

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GUARDIAN FINANCIAL CORP. AND OTHER ENTITIES LISTED ON SCHEDULE "A"**

(Applicants)

**FACTUM OF THE APPLICANTS
(Re: Stay Extension and Other Relief)
(Returnable March 11, 2021)**

March 9, 2021

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PART I - OVERVIEW

1. The Applicants are part of the IWG multinational corporate group that offers a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.
2. Since July 30, 2020, certain of the Applicants' affiliates in the United States (the "**Chapter 11 Debtors**") have been filing voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**", and such proceedings, the "**Chapter 11 Cases**"). Certain of the Chapter 11 Debtors (the "**Guarantor Debtors**") guaranteed certain Leases held by the CCAA Debtors (as defined below). The commencement of the Chapter 11 Cases by the Guarantor Debtors may have been a technical event of default under the CCAA Debtors' Leases.
3. Due to concerns that Landlords may take action under the Leases, the Chapter 11 Debtors sought recognition of the Chapter 11 Cases under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On August 24, 2020, this Court recognized the Chapter 11 Cases as "foreign main proceedings".
4. On August 31, 2020, the Applicants commenced these proceedings under the CCAA (the "**CCAA Proceedings**") and this Court granted an Initial Order in respect of the Applicants

and certain affiliated limited partnerships (together, the “**CCAA Debtors**”, and each a “**CCAA Debtor**”). On September 10, 2020, this Court granted an Order amending and restating the Initial Order (as amended and restated, the “**Initial Order**”). KSV was appointed monitor (the “**Monitor**”) of the CCAA Debtors. The Initial Order provided a stay of proceedings (the “**Stay Period**”) until November 27, 2020. On November 19, 2020, this Court granted an Order in the CCAA Proceedings that, among other things, extended the Stay Period until March 16, 2021 (the “**Stay Extension Order**”).

5. This factum is filed in support of a motion by the CCAA Debtors for an Order, substantially in the form of the draft order attached to the Motion Record at Tab 3, that, *inter alia*:

- (a) extends the Stay Period to June 30, 2021;
- (b) terminates and discharges the CCAA Proceedings with respect to RGN Alberta Limited Partnership and its general partners, RGN Alberta GP Inc.;
- (c) approves the payment of a surrender fee in connection with a lease amending agreement; and
- (d) seals certain confidential exhibits of the Sixth Feltman Affidavit (as defined below).

PART II - THE FACTS

6. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn March 5, 2021 (the “**Sixth Feltman Affidavit**”). Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Sixth Feltman Affidavit.

A. The Chapter 11 Cases

7. As stated above, the commencement of the Chapter 11 Cases by the Guarantor Debtors may have been a technical event of default under the CCAA Debtors' Leases. Therefore, the restructuring of the CCAA Debtors is significantly intertwined with the restructuring of the Guarantor Debtors, and the CCAA Proceedings are significantly intertwined with the Chapter 11 Proceedings.

Sixth Feltman Affidavit at para. 19, Applicants' Motion Record, Tab 2.

8. To advance the CCAA Proceedings in parallel with the Chapter 11 Proceedings, the Court extended the original Stay Period to March 16, 2021 to align with key milestones (the "**Milestones**") in the Chapter 11 Cases set out in the Chapter 11 Debtors' US\$50 million debtor-in-possession financing facility (the "**DIP Facility**").

Sixth Feltman Affidavit at paras. 19-20, Applicants' Motion Record, Tab 2.

9. In December 2020, the Chapter 11 Debtors and their DIP lender extended the the Milestones and in January 2021, the Milestones were extended again pursuant to a second amendment to the DIP Facility (the "**Second DIP Amendment**"), which the U.S. Court approved on February 11, 2021. The Second DIP Amendment also increased the availability under the DIP Facility by US\$43 million. Below are the revised Milestones, which could be extended by an additional 30 days at the option of the Chapter 11 Debtors:

<u>Milestone</u>	<u>Original Date</u>	<u>New Date (Second DIP Amendment)</u>
Filing of a plan of reorganization	November 25, 2020	March 31, 2021
Obtain a confirmation order from the U.S. Court confirming the plan of reorganization	February 15, 2021	June 23, 2021
"Effective Date" of the plan of	March 16, 2021	June 30, 2021

reorganization		
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Sixth Feltman Affidavit at paras. 22-23, Applicants' Motion Record, Tab 2.

B. The CCAA Debtors' Restructuring Efforts

10. The primary purpose of the restructuring proceedings is to permit negotiations with Landlords in a stabilized environment. The CCAA Debtors have initiated and are conducting a comprehensive review of their unexpired Leases to determine whether any Leases should be disclaimed as part of the CCAA Proceedings if acceptable amendments could not be achieved with the various Landlords. As part of this review, over the past four months (since the latest Stay Extension Order), the CCAA Debtors have been engaging in good-faith, arm's-length negotiations with their Landlords to obtain favourable lease amendments to ensure that each Centre is financially viable and sustainable on a long-term basis.

Sixth Feltman Affidavit at para. 26, Applicants' Motion Record, Tab 2.

11. As of March 5, 2021, the CCAA Debtors and their Canadian Affiliates have successfully negotiated Lease amendments ("**LAAs**" and each a "**LAA**") for 28 Centres. 15 are finalized and the remaining 13 are subject to final documentation. These LAAs could not have been achieved without the stability provided by the CCAA stay of proceedings.

Sixth Feltman Affidavit at paras. 27 and 29, Applicants' Motion Record, Tab 2.

12. In addition, one Lease of a CCAA Debtor was disclaimed, two Canadian Affiliates closed their Centres, and a Canadian Affiliate that had filed for a notice of intention to make a proposal was deemed to make an assignment into bankruptcy.

Sixth Feltman Affidavit at para. 27, Applicants' Motion Record, Tab 2.

13. The CCAA Debtors remain focused on, among other things, further negotiations with their Landlords and consummating a successful restructuring in a coordinated manner with the

Chapter 11 Debtors to address the liabilities of the Guarantor Debtors under the Leases in Canada and the United States.

Sixth Feltman Affidavit at para. 29, Applicants' Motion Record, Tab 2.

C. The Lease Amendment Agreements (LAAs)

1. LAA of RGN Alberta Limited Partnership

14. RGN Alberta Limited Partnership ("**RGN Alberta LP**") is the Canadian Tenant SPE for a Centre located at 144-4 Avenue SW in Calgary, Alberta, pursuant to a Lease with its Landlord Aspen Properties (SLP) Ltd. ("**Aspen**").

Sixth Feltman Affidavit at para. 38, Applicants' Motion Record, Tab 2.

15. RGN Alberta LP successfully negotiated a LAA with Aspen, the specific terms of which are confidential. One of the conditions of the LAA requires RGN Alberta LP to seek an order from the Court discharging the CCAA Proceedings with respect to RGN Alberta LP as soon as reasonably practicable in order to permit certain negotiated payments under the LAA to be made to Aspen.

Sixth Feltman Affidavit at paras. 39 and 40, Applicants' Motion Record, Tab 2.

16. Aspen has agreed that, following the payments being made, the Lease will be in good standing. Aspen has also agreed to waive any claim that the Lease is in default for acts, events or omissions of RGN Alberta LP arising prior to execution of the LAA and waive any default arising from the commencement of the Chapter 11 Cases by the Guarantor Debtors. Effectively, following the Court granting the order requested terminating and discharging the CCAA Proceedings in respect of RGN Alberta LP, it will be in a position where its Lease cannot be terminated as a result of the Chapter 11 Cases and the CCAA Proceedings.

Sixth Feltman Affidavit at para. 41, Applicants' Motion Record, Tab 2.

2. LAA of RGN Ontario L Limited Partnership

17. RGN Ontario L Limited Partnership (“**RGN Ontario L LP**”) is the Canadian Tenant SPE for a Centre located at 5200 Yonge Street in Toronto, Ontario, pursuant to a Lease with its Landlord 5200 Yonge Limited Partnership (“**5200 Yonge**”).

Sixth Feltman Affidavit at para. 44, Applicants’ Motion Record, Tab 2.

18. RGN Ontario L LP successfully negotiated a LAA with 5200 Yonge, the specific terms of which are confidential. Pursuant to the LAA, 5200 Yonge has agreed to allow RGN Ontario L LP to partially surrender certain space located at its Centre. As a condition of the partial surrender, RGN Ontario L LP is required to pay 5200 Yonge a surrender fee.

Sixth Feltman Affidavit at para. 44-45, Applicants’ Motion Record, Tab 2.

19. The LAA requires as a condition that RGN Ontario L LP to seek an order from the Court approving the payment of the surrender fee by no later than March 31, 2021.

Sixth Feltman Affidavit at para. 46, Applicants’ Motion Record, Tab 2.

PART III - ISSUES

20. The issues before this Court are whether:

- (a) the Stay Period should be extended to June 30, 2021;
- (b) the CCAA Proceedings with respect to RGN Alberta LP and its general partner, RGN Alberta GP Inc., should be terminated and discharged;
- (c) the payment of a surrender fee by RGN Ontario L LP to its Landlord, 5200 Yonge, in connection with a Lease amendment should be approved; and
- (d) certain exhibits within the Sixth Feltman Affidavit should be sealed.

PART IV - THE LAW

A. The Stay of Proceedings Should be Extended

21. The current Stay Period expires on March 16, 2021. Pursuant to s. 11.02 of the CCAA, the Court may extend a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has been acting in good faith and with due diligence.

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

22. The CCAA Debtors are seeking to extend the Stay Period to and including June 30, 2021 to allow them to continue their restructuring initiatives, including reviewing Leases and negotiating Lease amendments. The CCAA Debtors have sufficient funds to continue operating through the proposed extension of the Stay Period. During the proposed extension of the Stay Period, the CCAA Debtors will continue to work with the Chapter 11 Debtors and other stakeholders to develop and advance a resolution to the CCAA Proceedings.

Sixth Feltman Affidavit at paras. 31-33, Applicants' Motion Record, Tab 2.

23. The CCAA Debtors' progress towards a successful restructuring to date has been achieved in large part due to the stability provided by the stay of proceedings. The contemplated extension of the Stay Period aligns with the amended outside date for implementation of a plan in the Chapter 11 Cases, which is critical for a successful restructuring of the CCAA Debtors.

Sixth Feltman Affidavit at paras. 29 and 31, Applicants' Motion Record, Tab 2.

24. No creditors are expected to suffer material prejudice as a result of extending the Stay Period. The CCAA Debtors will continue to pay their post-filing obligations, including post-filing rent obligations, as they become due. The CCAA Debtors are acting in good faith and with due diligence in pursuing their restructuring strategy and the Monitor supports the CCAA Debtors' request to extend the Stay Period.

Sixth Feltman Affidavit at paras. 32, 34-35, Applicants' Motion Record, Tab 2.

25. For the reasons described above, the Stay Period should be extended to June 30, 2021.

B. The CCAA Proceedings with respect to RGN Alberta LP and RGN Alberta GP Inc. Should be Terminated and Discharged

26. The CCAA Debtors submit that this Court should order the termination and discharge of the CCAA Proceedings with respect to RGN Alberta LP, and its general partner, RGN Alberta GP Inc. This Court has the jurisdiction to terminate the CCAA Proceedings with respect to RGN Alberta LP and RGN Alberta GP Inc. pursuant to s. 11 of the CCAA.

CCAA, s. 11.

27. RGN Alberta LP is seeking to terminate these CCAA Proceedings in order to return to ordinary course business operations. The LAA that RGN Alberta LP negotiated with its Landlord Aspen provides RGN Alberta LP with a broad waiver of claims in order to provide RGN Alberta LP with a "fresh start". However, in order for RGN Alberta LP to receive the benefit of the waiver under the LAA, it must make certain payments to Aspen shortly after the Court terminates and discharges the CCAA Proceedings with respect to RGN Alberta LP.

28. It has always been the intention that the CCAA Proceedings would provide RGN Alberta LP with a limited period of time by which it could negotiate with Aspen in a stabilized environment. RGN Alberta LP entered into negotiations as intended and emerged with the LAA. The CCAA Proceedings have served their purpose and RGN Alberta LP is able to exit the process.

29. The CCAA Debtors believe the resolution embodied in the LAA is the best option available to RGN Alberta LP in the circumstances and provides RGN Alberta LP with the best chance to operate as a going-concern outside of these restructuring proceedings. Indeed, as the Supreme Court of Canada has noted, "[t]he best outcome [in a CCAA proceeding] is

achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the CCAA process terminates without reorganization being needed”.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 14 ([CanLII](#)).

30. The CCAA Debtors and the Monitor do not believe that any stakeholder will be prejudiced by the termination of the CCAA Proceedings with respect to RGN Alberta LP.

31. As part of the termination of the CCAA Proceedings, the CCAA Debtors also seek to discharge and relieve KSV from its role as Monitor with respect to RGN Alberta LP and RGN Alberta GP Inc. It is well-established that the Court may grant an order discharging the Monitor on terms similar to those being sought in the proposed order. The Courts jurisdiction for making such an order is grounded in s. 11 of the CCAA.

See e.g. Re Golf Town Canada Inc. et al. (29 March 2018), Toronto CV-16-11527-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Termination Order at paras. 8-12 ([Monitor's Website](#)).

Re: Toys “R” Us Canada Ltd. et al (9 May 2018), Toronto CV-17-00582960-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Discharge Order at para 24 ([Monitor's Website](#)).

Re JTI-MacDonald Corp., 2010 ONSC 4212 at para. 19 ([CanLII](#)).

C. Payment of the Surrender Fee Should be Approved

32. The CCAA Debtors submit that this Court should approve the payment of the surrender fee for the partial surrender of space at RGN Ontario L LP’s Centre pursuant to the LAA between RGN Ontario L LP and 5200 Yonge.

33. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. CCAA courts often order payments to creditors outside of a plan of arrangement.

Nortel Networks Corp. Re, 2014 ONSC 4777 at paras. 53-56 ([CanLII](#)).

AbitibiBowater, (Re), 2009 QCCS 6461 at para. 71 ([CanLII](#)).

34. In *AbitibiBowater*, Justice Gascon approved a distribution to creditors and in doing so, considered a number of factors, including that the proposed distribution would lead to savings in favour of the CCAA debtors.

AbitibiBowater at para. 75.

35. In this case, payment of the surrender fee is required in order to effect the partial surrender. Like in *AbitibiBowater*, the proposed payment will lead to savings in favour of the debtor, RGN Ontario L LP. The partial surrender will allow RGN Ontario L LP to “right size” its Centre and reduce its obligations under the Lease accordingly in order to permit the Centre to operate in a sustainable manner. Thus, payment of the surrender fee in exchange for the ongoing benefits provided by the LAA is in the best interests of RGN Ontario L LP.

36. The CCAA Debtors and the Monitor support paying the surrender fee. None of RGN Ontario L LP’s creditors are expected to be prejudiced as a result of this requested relief because the Landlord is the only arm’s length creditor of RGN Ontario L LP and supports the requested relief.

D. Certain Confidential Exhibits Should be Sealed

37. The CCAA Debtors seek to seal certain exhibits of the Sixth Feltman Affidavit which contain confidential and commercially sensitive information. Specifically, the CCAA Debtors seek to seal:

- (a) Confidential Exhibit “I” - the LAA entered into between RGN Alberta LP and Aspen; and
- (b) Confidential Exhibit “J” - the LAA entered into between RGN L LP and 5200 Yonge.

38. The *Courts of Justice Act* (Ontario) grants this Court the discretion to order that any document filed in a civil proceeding be treated as confidential and sealed and not form part of the public record.

Courts of Justice Act, R.S.O., 1990 c. C. 43, s. 137(2).

39. The test to determine if a sealing order should be granted is set out in *Sierra Club of Canada v. Canada (Minister of Finance)*:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 ([CanLII](#)).

40. Courts have applied the *Sierra Club* test in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.

Re Danier Leather Inc., 2016 ONSC 1044 at para. 82 ([CanLII](#)).

41. The LAAs contain confidentiality clauses that serve a *bona fide* commercial purpose. Disclosing the LAAs' contents could have significant negative effects on the CCAA Debtors ability to negotiate LAAs with other Landlords. The material contained in the LAAs could create certain expectations related to future LAAs with other Landlords. Further, other Landlords may be unwilling to enter into LAAs with the CCAA Debtors if they do not have confidence that the confidentiality provisions therein will be honoured. On the other side, disclosing the LAAs'

contents could have significant negative effects on the Landlords' ability to negotiate terms with other tenants for their properties.

42. The CCAA Debtors and the Monitor believe that no stakeholder will be prejudiced if Confidential Exhibit "I" and Confidential Exhibit "J" are sealed. The other Landlords involved in these CCAA Proceedings are not creditors of RGN Alberta LP and RGN Ontario L LP, and the LAAs do not affect the other CCAA Debtors.

PART V - ORDER SOUGHT

43. The Applicants respectfully request that this Court grant the requested relief substantially in the form of the draft Order attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of March 2021.



Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
ADDITIONAL APPLICANTS

RGN Alberta IV GP Inc.
RGN Alberta GP Inc.
RGN Alberta X GP Inc.
RGN Alberta XIII GP Inc.
RGN Alberta XIV GP Inc.
RGN Alberta XVII GP Inc.
RGN British Columbia XX GP Inc.
RGN British Columbia XVI GP Inc.
RGN British Columbia XXV GP Inc.
RGN British Columbia XXIV GP Inc.
RGN Manitoba II GP Inc.
RGN Ontario II GP Inc.
RGN Ontario L GP Inc.
RGN Ontario LV GP Inc.
RGN Ontario LVI GP Inc.
RGN Ontario LVIII GP Inc.
RGN Ontario LXII GP Inc.
RGN Ontario XI GP Inc.
RGN Ontario XLI GP Inc.
RGN Ontario XLII GP Inc.
RGN Ontario XLV GP Inc.
RGN Ontario XLVI GP Inc.
RGN Ontario XLVII GP Inc.
RGN Ontario XLVIII GP Inc.
RGN Ontario XXI GP Inc.
RGN Ontario XXIV GP Inc.
RGN Ontario XXIX GP Inc.
RGN Ontario XXV GP Inc.
RGN Ontario XXVIII GP Inc.
RGN Ontario XXXI GP Inc.
RGN Ontario XXXII GP Inc.
RGN Ontario XXXIII GP Inc.
RGN Quebec V GP Inc.
RGN Quebec VI GP Inc.
RGN Quebec XIV GP Inc.
RGN Quebec XVI GP Inc.
RGN Services Limited

SCHEDULE "B"
OTHER CCAA DEBTORS

RGN Alberta IV Limited Partnership
RGN Alberta Limited Partnership
RGN Alberta X Limited Partnership
RGN Alberta XIII Limited Partnership
RGN Alberta XIV Limited Partnership
RGN Alberta XVII Limited Partnership
RGN British Columbia XX Limited Partnership
RGN British Columbia XVI Limited Partnership
RGN British Columbia XXV Limited Partnership
RGN British Columbia XXIV Limited Partnership
RGN Manitoba II Limited Partnership
RGN Ontario II Limited Partnership
RGN Ontario L Limited Partnership
RGN Ontario LV Limited Partnership
RGN Ontario LVI Limited Partnership
RGN Ontario LVIII Limited Partnership
RGN Ontario LXII Limited Partnership
RGN Ontario XI Limited Partnership
RGN Ontario XLI Limited Partnership
RGN Ontario XLII Limited Partnership
RGN Ontario XLV Limited Partnership
RGN Ontario XLVI Limited Partnership
RGN Ontario XLVII Limited Partnership
RGN Ontario XLVIII Limited Partnership
RGN Ontario XXI Limited Partnership
RGN Ontario XXIV Limited Partnership
RGN Ontario XXIX Limited Partnership
RGN Ontario XXV Limited Partnership
RGN Ontario XXVIII Limited Partnership
RGN Ontario XXXI Limited Partnership
RGN Ontario XXXII Limited Partnership
RGN Ontario XXXIII Limited Partnership
RGN Quebec V Limited Partnership
RGN Quebec VI Limited Partnership
RGN Quebec XIV Limited Partnership
RGN Quebec XVI Limited Partnership

**SCHEDULE “C”
LIST OF AUTHORITIES**

Cases

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ([CanLII](#)).
2. *JTI-MacDonald Corp.*, 2010 ONSC 4212 ([CanLII](#)).
3. *Nortel Networks Corp. Re*, 2014 ONSC 4777 ([CanLII](#)).
4. *AbitibiBowater, (Re)*, 2009 QCCS 6461 at para. 71 ([CanLII](#)).
5. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 ([CanLII](#)).
6. *Danier Leather Inc.*, 2016 ONSC 1044 ([CanLII](#)).

**SCHEDULE “D”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Courts of Justice Act, R.S.O. 1990, c. C. 43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(RETURNABLE MARCH 11, 2021)**

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