

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**THE HONOURABLE MR.
JUSTICE CAMPBELL**

) **MONDAY, THE 20TH DAY**
) **OF JULY, 2009**

**WF FUND III LIMITED PARTNERSHIP, d.b.a. WELLINGTON FINANCIAL LP AND
WELLINGTON FINANCIAL FUND III**

Applicant



-and-

BORDERWARE TECHNOLOGIES INC.

Respondent

RECEIVERSHIP ORDER

THIS APPLICATION, made by the Applicant, WF Fund III Limited Partnership, d.b.a. Wellington Financial LP and Wellington Financial Fund III (the "**Applicant**"), for an Order pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**") appointing RSM Richter Inc. ("**Richter**") as interim receiver and receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Borderware Technologies Inc. (the "**Debtor**") for the principal purpose of effecting a sale (a "**Transaction**") of all of the Debtor's right, title and interest in its business, assets and property to a purchaser (each such purchaser, a "**Purchaser**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Usher sworn July 19, 2009 (the "**Usher Affidavit**"), and the Exhibits thereto, the Report of Richter dated July 19, 2009, and on hearing the submissions of counsel for the Applicant and counsel for Richter, no one appearing for any Person (as defined below) listed on Schedule "A" hereto although duly served as appears from

the affidavit of service of Deborah S. Murphy sworn July 20, 2009, and on reading the consent of Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to Section 47(1) of the BIA and Section 101 of the CJA, Richter is hereby appointed as interim receiver and receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is not appointed as manager of the Debtor and shall not take possession of the Property or operate the business of the Debtor except as set out herein or upon further Order of this Court, but the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to negotiate and seek Court approval of a Transaction between the Receiver and a Purchaser including, without limitation, the WatchGuard Transaction (as defined in the Usher Affidavit);
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

- (c) to execute, assign, issue and endorse documents of whatever nature in respect of a Transaction, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (d) to apply for any sale approval and vesting order or other orders necessary to give effect to the Transaction and convey all or any part of the Property to the Purchaser thereof, free and clear of any liens or encumbrances affecting such Property;
- (e) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (f) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (g) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (h) to provide such assistance to the Debtor as the Debtor may request; and
- (i) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

EXPENSE REIMBURSEMENT

4. **THIS COURT ORDERS** that if a Transaction other than the WatchGuard Transaction closes that results in aggregate proceeds greater than the value of: (i) the WatchGuard

Transaction; plus (ii) the value of the residual assets of the Debtor not included in the WatchGuard Transaction, the Receiver will reimburse WatchGuard from such proceeds for WatchGuard's documented reasonable third-party expenses incurred in connection with its efforts to satisfy the pre-conditions to the WatchGuard Transaction from and after the date of this Order, to a maximum of CDN\$100,000. As security for this reimbursement obligation, WatchGuard is hereby granted a charge on the proceeds of sale arising from such a Transaction (the "**Reimbursement Charge**") in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the Receiver's Borrowings Charge (each as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to or as directed by the Receiver upon the Receiver's request, including, without limitation, to the Purchaser upon approval of this Court of a Transaction and the closing of same.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, that may not be disclosed or provided to the Receiver due to

the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the

Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on; (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that 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 the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates 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 Debtor 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 Debtor, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor, or as may be ordered by this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor in connection with the Transaction may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or

such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to a Purchaser and its advisors, but only to the extent desirable or required to negotiate and attempt to complete a Transaction. Each Purchaser or advisor to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a Transaction, and if it does not complete the Transaction, shall return all such information to the Receiver, or in the alternative destroy all such information. The Purchaser shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner that is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver or a Restructuring Officer (as defined below) 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property (including, without limitation, all proceeds of sale arising from a Transaction) in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").

18. **THIS COURT ORDERS** the Receiver and its legal counsel shall, if so requested in writing by any Person prior to the Receiver's discharge, pass its accounts, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures, funding working capital to the Debtor to pay critical operating expenses, paying costs or expenses in connection with or incidental to a Transaction and paying the fees and expenses of the Receiver and its legal counsel (the **"Receiver's Borrowings"**). The whole of the Property (including, without limitation, all proceeds of sale arising from a Transaction) shall be and are hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the repayment of the Receiver's Borrowings, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge .

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

CHIEF RESTRUCTURING OFFICER

23. **THIS COURT ORDERS** that the engagement of Mark Burton as Chief Restructuring Officer of the Debtor (the “CRO”) be and is hereby approved on such terms as agreed to between the Company and the CRO, and consented to by the Receiver.

24. **THIS COURT ORDERS** that the engagement of Peter Cauley as Chief Financial Restructuring Officer of the Debtor (the “CFRO” and, with the “CRO”, “Restructuring Officer(s)”) be and is hereby approved on such terms as agreed to between the Company and the CFRO, and consented to by the Receiver.

25. **THIS COURT ORDERS** that the Restructuring Officers shall not incur any liability or obligation as a result of the fulfilment of their respective duties, save and except any liability or obligation arising from gross negligence or wilful misconduct of the Restructuring Officer, and no action or other proceedings shall be commenced against a Restructuring Officer relating to his appointment or conduct as a Restructuring Officer, except with prior leave of this Court, on at least 7 days’ notice to the relevant Restructuring Officer and his counsel and upon further Order securing, as security for costs, the full indemnity costs of the Restructuring Officer, if any, in connection with any such action or proceeding and provided further that the liability of a Restructuring Officer hereunder shall not in any event exceed the quantum of the fees paid to such Restructuring Officer in connection with this proceeding.

GENERAL

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

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

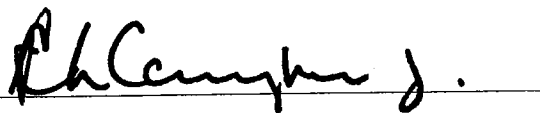
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver 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.

30. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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



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

JUL 20 2009

PER / PAR: TV

SCHEDULE "A"
PARTIES SERVED

STIKEMAN ELLIOT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Rod Barrett

Tel: (416) 869-5500
Fax: (416) 947-0866

Lawyers for Borderware Technologies Inc.

SCHEDULE "B"

FORM OF RECEIVER'S CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. **THIS IS TO CERTIFY** that RSM Richter Inc., the interim receiver and receiver (the "Receiver") of all of the assets, undertakings and properties of Borderware Technologies Inc. appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ● day of July, 2009 (the "Order"), made in an action having Court file ●, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ ●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the ● day of each month after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of the Royal Bank of Canada from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 2009.

**RSM RICHTER INC. in its capacity as
interim receiver and receiver of Borderware
Technologies Inc. and not in its personal
capacity**

Per: _____
Name:
Title:

**WF FUND III LIMITED PARTNERSHIP,
d.b.a. WELLINGTON FINANCIAL LP AND
WELLINGTON FINANCIAL FUND III**
Applicant

BORDERWARE TECHNOLOGIES INC.

Respondent

Court File No.: CV-09-8284-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

RECEIVERSHIP ORDER

Goodmans LLP
Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

David B. Bish (LSUC#: 41629A)
Christopher G. Armstrong (LSUC#: 55148B)

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant