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Second Report to Court of Duff & Phelps  
Canada Restructuring Inc. as Information  
Officer of Allied Systems Holdings, Inc.,  
Allied Systems (Canada) Company, Axis  
Canada Company and those other  
companies listed on Schedule “A” hereto

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July 26, 2012

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Court File No.:12-CV-9757-00CL

**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 ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER COMPANIES  
LISTED ON SCHEDULE "A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.C-36,  
AS AMENDED**

**SECOND REPORT OF DUFF & PHELPS CANADA RESTRUCTURING INC.  
AS INFORMATION OFFICER OF  
ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS  
CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A"  
HERETO**

**July 26, 2012**

## **1.0 Introduction**

On May 17, 2012, involuntary petitions were filed by BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 Ltd. and Spectrum Investment Partners, L.P. ("Black Diamond/Spectrum") against Allied Systems Holdings, Inc. ("Allied Systems US") and its subsidiary, Allied Systems, Ltd. (L.P.) ("ASL") pursuant to Chapter 11 of Title 11 of the *United States Code* ("Chapter 11") ("Involuntary Petitions") in the United States Bankruptcy Court for the District of Delaware ("U.S. Court").

On June 10, 2012, voluntary petitions were filed with the U.S. Court for relief under Chapter 11 by several subsidiaries of Allied Systems US ("Subsidiaries")<sup>1</sup> (Allied Systems US, ASL and the Subsidiaries are collectively referred to as the "Chapter

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<sup>1</sup> The U.S. subsidiaries are: Allied Automotive Group, Inc.; Allied Freight Broker LLC; Axis Areta, LLC; Axis Group, Inc.; Commercial Carriers, Inc.; CT Services, Inc.; Cordin Transport LLC; F.J. Boutell Driveway LLC; GACS Incorporated; Logistic Systems, LLC; Logistic Technology, LLC; QAT, Inc.; RMX LLC; Transport Support LLC; and Terminal Services LLC. The Canadian subsidiaries are Allied Systems (Canada) Company and Axis Canada Company.

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11 Debtors” or “Allied Group”), including Allied Systems (Canada) Company (“Allied Canada”) and Axis Canada Company (“Axis Canada”) (jointly, the “Canadian Debtors”). In connection therewith, Allied Systems US and ASL consented to the Involuntary Petitions. The cases commenced or consented to by the Chapter 11 Debtors in the U.S. Court are herein defined as the “Chapter 11 Proceedings”.

The Chapter 11 Debtors were granted ancillary relief under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) pursuant to an Order of the Ontario Superior Court of Justice (“Court”) dated June 12, 2012 (the “Initial Order”) and a Court Order dated June 13, 2012 (the “Supplemental Order”, and together with the Initial Order, the “Orders”). Copies of the Orders, without attachments, are provided in Appendix “A”.

Pursuant to the Orders, *inter alia*: a) the Chapter 11 Proceedings were recognized as a “foreign main proceeding” pursuant to Part IV of the CCAA; b) Allied Systems US was appointed as Allied Group’s foreign representative (“Foreign Representative”); c) certain orders made by the U.S. Court dated June 12, 2012 (the “First Day Orders”) were recognized; and d) Duff & Phelps Canada Restructuring Inc. (“D&P”) was appointed as information officer (the “Information Officer”).

On July 16, 2012, this Court made an Order (the “July 16 Order”): a) recognizing certain final orders of the U.S. Court that had previously been granted on an interim basis; b) approving certain ancillary relief in respect of Allied Group’s cash management system; and c) amending the Supplemental Order to provide for increased priority for the Administration Charge and the DIP Lender’s Charge (as both terms are defined in the Supplemental Order). A copy of the July 16 Order, without attachments, is provided in Appendix “B”.

This report (“Report”) is filed in D&P’s capacity as Information Officer.

## **1.1 Purposes of this Report**

The purposes of this Report are to:

- a) Provide background information about Allied Group; and
- b) Provide information with respect to the Foreign Representative’s request for the Court to:
  - Grant a Directors’ Charge (defined below); and
  - Further amend the Supplemental Order to provide for priority to the Directors’ Charge.

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## **1.2 Currency**

All currency references in this Report are to Canadian dollars, unless otherwise noted.

## **1.3 Definitions**

Certain capitalized terms used in this Report and not otherwise defined herein have the meanings ascribed to them in the affidavit of John Blount, Senior Vice President, Chief Administrative Officer, Secretary and General Counsel of Allied Systems US, sworn on July 25, 2012 (the "Blount Affidavit").

## **1.4 Restrictions**

In preparing this Report, the Information Officer has relied upon unaudited financial information prepared by Allied Group's representatives, Allied Group's books and records and discussions with its representatives. The Information Officer has not performed an audit or other verification of such information. The Information Officer expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Information Officer.

## **2.0 Background**

### **2.1 Business Overview**

Allied Group is primarily engaged in the "car-haul" business, being the transport by specially designed tractor trailers of vehicles, such as automobiles, sport-utility vehicles and light trucks, from manufacturing plants, ports, auctions, and railway distribution points to automobile dealerships in the United States and Canada. In Canada, this business is conducted by Allied Canada.

Allied Group also operates a logistics business which, among other things, arranges for and manages vehicle distribution services, automobile inspections, auction and yard management services, vehicle tracking, vehicle accessorizing, and dealer preparation services for the automotive industry in the United States and Canada, and provides yard management services in Mexico. In Canada, this business is conducted by Axis Canada.

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Allied Group's operations are centralized from its head office located in Atlanta, Georgia. Allied Group employs approximately 1,835 individuals, including approximately 600 active employees in Canada<sup>2</sup>. Approximately 390 active Canadian employees are members of the International Brotherhood of Teamsters or the Canadian Auto Workers' unions.

Further information concerning Allied Group's background is provided in the affidavit of Scott Macaulay, Senior Vice President and Chief Financial Officer of Allied Systems US, sworn June 11, 2012 ("Macaulay Affidavit"), in the Report to Court of D&P as Proposed Information Officer dated June 11, 2012 and the First Report to Court of the Information Officer dated July 11, 2012 ("IO Reports"). The Macaulay Affidavit, the IO Reports and other materials filed with the Court in the Canadian proceedings are available on D&P's website at [www.duffandphelps.com/restructuringcases](http://www.duffandphelps.com/restructuringcases). Information regarding the Chapter 11 Proceedings is posted on the "Restructuring News" portion of Allied Group's website at [www.alliedautomotive.com](http://www.alliedautomotive.com).

### **3.0 Directors' Charge**

As a Canadian transportation carrier, Allied Canada is subject to the *Canada Labour Code* ("CLC"). Section 251.18 of the CLC imposes joint and several liability on directors of a company for wages, severance and termination pay, among other things. Axis Canada is not subject to the CLC as its primary business is logistics services.

Prior to the Chapter 11 Proceedings, Allied Canada had two directors and four officers. The Information Officer understands that, shortly after the Chapter 11 Proceedings commenced, both directors of Allied Canada resigned due to, among other things, their concerns with potential personal liability, including liabilities set out in the CLC. The two former directors remain employees of Allied Group.

Axis Canada's two directors and three officers have remained in such capacities since the Chapter 11 Proceedings commenced. Their potential liabilities are more limited than those of Allied Canada due to the size (twelve employees) and nature of the business (not subject to the CLC). As discussed below, Allied Group wishes to offer them the same protections as Allied Canada's directors and officers.

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<sup>2</sup> The number of active Canadian employees varies by season. As of June 15, 2012, Allied Canada and Axis Canada employed 578 and 12 individuals, respectively. The number of Allied Canada employees includes 37 operators of tractors and/or trailers ("Owner Operators") who provide services to Allied Canada and are treated, in some respects, as employees.

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The Canadian Debtors are seeking to indemnify their directors and officers (current and former, actual and deemed) for liabilities associated with severance and termination (“Severance and Termination Obligations”) arising before and after the commencement of the Chapter 11 Proceedings and other statutory obligations (“Other Obligations”), such as wages, withholdings and sales taxes, arising after the commencement of the Chapter 11 Proceedings. In connection with the indemnity, the Foreign Representative is seeking Court approval of a charge on the collateral of the Chapter 11 Debtors located in Canada, in the maximum amount of \$9.9 million (the “Directors’ Charge”). Access to the Directors’ Charge would only be available if the directors’ and officers’ insurance maintained by Allied Group is not applicable or is not sufficient.

The potential obligations supporting the \$9.9 million Directors’ Charge are described below.

### **3.1 Severance and Termination Obligations**

#### *3.1.1 Previously Laid Off Employees*

Over the last fourteen months, Allied Canada has laid off approximately 260 employees. Pursuant to the CLC, individuals employed for twelve consecutive months or more are eligible for severance pay except where the termination is by way of dismissal for just cause. Pursuant to Section 235(1) of the CLC, the amount of severance is the greater of:

- a) two days’ wages at the employee’s regular rate of wages for his regular hours of work in respect of each completed year of employment that is within the term of the employee’s continuous employment by the employer; and
- b) five days’ wages at the employee’s regular rate of wages for his regular hours of work.

Allied Canada provided all eligible laid-off employees with the option to: a) receive severance payments; or b) postpone the receipt of severance and elect to retain recall rights and seniority for a period of time.

Since the commencement of the Chapter 11 Proceedings, Allied Canada has continued to make severance payments to its laid-off employees who elected to receive same, as authorized in the Final Wages Order (as defined in the July 16 Order). A copy of the Final Wages Order is provided in Appendix “C”.

Allied Canada’s current severance obligation to those employees laid off prior to the Chapter 11 Proceedings, including those employees that elected to retain their recall rights and seniority, is approximately \$1.7 million.

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### 3.1.2 Active Employees

Allied Canada has also considered its severance and termination obligations pursuant to the CLC in a worst case scenario should all remaining employees be terminated without advance notice (“Worst Case Scenario”). If that were to occur, Allied Canada’s employees would be entitled to the severance provisions referenced above and termination pay pursuant to Section 230(1) of the CLC, which provides that: “...an employer who terminates the employment of an employee who has completed three consecutive months of continuous employment by the employer shall, except where the termination is by way of dismissal for just cause, give the employee either:

- a) notice in writing, at least two weeks before a date specified in the notice, of the employer’s intention to terminate his employment on that date, or
- b) two weeks wages at his regular rate of wages for his regular hours of work, in lieu of the notice.”

Based on Allied Canada’s calculations, in the Worst Case Scenario, Allied Canada’s severance and termination obligations could be as high as \$6.1 million.

Accordingly, the total Severance and Termination Obligations, both existing and potential, are estimated to be \$7.8 million.

### 3.2 Other Obligations

Allied Canada’s employees, other than the Owner Operators<sup>3</sup>, are paid weekly. Allied Canada’s June 15, 2012 payroll was approximately \$1.8 million, including withholdings, an accrual for vacation pay and payment to the Owner Operators. Allied Canada has continued to pay employees in the normal course since the date of the Initial Order.

Allied Canada generally files its sales tax returns on a monthly basis. The average monthly remittance in the May, 2011 to July, 2011 period was \$209,000. Allied Canada advised that due to sales tax audits that occurred in 2012, its remittances in recent months are not representative of typical monthly payments as they include adjustments resulting from the audits. Allied Canada estimates that its monthly remittances will be approximately \$200,000.

Accordingly, Allied Canada has calculated an exposure for Other Obligations of \$2.1 million, comprised of the payroll amount (\$1.8 million), sales taxes (\$200,000) and a provision for variances (\$100,000).

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<sup>3</sup> Owner Operators are paid every two weeks.



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### 3.3 Priority

Pursuant to the July 16 Order, the Administration Charge and the DIP Lender's Charge (the "Charges") rank in priority to the existing security interests created pursuant to the First Lien Credit Facility ("First Facility"), the Second Lien Credit Facility (both as defined in the Macaulay Affidavit and together, the "Facilities") and other trusts, liens, charges and encumbrances, claims of secured creditors or otherwise (collectively, "Encumbrances")<sup>4</sup>.

The Foreign Representative is seeking to have the Court issue an order amending the Supplemental Order and the July 16 Order such that the Court-ordered charges would be as follows:

- a) Administration Charge (to the maximum amount of \$600,000);
- b) Directors' Charge with respect to severance obligations in connection with employees laid off prior to the Chapter 11 Proceedings (to a maximum amount of \$1.7 million) and Other Obligations in connection with weekly gross wages, withholdings and sales taxes (to a maximum amount of \$2.1 million);
- c) DIP Lender's Charge; and
- d) Directors' Charge for Severance and Termination Obligations if the remaining employees of the Canadian Debtors are terminated during the Chapter 11 Proceedings (to a maximum amount of \$6.1 million).

### 3.4 Information Officer's View

The Information Officer believes that the relief being sought is appropriate because:

- The Information Officer has reviewed the Canadian Debtors' calculations of the amounts underlying the Directors' Charge. The quantification of the Directors' Charge appears to be reasonable;

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<sup>4</sup> The Charges do not rank ahead of: a) Encumbrances, if any, that are valid, perfected by registration or possession, non-avoidable and senior to the Encumbrances securing the First Facility as of the date of the Final Financing Order (as defined in the July 16 Order); b) The Carve-Out (as defined in the Final Financing Order and generally includes certain professional fees associated with the Chapter 11 Proceedings).

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- The Directors' Charge is, in effect, secondary protection. The severance obligations owing in respect of those employees laid off for over twelve months (and who have elected to start receiving severance) are currently being paid per the Final Wages Order. Further, the Canadian Debtors have acknowledged that access to the Directors' Charge would only be sought once (or if) Allied Group's directors' and officers' insurance is exhausted or will not provide coverage;
  - In order to effectively and efficiently restructure Allied Canada, director oversight is highly beneficial. The Information Officer understands that Allied Canada has identified an employee of Allied Group willing to serve as a director if the Directors' Charge is granted;
  - The DIP Lender and companies affiliated with it that are participants in the Facilities have consented to the granting of the Directors' Charge as well as the proposed priority of the Directors' Charge. The Information Officer understands that Black Diamond/Spectrum, which are also participants in the Facilities, do not support the relief being sought;
  - Allied Group has considered alternatives for the Canadian Debtors, such as the appointment of a restructuring officer or a receiver or securing additional insurance coverage, in the event the Directors' Charge is not granted and no individual is willing to serve as a director of Allied Canada. These alternatives are costly and may not be as effective as simply having a director in place – operational disruption is possible and the costs could be significant, both in dollar terms and to the outcome of the restructuring process;
  - There is a risk that Allied Canada's officers may resign without the protection of the Directors' Charge due to concerns of them being "deemed" directors. Their resignations would impact the viability of Allied Canada's business; and
  - As the Information Officer has previously reported in the context of the Administration Charge and the DIP Lender's Charge, based on the advances made under the Facilities compared to the Information Officer's understanding of the approximate value of Allied Group's business and assets, the Information Officer is of the view that in these circumstances there will be no prejudice to the Canadian unsecured creditors of Allied Group if the Court grants the proposed Order.

Based on the foregoing, the Information Officer believes that the Directors' Charge and its proposed priority are appropriate in the circumstances.

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### 3.5 Application and Scope of the Directors' Charge

The relief being requested by the Foreign Representative extends the protection of a Directors' Charge to current, former, actual and deemed directors and officers of Allied Canada and Axis Canada and provides an indemnity and charge for potential director and officer liabilities that arose (or arise) both prior to and after the Filing Date (as defined in the draft Order).

#### 3.5.1 *Current and Former Directors and Officers*

All of the potential director and officer liabilities identified in the Blount Affidavit and in this Report arose (or may arise) after May 1, 2011. The appointed directors of Allied Canada on May 1, 2011 were two individuals, Keith Rentzel and Robert Ferrell, who continued as directors until June 18, 2012, when they resigned. No other directors of Allied Canada have been appointed since May 1, 2011. The appointed directors of Axis Canada since May 1, 2011 have been Messrs. Macaulay and Blount, who continue in office.

The appointed officers of Allied Canada on May 1, 2011 were Messrs. Rentzel, Macaulay, Blount and John Jansen. Mr. Rentzel resigned as an officer on June 22, 2012. The other officers continue in office. The appointed officers of Axis Canada, since May 1, 2011, have been Jorge Lopez and Messrs. Macaulay and Blount, who continue in office.

#### 3.5.2 *Actual or Deemed*

The Information Officer is working on the assumption that the reference in the proposed Order to “actual” directors and officers refers to duly appointed directors and officers.

The identity of “deemed” or “de facto” directors is more uncertain. The CLC, as noted above, imposes certain liability on “directors” of a corporation governed by the CLC, but does not define “directors”. The corporate statute governing the Canadian Debtors, being the Nova Scotia *Companies Act*, defines “director” as “includes any person occupying the position of director by whatever name called”<sup>5</sup>.

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<sup>5</sup> Nova Scotia *Companies Act*, Section 2(f).

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The Information Officer is aware that a somewhat similar provision in the British Columbia *Company Act* has been applied to impose liability on a person who had formally resigned as a director, but continued to be the directing mind of the company<sup>6</sup>.

The Information Officer also notes that the Nova Scotia *Companies Act* provides that a company governed by that statute “shall have at least one director”,<sup>7</sup> so there may be some question as to whether the resignation of the last-remaining director would be recognized under the *Companies Act* and/or the CLC.

It therefore appears that there are questions as to both: a) whether one of Messrs. Rentzel or Ferrell remains an “actual” director; and b) whether one or both of these individuals might be a “deemed” director for some indefinite period of time after they tendered their resignations as directors of Allied Canada, due to their continued involvement with Allied Group.

### 3.5.3 *Pre- and Post-Filing Obligations*

As noted above, Allied Canada's current severance obligation to those employees laid off prior to the commencement of the Chapter 11 Proceedings and the CCAA proceedings is approximately \$1.7 million.

The remaining potential director and officer liabilities relate to active employees and the payment of other potential post-filing amounts such as sales taxes.

### 3.5.4 *Discussion*

Section 11.51 of the CCAA contemplates an indemnity and charge to indemnify a director or officer “against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act”. However, Section 49 of the CCAA allows the Court to make “any order that it considers appropriate” if it is satisfied that it is necessary for the protection of the debtor companies' property or the interest of a creditor or creditors.

The Information Officer also notes that the Orders made by the U.S. Court and recognized in Canada have been made on the basis that Allied Group is and remains a going concern, and have therefore authorized the payment of some pre-filing liabilities, including pre-filing employee liabilities relating to severance pay.

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<sup>6</sup> *Baratta v. Belter*, [2001] C.L.A.D. No. 583; at the time of this case, the B.C. *Company Act* defined a director to include “every person, by whatever name designated, who performs the functions of a director”.

<sup>7</sup> Nova Scotia *Companies Act*, Section 93.

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The information in the Blount Affidavit suggests that it is important to the Canadian Debtors that Messrs. Rentzel and Ferrell remain as officers of Allied Group, even though they are not directors or officers of the Canadian Debtors. The Information Officer agrees with this view; given the integrated nature of Allied Group's business, the loss of their services would adversely affect the Canadian Debtors as well.

While it is not clear that these individuals will resign as officers of Allied Group if they are not given the entire protection of the Directors' Charge (for pre- and post-filing liabilities), their resignation has been identified as a risk. The Information Officer is not aware of the specific legal advice that has been given to these individuals, which might also impact that decision.

### 3.5.5 Conclusion

Given the potential liability that these individuals have, quite possibly even for future liabilities (if they remain with Allied Group and continue to be key individuals with respect to the operations of the Canadian Debtors), the Information Officer is of the view that extending the benefit of the Directors' Charge to these two individuals is appropriate in the unique circumstances of this case, even though they are no longer formally appointed as directors or officers of the Canadian Debtors.

The other issue is the scope of the protection that is given to Messrs. Rentzel and Ferrell – that is, whether they should also be indemnified for potential pre-filing obligations. In practical terms, the Information Officer would be supportive of this approach, if it is necessary in order for Allied Group to retain the services of these individuals.

## 4.0 Conclusion

Based on the foregoing, it is the Information Officer's view that the relief being sought by the Foreign Representative is reasonable.

\* \* \*

All of which is respectfully submitted,

*Duff + Phelps Canada Restructuring Inc.*

**DUFF & PHELPS CANADA RESTRUCTURING INC.  
IN ITS CAPACITY AS INFORMATION OFFICER OF  
ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS  
CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A"  
HERETO AND NOT IN ITS PERSONAL CAPACITY**

## **Schedule "A"**

## **SCHEDULE A – APPLICANTS**

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

## **Appendix “A”**



Court File No.: 12- CV- 9757-0001

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) TUESDAY, THE 12<sup>TH</sup> DAY  
 )  
MR. JUSTICE MORAWETZ ) OF JUNE, 2012

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

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY,  
AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON  
SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED



INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Allied Systems Holdings, Inc. in its capacity as foreign representative (the "**Foreign Representative**") of Allied Systems Holdings, Inc., Allied Systems (Canada) Company ("**Allied Canada**"), Axis Canada Company ("**Axis Canada**"), and together with Allied Canada, the "**Canadian Companies**") and those other entities listed on Schedule "A" hereto (collectively, the "**Chapter 11 Debtors**"), pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Scott Macaulay sworn June 11, 2012 (the "**Macaulay Affidavit**"), the report dated June 11, 2012 (the "**Report**") of Duff &

Phelps Canada Restructuring Inc., in its capacity as proposed information officer (the “**Proposed Information Officer**”), and the first supplemental affidavit of Christopher Eustace sworn June 11, 2012, the second supplemental affidavit of Christopher Eustace sworn June 12, 2012, and the third supplemental affidavit of Christopher Eustace sworn June 12, 2012 (collectively, the “**Eustace Affidavits**”) each filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for the Proposed Information Officer, counsel for Yucaipa American Alliance Fund I, L.P.; Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P., counsel for Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP, and those other parties present, no one else appearing, and upon reading the affidavit of service of Jason McMurtrie sworn June 11, 2012:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record, the Eustace Affidavits and the Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **FOREIGN REPRESENTATIVE**

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of the Chapter 11 Debtors in respect of the cases commenced in the United States Bankruptcy Court for the District of Delaware by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (the “**Foreign Proceeding**”).

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. THIS COURT DECLARES that the centre of its main interests for each of the Chapter 11 Debtors is the United States of America and that the Foreign Proceeding is hereby recognized as a “foreign main proceeding” as defined in section 45 of the CCAA.

#### **STAY OF PROCEEDINGS**

4. THIS COURT ORDERS that until otherwise ordered by this Court:

- (a) all proceedings taken or that might be taken against the Chapter 11 Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
- (b) further proceedings in any action, suit or proceeding against the Chapter 11 Debtors are restrained; and
- (c) the commencement of any action, suit or proceeding against the Chapter 11 Debtors is prohibited.

#### **NO SALE OF PROPERTY**

5. THIS COURT ORDERS that, except with leave of this Court, each of the Chapter 11 Debtors is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

#### **GENERAL**

6. THIS COURT ORDERS that within five (5) business days from the date of this Order, or as soon as practicable thereafter, the Foreign Representative shall cause to be published a notice substantially in the form attached to this Order as Schedule B, once a week for two consecutive weeks, in the *Globe and Mail* (National Edition).

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and

to assist the Chapter 11 Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

8. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of *Mr)* 12:31 p.m. Eastern Standard Time on the date of this Order.

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors and the Foreign Representative and their respective counsel, and 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.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.:



JUN 12 2012



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 13<sup>TH</sup> DAY  
)  
MR. JUSTICE MORAWETZ ) OF JUNE, 2012

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

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED  
SYSTEMS (CANADA) COMPANY,



AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON  
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APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED

SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Allied Systems Holdings, Inc. ("**Allied US**") in its capacity as the foreign representative (the "**Foreign Representative**") of Allied US, Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Scott Macaulay sworn June 11, 2012 (the "**Macaulay Affidavit**"), the report dated June 11, 2012 (the "**Report**") of

Duff & Phelps Canada Restructuring Inc. (“**Duff Canada**”) in its capacity as proposed information officer, and the first supplemental affidavit of Christopher Eustace sworn June 11, 2012, the second supplemental affidavit of Christopher Eustace sworn June 12, 2012, the third supplemental affidavit of Christopher Eustace sworn June 12, 2012, and the fourth supplemental affidavit of Christopher Eustace sworn June 12, 2012 (collectively, the “**Eustace Affidavits**”), and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed information officer, counsel for Yucaipa American Alliance Fund I, L.P.; Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P., counsel for Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP (collectively “**Black Diamond/Spectrum**”), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Jason McMurtrie sworn June 11, 2012 and on reading the consent of Duff Canada to act as the information officer:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application, the Application Record, the Eustace Affidavits and the Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined have the meaning given to them in the Macaulay Affidavit.

#### **INITIAL RECOGNITION ORDER**

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Initial Recognition Order (Foreign Main Proceeding) dated as of the date hereof (the “**Recognition Order**”), provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

## **RECOGNITION OF FOREIGN ORDERS**

4. THIS COURT ORDERS that the following orders (collectively, the “**Foreign Orders**”) of the United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) the Foreign Representative Order;
- (b) Financing Order;
- (c) Cash Management Order;
- (d) Pre-Petition Wages & Benefits Order;
- (e) Insurance Program & Insurance Premium Financing Order;
- (f) Pre-Petition Customers, Warehousemen, Common Carriers and Cargo Claims Order;
- (g) Pre-Petition Sales & Use Tax Order;
- (h) Critical Vendor Order; and
- (i) Utilities Service Order,

(copies of each such Foreign Orders are attached as schedules B through J hereto)

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.

## **APPOINTMENT OF INFORMATION OFFICER**

5. THIS COURT ORDERS that Duff Canada (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

## **NO PROCEEDINGS AGAINST THE CHAPTER 11 DEBTORS OR THE PROPERTY**

6. THIS COURT ORDERS that until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Chapter 11 Debtors or affecting their business (the “**Business**”) or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Chapter 11 Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

7. THIS COURT ORDERS that, without limiting the stays of proceedings provided for in the Recognition Order, 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 Chapter 11 Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Chapter 11 Debtors to carry on any business in Canada which that Chapter 11 Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

8. 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 any of the Chapter 11 Debtors and affecting the Business in Canada, except with leave of this Court.



## **ADDITIONAL PROTECTIONS**

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Chapter 11 Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Chapter 11 Debtors, 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 Chapter 11 Debtors, and that the Chapter 11 Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. 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 Allied Systems (Canada) Company and/or Axis Canada Company (the "**Canadian Companies**") with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Chapter 11 Debtors 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.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and 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.

## **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at least once every three months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall 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 Chapter 11 Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Chapter 11 Debtors shall (i) advise the Information Officer of all material steps taken by the Chapter 11 Debtors in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer 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.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of a Chapter 11 Debtor with information provided by the Chapter 11 Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer 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 Information Officer has been advised by the Chapter 11 Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Chapter 11 Debtors may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by Allied Systems (Canada) Company (“**Allied Canada**”) their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. Allied Canada is hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a weekly basis.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the

**“Administration Charge”**) on the Property in Canada, which charge shall not exceed an aggregate amount of \$600,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 22 and 24 hereof.

#### **INTERIM FINANCING**

20. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the **“DIP Lender’s Charge”**) on the Property in Canada, which DIP Lender's Charge shall (i) be consistent with the liens and charges created by the Interim Financing Order and (ii) charge the Property by way of hypothec to the extent of an aggregate amount of CDN \$25,000,000.00, provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before this Order is made, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 21 and 23 hereof, and further provided that the DIP Lender's Charge shall not be enforced except with leave of this Court.

21. THIS COURT ORDERS that notwithstanding the foregoing or any provisions to the contrary contained in this Order or the DIP Financing Agreement (the **“DIP Financing Agreement”**) entered into by Allied Systems US and ASL, as borrowers, certain of the Chapter 11 Debtors as guarantors, Yucaipa American Alliance Fund II, L.P., as agent and lender (the **“DIP Agent”**) and Yucaipa American Alliance (Parallel) Fund II, L.P., as lender, the DIP Agent has been granted a security interest hereunder in any shares or other equity interests in the capital stock (**“ULC Shares”**) of an issuer that is an unlimited company, unlimited liability company or unlimited liability corporation under the laws of Canada or any of its provinces or political subdivisions (each, a **“ULC”**), the debtor that owns such ULC Shares will remain the sole registered and beneficial owner of such ULC Shares until such time as such ULC Shares are effectively transferred into the name of the DIP Agent or any of its successors or assigns (in either case, a **“ULC Beneficiary”**) or any other person or entity on the books and records of the applicable ULC. Nothing in this Order or the DIP Financing Agreement is intended to, and nothing in this Order or the DIP Financing Agreement shall, constitute the DIP Agent, any other ULC Beneficiary or any other person or entity other than the applicable debtor, a member or shareholder of a ULC for the purposes of

the *Companies Act* (Nova Scotia), the *Business Corporations Act* (Alberta), the *Business Corporations Act* (British Columbia) and any other present or future laws governing ULCs (the “ULC Laws”) (whether listed or unlisted, registered or beneficial), until such time as notice is given to such Debtor and further steps are taken pursuant hereto or thereto so as to register the DIP Agent, any other ULC Beneficiary or such other person or entity, as specified in such notice, as the holder of the ULC Shares.

21A. THIS COURT ORDERS that notwithstanding any other provision of this Order or the Initial Recognition Order:

(a) the DIP Lender may (but is not required to) take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the related documents;

(b) Upon the occurrence of an Event of Default (as defined in the DIP Financing Agreement), provided the DIP Lender is authorized to do so pursuant to the Financing DIP Order in the Chapter 11 Cases and on five (5) business days’ notice to counsel to the Foreign Representative, the Information Officer and Black Diamond/Spectrum, the DIP Lender may exercise its rights and remedies under the Financing Order and the DIP Agreement in accordance with the terms thereof in respect of the Property located in Canada and without further Order or application to this Court.

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

22. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$600,000; and

Second – DIP Lender’s Charge

23. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender’s Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the

Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

24. THIS COURT ORDERS that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to the security granted under the First Lien Credit Facility and the Second Lien Credit Facility (as both terms are defined in the Macaulay Affidavit) pending the return of the Comeback Motion, but shall not rank in priority to any other trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

25. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Chapter 11 Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, unless the Chapter 11 Debtors also obtain the prior written consent of the Information Officer and the DIP Lender.

26. THIS COURT ORDERS that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) 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 any Chapter 11 Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Chapter 11 Debtor 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 Chapter 11 Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

27. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Chapter 11 Debtor's interest in such real property leases.

#### **SERVICE AND NOTICE**

28. THIS COURT ORDERS that the Chapter 11 Debtors, the Foreign Representative and the Information Officer each be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Chapter 11 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Chapter 11 Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. THIS COURT ORDERS that the Chapter 11 Debtors, the Foreign Representative and the Information Officer, and any party who has filed a Notice of Appearance, may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.

#### **GENERAL**

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

31. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Chapter 11 Debtor, the Business or the Property.

32. 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 Chapter 11 Debtors, the Foreign Representative, the Information Officer, 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 Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is 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.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective counsel, and 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.

35. THIS COURT ORDERS that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 13 2012



## **Appendix “B”**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) MONDAY, THE 16<sup>TH</sup> DAY  
MR. JUSTICE MORAWETZ ) OF JULY, 2012

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

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED  
SYSTEMS (CANADA) COMPANY,

AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON  
SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED

ORDER

THIS MOTION, made by Allied Systems Holdings, Inc. ("**Allied US**") in its capacity as the foreign representative (the "**Foreign Representative**") of Allied US, Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (the "**Chapter 11 Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of motion, the affidavit of Scott Macaulay sworn July 11, 2012 (the "**Macaulay Affidavit**"), the first report dated July 11, 2012 (the "**First Report**")

of Duff & Phelps Canada Restructuring Inc. in its capacity as information officer (the “**Information Officer**”) and the supplemental affidavit of Ava Kim sworn July 13, 2012, and on hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, counsel for Yucaipa American Alliance Fund II, LLC, Yucaipa Leveraged Finance, LLC, CB Investments, LLC, Yucaipa American Alliance Fund I, L.P., Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P., counsel for Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP (collectively “**Black Diamond/Spectrum**”), and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Ava Kim sworn July 12, 2012,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Motion Record and the First 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 that capitalized terms used herein and not otherwise defined have the meaning given to them in the Supplemental Order (Foreign Main Proceeding) granted by this Court on June 13, 2012 (the “**Supplemental Order**”).

## **RECOGNITION OF FOREIGN ORDERS**

3. THIS COURT ORDERS that the following orders (collectively, the “**Foreign Orders**”) of the United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) Final Wages Order;
- (b) Final Insurance Order;
- (c) Final Critical Vendors Order;
- (d) Final Customs, Warehouseman, Common Carriers and Cargo Claims Order;

- (e) Final Utilities Service Order;
- (f) Final Financing Order, and
- (g) Amended Sales and Use Tax Order

(as all such Orders are defined in the Macaulay Affidavit. Certified copies of each such Foreign Orders are attached as Schedules B through H hereto)

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada.

#### **CASH MANAGEMENT ORDER**

4. THIS COURT ORDERS, in furtherance of the Cash management Order, that Allied Canada and Axis Canada will indemnify The Bank of Nova Scotia (the “**Bank**”) from any liability the Bank may incur to any third party by virtue of the Bank’s operating the cash management system in accordance with the practices and procedures that the Bank established before the commencement of the Chapter 11 cases of Allied Canada and Axis Canada.

5. THIS COURT ORDERS that any sums due the Bank by virtue of the foregoing indemnification shall not be subject to impairment without the consent of the Bank.

#### **VALIDITY AND PRIORITY OF CHARGES**

6. THIS COURT ORDERS that paragraph 24 of the Supplemental Order is hereby deleted in its entirety and replaced with the following:

“24. THIS COURT ORDERS:

(a) that “**Encumbrances**” means any security interests, trusts, liens charges and encumbrances (collectively, “**Encumbrances**”) in favour of any Person;

(b) that each of the Administration Charge and the DIP Lender's Charge shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all Encumbrances other than:

(i) Encumbrances (if any) in favour of any Person that are valid, perfected (by registration or possession), non-avoidable and are senior to Encumbrances securing the First Lien Credit Facility as of the date of the Final Financing Order, as defined in the Order of this Court on July 16, 2012); and

(ii) the Carve-Out (as defined in such Final Financing Order).”

#### **GENERAL**

7. 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 Chapter 11 Debtors, the Foreign Representative, the Information Officer, 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 Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

8. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is 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.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 16 2012

*NB*



## **Appendix “C”**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:  
ALLIED SYSTEMS HOLDINGS, INC., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11  
Case No. 12-11564 (CSS)  
(Jointly Administered)  
Re: Docket Nos. 78, 110, 124 & \_\_\_\_\_

CERTIFIED:  
AS A TRUE COPY: 7/13/12  
ATTEST:

DAVID D. BIRD, CLERK  
U.S. BANKRUPTCY COURT.

By: *David D. Bird*  
Deputy Clerk

**FINAL ORDER AUTHORIZING PAYMENT OF WAGES, PAYROLL TAXES,  
CERTAIN EMPLOYEE BENEFITS AND RELATED EXPENSES DUE PRIOR TO THE  
COMMENCEMENT OF THE CHAPTER 11 CASES, AND OTHER COMPENSATION  
TO EMPLOYEES, OWNER-OPERATORS AND INDEPENDENT CONTRACTORS**

This matter is before the Court on the motion (the "Motion") of Allied Systems Holdings, Inc. and its U.S. and Canadian subsidiaries (collectively, the "Debtors") seeking authority to pay wages, compensation, payroll taxes, certain employee benefits and related expenses which were earned before the commencement of these Chapter 11 Cases<sup>2</sup> by Employees, owner-operators and independent contractors.

The Court has considered the Motion, the Declaration of Scott D. Macaulay in Support of Chapter 11 Petitions and First Day Motions, and the matters reflected in the record of the hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334; that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that the Debtors have provided appropriate notice of the Motion and the opportunity for a hearing on

<sup>1</sup> The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (875688228); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveaway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion.

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the Motion under the circumstances and that no further notice is necessary; and that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED** as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to pay the Employee Obligations (as defined in the Motion) that were earned by virtue of the services rendered or equipment furnished by their employees or owner-operators before the commencement of these Chapter 11 Cases.
3. The Employee Obligations that the Debtors are authorized, but not directed, to pay include, without limitation: (i) wages, salaries, compensation and lease payments; (ii) payroll taxes; (iii) vacation, sick and holiday pay; (iv) qualified 401(k) plan obligations; (v) health and welfare benefits; (vi) severance amounts; (vii) flexible spending account programs; (viii) qualified pension plans; (ix) life insurance plans; (x) miscellaneous payroll deductions; and (xi) other benefits, in an aggregate amount not to exceed \$15,500,000 (inclusive of the \$10,500,000 cap authorized by the Interim Order).
4. The Debtors are authorized, but not directed, to continue to honor, pay and maintain, in their sole discretion, all of their employee benefit plans to the extent such benefit plans were in effect as of the commencement of these Chapter 11 Cases.
5. The banks and other financial institutions that process, honor and pay any and all checks on account of Employee Obligations may rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.



6. Neither this Order, nor the Debtors' payment of any amounts authorized by this Order, shall (i) result in any assumption of any executory contract by the Debtors; (ii) result in a commitment to continue any plan, program, or policy of the Debtors; (iii) be deemed an admission as to the validity of the underlying obligations or a waiver of any rights the Debtors may have to subsequently dispute such obligations; or (iv) impose any administrative, pre-petition, or post-petition liabilities upon the Debtors.

7. Except with respect to Employee Obligations due Union Employees and compensation due owner-operators under Union Agreements, no payment by the Debtors to any individual employee for Employee Obligations earned before the commencement of these Chapter 11 cases shall exceed \$11,725.

8. The Debtors are authorized to make all payments permitted hereunder whether due before or after the commencement of these Chapter 11 Cases.

9. Notwithstanding any other provision of this Order, no payments which implicate 11 U.S.C. § 503(c) shall be made by the Debtors, except upon further order of this Court.

10. Nothing herein shall be deemed to alter, modify or waive the Debtors' obligations under applicable Canadian law.

11. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Local Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court shall retain jurisdiction to interpret and enforce this Order.

Dated: July 10, 2012  
Wilmington, Delaware

  
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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE