

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

ORDER
(ENHANCEMENT OF THE MONITOR'S POWERS)

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THE KING'S BENCH
WINNIPEG CENTRE

THE HONOURABLE) Friday, the 27th day of October, 2023
)
MR. JUSTICE BOCK)

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

ORDER
(ENHANCEMENT OF THE MONITOR'S POWERS)

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

ON READING the notice of motion of TD, the affidavit of David Quinn sworn October 25, 2023 and the Exhibits thereto, and the Fourth Report of Deloitte dated October 24, 2023 (the "**Fourth Report**") and the Supplement to the Fourth Report of the Monitor dated October 26, 2023, and on hearing the submissions of counsel for the

Applicants, counsel for the court-appointed monitor, Deloitte Restructuring Inc. (the "**Monitor**"), counsel for TD and Mr. Stephen Segal on behalf of the Purchaser (as defined herein);

SERVICE

1. THIS COURT ORDERS that the time for service of TD'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.

ORDER TO TAKE EFFECT UPON FILING OF MONITOR'S CERTIFICATE

2. THIS COURT ORDERS that the Monitor shall file the Monitor's certificate attached as **Schedule "A"** to this Order (the "**Monitor's Certificate**") if (i) the transaction for the purchase and sale of Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation of corporations to be formed (the "**Purchaser**") and Monitor for and on behalf of the Applicants (as amended by amending agreements dated August 31, 2023 and October 6, 2023 and as may be amended thereafter) (collectively the "**APA**") fails to close by November 3, 2023, and (ii), the Purchaser fails to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD.

3. THIS COURT ORDERS that this Order and all of its provisions thereunder shall become immediately effective upon the Monitor filing and serving on the Purchaser (by email at SSegal@g8group.ca), the Applicants and TD the Monitor's Certificate.

ENHANCED MONITOR'S POWERS

4. THIS COURT ORDERS that, without in any way limiting the powers and duties of the Monitor set out in the Amended and Restated Initial Order of the Honourable Justice Bock dated February 14, 2023 (the "**ARIO**") or other Orders of the Court in these proceedings, the Monitor shall be directed and empowered, but not required, to exercise the following powers in respect of the Business and Property (as both are defined in the

ARIO) for and on behalf of the Applicants where the Monitor considers it necessary or desirable to do so:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to cease to carry on all or any part of the Business, cease to perform any contracts of the Applicants, and take any actions or steps the Monitor considers necessary or desirable to proceed with an orderly liquidation of the Business and Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- (e) to terminate the employment of any of the Applicants' employees or management;
- (f) to disclaim any contracts entered into by the Applicants;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Applicants and to exercise all remedies of the Applicants in collecting such monies, including, without limitation, to enforce any security held by the Applicants;
- (h) to settle, extend or compromise any indebtedness owing to the Applicants;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of the Applicants, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants, the Property or the Monitor, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Monitor in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* (Manitoba) and such other similar provincial personal property security legislation, shall not be required.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the CCAA proceedings, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to assign the Applicants into bankruptcy;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Monitor, in the name of the Applicants;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Applicants, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Applicants;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Applicants may have;

- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (u) to perform such other duties as are required by this Order or by this Court from time to time,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Applicants, and without interference from any other Person.

5. THIS COURT ORDERS that the Applicants and their current and former shareholders, officers, directors, agents and representatives or all other persons acting on their instructions (each a "**Person**" and together, "**Persons**") shall fully co-operate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order or any other Order of the Court. Notwithstanding the ARIO and without limiting the foregoing:

- (a) to the extent that a power or authority has been granted by this Order to the Monitor, no Person shall exercise such power or authority without the express, written consent of the Monitor; and
- (b) the Applicants shall not:
 - (i) have the authority to file any plan or plans of compromise or arrangement (ARIO, paragraph 3);
 - (ii) be authorized to retain such further Assistants (ARIO, paragraph 4);
 - (iii) be entitled to continue to utilize the Cash Management System (ARIO, paragraph 5), factor accounts receivable (ARIO, paragraph 6), or make any payments without the Monitor's written consent (ARIO, paragraphs 6 – 9);
 - (iv) have the right to pursue all avenues of refinancing of its Business or Property (ARIO, paragraph 12(c)).

LIMITATION ON THE MONITOR'S LIABILITY

6. THIS COURT ORDERS that the Monitor is not and shall not for any purposes be deemed to be an officer, director or employee of the Applicants, and that no provision in

this Order is intended to create a fiduciary duty to any party including, without limitation, any creditor or shareholder of the Applicants. Additionally, any exercise of any power or authority hereunder by the Monitor shall be in its capacity as Monitor and for and on behalf of the Applicants, and the Monitor shall have no personal liability or obligation therefore to any creditor or other person or entity, except as provided for under this Order.

7. 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 willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

USE OF THE DEPOSIT

8. THIS COURT ORDERS that the Monitor shall be authorized and entitled to make the following interim disbursements from the Deposit (as that term is defined in the APA):

- (a) first, to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, McDougall Gauley LLP ("MG"), and the Applicant's legal counsel, MLT Aikins LLP ("MLTA") as set out in the Fourth Report;
- (b) second, to pay the ongoing reasonable professional fees and disbursement of the Monitor and MG and any final invoice received from MLTA, in each case at their standard rates and charges as part of the costs of these proceedings; and
- (c) third, to pay for the reasonable costs and expenses incurred in exercising the Monitor's powers pursuant to the terms of this Order.

GENERAL

9. THIS COURT ORDERS that, except as modified by this Order, the ARIO and other Orders of the Court made in these proceedings shall continue to apply.

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 respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

13. THIS COURT ORDERS that any interested party (including the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

November 1
October ____, 2023

T. BOCK

BOCK, J.

I, SAM GABOR, OF THE FIRM OF GOWLING WLG (CANADA) LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES:

JJ Burnell of MLT Aikins LLP, counsel for the Applicants

Craig Frith of McDougall Gauley LLP, counsel for the Monitor

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK.

Schedule A – 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

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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 (Expansion of Monitor’s Powers) dated October 27, 2023, the Court granted the Monitor enhanced powers thereunder subject to the Monitor filing this certificate.

THE MONITOR CERTIFIES the following:

1. The transaction for the purchase and sale of Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation of corporations to be formed (the "**Purchaser**") and Monitor for and on behalf of the Applicants (as amended by amending agreements dated August 31, 2023 and October 6, 2023 and as may be amended thereafter) (collectively the "**APA**") failed to close by November 3, 2023.
2. The Purchaser failed to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD.
3. 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: