



No. S-211985  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.**  
**1985, c. C-36**

**AND**

**IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON  
CAPITAL BRIDGING INC.**

**PETITIONERS**

**NOTICE OF APPLICATION**  
**(Comeback Hearing)**

Name of applicants: The Petitioners, Ardenton Capital Corporation And Ardenton Capital Bridging Inc.

To: Service List (attached hereto as **Schedule "A"**)

TAKE NOTICE that an application will be made by the applicants to the Honourable Mister Justice Macintosh at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on March 15, 2020 at 9:00 a.m. for the orders set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

1. An order in substantially the form attached as **Schedule "B"** amending and restating the relief granted under the order made March 5, 2020 (the "**Initial Order**"), including extending the relief under the Initial Order to May 7, 2021; and
2. Such further and other relief as counsel may request and the Court may deem just.

**PART 2: FACTUAL BASIS**

1. Unless otherwise indicated, capitalized terms used in this Notice of Application have the same meaning as set out in the Petition filed in these proceedings on March 3, 2021.

**A. NATURE OF RELIEF SOUGHT**

2. In this Notice of Application, the Petitioners seek an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), which, among other things, would:
  - (a) extend the initial ten (10) day Stay of Proceedings in these proceedings from March 15, 2021, to and including May 7, 2021 (the "**Extended Stay Period**");

- (b) increase the amount of the Administration Charge to \$1,000,000 which includes an amount not to exceed \$25,000 to secure the fees and disbursements relating to services rendered or to be rendered by independent legal counsel to the directors and officers of the Petitioners;
  - (c) increase the amount of the D&O Charge to \$240,000;
  - (d) grant a charge in favour of ACBI in connection with any intercompany loans or advances made by ACBI to ACC during these CCAA proceedings (the “**ACBI Intercompany Charge**” and collectively with the D&O Charge and the Administration Charge, the “**Charges**”), such ACBI Intercompany Charge to rank subordinate to each of the Administration Charge and the D&O Charge, but ahead of all other liens and encumbrances against ACC. The Charges shall rank subordinate to the properly perfected security interests registered against the Petitioners in favour of The Toronto-Dominion Bank (“**TD Bank**”) up to a maximum amount of \$100,000 and HSBC Bank Canada;
  - (e) grant the relief in respect of rent disclaimers which was not included in the Initial Order; and
  - (f) such further and other relief as counsel may request, the Court may deem just.
3. The Petitioners intend to continue to use the Extended Stay Period, with the assistance of the Monitor, to develop and implement a restructuring of the Petitioners’ business by way of the implementation of a plan or plans of compromise or arrangement with their creditors (a “**Plan**”), or, in the alternative, a combination of a recapitalization and refinancing.

## **B. BACKGROUND**

4. On March 5, 2021, the Petitioners sought and obtained the Initial Order in these proceedings. Among other things, the Initial Order:
- (a) granted the initial Stay of Proceedings in favour of the Petitioners to and including March 15, 2021;
  - (b) granted each of the Administration Charge and the D&O Charge; and
  - (c) appointed KSV Restructuring Inc. as Monitor in these CCAA proceedings.
5. Following the entry of the Initial Order:
- (a) the Petitioners immediately deployed their communication plans to their investors, creditors and employees, and suppliers; and
  - (b) management has worked to stabilize the business and has been actively engaging with stakeholders, including investors.

6. To date, the Petitioners have been focusing on reaching out to as many stakeholders as possible to address their immediate questions and concerns. The Monitor has participated in some of these discussions to affirm its role as a Court officer and make itself available to stakeholders.

#### C. EXTENSION OF THE STAY PERIOD

7. Under the Initial Order, the Court granted the initial Stay of Proceedings to and including March 15, 2021. The Petitioners now seek an extension of the initial Stay of Proceedings until and including May 7, 2021.
8. Based upon the current projections and assumptions contained in the Cash Flow Projections, the Petitioners should have sufficient liquidity to fund their obligations and the associated costs through the end of the Extended Stay Period. The Petitioners expect to return to Court before expiry of the Extended Stay Period to seek additional relief in connection with these CCAA proceedings depending on how matters progress with its investors and other stakeholders, including, without limitation, the approval of a form of claim process, a creditors' meeting order and interim financing.

#### D. ADMINISTRATION CHARGE

9. The Initial Order granted the Administration Charge as security for the fees and disbursements (incurred at their standard rates and charges) of the Monitor, along with its legal counsel and the Petitioners' legal counsel relating to services rendered in respect of the Petitioners up to a maximum of \$350,000. Under the provisions of the Initial Order, the Administration Charge currently has a first priority over all other charges, other than the properly perfected security interests registered against the Petitioners in favour of HSBC Bank Canada and TD Bank (to a maximum of \$100,000).
10. After further consideration, and in light of the need to implement a comprehensive restructuring and the complexities of this matter, and the Petitioners' lack of liquidity, the Petitioners, in consultation with the Monitor, have determined that the quantum of the Administration Charge should be increased to a maximum of \$1,000,000 (the "**Increased Administrative Charge**"). The involvement of legal counsel and the scale of investor engagement required to facilitate a proactive and fulsome negotiation to develop a comprehensive Plan will be substantial. It will likely require input from many practice areas and lawyers from each firm. Given the uncertainties in the Petitioners' projected cash flow, it is likely that the Petitioners will not have sufficient available cash resources to pay professional fees and costs as they come due.
11. The D&O have engaged independent legal counsel to advise them during these CCAA proceedings given the complexities and the D&O unfamiliarity with such proceedings. The fees and costs of such D&O lawyers shall also be secured by the Increased Administrative Charge to a maximum of \$25,000, plus applicable taxes.
12. The Monitor supports the Increased Administration Charge.

## **E. D&O CHARGE**

13. As is customary in CCAA proceedings, the Initial Order also granted a charge in favour of the D&O up to a maximum of \$110,000, which reflected the estimated potential liabilities for a ten day period up to the date of the Comeback Hearing. While the Petitioners do have D&O insurance, the Petitioners' policy is set to expire on June 1, 2021. It is unclear whether the Petitioners' existing insurers are prepared to extend the Petitioners' existing insurance coverage after the expiry of the existing policies. The Amended and Restated Order contemplates increasing the quantum of the D&O Charge to a maximum of \$240,000 (the "**Increased D&O Charge**"), reflecting two full payroll cycles for the Petitioners.
14. The Monitor is supportive of the Increased D&O Charge. The Increased D&O Charge is only in respect of prospective obligations, except for those claims that are adequately covered by the existing D&O insurance coverage currently in place. The other items covered by the Increased D&O Charge (payroll) are expected to be paid in the ordinary course of operations.

## **F. INTERCOMPANY CHARGE**

15. ACC receives certain advances, payments and dividends from its subsidiaries, including ACBI, from time to time on account of repayment of intercompany loans and dividends ACBI receives from its majority-owned indirect subsidiaries, being Comtrad Strategic Sourcing Inc. and Achieve 1 (both of which are Ardenton Opcos).
16. ACBI has no independent management team but rather relies on the ACC management team, which accrues to the benefit of ACBI's creditors.
17. ACBI is indebted to various noteholders under the ACBI Notes. Such indebtedness is unsecured. The only other debt obligations at ACBI are in respect of a small amount owed to its accounting firm for services rendered pre-filing.
18. Prior to these proceedings, it was common business practice for intercompany advances to be made between the Petitioners. Given the liquidity constraints facing ACC, it is imperative that ACBI be able to continue to advances monies it receives from its subsidiaries to ACC.
19. The Cash Flow Projections and the ability of ACC to operate on a stand-alone basis without additional financing is predicated on the Petitioners' ability to advance funds to each other.
20. The Petitioners are seeking an order granting the ACBI Intercompany Charge in favour of ACBI against all of the property and assets of ACC for advances which may be made by ACBI to ACC, such charge to be subordinate only to the Increased Administration Charge and the Increased D&O Charge and the liens in favour of HSBC Bank Canada existing as of the date of the Initial Order and TD Bank in the amount of \$100,000. The intention of the ACBI Intercompany Charge is to provide further protection to

noteholders of the ACBI Notes to ensure their position is not prejudiced by any advances made by ACBI to ACC.

21. The purpose of the ACBI Intercompany Charge is to ensure that the status quo is preserved as to the entitlements of the creditors of each Petitioner.

**G. AMENDMENT TO PRIORITY OF CHARGES**

22. It is proposed that the priority of the Charges be as follows:

- (a) First, Administration Charge;
- (b) Second, D&O Charge; and
- (c) In the case of ACC only, the Intercompany Charge.

23. These Charges are intended to rank ahead of all other liens and encumbrances as against the Petitioners other than those existing as of the date of the Initial Order in favour of:

- (a) HSBC Bank Canada; and
- (b) TD Bank, up to a maximum amount of \$100,000.

24. Service of the Court materials filed in these proceedings to date and in support of the Comeback Hearing will be provided to any secured creditors with Personal Property Security Act registrations filed against the Petitioners as of the date of the Initial Order, being TD Bank and HSBC Bank Canada.

25. ACC is currently indebted to TD Bank in the amount of approximately \$47,000 on account of two Visa facilities issued to ACC. TD Bank will not oppose the relief sought by the Petitioners at the Comeback Hearing provided the Charges continue to rank behind TD Bank's security. However, TD Bank has agreed to limit their prior ranking security interest to \$100,000 to cover the existing Visa facilities and costs and expenses related thereto.

**H. DISCLAIMER OF REMAINING LEASES**

26. ACC currently has two leases in respect of its office spaces in Toronto and Vancouver.
27. ACC issued notices of disclaimer dated March 10, 2021 with respect to these remaining leases by causing the prescribed form of disclaimer to be delivered to the respective landlords.
28. ACC has finalized arrangements to move its Vancouver head office to a smaller more affordable location within the city of Vancouver. It is anticipated that ACC will occupy the new space in April 2021.



## I. EMD LICENSE SUSPENDED

29. AFI, a subsidiary of ACC, is a registered exempt market dealer that distributes the Securities under prospectus exemptions primarily in Canada. ACC is a related party issuer and the source of AFI's revenues.
30. As a result of ACC filing for CCAA, the British Columbia Securities Commission ("BCSC") took action pursuant to section 40.1 (1) of the *Securities Act* (BC) to suspend AFI's registration on March 8, 2021. Following receipt of this notice from BCSC, AFI confirmed that it would not be objecting to the suspension of its registration and on March 8, 2020 AFI consented to the Executive Director of the BCSC taking this action.

## PART 3: LEGAL BASIS

1. The Petitioners rely on:
  - (a) the CCAA;
  - (b) the Supreme Court Civil Rules, B.C. Reg. 241/2010, as amended;
  - (c) the inherent and equitable jurisdiction of this Honourable Court; and
  - (d) such further and other legal basis as counsel may advise and this Honourable Court may allow.

### A. THE STAY EXTENSION IS APPROPRIATE

2. This Honourable Court is granted with jurisdiction to grant the extension of a stay pursuant to section 11.02(2) of the CCAA. In determining whether it is appropriate to extend a stay of proceedings, the Court should enquire whether the order sought advances the remedial purposes of the CCAA and avoids the losses that result from liquidation.

CCAA, s. 11.02(2)

*North American Tungsten, Re*, 2015 BCSC 1376 at paras. 25-26 ("*North American Tungsten*")

3. In the early stages of a CCAA proceedings, it is appropriate for the Courts to give deference when considering extensions to a stay period, provided the good faith and due diligence requirements have been met pursuant to section 11.02(3) of the CCAA.

CCAA, s. 11.02(2) and 11.02(3)

*North American Tungsten* at para. 28

4. It is necessary and in the Petitioners' best interests and their respective stakeholders' best interests that the Court extends the Stay Period until May 7, 2021. The Extended Stay Period will allow the Petitioners, with the Monitor's assistance, to engage further with stakeholders, including their investors, and to formulate a restructuring Plan which will

ultimately preserve and maximize the value of the Petitioners' business and generate sufficient value to repay the Petitioners' obligations.

5. The Monitor supports the Extended Stay Period and confirms that the Petitioners have acted, and continue to act, in good faith and with due diligence.

**B. THE INCREASED ADMINISTRATION CHARGE IS APPROPRIATE**

6. The Petitioners seek the Increased Administration Charge to secure the collective fees and disbursements for legal counsel for the Petitioners, the Monitor, and legal counsel for the Monitor.

7. Section 11.52 of the CCAA provides that, on notice to the secured creditors who are likely to be affected by the security or charge, the Court may make an order declaring a priority charge in respect of certain professional fees and disbursements incurred in the proceedings. In determining whether to grant the charge, Canadian Courts have considered, *inter alia*, the following factors:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

CCAA, s. 11.52

*JTI-Macdonald Corp., Re*, 2019 ONSC 1625 at para. 20

8. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because the professionals would be unlikely to risk offering their services without the assurance of being paid. Any failure to provide protection for professional fees will “*result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings*”.

*Timminco Ltd., Re*, 2012 ONSC 506 at para. 66

9. The Petitioners require the specialized expertise, knowledge and continuing participation of the proposed beneficiaries of the Increased Administration Charge in order to complete the restructuring, and the Increased Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.

10. The amount of the proposed Increased Administration Charge was determined in consultation with the Monitor and is fair and reasonable in light of the number of beneficiaries, the size and complexity of the business of the Petitioners, and the scope and the complexity of the proposed restructuring.
11. The Increased Administration Charge amount and scope proposed herein is in line with previous charges approved by the Courts in filings of this size, nature and complexity.

**C. THE INCREASED DIRECTORS' AND OFFICERS' CHARGE IS APPROPRIATE**

12. The Petitioners seek the Increased D&O Charge to secure the indemnity of each Petitioner's directors and officers.
13. Pursuant to section 11.51 of the CCAA, on notice to the secured creditors who are likely to be affected by the security or charge, this Court is vested with the power to grant a charge over the assets of a debtor company with respect to directors' and officers' indemnification on a priority basis. The Court must be satisfied with the amount of the proposed charge. The Court will consider the following factors:
  - (a) whether the charge is essential to the successful restructuring of the debtor;
  - (b) whether the continued participation of the directors and officers is critical to the restructuring; and
  - (c) whether the amount of the charge is reasonable and appropriate in light of the obligations and liabilities that may be incurred by the directors and officers. The proposed charge must not provide coverage for the wilful misconduct or gross negligence of any director or officer of the debtor company.

CCAA, s. 11.51

*Canwest Publishing Inc., Re*, 2010 ONSC 222 at para. 56

*Canwest Global Communications Corp., Re*, 2009 CarswellOnt 6184 at paras. 44-48 ("**Canwest Global**")

14. Consistent with both the foregoing and the British Columbia Model CCAA Initial Order, the Increased D&O Charge is not intended to duplicate coverage already in place under the Petitioners' existing directors' and officers' liability insurance policies, but rather, to supplement such coverage in the event that any particular claim is not insured under those policies.
15. The request of the Petitioners' D&O to receive adequate protection in the form of the Increased D&O Charge is fair and reasonable and advances the integral need of the Petitioners to have fully functional, experienced and qualified advisors, directors and officers. Particularly, the specialized knowledge held by the current management, and



their relationships with various key creditors and their representatives gained throughout the growth of the Petitioners' business, cannot be replicated or easily replaced.

16. The Petitioners submit that the increased quantum of the Increased D&O Charge is reasonable in the circumstances. It is calculated based on an estimation of the potential liability the D&O could have during these CCAA proceedings.
17. The proposed increase to the Increased D&O Charge is consistent with other filings of this nature.

**D. THE INTERCOMPANY CHARGE IS APPROPRIATE**

18. Pursuant to section 11.2(1) of the CCAA, on notice to the secured creditors who are likely to be affected by the security or charge, a Court may make an order declaring that all or part of the company's property is subject to a security or charge, in an amount that the Court considers appropriate, in favour of a person specified in the order who agrees to lend to the company an amount approved by the Court. The Court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

CCAA, s. 11.2(1) and s. 11.2(2)

19. Section 11.2(4) of the CCAA lists the following factors the Court must consider in deciding whether to grant a super-priority charge:
  - (a) the period during which the company is expected to be subject to proceedings under this Act;
  - (b) how the company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
  - (e) the nature and value of the company's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the monitor's report referred to in paragraph 23(1)(b) of the CCAA, if any.
20. In *Canwest Global*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) of the CCAA in addition to those found in section 11.2(4) of the CCAA, namely:
  - (a) whether notice has been given to secured creditors likely to be affected by the security or charge;

- (b) whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtor's cash flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.

*Canwest Global* at paras. 31-34

- 21. In *Performance Sports Group Ltd., Re*, 2016 ONSC 6800 ("**Performance Sports**"), Justice Newbould set out that "[i]ntercompany charges to protect intercompany advances have been approved before in CCAA proceedings under the general power in section 11 to make such order as the court considers appropriate".

*Performance Sports* at para. 34

*Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at paras. 65-67

- 22. The Petitioners engage in various intercompany transactions on an ongoing basis and make certain advances to each other to ensure each entity has sufficient cash to continue operating. Additionally, the Cash Flow Statement and ability of ACC to operate on a stand-alone basis without additional financing is predicated on the Petitioners' ability to advance funds to each other. Accordingly, the ACBI Intercompany Charge is reasonably necessary to ensure the Petitioners are able to operate in the ordinary course during the Extended Stay Period. The ACBI Intercompany Charge will preserve the *status quo* between the Petitioners and protect stakeholders during this initial period.

## **E. CONCLUSION**

- 23. As set out in the Cash Flow Projections filed with the Original Affidavits, it is anticipated that the Petitioners will have sufficient cash to fund its operations for the duration of the Extended Stay Period. However, given the uncertainty of certain sources of funding contained in the Cash Flow Projections, the Petitioners intend to proactively pursue interim financing from a third party and will return to this Court in the near term once it is able to secure such interim financing.
- 31. Since the granting of the Initial Order, the Petitioners have acted and continue to act in good faith and with due diligence to complete a restructuring under the CCAA and stabilize their business and operations. The Petitioners have also provided information to and answered inquiries from their various stakeholders and have contacted their critical vendors and suppliers.
- 32. The Petitioners continue to carry on their business in accordance with the CCAA and the Initial Order. None of the Petitioners' stakeholders will suffer material prejudice if the Amended and Restated Initial Order is granted as requested. Further, The Monitor is supportive of the relief sought in connection with the Amended and Restated Initial Order.

**PART 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of James Livingstone, made on March 2, 2021;
2. Pre-Filing Report of KSV Restructuring Inc., dated March 3, 2021;
3. Affidavit #2 of James Livingstone, made on March 5, 2021;
4. Affidavit #3 of James Livingstone, made on March 10, 2021;
5. First Report of KSV Restructuring Inc. (to be filed); and
6. Such further and other material as counsel may advise and as this Honourable Court may allow.

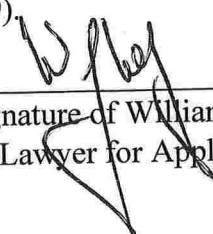
The applicants estimate that the application will take 1 hour.

- This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 10, 2021

  
\_\_\_\_\_  
Signature of William E. J. Skelly  
 Lawyer for Applicant

***To be completed by the court only:***

Order made  
in the terms requested in paragraphs ..... of Part 1 of  
this notice of application

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

Signature of  Judge  Master

## Appendix

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts



**SCHEDULE "A"**

(Service List)

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.**  
**1985, c. C-36**

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**IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON**  
**CAPITAL BRIDGING INC.**

**PETITIONERS**

**SERVICE LIST**

**March 10, 2021**

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<p><b>Ministry of Finance (Ontario)</b> Insolvency Unit 33 King Street West, 6th Floor Oshawa, Ontario L1H 8H5</p>	<p><a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>

<p><b>Ontario Securities Commission</b> General Counsel's Office 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8</p>	<p>Paloma Ellard (416) 595-8906 <a href="mailto:pellard@osc.gov.on.ca">pellard@osc.gov.on.ca</a></p>
<p><b>Attorney General of British Columbia</b> Legal Services Branch, Revenue &amp; Taxation 400-1675 Douglas Street Victoria, British Columbia V8W 9J7</p> <p>Mailing address: PO Box 9289 Stn. Prov. Govt. Victoria, British Columbia V8W 9J7</p> <p><b>Attention: Aaron Welch and Isabel Gowda</b></p>	<p>Aaron Welch (250) 356-8589 <a href="mailto:aaron.welch@gov.bc.ca">aaron.welch@gov.bc.ca</a></p> <p><a href="mailto:AGLSBRevTaxInsolvency@gov.bc.ca">AGLSBRevTaxInsolvency@gov.bc.ca</a></p>
<p><b>Department of Justice Canada</b> British Columbia Regional Office 900-840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Counsel to Her Majesty The Queen in right of Canada as represented by the Minister of National Revenue</p>	
<p><b>Ministry of Finance (British Columbia)</b> British Columbia Parliament Buildings Minister of Finance Room 153 501 Belleville Street Victoria, BC V8V 1X4</p> <p>And</p> <p><b>Ministry of Finance (British Columbia)</b> 1802 Douglas Street Victoria, BC V8T 4K6</p>	<p><a href="mailto:FIN.Minister@gov.bc.ca">FIN.Minister@gov.bc.ca</a></p>

<p><b>British Columbia Securities Commission</b> 12th Floor 701 W. Georgia Street Vancouver, BC V7Y 1L2</p> <p><b>Attention: Office of General Counsel</b></p>	<p>Sarah Corrigan-Brown <a href="mailto:GeneralCounselsOffice@bcsc.bc.ca">GeneralCounselsOffice@bcsc.bc.ca</a></p>
<p><b>The Toronto-Dominion Bank</b> 1933 Willingdon Avenue, 2nd Floor Burnaby, British Columbia V5C 5J3</p> <p>And</p> <p><b>The Toronto-Dominion Bank (Commercial Baking)</b> P.O. Box 1001, Pacific Centre 700 West Georgia Street, 2nd Floor Vancouver I.B.C. V7Y 1A2</p>	<p>Christopher Keane (604) 654-3944 <a href="mailto:christopher.keane@td.com">christopher.keane@td.com</a></p> <p>Michelle Madore (604) 654-3055 <a href="mailto:michelle.madore@td.com">michelle.madore@td.com</a></p> <p>Andrew Laukkanen (604) 654-3195 <a href="mailto:andrew.laukkanen@td.com">andrew.laukkanen@td.com</a></p>
<p><b>HSBC Bank Canada</b> Personal Lending 855 West Georgia Street, 2nd Floor Vancouver, British Columbia V6C 3G1</p>	<p>Sarah Wilkinson (604) 641-2513 <a href="mailto:sarah_a_wilkinson@hsbc.ca">sarah_a_wilkinson@hsbc.ca</a></p> <p>Janette T. Wong (604) 641-1127 <a href="mailto:janette_t_wong@hsbc.ca">janette_t_wong@hsbc.ca</a></p>
<p><b>Nansil Inc.</b></p>	<p>Richard Gotlib <a href="mailto:richard.gotlib@gmail.com">richard.gotlib@gmail.com</a></p>
<p><b>Bentall Kennedy (Canada) Limited Partnership,</b> Suite 1100 - One York Street, Toronto, ON, M5J0B6. Telephone: 1 416 681 3400</p> <p><b>Attention: Geoff Rayner, Sr Director, Leasing</b></p>	



<b>Oxford Properties Group,</b> MNP Tower, Suite 1280, 1021 West Hastings Street, Vancouver, BC, V6E0C3	Susan Wali, Property Administrator (604) 893-3240 <a href="mailto:swali@oxfordproperties.com">swali@oxfordproperties.com</a>
<b>Lawson Lundell LLP</b> 1600 - 925 West Georgia Street, Vancouver, BC V6C 3L2	William Roberts (604) 631-9163 <a href="mailto:wroberts@lawsonlundell.com">wroberts@lawsonlundell.com</a>
<b>Blake, Cassels &amp; Graydon LLP</b> 595 Burrard Street, Suite 2600 Vancouver, BC V7X 1L3  Counsel to Oxford Management Services Inc.	Claire Hildebrand (604) 631-3331 <a href="mailto:claire.hildebrand@blakes.com">claire.hildebrand@blakes.com</a>

**Email Distribution List**

**SCHEDULE "B"**

(Form of Amended and Restated Initial Order)

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND  
ARDENTON CAPITAL BRIDGING INC.

PETITIONERS

**ORDER MADE AFTER APPLICATION**  
**(Amended and Restated Initial Order)**

BEFORE THE HONOURABLE )  
MR. JUSTICE MACINTOSH )      March 15, 2021

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 15th day of March, 2021; AND ON HEARING William E.J. Skelly and Kyle Plunkett, counsel for the Petitioners, Colin Brousson, counsel for the Monitor, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of James Livingstone, made on March 2, 2021 (the "**Livingstone #1 Affidavit**"), the Pre-Filing Report of KSV Restructuring Inc. (the "**Monitor**") dated March 3, 2021, the Second Affidavit of James Livingstone, made on March 5, 2021, the Third Affidavit of James Livingstone, made on March 10, 2021 and the First Report of the Monitor (to be filed); AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

### **AMENDED AND RESTATED INITIAL ORDER**

1. This Amended and Restated Initial Order amends and restates the Order of this Court (the “**Initial Order**”) made in these proceedings on March 5, 2021 (the “**Order Date**”).

### **JURISDICTION**

2. Each Petitioner is a company to which the CCAA applies.

### **SUBSEQUENT HEARING DATE**

3. The hearing of the Petitioners’ application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held by MS Teams (or as the Court may direct) at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at \_\_\_\_\_ .m. on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 2021 or such other date as this Court may order.

### **PLAN OF ARRANGEMENT**

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court, a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

5. Subject to this Order and any further Order of this Court, each Petitioner shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), and continue to carry on its business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and

empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioners shall be entitled to continue to utilize the central cash management system currently in place as described in the Livingstone #1 Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioner, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “**Wages**”); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to either Petitioner’s restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:



- (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of any Petitioner are domiciled;
- (ii) any litigation in which any Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
- (iii) any related corporate matters.

8. Except as otherwise provided herein, each Petitioner shall be entitled to pay all expenses reasonably incurred by such Petitioner in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$25,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

9. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i)

employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

- (b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by any Petitioner in connection with the sale of goods and services by any Petitioner, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

10. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between any Petitioner and the landlord from time to time (“Rent”), for the period commencing from and including the Order Date. On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

11. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the Order Date except as authorized by this Order;

- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by any Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

12. Subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for the Petitioners' Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), each Petitioner, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or

control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

16. Until and including May 7, 2021, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of any Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of any Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. 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 any Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.



18. Nothing in this Order, including paragraphs 13 and 14, shall: (i) empower any Petitioner to carry on any business which such Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

19. 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 Petitioner, except with the written consent of the Petitioners and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

20. During the Stay Period, all Persons having oral or written agreements with any Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or any Petitioner, 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 any Petitioner, and that each Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to any Petitioner on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of any Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of any Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

## **DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**

23. Each Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of any Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. The directors and officers of each Petitioner shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$240,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 36 and 38 herein.

25. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) each Petitioner’s directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **APPOINTMENT OF MONITOR**

26. KSV Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioners’ receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Petitioners in their preparation of the Petitioners’ cash flow statements;

- (d) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (e) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

28. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination

including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

31. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

#### **ADMINISTRATION CHARGE**

32. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

34. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration charge includes an amount not to exceed \$25,000, plus applicable taxes, to secure the fees and disbursements relating to services rendered or to be rendered by independent legal counsel to the directors and officers of the Petitioners. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

#### **INTERCOMPANY CHARGE**

35. The Petitioner, Ardenton Capital Bridging Inc. ("**ACBI**"), shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Charge**") on the Property of the Petitioner, Ardenton Capital Corporation ("**ACC**"), as security for all advances or payments made by ACBI to ACC, from and after the date of the Initial Order. The Intercompany Charge shall have the priority set out in paragraphs 36 and 38 hereof.

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

36. The priorities of the Administration Charge, the Directors' Charge and the Intercompany Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Directors' Charge (to the maximum amount of \$240,000); and

Third – Intercompany Charge in the case of the Property of ACC.

37. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Intercompany Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

38. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA, the liens and encumbrances in favour of the Toronto-Dominion Bank against the Property to a maximum amount of \$100,000, and the liens and encumbrances in favour of HSBC Bank Canada against the Property existing as at the date of the Initial Order.

39. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Director's Charge.

40. The Administration Charge, the Directors' Charge and the Intercompany 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 (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease,



mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioners; 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 the Petitioners 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 Petitioners 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.

41. 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 Petitioner’s interest in such real property leases.

### **SERVICE AND NOTICE**

42. The time for service of the Notice of Application for this Order is hereby abridged and deemed good and sufficient and this Notice of Application is properly returnable today.

43. The Monitor shall (a) without delay, publish in the national edition of the Globe and Mail, a notice containing the information prescribed under the CCAA, (b) within five days after Order Date, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against any Petitioner of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, save and except the Petitioners’ investors, whose addresses and claim amounts shall be treated as confidential (unless otherwise consented to by the



investor in writing), and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. The Petitioners and the Monitor are 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 Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners 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.

45. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <https://www.ksvadvisory.com/insolvency-cases/case/ardenton-capital-corporation>.

46. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: <https://www.ksvadvisory.com/insolvency-cases/case/ardenton-capital-corporation>.

47. Notwithstanding paragraphs 44 and 46 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## **GENERAL**

48. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

49. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any Petitioner, the Business or the Property.

50. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America or the United Kingdom to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

51. Each of the Petitioners and the Monitor 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 and 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, including acting as a foreign representative of any Petitioner to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended or pursuant to the *Insolvency Act*, 1986, (c. 45) of the United Kingdom.

52. Any Petitioner may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determine that such a filing is appropriate.

53. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

54. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all

affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

55. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List 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.

56. Endorsement of this Order by counsel appearing on this Notice of Application, except for counsel for the Petitioners, is hereby dispensed with.

57. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of William E.J. Skelly  
 Party  Lawyer for the Petitioners

BY THE COURT

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REGISTRAR