e) approving the Applicants' execution of the Second Amendment to Interim Facility Loan Agreement (the “**Second Amended Loan Agreement**”) attached to the Second Report, and authorizing and directing the Monitor to use the funds made available to the Applicants under paragraph 2.1(a)(i) of the Second Amended Loan Agreement to pay the Applicants' professional fee arrears as detailed in the Second Report;
- (f) authorizing and directing the Monitor to pay the proceeds of the Transaction in accordance with the proposed distribution set out in the draft Distribution Discharge, and *CCAA* Termination Order (collectively, the “**Distributions**”);
- (g) providing that, upon the payment of the Distributions and upon filing the Monitor's Certificate:
 - (i) the within proceedings shall be terminated and the Monitor shall be discharged;
 - (ii) Deloitte Restructuring Inc. shall be released and discharged from any and all liability that Deloitte Restructuring Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte Restructuring Inc. while acting in its capacity as Monitor in these proceedings, save and except for any gross negligence or wilful misconduct on the Monitor's part; and
 - (iii) no action or other proceeding shall be commenced against the Monitor, including its officers, directors, employees, solicitors, and agents and assigns in any way arising from or related to its capacity or conduct as Monitor, except with prior leave of this Court on notice to the Monitor, and upon such terms as this Court may direct;
- (h) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

3. For the purposes of this application, the Monitor relies on:

- (a) sections 5.1, 11, 11.02(2), 11.52, and 36 of the *CCAA*; and

(b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.

4. Unless otherwise defined herein, capitalized terms will have the meanings give to them in the Sale and Investment Solicitation Procedures (the "**SISP**") attached as Schedule "1" to the Order of the Honourable Mr. Justice Bock dated April 5, 2023 (the "**SISP Approval Order**").

SERVICE

5. The Monitor's Notice of Motion, Brief of Law, and the Second Report were served by email on the members of the service list established in these proceedings, as contemplated by paragraph 51 of the ARIO.

6. Despite the Monitor's best efforts, it was not possible to provide five business days' notice of this motion, as set out in section 6.7(a) of the SISP. The Monitor is therefore seeking to abridge the time for service of the within motion.

SALE APPROVAL

7. As outlined in the Second Report and Confidential Supplement:

- (a) the Monitor conducted the SISP in accordance with the SISP Approval Order, which resulted in four offers being received from Qualified Phase 2 Bidders;
- (b) after seeking further clarification and input from the Accurate Director and Secured Creditors as required by the SISP, the Monitor rejected all but the Purchaser's offer;
- (c) further negotiations ensued between the Purchaser and The Toronto-Dominion Bank ("**TD Bank**"), which were facilitated by the Monitor and resulted in the Sale Agreement now put forward for Court approval; and
- (d) the Monitor is of the opinion that:

- (i) the aggregate consideration for the Transaction is superior to all other offers submitted during the SISP;
- (ii) the Transaction:
 - A. is expected to provide greater net realizations for the Applicants' assets than the Monitor would expect to realize in a receivership or bankruptcy;
 - B. will benefit the Applicants' customers and at least 85% of their workforce; and
 - C. will provide for the uninterrupted continuation of major commercial projects;
- (iii) will bring finality to the proceedings and associated costs, which are being borne exclusively by TD Bank.

RELEASE OF THE GUARANTORS

8. The Sale Agreement is conditional upon, among other things, the Court granting an Approval and Vesting Order that provides for the release of the *Principals* (i.e., Stephen Segal, Brant Enderle, and Tim Morris) from any liabilities in connection with any Guarantees.

9. The Principals are, as of the date of this motion, directors of the Applicants.

10. Section 5.1 of the *CCAA* expressly contemplates the release of claims against directors of a debtor company in the context of a plan of compromise and arrangement (a "**Plan**") provided the provision for the directors' release does not include claims that:

- (a) relate to contractual rights of one or more creditors (e.g., guarantees) (section 5.1(2)(a)); and
- (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors (section 5.1(2)(b)).

11. The jurisprudence has established that, because the language of section 5.1(1) is permissive, it does not limit the Court's jurisdiction to render any order it considers appropriate pursuant to section 11 of the *CCAA*. This rationale has been used to justify the granting of director and other third party releases in not just Plans, but also sale approval and vesting orders, albeit with language carving out claims not permitted to be released pursuant to section 5.1(2)(b).

12. While section 5.1(2)(a) of the *CCAA* prohibits a provision in a Plan that purports to release a debtor company director from a claim based on a guarantee, the section stops short of extending that prohibition to a release granted pursuant to a sale approval and vesting order, the jurisdiction for which is, again, not section 5.1(1), but rather section 11; consequently, it is open for this Court to consider exercising its jurisdiction pursuant to section 11 and grant the release sought by the Purchaser as a condition precedent to the Transaction.

13. The release can be justified pursuant to the criteria applied by Courts in considering whether they grant third party releases generally, including:

- (a) the Court granting a form of Approval and Vesting Order providing for the Principals' release from their Guarantees is a condition precedent in the Sale Agreement;
- (b) the Principals are contributing financially to the Transaction and Mr. Segal, in particular, has been directing the Applicants' day to day business operations and restructuring throughout the *CCAA* proceedings;
- (c) the within motion and draft Approval and Vesting Order have been circulated to the members of the service list, such that they ought to be aware of the scope of the release sought; and
- (d) the releases are limited to Principals' Guarantees and do not extend to any statutory obligations or claims against directors and officers' liability insurance or the directors and officers' charge.

SEALING ORDER

14. The amount of the Transaction's purchase price and other commercially sensitive particulars have been redacted from the copy of the Sale Agreement appended to the Second Report. The Confidential Supplement contains the unredacted version of this document, along with the particulars of all offers the Monitor received.

15. The sealing of the Confidential Supplement is being sought so as to avoid prejudicing any future efforts to sell the Applicants' assets if, for example, the Court does not approve the Transaction or the same does not close after Court approval is granted.

INCREASING THE ADMINISTRATION CHARGE

16. The current administration charge secures the fees and disbursements of the Monitor, its counsel, and the Applicants' counsel (collectively, the "**Professionals**") to an aggregate amount of \$500,000 (ARIO, paragraph 33).

17. As set out in the Second Report, the Applicants have not had sufficient cash flow to pay the Professionals, making it necessary for these parties to rely on the administration charge to be paid for their services.

18. The Professionals' aggregate accounts receivable, work in progress, and estimated fees and disbursements required to complete the Transaction and other work required to bring the *CCAA* proceedings to a close exceeds \$500,000.

19. The increase of the administration charge from \$500,000 to \$1 million is appropriate in the circumstances based on:

- (a) the size and complexity of the Applicants' businesses and the within proceedings;

- (b) the critical roles the Professionals have played in the Applicants' restructuring activities, the SISP, and the negotiation of the Transaction; and
 - (c) the current arrears, work in progress, and estimated fees and disbursements yet to be incurred.
20. In the Monitor's view, there has been no unwarranted duplication of roles between the Professionals, and the Monitor understands that the increase is supported by TD Bank.

EXTENDING THE STAY OF PROCEEDINGS

21. The Stay Period expires on July 28, 2023. The Monitor is seeking an extension of the Stay Period until the earlier of the filing of the Monitor's Certificate and September 1, 2023 to facilitate the closing of the Transaction, if approved, and the additional work contemplated by the Approval and Vesting Order and the Distribution and Discharge Order.

22. The Applicants have been acting and continue to act in good faith and with due diligence, and are working to secure sufficient liquidity, if needed, to cash flow the business until September 1, 2023.

SECOND AMENDED LOAN AGREEMENT AND PAYMENT

23. Paragraph 9(b) of the ARIO provides that:

... the Applicants shall remit, in accordance with legal requirements, or pay: 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...

24. Pursuant to the SISP Approval Order, the Court authorized the Applicants' execution of the Amended Loan Agreement by the Applicants and authorized and

empowered the Applicants to borrow up to an additional \$1,150,000.00 pursuant to the Amended Loan Agreement.

25. Paragraph 2.1(a)(i) of the Amended Loan Agreement provides that TD Bank shall make an advance to pay amounts owing by the Applicants under the *Excise Tax Act* (Canada) (the "**ETA**") on account of goods and services tax which accrued prior to the date on which the Initial Order was pronounced by the *CCAA* Court (the "**GST Arrears**") which the Applicants "*shall promptly remit to the applicable Governmental Authority under the ETA, and shall be utilized for no other purpose*" (Emphasis added).

26. The applicable Governmental Authority under the *ETA* referenced in the Amended Loan Agreement is Canada Revenue Agency ("**CRA**"), whose counsel has confirmed that the Applicants' GST / HST collections for the periods of January 1, 2023 – February 10, 2023 (the "**Pre-Filing GST**") are subject to the stay granted by this Honourable Court pursuant to the ARIO. Accordingly, as of the date of this motion, the Applicants are not legally required to remit or pay any Sales Taxes, including the Pre-Filing GST.

27. With CRA's counsel having confirmed there is no Pre-Filing GST currently due from the Applicants, the DIP Lender is agreeable to the Applicants using the Funds to pay the Professionals' arrears. The Second Amended Loan Agreement amends paragraph 2.1(a)(i) of the Amended Loan Agreement to allow the amounts previously withheld to satisfy the GST Arrears to be utilized for this purpose.

28. The Monitor is seeking this Court's approval of the Applicants' execution of the Second Amended Loan Agreement on behalf of the Applicants, with the available funds to be paid to reduce the amounts owed to the Professionals. The Second Amended Loan Agreement does not increase the aggregate amount that the Applicants have been authorized and empowered to borrow pursuant to the SISP Approval Order, nor does it increase the aggregate amount secured by the DIP Lender's Charge; consequently, no creditor will be materially prejudiced by the execution of the Second Amended Loan Agreement.

DISTRIBUTION AND DISCHARGE

29. Should the Transaction be approved by the Court and subsequently close, the Monitor is seeking to avoid the costs of a further hearing and instead be authorized to distribute the proceeds in accordance with the Second Report.

30. Upon service of the Monitor's Certificates pursuant to, first, the Approval and Vesting Order and, second, the Distribution and Discharge Order, the Monitor will not have any further responsibilities in its role as court-appointed Monitor in these *CCAA* proceedings.

31. The post-termination protections for the Monitor in the Monitor's Distribution, Discharge, and *CCAA* Termination Order are based on the model discharge order approved by the Court for use in receivership proceedings.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The pleadings filed herein;
2. The Amended and Restated Initial Order pronounced February 14, 2023;
3. The Order pronounced April 5, 2023;
4. The First Report of Deloitte Restructuring Inc. dated April 3, 2023;
5. The Affidavit of Stephen Segal sworn February 6, 2023;
6. The Affidavit of Stephen Segal sworn April 3, 2023;

7. The Second Report of the Deloitte Restructuring Inc. and the Confidential Supplement thereto;
8. The Monitor's Brief of Law, to be served and filed.
9. The Affidavit of Service of Alecia Iwanchuk, to be filed; and
10. Such further and other documents and evidence as counsel may advise and this Honourable Court may permit.

[DATE]

McDOUGALL GAULEY LLP
500 – 616 Main Street, Saskatoon SK S7J 0J6
Ian A. Sutherland, K.C. / Craig Frith
PHONE: (306) 665-5417 / (306) 665-5432
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TO: SERVICE LIST (attached)

SCHEDULE "A"

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.

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

APPROVAL AND VESTING ORDER

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THE KING'S BENCH

Winnipeg Centre

THE HONOURABLE MISTER) FRIDAY, THE 21st
)
JUSTICE BOCK) DAY OF JULY, 2023
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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**") dated [DATE] and appended to the Second Report of the Monitor dated [DATE] (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**") and the Purchaser, no one appearing

for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] and 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 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

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

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

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

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

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

(i) Security Agreements

1. General Security Agreement granted by Accurate Dorwin (2020) Inc. in favour of TD dated February 28, 2020;
2. General Security Agreement granted by Glass 8 Inc. in favour of TD dated July 1, 2020;
3. General Security Agreement granted by National Interiors (2021) Inc. in favour of TD dated March 31, 2021;
4. General Security Agreement granted by 10064720 Manitoba Ltd. in favour of TD dated August 11, 2022;
5. General Security Agreement granted by Polar Holding Ltd. in favour of TD dated January 26, 2023;
6. General Security Agreement granted by 12986591 Canada Ltd. in favour of TD dated January 26, 2023;

General Security Agreement granted by 12986647 Canada Ltd. in favour of TD dated January 26, 2023(ii)
Personal Property Security Registrations

(ii) Personal Property Security Registrations

DEBTOR	SECURED PARTY	REGISTRATION #	JURISDICTION
Accurate Dorwin (2020) Inc.	The Toronto-Dominion Bank	202002756406	Manitoba
Glass 8 Inc.	The Toronto-Dominion Bank	202009997506	Manitoba
Glass 8 Inc.	The Toronto-Dominion Bank	20062632556	Alberta
National Interiors (2021) Inc.	The Toronto-Dominion Bank	202105158205	Manitoba
12986647 Canada Ltd.	The Toronto-Dominion Bank	35556653	New Brunswick
12986647 Canada Ltd.	The Toronto-Dominion Bank	37963576	New Brunswick
12986647 Canada Ltd.	The Toronto-Dominion Bank	34835918	Nova Scotia
12986647 Canada Ltd.	The Toronto-Dominion Bank	37375714	Nova Scotia
12986647 Canada Ltd.	The Toronto-Dominion Bank	6104379	Prince Edward Island
12986591 Canada Ltd.	The Toronto-Dominion Bank	35556646	New Brunswick
12986591 Canada Ltd.	The Toronto-Dominion Bank	37963600	New Brunswick
12986591 Canada Ltd.	The Toronto-Dominion Bank	34835926	Nova Scotia
12986591 Canada Ltd.	The Toronto-Dominion Bank	37375730	Nova Scotia

12986591 Canada Ltd.	The Toronto-Dominion Bank	6104388	Prince Edward Island
Polar Holding Ltd.	The Toronto-Dominion Bank	202301327406	Manitoba
10064720 Manitoba Ltd.	The Toronto-Dominion Bank	202301494604	Manitoba

SCHEDULE "B"

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.

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

DISTRIBUTION, DISCHARGE, AND CCAA TERMINATION ORDER

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FILE NO. 549268.11**

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.

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

DISTRIBUTION, DISCHARGE, AND CCAA TERMINATION 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 authorizing the Monitor to distribute the Net Proceeds of the Transaction (as those terms are defined in the Approval and Vesting Order of the Honourable Mr. Justice Bock dated July 21, 2023 (the "**AVO**") and other relief was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Second Report of the Monitor dated [DATE] (the "**Second Report**") and Confidential Supplement thereto (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Monitor, the Applicants, The Toronto-Dominion Bank ("**TD Bank**") and the Purchaser, no one appearing for any other person on the service

list, although properly served as appears from the affidavit of [NAME] sworn [DATE] and filed:

INTERPRETATION

1. Unless otherwise defined herein, capitalized terms appearing in this Order will have the meanings given to them in the AVO.

INCREASE TO THE ADMINISTRATION CHARGE

2. THIS COURT ORDERS that the Administration Charge (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**") be increased from \$500,000 to \$1,000,000.

EXTENSION OF THE STAY PERIOD

3. THIS COURT ORDERS that the Stay Period (as that term is defined in the ARIO) is hereby extended from July 28, 2023 to the earlier of the Monitor filing a certificate substantially in the form attached hereto as Schedule A to this Order (the "**Monitor's Certificate**") certifying that it has completed the other activities described in the Second Report and September 1, 2023.

APPROVALS

4. THIS COURT ORDERS that the Second Report, the Confidential Supplement, and the activities, actions, and conduct described therein are hereby approved.

5. THIS COURT ORDERS that the fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, MLT Aikins LLP, inclusive of the Estimated Monitor's Fees, the Estimated Monitor's Legal Fees, and the Estimated Applicants' Legal Fees, as defined and set out in the Second Report are hereby approved.

THE SECOND AMENDED LOAN AGREEMENT

THE COURT ORDERS that the Applicants' execution of the Second Amendment to Interim Facility Loan Agreement dated July ___, 2023 (the “**Second Amended Loan Agreement**”) attached as Appendix “___” to the Second Report is hereby approved. The Monitor is authorized and directed to use the funds made available to the Applicants under paragraph 2.1(a)(i) of the Second Amended Loan Agreement to pay the Applicants' professional fee arrears as detailed in the Second Report.

DISTRIBUTION

6. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Monitor is authorized to maintain a holdback of \$_____ on account of further fees and disbursements of the Monitor, its legal counsel, and the Applicants' legal counsel (the "**Monitor's Holdback**"), and to apply from time to time the amounts so held back against such further fees and disbursements (without the requirement of taxation or passing of accounts), and the Monitor shall make the following distributions from the remaining Net Proceeds:

- (a) first, in satisfaction of the Administration Charge:
 - (i) to Deloitte Restructuring Inc., \$_____ on account of the Monitor's outstanding fees and disbursements;
 - (ii) to McDougall Gauley LLP, \$_____ on account of its outstanding fees and disbursements;
 - (iii) to MLT Aikins LLP, \$_____ on account of its outstanding fees and disbursements;
- (b) second, in satisfaction of the DIP Lender's Charge, to TD Bank, the repayment of the DIP Facility to the maximum amount of \$2,350,000; and
- (c) third, any residual amounts remaining from the Net Proceeds after satisfaction of the Administration Charge, the DIP Lender's Charge, and amounts payable from the Monitor's Holdback, to Canada Revenue Agency

on account of the CRA Priority Claims detailed in the Second Report up to the maximum amount of \$1,260,474.

TERMINATION OF PROCEEDINGS, DISCHARGE, AND RELEASE

7. THIS COURT ORDERS that upon payment of the amounts set out in paragraph six hereof and upon the Monitor filing the Monitor's Certificate:

- (a) the within proceedings shall be terminated without any other act or formality, save and except as provided in this Order; provided, however, that nothing in this Order affects the validity of any orders made in these proceedings or any actions or steps taken by any Person; and
- (b) the Monitor shall be discharged as Monitor of the undertaking, property, and assets of the Applicants, provided however that notwithstanding its discharge herein:
 - (i) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the proceedings herein; and
 - (ii) the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. in its capacity as Monitor.

8. THIS COURT ORDERS AND DECLARES that, upon the filing of the Monitor's Certificate, Deloitte Restructuring Inc. is hereby released and discharged from any and all liabilities that Deloitte Restructuring Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte Restructuring Inc. while acting in its capacity as Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part. Without limiting the generality of the foregoing, Deloitte Restructuring Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on the Monitor's part.

9. THIS COURT ORDERS AND DECLARES that, once the Monitor's Certificate is filed and these proceedings have been terminated, no action or other proceeding shall be commenced against the Monitor, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Monitor, except with prior leave of this Court on notice to the Monitor, and upon such terms as this Court may direct.

MISCELLANEOUS MATTERS

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

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

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

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK