

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO**

Applicants

**FIFTH REPORT TO THE COURT OF
RSM CANADA LIMITED, IN ITS CAPACITY AS MONITOR OF THE APPLICANTS**

DECEMBER 15, 2023

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I. INTRODUCTION

1. On August 25, 2023, Quality Rugs of Canada Limited and the other companies listed in Schedule A attached hereto (collectively referred to herein as “**QSG**” or the “**Applicants**” or the “**Companies**”) sought and obtained an initial order (the “**Initial Order**”), under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Companies’ proceedings pursuant to the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:
 - (a) appointed RSM Canada Limited (“**RSM**”) as monitor (in such capacity, the **Monitor**);
 - (b) granted a Stay of Proceedings against the Companies and Directors and Officers (as those terms are defined in the Initial Order) for the period to and including September 5, 2023 (the “**Stay Period**”);
 - (c) approved a debtor-in-possession credit facility (the “**DIP Facility**”) from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the “**DIP Lender**”) pursuant to which, among other things, the DIP Lender would provide an initial amount of up to \$3,500,000 in accordance with the Cash Flow Forecast (as defined in the Monitor’s First Report) to be advanced during the initial 10 days of the CCAA; and
 - (d) granted the Administration Charge, Directors’ Charge, DIP Lenders’ Charge, Financial Advisor’s Charge and Lien Charge (all defined in the Initial Order).

A copy of the Initial Order is attached hereto as **Appendix “A”**.

3. On September 5, 2023, the Initial Order was amended and restated (the “**ARIO**”), which, *inter alia*: (i) extended the Stay Period to October 31, 2023; and (ii) provided for borrowings under the DIP Facility to be increased to but not exceed

\$7 million, unless permitted by further order of the Court. A copy of the ARIO is attached hereto as **Appendix “B”**.

4. On October 30, 2023, the Monitor was informed by the potential purchaser of QSG’s assets that the transaction would not be proceeding. The Monitor issued its Third Report dated October 30, 2023 (the “**Third Report**”).
5. On October 31, 2023, the Court issued an Endorsement (the “**October 31st Endorsement**”) (i) appointing the Fuller Landau Group Inc. (“**FLGI**”) as receiver (the “**Receiver**”) over the assets and undertakings of QSG on the basis of a “bare bones” receivership order to be submitted to the Court, and (ii) extended the stay of proceedings in the CCAA Proceedings until November 24, 2023 pending a hearing to address various transition issues.
6. On November 2, 2023, the Court issued a further Endorsement (the “**November 2nd Endorsement**”), which clarified certain issues relating to priority of the various Court-ordered charges.
7. On November 8, 2023, the Court issued Orders dated October 31, 2023: (i) extending the Stay Period in the CCAA Proceedings to November 24, 2023 and narrowing the mandate of the Monitor (the “**Stay Extension Order**”); and (ii) formally appointing the Receiver and setting out the powers and duties of the Receiver (the “**Receivership Order**”).
8. On November 24, 2023, the Court issued a more fulsome receivership order in the receivership proceedings and an order in these proceedings approving the Fourth Report of the Monitor dated November 17, 2023 (the “**Fourth Report**”), approving the fees and disbursements of the Monitor and its counsel to the dates outlined in the Fourth Report, and extending the Stay Period until further order of the Court, largely to facilitate the narrow mandate of the Monitor to provide assistance in connection with certain ongoing litigation arising out of these Proceedings.
9. On December 7, 2023, a hearing was conducted to deal with a request from a group of suppliers to QSG (the “**Suppliers**”) for the creation of a charge to protect

their interests, in priority to all of the Charges other than the Administration Charge and the Receiver's Charge.

10. On December 11, 2023, Justice Penny issued an Endorsement (the "**December 11th Endorsement**") arising from the December 7 hearing, specifically requesting input from the Monitor on an issue impacting the request of the Suppliers for a priority charge. A copy of the December 11th Endorsement is attached hereto as **Appendix "C"**.
11. Copies of the various materials pertaining to the CCAA Proceedings are available on the Monitor's website at <http://www.rsmcanada.com/quality-sterling-group> (the "**Monitor's Website**").

Purpose of Report

12. The purpose of this fifth report of the Monitor (the "**Fifth Report**") is to provide the Court with information pertaining to the fact that the word "trust" was deleted from the charging language found in the CCAA Model Initial Order. In paragraph 23 of the December 11th Endorsement, Justice Penny noted that the argument made by the Suppliers that the exclusion of the word "trusts" from paragraph 47 of the Initial Order and of the ARIO "surfaced for the first time in the Suppliers' reply factum". As a result, Justice Penny noted that the record lacked evidence of "for example, the circumstances giving rise to this deletion of the word "trusts", the intended business purpose of the deletion, who was involved in the negotiation of this issue and the drafting, who had notice of it, whether this divergence from the Model Order was specifically brought to the attention of other stakeholders and the Court, etc."
13. In paragraph 24 of the December 11th Endorsement, Justice Penny specifically stated that he would require input from the Monitor on this issue.

Terms of Reference

14. In preparing the Fifth Report and making the comments herein, the Monitor has relied upon its own records and those of its counsel, as well as discussions with

counsel to Ironbridge Equity Partners Management Limited (“**Ironbridge**”), the Suppliers, QSG and the Receiver (collectively, the “**Information**”).

15. To the extent that any of the Information may have been provided by other parties or was obtained from documents filed with the Court in this matter, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of any of the Information which may be financial in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook*.
16. Capitalized terms not otherwise defined herein are as defined in the pre-filing reports of RSM, the First Report, the Second Report, the Third Report, the Fourth Report, the various Orders of the Court and other documentation filed in respect of the CCAA Proceedings, which can be found on the Monitor’s Website.
17. Unless otherwise stated, all dollar amounts contained in the Fourth Report are expressed in Canadian dollars.

II. EVENTS PRIOR TO AUGUST 4 HEARING

18. It is important to remember the context of these proceedings from the very outset. They began with competing CCAA applications, and the Company did not begin to draft its own CCAA materials until after Waygar Capital Inc. (“**Waygar**”) had served a CCAA application returnable on the original August 4, 2023 hearing date. The Company served its competing Notice of Application and the original affidavit of John Pacione late on August 3, 2023 by way of separate emails. At approximately 6:45 pm on August 3, 2023, the fulsome Application Record of QSG was served, including a draft of the proposed CCAA Initial Order and a blackline to the Model Order.
19. The Monitor and its counsel saw the first draft of a CCAA initial order from counsel for QSG on August 1, 2023. The draft initial order provided by QSG’s counsel had not removed the word “trusts” from the relevant charging language; however, the

draft order needed work in many respects. Given the significant work required for QSG's counsel to complete its CCAA application materials and to continue discussions with Ironbridge and Waygar, counsel to the Monitor was asked to review and revise the draft initial order.

20. The Monitor's counsel was relatively new to the matter, with little factual background; however, the Monitor and its counsel were aware of a few simple facts. First, it quickly became clear that there would be no request for a DIP loan at the August 4th hearing. Second, the Company had approximately \$6 million in its blocked bank account which it was hoping to access for operations and to fund professional fees. Third, given what was now a public fight with no locked up proposed purchaser or DIP lender, the Company was concerned to not upset its suppliers generally.
21. The draft initial order provided to the Monitor did not make any provision for a lien regularization approach. The first thing that the Monitor did was consider other simple alternatives, notably the case involving FirstOnSite from 2016. A copy of the Amended and Restated Initial Order in the FirstOnSite case is attached hereto as **Appendix "D"**. Accordingly, the draft initial order was edited to contemplate suppliers being denied the right to lien owners' property, but to rather file notices of lien with the Monitor and QSG, and to be given a lien charge.
22. The draft initial order provided to the Monitor also included very generic DIP loan provisions, which were removed from the draft in advance of the August 4, 2023 hearing (the "**August 4th Hearing**"). Instead, the only charges which were included in the draft initial order for the August 4th Hearing were an Administration Charge, a Directors' Charge and a charge in favour of Alvarez & Marsal for its success fee.
23. As part of these amendments to the draft initial order, recognizing that QSG had approximately \$6 million in its blocked account, mindful of the desire to be seen to be working with the suppliers, and recognizing that QSG would have to return later for approval of DIP financing, assuming that its application was successful, what is now paragraph 47 of the draft order was amended to (i) remove the word "trusts"; (ii) add the usual proviso protecting secured creditors who had not been served;

and (iii) add language from paragraph 51 of the FirstOnSite Amended and Restated Initial Order regarding suppliers.

24. Prior to the service of the QSG CCAA Application Record, the draft initial order had not been shared with anyone other than QSG and the Monitor, and counsel for QSG had provided few comments on the draft. These provisions were not the result of any negotiations or discussions with either Ironbridge or the Suppliers (who were not yet active in the case). Rather, this was a simple form of draft order prepared in the hope of the QSG application being successful on August 4, 2023, with the expectation that the \$6 million or some component of it would be available to QSG. Effectively, this form of draft initial order was intended to be merely a bridge to getting a firm deal with Ironbridge by the time that the Comeback Hearing would have taken place.
25. Attached hereto as **Appendix “E”** are copies of the draft initial order which was served on August 3, 2023, as well as a blackline to the Model Order.
26. Late on the afternoon of August 3, 2023, prior to the August 4th Hearing, QSG and the Monitor learned that Waygar had swept from the blocked account all of the approximately \$6 million that QSG had planned to use for its operations. The expected availability of those funds had been a significant part of the decision to remove the word “trusts” from the draft CCAA initial order in securing the 3 charges noted above pending any Comeback Hearing.

III. EVENTS BETWEEN AUGUST 4 HEARING AND AUGUST 25 HEARING

27. At the outset of the August 4th Hearing, it was clear that Justice Penny did not have sufficient evidence, briefing materials or time to deal with the competing CCAA applications, and the parties agreed to a two (2) week interim stay to provide time for them to either advance a deal with Ironbridge or to litigate the competing applications. Neither the Waygar CCAA application nor the QSG CCAA application was argued that day, and no one discussed or walked through any of the draft orders filed by either party in support of their applications.

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28. Rather, following guidance from Justice Penny, the parties agreed upon the August 4, 2023 order (the “**August 4th Order**”) to provide a two (2) week stay of proceedings to protect the Company and to approve limited interim financing from Waygar. That order was expressly not a CCAA initial order, and no formal court officer was appointed thereunder, but both RSM and FLGI had rights to information to assist the parties.
 29. Negotiations between QSG, Waygar and Ironbridge ensued. Those negotiations were not completed by August 18, 2023. Accordingly, by order dated August 18, 2023, the terms of the August 4th Order were extended through August 23, 2023. Once again, on August 23, 2023, the matter was extended by further order to August 25, 2023.
 30. Throughout most of this time, the discussions revolved around the business terms of the transaction, including the DIP financing terms. RSM and its counsel were not actively involved in most of those discussions, but were involved in reviewing the terms of the proposed DIP financing as it was evolving. With little to no funding available for the professionals, very little time was spent considering or advancing the draft CCAA initial order in the absence of an agreed upon business deal.
 31. Finally, on August 23, 2023 there was sufficient movement on the potential deal with Ironbridge that drafts of the letter of intent (“**LOI**”) and DIP term sheet began to be reviewed and commented on in earnest. On the afternoon of August 24, 2023, QSG’s counsel sent a revised draft of the initial order to the Monitor and its counsel for review, containing relatively few edits to the prior version which had included the possibility of a DIP loan.
 32. The first time that the Monitor’s counsel shared the draft CCAA initial order with Ironbridge’s counsel for comment was on August 24, 2023. Limited comments were received from them and were reflected in the draft initial order. None of those comments dealt with the word “trusts” or what is now paragraph 47. However, the focus at that time was still on finalizing the broader deal documents and, in particular, the LOI and certain arrangements between the principals of QSG and each of Ironbridge and Waygar.

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33. Discussions on open points continued well into the evening and, at 1:53 am on August 25, 2023, QSG's counsel emailed the Service List to confirm the Zoom particulars for the hearing which was scheduled for 10:00 am, to advise that there were "some issues still requiring confirmation between the parties in the morning" which needed to be settled before the hearing could proceed, and attaching a draft of the initial order, but not a blackline to the Model Order. Attached hereto as **Appendix "F"** is a copy of this email from QSG's counsel, as well as the form of draft initial order which had been attached to that email.

IV. THE AUGUST 25 HEARING

34. Before the hearing on August 25, 2023 was scheduled to begin, there were a great many emails and telephone calls to try to confirm that all of the business terms of the deals between QSG, Ironbridge and Waygar had been settled and all documents executed, so that the QSG CCAA application could proceed effectively on consent. In the absence of signed documents, many of the court materials could not be finalized, including the Second Supplemental Pre-Filing Report of the Monitor.
35. At 10:00 am on August 25, 2023, the hearing began and, by agreement among all parties, the hearing was stood down until 11:00 am to allow matters to be concluded. When the hearing resumed at 11:00 am, the parties still were not in a position to file materials with signed documents. However, there was enough comfort with the likelihood of a deal that, at the request of Justice Penny, submissions were made by the Monitor's counsel as to the background and the principal terms of the proposed relief. When those submissions concluded, the matter was once again stood down, this time until 12:30 pm, to allow the documents to hopefully be executed and served.
36. At approximately 12:00 pm, as had been suggested during submissions, the Monitor's counsel sent a draft of the Monitor's Second Supplemental Pre-Filing Report to Justice Penny so that he could review it. The hearing re-convened at 12:30 pm, but again the materials were not all available to proceed. Justice Penny

left the Zoom call, but all other counsel remained on the line and many counsel discussed or made requests for changes or suggested edits to the draft initial order, mostly with respect to issues relating to the lien notice provisions. That process continued for some time.

37. The signed and final version of the Second Supplemental Pre-Filing Report of the Monitor, together with its appendices, was then provided to Justice Penny and the Service List at approximately 1:00 pm.
38. The draft initial order, now bearing comments from certain counsel on the Zoom call, was sent to Justice Penny at 1:15 pm with an email to the effect that the matter was ready to proceed. Attached hereto as **Appendix “G”** is a copy of the email from Monitor’s counsel to Justice Penny delivering that draft of the initial order.
39. That same version of the draft initial order, together with a blackline to the version from the prior day, was circulated to the Service List at 1:20 pm. Attached hereto as **Appendix “H”** is an email from Monitor’s counsel to the Service List delivering those versions of the draft initial order.
40. The hearing re-convened shortly after 1:15 pm and counsel for the Monitor walked Justice Penny through a blackline of the draft initial order against the Model Order, which blackline had not yet been circulated to the Service List and was shared on the Zoom screen to be reviewed. In light of certain time constraints that day, the review against the Model Order did not highlight every word change from the Model Order, but rather focused on bigger picture edits and why they were made, such as the lien regularization issues. The fact that the word “trusts” was not in paragraph 47 of the draft initial order was not specifically brought to the attention of Justice Penny or otherwise discussed during that review of the Model Order. At the end of that review of the draft initial order, Justice Penny was satisfied and issued the Initial Order.
41. Simply put, the process of finalizing documents and proceeding to seek the Initial Order in this case was an exercise of real time litigation under considerable time constraints and pressure, with the draft initial order being the ongoing subject of

comment even during the hearing. At no time prior to the hearing was a blackline of the draft initial order to the Model Order circulated to the Service List.

42. All of that said, at no point in any of the discussions or negotiations which the Monitor or its counsel had with either Ironbridge or QSG about the DIP Term Sheet was there ever a discussion or agreement that the DIP loan would not have priority over all manner of contractual or statutory security, liens or trusts. Frankly, those discussions were premised on the basis that all of the Charges would seek to have priority over those types of interests.
43. At that point in the Proceedings, without the comfort of the cash in the blocked account which had emboldened counsel for the Monitor and for QSG to remove the word “trusts” from the charging language on August 3, 2023, all of the beneficiaries of the Charges were aware that the principal source of recovery for them under any Charge would be from accounts receivable collections. The word “trusts” should have been re-inserted. There is no reason for that word to have been excluded, and the failure to re-insert it before August 25, 2023 was simply an oversight in the haste of dealing with the matter as it unfolded on August 24 and 25, 2023.
44. The Monitor also wishes to make clear that, at no point in the discussions regarding the form of the draft initial order were any of the Suppliers consulted on issues related to paragraph 47. There were a couple of counsel for suppliers making minor comments on the draft initial order during the Zoom call on August 25, 2023, and counsel for the LiUNA local had asked questions about the continuance of their grievances, but there had been no prior involvement with any of the suppliers on issues related to the priority of the Charges.

V. THE ARIO HEARING

45. After the Initial Order was issued, there were very few comments and concerns raised in regards to the Initial Order. Most of the comments, and particularly from the supplier community, revolved around the lien regularization aspects of the Initial Order and its deficiencies. Accordingly, the Monitor and QSG undertook to

try to negotiate a stand-alone Lien Regularization Order to deal with those claims in a more fulsome way and the manner of seeking to properly protect and/or deal with them.

46. In connection with the DIP and the ranking of the Charges, no changes were suggested to the Initial Order provisions in regard to the word “trusts”. Once again, that was not a decision made in furtherance of the negotiated business deal. Rather, parties appear to have been focused on changes made from the Initial Order to the draft ARIO.
47. Counsel for Ironbridge made a number of requests for edits to the Initial Order, almost all of which were made. One such request was for a change in the concluding language of paragraph 47 of the Initial Order. Exclusion (b) at the end of paragraph 47 provides that the Charges’ priority is modified as against “any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.” On August 25, 2023, while the Court was being taken through the draft initial order, counsel for Ironbridge requested that the word “Encumbrances” in that passage be changed to the word “Charges”. Since that email was received too late to be effected on August 25, 2023, counsel for the Monitor had advised counsel for Ironbridge that the change would be made before the ARIO hearing. While the changes requested in that email were generally made by counsel for the Monitor on or about August 29, 2023, as a result of confusion, that specific word change did not make its way into the final version of the ARIO which was issued by the Court. Attached hereto as **Appendix “I”** is a copy of an email received from Natalie Renner at 1:37 pm on August 25, 2023, together with her comments on the draft initial order, including a request for this word change.

VI. CONCLUSION

48. The purpose of this Fifth Report is not to make a recommendation to this Honourable Court, but rather to provide the Court with evidence from the Monitor

as to the reason why the word “trusts” was removed from the charging provisions of in the Initial Order and the ARIO.

All of which is respectfully submitted to this Court as of this 15th day of December 2023.

RSM CANADA LIMITED

solely in its capacity as Proposed CCAA
Monitor of the Quality Sterling Group and
not in its personal or corporate capacity



Per: Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

APPENDIX A

Court File No. CV-23-00703933-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 25TH
MR JUSTICE PENNY) DAY OF AUGUST, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit"), the supplemental affidavit of John Pacione sworn August 17, 2023, the second supplemental affidavit of John Pacione sworn August 22, 2023, the Application Record and the Supplementary Application Record filed by Waygar Capital Inc. ("Waygar"), including the affidavit of Don Rogers sworn July 24, 2023, the

supplementary affidavit of Don Rogers sworn August 3, 2023, the pre-filing report of Fuller Landau Group Inc., dated July 25, 2023, the supplement to the pre-filing report of Fuller Landau Group Inc., dated August 3, 2023, the second supplement to the pre-filing report of the Fuller Landau Group Inc., dated August 16, 2023, the pre-filing report of RSM Canada Limited, dated August 3, 2023, the supplemental pre-filing report of RSM Canada Limited dated August 17, 2023, the second supplemental pre-filing report of RSM Canada Limited dated August 25, 2023 and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge Equity Partners (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. [intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of

this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or if agreed to between the Applicants, Waygar and Ironbridge, provided that Waygar's approval rights shall terminate upon the closing of the transaction contemplated by the Asset Purchase Agreement, to replace it with another substantially similar 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 Applicants 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 Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5A. THIS COURT ORDERS that, notwithstanding paragraph 5 hereof or the provision of any documents under which the Cash Management System operates, any disbursement of funds which may have been deposited into or accrued in the Blocked Account (as defined in the Affidavit of Don Rogers sworn July 24, 2023) shall be made only on the consent of the Monitor (as herein defined), and without the need for the consent of Waygar or its advisors, provided that the Monitor shall only approve the disbursement if the Monitor is satisfied, acting reasonably, that such disbursement is necessary to comply with any payment contemplated to be made under

this Order, including payments for suppliers of goods and services to the Applicants in the ordinary course of business and consistent with the Cash Flow Projections.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i)

employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants 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 Applicants to any of its creditors as of August 4th, 2023; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents and the DIP Term Sheet (each as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 5, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any

person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof (including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court. Upon delivering such Notices of Lien, the Lien Claims will be considered preserved and perfected and no further steps need be taken by the Lien Claimant.

20. THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over any Property of the Applicants relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value and in accordance with the priority that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge"), and shall rank in priority in accordance with the priority afforded to such Charge at law.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and approve reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party

from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

27. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. THIS COURT ORDERS that, 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) the Applicants' 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 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit

of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (f) [intentionally deleted];
- (g) [intentionally deleted];
- (h) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) 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
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants 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 Applicant may agree.

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

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel

to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. For clarity, in no circumstances shall Waygar be responsible for the Financial Advisor's monthly Work Fee (as that term is defined in the A&M Engagement Letter), including, without limiting the foregoing, by way of payment from the proceeds of sale of the Applicants' assets (including accounts receivable collections).

37. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed \$3,500,000 unless permitted by further Order of this Court.

40. THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 25, 2023 (the “DIP Term Sheet”), filed, and the definitive documentation to be entered into pursuant thereto.

41. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order

41A. THIS COURT ORDERS that the Applicants shall deposit all Advances (as defined in the DIP Term Sheet) into a bank account designed by the Borrower (the “Borrower’s Account”) and utilized by the Borrower in accordance with the terms of the DIP Term sheet and other Definitive Documents.

42. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender’s Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings made on August 4, 2023. The DIP Lender’s Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, may immediately exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

44. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, and the DIP Lender's Charge, as among them, shall be as follows:

First – the DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time:

Second – the Administration Charge (to a maximum amount of \$750,000);

Third – the Directors' Charge (to a maximum amount of \$600,000);

Fourth – the DIP Lender's Charge (to a maximum of \$3,500,000); and

Fifth – the Financial Advisor’s Charge (to a maximum of \$950,000).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge, the Financial Advisor’s Charge, the DIP Lender’s Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a “secured creditor” as defined in the CCAA that has not been served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

48. THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

50. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Charges") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 Applicants 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.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. THIS COURT ORDERS that service of the Applicants' Application Record and Supplementary Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner

prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

57. THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender's Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants are directed to identify and segregate into a separate bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

58. THIS COURT ORDERS that nothing herein impacts or detracts from the provisions of the Order of this Court made on August 4, 2023 in these proceedings and in the Waygar application (the "August 4 Order"); provided, however, that upon the filing with this Court of a certificate of the Monitor confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order has been paid in full net of the amount of \$707,000, the Interim Lender's Charge in favour of Waygar in the August 4 Order shall be finally discharged and no longer enforceable.

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

60. THIS COURT ORDERS that 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 the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

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

62. THIS COURT ORDERS that each of the Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

collectively, The Applicants

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

INITIAL ORDER

Gardiner Roberts LLP
Bay Adelaide Centre
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Christopher Besant (LSO# 248820)
Email: cbesant@grllp.com
Tel: (416) 865 4022

Lawyer for the Applicants

APPENDIX B

Court File No. CV-23-00703933-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 5TH
MR JUSTICE PENNY) DAY OF SEPTEMBER, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

**AMENDED AND RESTATED INITIAL ORDER
(Amending Initial Order Dated August 25, 2023)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit"), the supplemental affidavit of John Pacione sworn August 17, 2023, the second supplemental affidavit of John Pacione sworn August 22, 2023, the affidavit of John Pacione sworn September 2, 2023 and the Exhibits

thereto (the “Third Pacione Affidavit”), the Application Record and the Supplementary Application Record filed by Waygar Capital Inc. (“Waygar”), including the affidavit of Don Rogers sworn July 24, 2023, the supplementary affidavit of Don Rogers sworn August 3, 2023, the pre-filing report of Fuller Landau Group Inc., dated July 25, 2023, the supplement to the pre-filing report of Fuller Landau Group Inc., dated August 3, 2023, the second supplement to the pre-filing report of the Fuller Landau Group Inc., dated August 16, 2023, the pre-filing report of RSM Canada Limited, dated August 3, 2023, the supplemental pre-filing report of RSM Canada Limited dated August 17, 2023, the second supplemental pre-filing report of RSM Canada Limited dated August 25, 2023, the first report of RSM Canada Limited as the Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”), and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge Equity Partners (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

1. THIS COURT ORDERS that the time for service of the Applicants’ Notice of Motion and the Motion Record and the Supplementary Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants 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

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or if agreed to between the Applicants, Waygar and Ironbridge, provided that Waygar's approval rights shall terminate upon the closing of the transaction contemplated by the Asset Purchase Agreement, to replace it with another substantially similar 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 Applicants 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 Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date

of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA and the DIP Term Sheet, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants 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 Applicants to any of its creditors as of August 4, 2023; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents and the DIP Term Sheet (each as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord

shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including October 31, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof

(including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court. Upon delivering such Notices of Lien, the Lien Claims will be considered preserved and perfected and no further steps need be taken by the Lien Claimant.

20. THIS COURT ORDERS that, upon serving a Lien Notice, subject to paragraph 21, the Lien Claimant shall be entitled to a charge over any Property of the Applicants, other than the Borrower's Account, relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value and in accordance with the priority that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge"), and shall rank in priority in accordance with the priority afforded to such Charge at law.

20A. THIS COURT ORDERS that, subject to paragraph 21, any Lien Claim preserved by any person in respect of a project in which the Applicants are a contracting party, which has not been bonded off as of the date of this order, is hereby vacated on terms that any person having such a Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 19 of this order on the date of preservation of such Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 20 of this order (as may be subsequently amended), provided that the vacating and preservation of such Lien Claims pursuant to this paragraph shall not be deemed to cure any default triggered by the filing of a lien under any contract with any owner or contracting party of the Applicants.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and approve reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends

seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

27. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. THIS COURT ORDERS that, 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) the Applicants' 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 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (f) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) 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
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants 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 Applicant may agree.

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

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. For clarity, in no circumstances shall Waygar be responsible for the Financial Advisor's monthly Work Fee (as that term is defined in the A&M Engagement Letter), including, without limiting the foregoing, by way of payment from the proceeds of sale of the Applicants' assets (including accounts receivable collections).

37. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from

and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the “DIP Facility”) from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed \$7,000,000 unless permitted by further Order of this Court.

40. THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 25, 2023 (the “DIP Term Sheet”), filed, and the definitive documentation to be entered into pursuant thereto.

41. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order

41A. THIS COURT ORDERS that the Applicants shall deposit all Advances (as defined in the DIP Term Sheet) into a bank account designed by the Borrower (the “Borrower’s Account”) and utilized by the Borrower in accordance with the terms of the DIP Term sheet and other Definitive Documents.

42. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, including the Borrower's Account, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings made on August 4, 2023. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, may immediately exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

44. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, and the DIP Lender's Charge , as among them, shall be as follows:

First – the DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time;

Second – the Administration Charge (to a maximum amount of \$750,000);

Third – the Directors' Charge (to a maximum amount of \$600,000);

Fourth – the DIP Lender's Charge (to a maximum of \$7,000,000); and

Fifth – the Financial Advisor's Charge (to a maximum of \$950,000).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, the DIP Lender's Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and the Borrower's Account, as applicable, and such Charges (except for the Lien Charge, which is dealt with in paragraph 20) shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

49. THIS COURT ORDERS that the Charges 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") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 Applicants 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.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

52. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

53. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

54. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

55. THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender's Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants are directed to identify and segregate into a separate bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

56. THIS COURT ORDERS and the Interim Lender's Charge in favour of Waygar made pursuant to the August 4 Order is fully discharged and no longer enforceable as the Monitor has filed with this Court a certificate, confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order was paid in full net of the amount of \$707,000.

57. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


58. THIS COURT ORDERS that 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 the Applicants, the Business or the Property.

59. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

60. THIS COURT ORDERS that each of the Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

62. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line.

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

collectively, The Applicants

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

AMENDED AND RESTATED INITIAL ORDER

Gardiner Roberts LLP
Bay Adelaide Centre
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Christopher Besant (LSO#248820)
Email: cbesant@grllp.com
Tel: (416) 865 4022

Lawyer for the Applicants

APPENDIX C



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00703933-00CL

DATE: Dec 07, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **QUALITY RUGS OF CANADA LIMITED v. WAYGAR CAPITAL INC.,
AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P. et al**

BEFORE: **JUSTICE PENNY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Kenneth Kraft	Receiver	kenneth.kraft@dentons.com
Sara-Ann Wilson		sara.wilson@dentons.com
Ken Pearl	The Fuller Landau Group Inc. (the Receiver)	kpearl@fullerllp.com
Matilda Lici	Waygar Capital Inc., as agent for Ninepoint Canadian Senior Debt Master Fund L.P. (Applicant)	mlici@airdberlis.com
Chris Besant	Lawyer to certain former Directors & Officers of Quality Rugs of Canada Limited	cbesant@grllp.com
Haddon Murray	Torlys Inc; Metropolitan Hardwood Floors (Eastern) Inc.; Lauzon – Planchers De Bois Exclusifs Inc.; Ceratec Inc.; and Boa- Franc SENC/GP	haddon.murray@gowlingwlg.com
Joe Latham	CCAA Monitor	jlatham@goodmans.ca
Bryan Tannenbaum	RSM Canada Limited (CCAA Monitor)	bryan.tannenbaum@rsmcanada.com
Arif Dhanani		arif.dhanani@rsmcanada.com
Michael Farace	GG Eight Cumberland Inc.	Michael.Farace@devrylaw.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Gerard Borean	Lawyer for Ciot Creditor	gborean@parenteborean.com
Devon Goyo		dgoyo@parenteborean.com
Derek Rici Natalie Renner	Ironbridge Equity Partners Management Limited	dricci@dwpv.com nrenner@dwpv.com
Andrew Winton	Alvarez & Marsal Canada Securities ULC.	awinton@lolg.ca
Demetrios Yiokaris	LIUNA Local 183	dyiokaris@kmlaw.ca
Michael Mandarino Daniel Wright	United Brotherhood of Carpenters and Joiners of America	mmandarino@rousseauazzuca.com dwright@rousseauazzuca.com
Eric Dwyer	CDS Distribution Inc.	edwyer@brazeauseller.com
Danny Nunes	Fuzion Flooring	danny.nunes@dlapiper.com

ENDORSEMENT OF JUSTICE PENNY

[1] This motion is brought in relation to concurrent CCAA and receivership proceedings in relation to QSG, one of Canada’s largest flooring contractors on large office and condominium construction projects. At the time of its CCAA filing, QSG was providing flooring contracting services to around 100 construction projects in Canada, mostly in Toronto.

[2] Various Suppliers of flooring material to QSG in respect of projects in Alberta, British Columbia and Ontario, move for an order:

- (a) declaring that certain funds owing to the Suppliers on account of improvements constitute trust funds;
- (b) granting a super-priority charge (a “trust and lien charge” or “TLC”) on all the property of QSG to secure amounts owing regarding: (i) any proven lien claim to the extent of any holdback; and, (ii) any proven trust claim that existed as of August 4, 2023;
- (c) ordering that the trust and lien charge ranks in priority to all charges or security interests attaching to QSG’s property with the exception of two prior court-ordered charges, the Administration charge and the Receiver’s charge; and
- (d) ordering the Receiver to keep accounts of all amounts received so that the funds can be traced on a project-by-project basis.

[3] Certain Suppliers, but not all, also seek an order that the Receiver retain all holdback funds received from any project in a separate account, to be paid out in respect of proven claims.

[4] Suppliers to QSG at numerous projects are owed pre-filing amounts for the supply of materials which are unpaid. They assert lien and trust claims under provincial law. Since the CCAA filing, work has continued at these projects but Suppliers have been paid on a COD basis. During the CCAA proceedings, it was proposed that Suppliers' pre-filing claims would be dealt with through a claims process within the CCAA proceedings. Weeks of negotiation between the stakeholders did not produce a consensus, and no agreement was ever reached on the terms and conditions of that process.

[5] To put the current motion in context, a brief explanation of the background is required.

Background

[6] On August 25, 2023 I made an initial order under the CCAA which, among other things, imposed a stay of all proceedings against QSG. An amended and restated initial order (ARIO) was made on September 5, 2023. QSG hoped to conclude a sale transaction under which Ironbridge would acquire QSG's business. However, by late October, Ironbridge terminated all negotiations. This left QSG with no choice but to submit to the alternative relief, sought by its principal secured creditor, Waygar, for the appointment of a receiver. I made the initial receivership order on October 31, 2023 and granted an amended receivership order on November 24, 2023. The Monitor, although not yet discharged, now has only a support and transitional role.

[7] By far the largest asset of QSG is its accounts receivable. In order to maximize realization of this asset, both the Monitor under the CCAA and now the Receiver concluded that all viable projects need to be completed. Since QSG is insolvent, cash to finance project completion has to come from ongoing accounts receivable for ongoing work done or from some other source. Under the CCAA, the projected shortfall in cash flow was funded by Ironbridge as a DIP lender, in relation to which it was granted a DIP lenders' charge. The charges granted in the initial order and the ARIO are, in order of priority: 1) the Administration charge; 2) the D&O charge; and 3) the DIP lenders' charge. The committed DIP facility of \$5 million was fully drawn down and is, therefore, no longer available. Ironbridge, having withdrawn from its proposed purchase, is not prepared to advance further funds. Neither Waygar, nor anyone else, is prepared to advance further funds either. Accordingly, for the Receiver to pursue its value-maximizing strategy, it must fund the expense of completing projects entirely from ongoing accounts receivable. All ongoing post-filing supply of flooring materials to the projects continues to be on a COD basis.

The Suppliers' Motion

[8] The Suppliers say their pre-filing accounts for delivery of materials to QSG projects created a trust (for example, by virtue of s. 8 of Ontario's *Construction Act*) which was imposed on the owner's payment obligation to pay QSG, and the payments themselves, for those

improvements. However, post-filing, QSG did not use progress payments from owners to pay its pre-filing liabilities to Suppliers on those specific projects. Rather, QSG utilized the payments to fund the cost of ongoing deliveries of materials and labour to all its projects, without discrimination as to the source of the funds. In the normal course, this would have given rise to lien and trust claims, and related proceedings. However, due to the CCAA stay, the Suppliers could not pursue those remedies and, due to the passage of time and the difficulty of tracing payments from one owner to materials purchased for projects of other owners, these remedies are realistically no longer available in any event.

[9] The receivership order establishes a claims process to determine the Suppliers' lien and trust claims. The deadline for filing such claims is December 21. The purpose of the Suppliers' motion is to secure, for all proven lien and trust claims, a charge against net realizations ultimately made in the course of the Receiver's asset realizations (and certain related collateral relief). The scope of the Suppliers' motion changed since its initial inception. By the time of oral argument, no stakeholder seriously challenged the concept of a charge to protect the Suppliers' proven claims. The areas of disagreement essentially came down to:

- 1) the scope of the charge;
- 2) whether the Receiver should, as it had requested, have access to holdbacks that may be paid in order to finance its ongoing realization efforts (some of the Suppliers are willing to agree to this, with appropriate protections; others are not); and,
- 3) the priority to be afforded the trust and lien charge vis-à-vis the other existing priorities.

Should A Trust and Lien Charge Be Granted?

[10] I agree with the Suppliers that their rights under provincial construction lien legislation have been suspended by the CCAA and receivership proceedings, to their detriment. Enforcement rights they would otherwise have had were not available to them. As Mr. Murray has submitted, the use of accounts receivable from specific projects to finance ongoing operations on other projects has had the effect of making the Suppliers, to the extent of their unpaid pre-filing invoices, involuntary, unsecured DIP lenders.

[11] It was always contemplated that a "replacement" remedy would be available to the Suppliers within the CCAA proceedings. Negotiations were ongoing when the proposed sale, which was the basis for the proposed CCAA restructuring, was terminated. Now, the Receiver is faced with the same problem QSG and the Monitor had; ongoing accounts receivable are required to pay for ongoing supply of labour and materials to finish all viable projects, in the expectation that this is the best way to maximize realizations for the benefit of all stakeholders. Suppliers with proven lien and trust claims have a legitimate interest in the priority of ultimate distributions from the Receiver's realizations. They should not be put (to the extent now possible), in relation to realizations on accounts receivable, for example, in any worse position than they would have been in had they been permitted to assert lien and trust claims in the ordinary course.

[12] I therefore agree with the Suppliers that an appropriate remedy, in the circumstances, is to order a trust and lien charge (TLC) in favour of the Suppliers' proven trust and lien claims. As noted earlier, no one seriously opposed this relief in concept.

Scope of the Charge

[13] The Suppliers' proposed order granting the TLC makes it clear that the charge is only in relation to *proven* claims. This is appropriate because, of course, even in the ordinary course the Suppliers would not be granted a remedy in the absence of proven claims. It is premature at this point for the court to be making any declarations about whether certain funds are or are not subject to a trust. The claims process will determine whether there are proven claims. I am in no position to say, on this record, that there are or are not proven trust claims. The provincial statutes say what they say. Whether the Suppliers' evidence will bring them within the scope of that legislation is not before me on this motion. I therefore decline to grant any declaratory relief at this stage.

[14] As I understand it, the concern of some stakeholders, forcefully articulated by Waygar, is that the Suppliers should only receive the priorities (or equivalent relief) they would have had under the existing legislative structure. They should not receive any remedy in these proceedings that would put them in a better position than they would have been under the applicable legislation.

[15] While there was little discussion of the details of the Suppliers' proposed TLC order, one area flagged by Waygar was that the proposed order would purport to grant the Suppliers a charge over all of the "property" of QSG. This, Waygar submits, would be overreaching because, under the trust provisions in the legislation, the trust applies only to the accounts receivable owing, and the payments made, to QSG from the owner, not to "any" or "all" of QSG's property.

[16] I tend to agree with Waygar's point but, because there was so little focus on the specific details of the proposed order itself, I prefer to leave that issue to the parties to negotiate with the benefit of the court's direction on the more threshold, substantive issues.

Ability to Utilize the Holdbacks

[17] The issue here is that holdbacks (typically 10%) are required to be withheld by the owners on all payments, pending final completion. The owners do not release these funds until they are satisfied that there are no claims from anywhere in the construction "pyramid"; they are cautious because owners can be found liable to lien claimants for holdback funds that were wrongly paid directly to the contractor, if it turns out those funds did not make it into the pockets of the relevant lien claimant.

[18] Some Suppliers take the view that the holdbacks are sacrosanct and, under no circumstances, should they be diverted to other purposes. The Suppliers, like other stakeholders, are not guaranteed that the Receiver's strategy is going to pan out; there is always a risk (hopefully small) that, at the end of the day, the efforts to work out the projects will not produce

sufficient net realizations to pay all the Suppliers' claims. Thus, some Suppliers are of the opinion that the holdbacks are an existing, secure pot of funds that should not be put at risk at all.

[19] As the argument on this issue unfolded, it seemed to me it is somewhat of a red herring. The Receiver is not asking for an order that owners disgorge holdbacks before project completion or in the face of outstanding claims. As a practical matter, owners will not pay holdbacks in the face of outstanding claims. The claims procedure calls for all claims to be submitted by December 21, 2023. Thus, by that date the Receiver will know which projects are subject to claims and which are not. Suppliers are only entitled to holdbacks in respect of projects to which they have provided improvements. The reality is that the Receiver will almost certainly never have access to holdbacks in respect of projects which are subject to lien and trust claims. I take the view that if, somehow, the Receiver were to come into possession of holdback payments regarding projects subject to claims, the Receiver should hold and preserve these funds in a separate account and should not knowingly utilize these funds, absent further order of the court, to pay the general, ongoing costs of completing other projects. But, as I have said, this seems an entirely unlikely scenario in any event. In short, the Receiver should not utilize any holdback funds for general purposes unless it is clear that there are no lien claimants against the project for which the holdback has been paid.

The Relative Priority of the TLC in Relation to the D&O Charge and the DIP Lenders' Charge

[20] The Suppliers propose that the TLC rank second, only behind the Administration charge and the Receiver's charge. They argue that the use of accounts receivable, paid by owners in respect of unpaid pre-filing Supplier improvements, to fund ongoing operations with other owners and projects, and the failure to transfer those payments directly to the Suppliers to those projects, was a breach of trust. They further argue that, as trust funds, these accounts receivable do not constitute "property" of QSG. Thus, the Suppliers argue, the D&O charge and the DIP lenders' charge over the property of QSG cannot fall upon the trust funds, which are not QSG's property.

[21] The applicable law clearly provides that construction-related trusts under provincial law can survive in an insolvency, although the provisions of provincial law do not *necessarily* prevail. The relationship between the two may engage the paramountcy doctrine, which, in turn, depends on whether, in the particular circumstances of each case, there is an operational conflict between the dictates of federal law (the CCAA and orders made pursuant thereto) and provincial law (such as s. 8 of the *Construction Act*). In this case, the D&Os and the DIP lender say there is an operational conflict because the orders of this court created a charge in their favour (which was acted upon to their detriment) and that it would be contrary to the purposes of the CCAA to interfere with that priority after the fact to give effect to a superior priority for subsequently proven claims under provincial law.

[22] One of the most significant arguments made by the Suppliers in opposition to the D&Os and the DIP lender on this point is that there is no operational conflict, and no reasonable reliance, because the Initial Order and the ARIO did not include “trusts” in the list of QSG’s “property” to which the D&Os’ and DIP lenders’ charges would apply. This was a conscious choice, say the Suppliers, because the language of the Commercial List Model Order does include the word “trusts” in that list. Someone consciously decided to leave it out of the relevant orders imposing the charges in this case. This, they say, completely eliminates the basis for arguing there is any operational conflict and that there was any reasonable reliance on the form of the orders made.

[23] Unfortunately, however, this argument, that the Initial Order and the ARIO excluded “trusts” from the reach of the D&O and DIP lenders’ charge, surfaced for the first time in the Suppliers’ reply factum, para. 11. As a result, the record lacks any evidence about what is now a critical point in the most important, disputed issue on this motion. Such evidence might have addressed, for example, the circumstances giving rise to this deletion of the word “trust”, the intended business purpose of the deletion, who was involved in the negotiation of this issue and the drafting, who had notice of it, whether this divergence from the Model Order was specifically brought to the attention of other stakeholders and the court, etc. I would have, in the ordinary course, also expected to hear from my “eyes and ears”, the Monitor and its counsel, on this issue because they were directly involved at the time. Further, because it was raised for the first time in reply, I do not feel it was properly addressed in written and oral submissions on the motion.

[24] Accordingly, I am not prepared to deal with this issue on the present record. I will require supplementary evidence from those directly involved, input from the Monitor and supplementary short written submissions (not to exceed five pages each, restricted to the specific issue I have identified) from those parties who filed material on this issue in the first instance.

Conclusion

[25] I would ask the Receiver to attempt to mediate an orderly timetable and date for this additional work to be done. If a case conference is required, one should be arranged as soon as possible. At the moment, I am unsure whether another attendance for further oral submissions will be required. I will decide this question after reading the additional material and hearing, perhaps again through the Receiver, the parties’ views on whether there should be additional oral submissions.

[26] The balance of my determinations set out above shall be effective as of the release of this endorsement.

[27] Finally, I would add that I am not specifying any specific provision of information by the Receiver to the stakeholders in my endorsement at this time. The Receiver has expressed a willingness to provide relevant information. Indeed, the Receiver concedes that providing information of the kind identified by the moving parties is part of its obligation to the court in

any event. It makes sense that that the Receiver should be able to account for all amounts received so that the funds can be traced on a project-by-project basis. I will leave it to the parties to negotiate further whether there are specific items that ought to be included in the ultimate order that will result from this motion and my determinations of the principal issues.

A handwritten signature in blue ink, appearing to read "Penny J." with a period at the end. The signature is stylized and cursive.

Penny J.

APPENDIX D

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR) THURSDAY, THE 21st
)
JUSTICE NEWBOULD) DAY OF APRIL, 2016

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 FIRSTONSITE G.P. INC.

Applicant

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by FirstOnSite G.P. Inc. ("**FirstOnSite GP**" or "**the Applicant**"), the general partner of FirstOnSite Restoration L.P. ("**FirstOnSite LP**", collectively with FirstOnSite GP, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario, pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Demos sworn April 20, 2016 and the Exhibits thereto (the "**Demos Affidavit**"), the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), dated April 20, 2016 (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this application, and on hearing the submissions of counsel for FirstOnSite, FTI, 3297167 Nova Scotia Limited (the "**Purchaser**"), Wells Fargo Capital Finance Corporation Canada, the Business Development Bank of Canada ("**BDC**"), BDC Capital Inc. and the DIP Lender (as defined further below) no one appearing for any other party although duly served as appears from the affidavit of

service, filed, and on reading the consent of FTI to act as the Monitor (in such capacity, the "**Monitor**"),

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that FirstOnSite GP is a company to which the CCAA applies. Although not an Applicant, FirstOnSite LP shall enjoy the benefits of the protection and authorizations provided to the Applicant by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that FirstOnSite GP 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

4. **THIS COURT ORDERS** that FirstOnSite 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**"). Subject to further Order of this Court, FirstOnSite shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. FirstOnSite is 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 the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that FirstOnSite shall be entitled to continue to utilize the central cash management system currently in place as described in the Demos Affidavit or, with the consent of the Monitor and the DIP Lender, 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 FirstOnSite 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 FirstOnSite and the DIP Lender, 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.

6. **THIS COURT ORDERS** that, subject to availability under the DIP Facility (as defined further below) and in accordance with the Budget as defined in the DIP Agreement (as defined further below), FirstOnSite shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, reasonable director fees, expenses and reimbursements payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by FirstOnSite in respect of these proceedings, at their standard rates and charges;

- (c) with the consent of the Monitor for amounts in excess of \$10,000 each, any amounts owing to or in respect of individuals working as independent contractors or temporary workers in connection with the FirstOnSite Business; and
- (d) amounts owing for goods and services actually supplied to FirstOnSite, or to obtain the release of goods contracted for, prior to the date of this Order, by suppliers with the consent of the Monitor for amounts in excess of \$10,000 each, if in the opinion of FirstOnSite, the supplier of the goods or services is critical to the FirstOnSite Business and ongoing operations of the FirstOnSite enterprise.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, FirstOnSite shall be entitled but not required to pay all reasonable expenses incurred by FirstOnSite in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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;
- (b) payment for goods or services actually supplied to FirstOnSite following the date of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by FirstOnSite in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, with the consent of the Monitor, and subject to availability under the DIP Facility and in accordance with the Budget, FirstOnSite shall be entitled but not required to pay all expenses and capital expenditures of FirstOnSite Restoration, Inc. ("FOS US") reasonably necessary for the preservation of FirstOnSite's Property and Business.

9. **THIS COURT ORDERS** that FirstOnSite shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by FirstOnSite in connection with the sale of goods and services by FirstOnSite, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by FirstOnSite.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, FirstOnSite 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 to the landlord under the lease) or as otherwise may be negotiated between FirstOnSite and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, but subject to the Budget and the terms of the DIP Agreement, FirstOnSite is 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 FirstOnSite to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that FirstOnSite shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and the Definitive Documents (both as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) in accordance with paragraphs 13 and 14, and with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but

not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premise, in accordance with Section 32 of the CCAA;

- (d) with the prior consent of the Monitor or further Order of the Court, disclaim or resiliate any agreement to which the company is a party in accordance with Section 32 of the CCAA; and
- (e) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

13. **THIS COURT ORDERS** that FirstOnSite shall provide each of the relevant landlords with notice of FirstOnSite's 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 FirstOnSite's 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, such landlord and FirstOnSite, or by further Order of this Court upon application by FirstOnSite on at least two (2) days notice to such landlord and any such secured creditors. If FirstOnSite disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to FirstOnSite's claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving FirstOnSite and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against FirstOnSite in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST FIRSTONSITE OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including May 20, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of FirstOnSite or the Monitor, or affecting the Business or the Property, except with the written consent of FirstOnSite and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of FirstOnSite or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that 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 FirstOnSite or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of FirstOnSite and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower FirstOnSite to carry on any business which FirstOnSite is not lawfully entitled to carry

on, or (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by FirstOnSite, except with the written consent of FirstOnSite and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with FirstOnSite 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 and benefits services, insurance, vehicle and transportation services, temporary labour and staffing services, subcontractors, trade suppliers, equipment vendors and rental companies, utility or other services to the Business or FirstOnSite, 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 FirstOnSite, and that FirstOnSite shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names and building and other permits, 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 FirstOnSite in accordance with normal payment practices of FirstOnSite or such other practices as may be agreed upon by the supplier or service provider and each of FirstOnSite and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

19. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 15 to 18 hereof, the rights of any person who has supplied services and/or materials to FirstOnSite to preserve and perfect a lien under the *Construction Lien Act* (Ontario) or any applicable provincial equivalent (the "**Provincial Lien Legislation**") in respect of a project to which FirstOnSite is a contracting party (the "**FOS Lien Claims**") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 19 to 22 hereof subject to further Order of the Court.

20. **THIS COURT ORDERS** that any person who wishes to assert an FOS Lien Claim (a "**Lien Claimant**") shall serve a notice of such FOS Lien Claim setting out the amount and particulars thereof to the Monitor at firstonsite@fticonsulting.com and copy, Goodmans LLP, counsel to the monitor at: cdescours@goodmans.ca and Applicant c/o Stikeman Elliott LLP: hmurray@stikeman.com within the timeframes prescribed by the applicable Provincial Lien Legislation (a "**Lien Notice**") or such other time frame as may be ordered by the Court.

21. **THIS COURT ORDERS** that upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over the Property of FirstOnSite equivalent to the value that the Lien Claimant would otherwise be entitled to as a lien under the applicable Provincial Lien Legislation (the "**Lien Charge**").

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and reduce or disallow the FOS Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and FirstOnSite that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

23. **THIS COURT ORDERS** that nothing in paragraphs 19 to 22 hereof shall be construed as limiting or prejudicing the rights of the Monitor, FirstOnSite or any other interested party from challenging:

- (a) the validity or timeliness of a Lien Notice;
- (b) the validity or quantum of an FOS Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration;
- (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 21 of this Order; or
- (d) the priority of a Lien Charge under paragraph 49 of this Order.

24. **THIS COURT ORDERS** that in connection with the matters in paragraphs 19 to 22 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 19 to 23 of this Order, (iii) shall be entitled to rely on the books and records of FirstOnSite and any information provided by FirstOnSite, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 19 to 23 of this Order from FirstOnSite or any of its subsidiaries.

NON-DEROGATION OF RIGHTS

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to

FirstOnSite. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

ENGAGEMENT OF THE FINANCIAL ADVISOR

27. **THIS COURT ORDERS** that the agreement dated as of October 31, 2015, engaging Alvarez & Marsal Canada Securities ULC (the "**Financial Advisor**") as financial advisor to FirstOnSite, a copy of which is attached as Exhibit "F" to the Demos Affidavit (the "**A&M Engagement Letter**"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1.1 million, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 49 and 51 herein.

APPOINTMENT OF MONITOR

28. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of

FirstOnSite with the powers and obligations set out in the CCAA or set forth herein and that FirstOnSite and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by FirstOnSite pursuant to this Order, and shall cooperate 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.

29. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor FirstOnSite's 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) assist FirstOnSite, to the extent required by FirstOnSite, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between FirstOnSite and the DIP Lender and as contemplated to be provided to the DIP Lender pursuant to the DIP Agreement and the Definitive Documents;
- (d) advise FirstOnSite in its preparation of FirstOnSite's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise FirstOnSite in its development of the Plan and any amendments to the Plan;
- (f) assist FirstOnSite, to the extent required by FirstOnSite, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of FirstOnSite, to the extent that is necessary to adequately assess FirstOnSite's business and financial affairs or to perform its duties arising under this Order;
- (h) 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
- (i) perform such other duties as are required by this Order or by this Court from time to time.

30. **THIS COURT ORDERS** that the Monitor, in its capacity as Escrow Agent under the Escrow Agreement, in connection with the agreement of purchase and sale (the "APA") entered into as between FirstOnSite LP, by its general partner FirstOnSite GP, and the Purchaser, is authorized and empowered to (a) hold the Deposit in a segregated account in the name of the Monitor, and (b) release the Deposit as contemplated by the Escrow Agreement or subject to further Order of the Court, and the Monitor shall incur no liability with respect to the foregoing. Unless otherwise defined in this Order, each capitalized term in this paragraph shall have the meaning ascribed to it in the APA.

31. **THIS COURT ORDERS** that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of FirstOnSite and the DIP Lender with information provided by FirstOnSite 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 FirstOnSite 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 FirstOnSite may agree.

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

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to FirstOnSite shall be paid their reasonable fees and disbursements, in each case at their

standard rates and charges, by FirstOnSite as part of the costs of these proceedings. FirstOnSite is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for FirstOnSite on a weekly basis and, in addition, FirstOnSite is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to FirstOnSite, retainers in the amount of \$100,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and FirstOnSite's counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 million, as security for the professional fees and disbursements, incurred at standard rates and charges, of the Monitor, counsel to the Monitor and counsel to FirstOnSite, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 49 and 51 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from Wells Fargo Capital Finance Corporation Canada (the "**DIP Lender**"), in order to finance FirstOnSite's working capital requirements and other general corporate purposes, expenses relating to these CCAA proceedings, and capital expenditures, provided that

borrowings under such DIP Facility shall not exceed the availability under the DIP Facility and, in any event, shall not exceed \$15 million, subject to the further Order of this Court.

39. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached to the Demos Affidavit as **Exhibit "H"** (the "**DIP Agreement**"), and the Definitive Documents.

40. **THIS COURT ORDERS** that the DIP Facility and the DIP Agreement are hereby approved.

41. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and FirstOnSite is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure any obligation to the ABL Lender (as defined in the Demos Affidavit) that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 49 and 51 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against FirstOnSite or the Property under or pursuant to the DIP Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to FirstOnSite and set off and/or consolidate any amounts owing by the DIP Lender to FirstOnSite against the obligations of FirstOnSite to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against FirstOnSite and for the appointment of a trustee in bankruptcy of FirstOnSite; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of FirstOnSite or the Property.

44. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by FirstOnSite LP under the CCAA, or any proposal filed by FirstOnSite under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP Agreement or Definitive Documents.

KEY EMPLOYEE RETENTION PLAN ("KERP")

45. **THIS COURT ORDERS** that the KERP, as described in the Demos Affidavit, the details of which are included in the Confidential Supplement to the Pre-Filing Report, is

hereby approved and FirstOnSite is authorized and directed to make payments in accordance with the terms thereof.

46. **THIS COURT ORDERS** that the KERP Participants (as such term is defined in the Demos Affidavit) shall be entitled to the benefit of and are hereby granted a charge (the “KERP Charge”) on the Property, which charge shall not exceed an aggregate amount of \$2.26 million, to secure the amounts payable to the KERP Participants pursuant the KERP.

47. **THIS COURT ORDERS** that the KERP Charge shall have the priority set out in paragraphs 49 and 51 herein.

48. **THIS COURT ORDERS** that the summary of the KERP included in the Confidential Supplement to the Pre-Filing Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court File, in a sealed envelope attached to a notice that sets out the title of these proceedings a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

49. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender’s Charge, the KERP Charge, the Financial Advisor’s Charge, the Lien Charge, as among them, shall be as follows:

- First - the Administration Charge, to a maximum amount of \$1 million;
- Second - the DIP Lender’s Charge, to a maximum amount of \$15 million;
- Third - the KERP Charge, to a maximum amount of \$2.26 million;
- Fourth - the Financial Advisor’s Charge, to a maximum amount of \$1.1 million; and

Fifth - the Lien Charge, to the extent necessary to secure such Lien Claims as may arise (provided that the Lien Charge shall rank subordinate to the security interests granted in favour of Wells Fargo Capital Finance Corporation Canada, as agent and lender thereto, securing the performance of the obligations under the credit agreement dated November 25, 2014 (as amended) ("**Wells Pre-filing Security**") and the security interests granted in favour of BDC securing the performance of the obligations under the credit agreement dated November 25, 2014 ("**BDC Pre-filing Security**").

50. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge, and the Lien Charge, (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

51. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except any claims of any person against FirstOnSite for amounts owing for services and/or materials supplied that have priority over Encumbrances by statute (other than the Lien Charge, which shall rank subordinate to the Wells Pre-filing Security and the BDC Pre-filing Security, but otherwise enjoys the same priority as the other Charges, subject to paragraph 49, above.)

52. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing in this Order shall affect or otherwise alter the priority of any claims of any Person in respect of amounts owing to any such Person by FirstOnSite in respect of

supplied services or materials that are given priority over other Encumbrances by statute.

53. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, FirstOnSite shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless FirstOnSite also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

54. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees and/or the DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds FirstOnSite, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by FirstOnSite 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 FirstOnSite entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by FirstOnSite pursuant to this Order, the DIP Agreement or the Definitive Documents, 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.

55. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in FirstOnSite's interest in such real property leases.

SERVICE AND NOTICE

56. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against FirstOnSite of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner (provided that the list shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual), all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

57. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil

Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/firstonsite>.

58. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, FirstOnSite and the Monitor are at liberty to serve or distribute 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 facsimile transmission to FirstOnSite's creditors or other interested parties at their respective addresses as last shown on the records of FirstOnSite and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

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

60. **THIS COURT ORDERS** that 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 FirstOnSite, the Business or the Property.

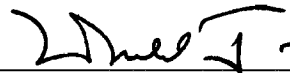
61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist FirstOnSite, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to FirstOnSite 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 FirstOnSite and the Monitor and their respective agents in carrying out the terms of this Order.

62. **THIS COURT ORDERS** that each of FirstOnSite 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

64. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 02 2016

PER / PAR: RW

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

Court File No: CV-16-11358-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRSTONSITE G.P. INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED
INITIAL ORDER**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Email: mkonyukhova@stikeman.com

C. Haddon Murray LSUC#: 61640P

Tel: (416) 869-5239

Email: hmurray@stikeman.com

Vlad Calina LSUC#: 69072W

Tel: (416) 869-5202

Email: vcalina@stikeman.com

Fax: (416) 948-0866

Lawyers for the Applicant

APPENDIX E

Court File No. [REDACTED]

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE [REDACTED])
JUSTICE [REDACTED])

FRIDAY, THE 4TH
DAY OF AUGUST, 2023

**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 QUALITY RUGS OF CANADA
LIMITED, TIMELINE FLOORS INC., ONTARIO
FLOORING LTD., WESTON HARDWOOD DESIGN
CENTRE INC, AND MALVERN CONTRACT INTERIORS
LIMITED**

(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "**Pacione Affidavit**"), the Application Record (including the supplementary affidavit of Don Rogers sworn [INSERT DATE]) filed by Waygar Capital Inc. ("Waygar") and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on

hearing the submissions of counsel for the Applicants, counsel for Waygar and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. [intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or to replace it with another substantially similar 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 Applicants 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 Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants 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 Applicants to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$____ in any one transaction or \$____ 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court

upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including August 14, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the

foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs [14 to 17] hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Lien Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs [18 to 21] hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court.

20. THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over the Property of the Applicants equivalent to the value that the Lien Claimant would otherwise be entitled to as a lien under the applicable Provincial Lien Legislation (the "Lien Charge").

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs [18 to 21] hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph [20] of this Order; or (d) the priority of a Lien Charge under paragraphs [45] and [47] of this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs [18 to 21] of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs [18 to 22] of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs [18 to 22] of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and

that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

27. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$600,000, as security for the indemnity provided in paragraph [26] of this Order. The Directors' Charge shall have the priority set out in paragraphs [45] and [47] herein.

28. THIS COURT ORDERS that, 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) the Applicants' 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 [26] of this Order.

APPOINTMENT OF MONITOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants, a copy of which is attached as Exhibit "*" to the Pacione Affidavit (the "A&M

Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs [45] and [47] herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar;
- (d) [intentionally deleted];
- (e) [intentionally deleted];

- (f) [intentionally deleted];
- (g) [intentionally deleted];
- (h) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) 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
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 or in paragraph [31] hereof. In the case of information that the Monitor has been advised by the Applicants 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 Applicant may agree.

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

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$40,000, \$35,000 and [GR?], respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [45] and [47] hereof.

[intentionally deleted]

39. [intentionally deleted]

40. [intentionally deleted]

41. [intentionally deleted]

42. [intentionally deleted].

43. [intentionally deleted]

(a)

44. [intentionally deleted]

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge and the Lien Charge, as among them, shall be as follows:

First – the Administration Charge (to a maximum amount of \$750,000);

Second – the Financial Advisor's Charge (to a maximum of \$950,000);

Third – the Directors' Charge (to a maximum amount of \$600,000); and

Fourth – the Lien Charge, to the extent necessary to secure such Lien Claims as may arise.

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute **[NTD: any basis to note a subordination to Waygar?]**.

48. THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

50. THIS COURT ORDERS that the Charges 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") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 Applicants 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.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. THIS COURT ORDERS that service of the Applicants' Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) [NTD: other publications?] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL '<@>' (the "Monitor's Website").

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the“Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

57. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

58. THIS COURT ORDERS that 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 the Applicants, the Business or the Property.

59. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to

give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

60. THIS COURT ORDERS that each of the Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

62. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Schedule “A” – Other Entities Protected by the Stay

1. Quality Commercial Carpet Corporation;
2. Joseph Douglas Pacione Holdings Ltd.;
3. John Anthony Pacione Holdings Ltd.;
4. Jopac Enterprises Limited;
5. Patjo Holdings Inc.;

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED, TIMELINE FLOORS INC., ONTARIO
FLOORING LTD., WESTON HARDWOOD DESIGN CENTRE INC, AND MALVERN
CONTRACT INTERIORS LIMITED**

collectively, The Applicants

Court File No.:

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>	
<p>INITIAL ORDER</p>	
<p>Gardiner Roberts LLP Bay Adelaide Centre 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3</p>	
<p>Christopher Besant (LSO# <>) Email: cbesant@grllp.com Tel: (416) 865 4022</p>	<p>Lawyer for the Applicants <></p>

TAB 4

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____)
JUSTICE _____)
JUSTICE _____)

**WEEKDAY FRIDAY, THE #
DAY OF MONTH, 20YR 4TH
DAY OF AUGUST, 2023**

***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 [APPLICANT'S NAME] (the "Applicant")***

***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 QUALITY RUGS OF CANADA
LIMITED, TIMELINE FLOORS INC., ONTARIO
FLOORING LTD., WESTON HARDWOOD DESIGN
CENTRE INC, AND MALVERN CONTRACT INTERIORS
LIMITED***

(collectively, the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the ~~Applicant~~Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"),² was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~John Pacione sworn ~~[DATE]~~August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit"), the Application Record (including the supplementary affidavit of Don Rogers sworn [INSERT DATE]) filed by Waygar Capital Inc. ("Waygar") and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of [MONITOR'S NAME] to act as the Monitor~~the Applicants, counsel for Waygar and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

1. THIS COURT ORDERS that the time for service of the Applicants' Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the ~~Applicant is a company~~Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

¹~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

²~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

3. ~~THIS COURT ORDERS that the Applicant 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").~~[intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the ~~Applicant~~Applicants shall remain in possession and control of ~~its~~their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the ~~Applicant~~Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the "Business") and Property. The ~~Applicant is~~Applicants are 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~~them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~THIS COURT ORDERS that the Applicant~~Applicants shall be entitled ~~to continue~~ to utilize the ~~central~~ cash management system³ currently in place as described in the Pacione Affidavit of [NAME] sworn [DATE] or to 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 ~~Applicant~~Applicants 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 ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the

³~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

provider of the Cash Management System, an unaffected creditor under ~~the~~any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.}]

6. THIS COURT ORDERS that the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the ~~Applicant~~Applicants shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the ~~Applicant~~Applicants following the date of this Order.

8. THIS COURT ORDERS that the ~~Applicant~~Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed ~~for~~ ⁴resiliated in accordance with the CCAA, the ~~Applicant~~Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the ~~Applicant~~Applicants ~~is~~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 ~~Applicant~~Applicants

⁴~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding \$~~●~~_____ in any one transaction or \$~~●~~_____ in the aggregate~~};~~⁵;
- (b) ~~t~~erminate 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

~~12.~~12. THIS COURT ORDERS that the ~~Applicant~~Applicants shall provide each of the relevant landlords with notice of the ~~Applicant~~Applicants's 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 ~~Applicant~~Applicants's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be

⁵~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims ~~for resiliates~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the ~~Applicant's~~Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the ~~Applicant~~Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including ~~[DATE — MAX. 30 DAYS]~~August 14, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant or~~Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the ~~Applicant~~Applicants, the Protected Parties, the Monitor, or the ~~Monitor~~Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Applicant~~Applicants or the Protected Parties, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~Applicants 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~~the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, 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 ~~Applicant~~Applicants, and that the ~~Applicant~~Applicants 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 date of this Order are paid by the ApplicantApplicants in accordance with normal payment practices of the ApplicantApplicants or such other practices as may be agreed upon by the supplier or service provider and each of the ApplicantApplicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs [14 to 17] hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Lien Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project to which on of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs [18 to 21] hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court.

20. THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over the Property of the Applicants equivalent to the value that the Lien Claimant would otherwise be entitled to as a lien under the applicable Provincial Lien Legislation (the "Lien Charge").

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and reduce or disallow the Lien Claims set out therein, or refer such matter

for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs [18 to 21] hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph [20] of this Order; or (d) the priority of a Lien Charge under paragraphs [45] and [47] of this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs [18 to 21] of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs [18 to 22] of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs [18 to 22] of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. ~~18.~~ THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any

monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. ~~19.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~Applicants 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 ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. ~~20.~~ THIS COURT ORDERS that the ~~Applicant~~Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Applicants after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

⁷ ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

27. ~~21.~~ THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~●~~600,000, as security for the indemnity provided in paragraph ~~[2026]~~ of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~[3845]~~ and ~~[4047]~~ herein.

28. ~~22.~~ THIS COURT ORDERS that, 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) the ~~Applicant's~~Applicants' 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 ~~[2026]~~ of this Order.

APPOINTMENT OF MONITOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants, a copy of which is attached as Exhibit "*" to the Pacione Affidavit (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs [45] and [47] herein.

~~23.~~ APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that ~~[MONITOR'S NAME]~~RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to

~~⁸Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

monitor the business and financial affairs of the ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants 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.

31. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' 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) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, in its dissemination, ~~to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other~~of information ~~as agreed to between~~creditors of the ~~Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender~~Applicants, including Waygar;
- (d) ~~advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~[intentionally deleted];
- (e) ~~advise the Applicant in its development of the Plan and any amendments to the Plan;~~[intentionally deleted];
- (f) ~~assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~[intentionally deleted];

(g) ~~_____ [intentionally deleted];~~

(h) ~~(g)~~ 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 ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant~~Applicants's business and financial affairs or to perform its duties arising under this Order;

(i) ~~(h)~~ 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

(j) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

32. ~~25.~~ THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. ~~26.~~ THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. ~~27.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the ~~Applicant and the DIP Lender~~ Applicants with information provided by the ~~Applicant~~ Applicants 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 or in paragraph [31] hereof. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants 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 Applicant may agree.

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

36. ~~29.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the ~~Applicant~~ Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the ~~Applicant~~ Applicants as part of the costs of these proceedings. The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL]~~ bi-weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$ ~~●~~ 40,000, \$35,000 and [GR?], respectively, } to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

37. ~~30.~~ THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. ~~31.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, ~~if any, and~~ the ~~Applicant~~Applicants's counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 ~~\$~~\$~~750,000~~, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~[3845]~~ and ~~[4047]~~ hereof.

DIP FINANCING

~~32. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~ ~~unless permitted by further Order of this Court.~~

~~33. — THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

~~34. — THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under~~

~~and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

~~35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.~~

~~36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:~~

~~[intentionally deleted]~~

~~39. [intentionally deleted]~~

~~40. [intentionally deleted]~~

~~41. [intentionally deleted]~~

~~42. [intentionally deleted].~~

~~43. [intentionally deleted]~~

~~(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;~~

~~(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP~~

~~Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and~~

~~(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

~~37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.~~

44. [intentionally deleted]

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. ~~38.~~ THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge and the ~~DIP Lender's~~Lien Charge, as among them, shall be as follows⁹:

First – the Administration Charge (to ~~the~~a maximum amount of \$~~●~~\$750,000);

Second – ~~DIP Lender~~the Financial Advisor's Charge (to a maximum of \$950,000); ~~and~~

Third – the Directors' Charge (to ~~the~~a maximum amount of \$~~●~~600,000); and

Fourth – the Lien Charge, to the extent necessary to secure such Lien Claims as may arise.

46. ~~39.~~ THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge or the ~~DIP Lender's~~Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. ~~40.~~ THIS COURT ORDERS that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, ~~trusts,~~ liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a "secured creditor" as defined in the CCAA that has not been

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute [NTD: any basis to note a subordination to Waygar?].

48. THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

49. ~~41.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, ~~the DIP Lender~~ and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~ Charges, or further Order of this Court.

50. ~~42.~~ THIS COURT ORDERS that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ Charges 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") ~~and/or the DIP Lender~~ thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the ~~Applicant~~ Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) ~~neither~~ the creation of the Charges ~~nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents~~ shall

not create or be deemed to constitute a breach by the ~~Applicant~~Applicants 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 ~~Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents~~; and

(c) the payments made by the ~~Applicant~~Applicants pursuant to this Order, ~~the Commitment Letter or the Definitive Documents~~, 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.

51. ~~43.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. THIS COURT ORDERS that service of the Applicants' Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

53. ~~44.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) [NTD: other publications?] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

54. ~~45.~~ THIS COURT ORDERS that the E-Service ~~Protocol~~Guide of the Commercial List (the “~~Protocol~~Guide”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ‘<~~@~~>’ (the “Monitor’s Website”).

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. ~~46.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the ~~Applicant~~Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the ~~Applicant’s~~Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

57. ~~47.~~ THIS COURT ORDERS that the ~~Applicant~~Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

58. ~~48.~~ THIS COURT ORDERS that 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 the ~~Applicant~~Applicants, the Business or the Property.

59. ~~49.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

60. ~~50.~~ THIS COURT ORDERS that each of the ~~Applicant~~Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

62. ~~52.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Schedule “A” – Other Entities Protected by the Stay

1. Quality Commercial Carpet Corporation;
2. Joseph Douglas Pacione Holdings Ltd.;
3. John Anthony Pacione Holdings Ltd.;
4. Jopac Enterprises Limited;
5. Patjo Holdings Inc.;

Court File No.:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED, TIMELINE FLOORS INC., ONTARIO
FLOORING LTD., WESTON HARDWOOD DESIGN CENTRE INC, AND MALVERN
CONTRACT INTERIORS LIMITED

collectively, The Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

Gardiner Roberts LLP
Bay Adelaide Centre
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Christopher Besant (LSO# <>)
Email: cbesant@grllp.com
Tel: (416) 865 4022

Lawyer for the Applicants<>

APPENDIX F

Dhanani, Arif

From: Besant, Chris <cbesant@grllp.com>
Sent: Friday, August 25, 2023 1:53 AM
To: sgraff@airdberlis.com; mlici@airdberlis.com; kpearl@fullerllp.com; asheth@fullerllp.com; ar@buckwold.com; alutsch@lawsonlundell.com; khannan@lawsonlundell.com; kenneth.kraft@dentons.com; Combatti, Jim; kesaw@osler.com; MWasserman@osler.com; NMacParland@dwpv.com; mgottlieb@lolg.ca; Latham, Joe; tsabharwal@dakllp.com; Demetrios Yiokaris; Dhanani, Arif; Tannenbaum, Bryan; gwb@lbnfirm.com; danny.nunes@dlapiper.com; Michael Farace; awinton@lolg.ca; mdrudi@dakllp.com
Cc: Risteska, Daria; Mahil, Saisha; Ly, Janice; Knight, Ingrid
Subject: Quality Rugs & Waygar CCAA hearing 10 am today
Attachments: Draft QSG Initial CCAA Order.doc

TO THE SERVICE LIST

QUALITY & WAYGAR CCAA Hearing - AUG 25 @ 10 am - CASELINES URLS + ZOOM HEARING DETAILS

QUALITY RUGS CCAA APPLICATION

QUALITY RUGS OF CANADA LIMITED v. WAYGAR CAPITAL INC., AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P..

CV-23-00703933-00CL

Click here to go to the case: <https://ontariocourts.caselines.com/s/s/e4cb41>

WAYGAR CCAA APPLICATION

WAYGAR CAPITAL INC., AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P. v. QUALITY RUGS OF CANADA LIMITED et al.

CV-23-00703292-00CL

Click here to go to the case: <https://ontariocourts.caselines.com/s/s/287b313>

ZOOM LINK FOR AUG 25 hearing @ 10 am Before the Honourable Justice Penny

Video Conference Link for both cases above:

<https://ca01web.zoom.us/j/65400327305?pwd=WC91RjNENjNnZ1Q2NHpvbDIzaUNldz09#success>

Note that the bulk of the material including responding materials of Stakeholders is filed in the Waygar case, but the Quality Rugs Case contains all of its CCAA Application materials including the Pre-Filing reports of RSM as proposed Monitor.

While there are some issues still requiring confirmation between the parties in the morning prior to court, assuming those are resolved, an Initial Order in the Quality CCAA proceeding would be jointly proposed by Waygar and Quality at the hearing substantially in the form attached.

Chris Besant • Partner

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

T 416.865.4022 | F 416.865.6636 | E cbesant@grllp.com | www.grllp.com/p/christopherbesant

From: Knight, Ingrid

Sent: Tuesday, August 22, 2023 10:01 PM

To: sgraff@airdberlis.com; mlici@airdberlis.com; kpearl@fullerllp.com; asheth@fullerllp.com; ar@buckwold.com; alutsch@lawsonlundell.com; khannan@lawsonlundell.com; kenneth.kraft@dentons.com; Combatti, Jim; kesaw@osler.com; MWasserman@osler.com; NMacParland@dwpv.com; mgottlieb@lolg.ca; Latham, Joe; tsabharwal@dakllp.com; Demetrios Yiokaris; Dhanani, Arif; Tannenbaum, Bryan; gwb@lbnfirm.com; danny.nunes@dlapiper.com

Cc: Risteska, Daria; Mahil, Saisha; Ly, Janice; Besant, Chris

Subject: RE: Quality Rugs of Canada Limited v. Waygar Capital Inc., as Agent for Ninepoint Canadian Senior Debt Master Fund L.P.

Good evening,

Attached for service pursuant to the *Rules*, is a complete copy of the Second Supplementary Affidavit of John Pacione. The one sent previously was missing the exhibit.

If there are any problems with the transmission of this email or its attachment, please contact me.

Regards,

Ingrid Knight • Assistant

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

T 416.865.6694 | F 416.865.6636 | E iknight@grllp.com

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Court File No. CV-23-00703933-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 25TH
MR JUSTICE PENNY) DAY OF AUGUST, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit") and **[add any new evidence prepared and filed]**, the Application Record filed by Waygar Capital Inc. ("Waygar"), including the supplementary affidavit of Don Rogers sworn July 31, 2023 and **[add any new materials filed by Waygar]**, and the consent of RSM Canada Limited to act as the Monitor, and on being

advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge [insert entity details] (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. [intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or to replace it with another substantially similar 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 Applicants 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 Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5A. THIS COURT ORDERS that, notwithstanding paragraph 5 hereof or the provision of any documents under which the Cash Management System operates, any disbursement of funds which may have been deposited into or accrued in the Blocked Account (as defined in the Affidavit of Don Rogers sworn July 24, 2023) shall be made only on the consent of the Monitor (as herein defined), and without the need for the consent of Waygar or its advisors, provided that the Monitor shall only approve the disbursement if the Monitor is satisfied, acting reasonably, that such disbursement is necessary to comply with any payment contemplated to be made under this Order, including payments for suppliers of goods and services to the Applicants in the ordinary course of business and consistent with the Cash Flow Projections.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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

realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants 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 Applicants to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or

leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 5, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof (including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within

the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court.

20. THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over any Property of the Applicants relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge").

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under paragraphs 45 and 47 of this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or

information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

27. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. THIS COURT ORDERS that, 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) the Applicants' 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 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (f) [intentionally deleted];
- (g) [intentionally deleted];
- (h) 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

Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(i) 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

(j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants 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 Applicant may agree.

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

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis **[and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time].**

37. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 \$700,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed \$5,000,000 unless permitted by further Order of this Court.

40. THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 24, 2023 (the "DIP Term Sheet"), filed, and the definitive documentation to be entered into pursuant thereto.

41. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order

42. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings on August 4, 2023. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon **four (4)** days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

44. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, the DIP Lender's Charge and the Lien Charge, as among them, shall be as follows:

First – the Administration Charge (to a maximum amount of \$700,000);

Second – the Directors' Charge (to a maximum amount of \$600,000);

Third – the DIP Lender's Charge (to a maximum of \$5,000,000)[, **provided, however, hat if the purchase and sale transaction with Ironbridge closes with the approval of this Court, the DIP Facility shall not be repayable and the DIP Lender's Charge shall not be relied upon or enforced**];

Fourth – the Financial Advisor's Charge (to a maximum of \$950,000); and

Fifth - the Lien Charge, to the extent necessary to secure such Lien Claims as may arise.

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, the DIP Lender's Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, liens, charges and

encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

48. THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

50. THIS COURT ORDERS that the Charges 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") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 Applicants 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.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. THIS COURT ORDERS that service of the Applicants' Application Record and Supplementary Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for

substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

57. THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender’s Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants and Waygar are directed to identify and segregate into a separate

bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

58. THIS COURT ORDERS that nothing herein impacts or detracts from the provisions of the Order of this Court made on August 4, 2023 in these proceedings and in the Waygar application (the “August 4 Order”); provided, however, that upon the filing with this Court of a certificate of the Monitor confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order has been paid in full, the Interim Lender’s Charge in favour of Waygar in the August 4 Order shall be finally discharged and no longer enforceable.

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

60. THIS COURT ORDERS that 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 the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)



1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

collectively, The Applicants

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>INITIAL ORDER</p>
<p>Gardiner Roberts LLP Bay Adelaide Centre 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3</p>
<p>Christopher Besant (LSO# ) Email: cbesant@grllp.com Tel: (416) 865 4022</p>
<p>Lawyer for the Applicants </p>

APPENDIX G

Dhanani, Arif

From: Latham, Joe <jlatham@goodmans.ca>
Sent: Friday, August 25, 2023 1:15 PM
To: Michael.Penny@scj-csj.ca
Subject: #7400429-v13-CCAA Initial Order for QSG August 4 2023
Attachments: #7400429-v13-CCAA Initial Order for QSG August 4 2023.DOC

This is the draft Order. We are ready to walk through it. Thank you!

APPENDIX H

Dhanani, Arif

From: Axell, Erik <eaxell@goodmans.ca>
Sent: Friday, August 25, 2023 1:20 PM
To: sgraff@airdberlis.com; mlici@airdberlis.com; kpearl@fullerllp.com; asheth@fullerllp.com; ar@buckwold.com; alutsch@lawsonlundell.com; khannan@lawsonlundell.com; kenneth.kraft@dentons.com; Combatti, Jim; kesaw@osler.com; MWasserman@osler.com; NMacParland@dwvp.com; mgottlieb@lolg.ca; Latham, Joe; tsabharwal@dakllp.com; Demetrios Yiokaris; Dhanani, Arif; Tannenbaum, Bryan; gwb@lbnfirm.com; danny.nunes@dlapiper.com; Michael Farace; awinton@lolg.ca; mdrudi@dakllp.com; Risteska, Daria; Mahil, Saisha; Ly, Janice; Knight, Ingrid
Cc: Latham, Joe; Tannenbaum, Bryan; dyiokaris@kmlaw.ca
Subject: RE: Quality Rugs of Canada Limited v. Waygar Capital Inc., as Agent for Ninepoint Canadian Senior Debt Master Fund L.P.- CV-23-00703933-00CL - Supplemental Pre-Filing Report of the Proposed Monitor
Attachments: #7400429-v13-CCAA Initial Order for QSG August 4, 2023.DOC; Redline - Initial Order.pdf

As a follow up. Please see attached for a draft order as well as a blackline to the version of the order I have from yesterday.

Erik Axell
Goodmans LLP

416.840.2579
eaxell@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Axell, Erik
Sent: Friday, August 25, 2023 12:51 PM
To: sgraff@airdberlis.com; mlici@airdberlis.com; kpearl@fullerllp.com; asheth@fullerllp.com; ar@buckwold.com; alutsch@lawsonlundell.com; khannan@lawsonlundell.com; kenneth.kraft@dentons.com; Combatti, Jim <jimc@metrofloors.com>; kesaw@osler.com; MWasserman@osler.com; NMacParland@dwvp.com; mgottlieb@lolg.ca; Latham, Joe <jlatham@goodmans.ca>; tsabharwal@dakllp.com; Demetrios Yiokaris <dyiokaris@kmlaw.ca>; Dhanani, Arif <arif.dhanani@rsmcanada.com>; Tannenbaum, Bryan <bryan.tannenbaum@rsmcanada.com>; gwb@lbnfirm.com; danny.nunes@dlapiper.com; Michael Farace <Michael.Farace@devrylaw.ca>; awinton@lolg.ca; mdrudi@dakllp.com; Risteska, Daria <dristeska@grllp.com>; Mahil, Saisha <smahil@grllp.com>; Ly, Janice <jly@grllp.com>; Knight, Ingrid <iknight@grllp.com>
Cc: Latham, Joe <jlatham@goodmans.ca>; 'bryan.tannenbaum@rsmcanada.com' <bryan.tannenbaum@rsmcanada.com>; 'dyiokaris@kmlaw.ca' <dyiokaris@kmlaw.ca>
Subject: Quality Rugs of Canada Limited v. Waygar Capital Inc., as Agent for Ninepoint Canadian Senior Debt Master Fund L.P.- CV-23-00703933-00CL - Supplemental Pre-Filing Report of the Proposed Monitor

TO: THE SERVICE LIST

We are counsel to RSM Canada Limited, the Proposed Monitor in the above-referenced proceedings (the “**Proposed Monitor**”).

Please find attached the Second Supplemental Pre-Filing Report of the Proposed Monitor, which is hereby served upon you in connection with the motion in the above-referenced proceedings returnable Friday, August 25, 2023 at 10:00 am.

The Supplemental Pre-Filing Report, once filed with the court, will be uploaded to CaseLines, accessible using the following link: [QUALITY RUGS OF CANADA LIMITED v. WAYGAR CAPITAL INC., AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P. | CaseLines](#). Please contact the undersigned should you require access to CaseLines.

Regards,

Erik Axell

Goodmans LLP

416.840.2579

eaxell@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

APPENDIX I

Dhanani, Arif

From: Renner, Natalie <nrenner@dwpv.com>
Sent: Friday, August 25, 2023 1:37 PM
To: Axell, Erik; Latham, Joe; Steven Graff
Cc: MacParland, Natasha
Subject: Redline - Initial Order
Attachments: Redline - Initial Order.pdf

Please find attached some further clean up changes on the order. Apologies for the hand mark-up but my system is not letting me access word right now. This is a mark-up of the version Erik sent at 1:20 today. Please keep me on all emails going forward. Thanks

Natalie Renner

T 416.367.7489
nrenner@dwpv.com
[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
[dwpv.com](#)

DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

Court File No. CV-23-00703933-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 25TH
MR JUSTICE PENNY) DAY OF AUGUST, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit") ~~and [add any new evidence prepared and filed]~~, the supplemental affidavit of John Pacione sworn August 17, 2023, the second supplemental affidavit of John Pacione sworn August 22, 2023, the Application Record and the Supplementary Application Record filed by Waygar Capital Inc. ("Waygar"), including the

affidavit of Don Rogers sworn July 24, 2023, the supplementary affidavit of Don Rogers sworn August 3, 2023, the pre-filing report of Fuller Landau Group Inc., dated July 31~~25~~, 2023 ~~and **add any new materials filed by Waygar**~~, the supplement to the pre-filing report of Fuller Landau Group Inc., dated August 3, 2023, the second supplement to the pre-filing report of the Fuller Landau Group Inc., dated August 16, 2023, the pre-filing report of RSM Canada Limited, dated August 3, 2023, the supplemental pre-filing report of RSM Canada Limited dated August 17, 2023, the second supplemental pre-filing report of RSM Canada Limited dated August 25, 2023 and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge ~~[insert entity details]~~ Equity Partners (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. [intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and

wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are 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 them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or if agreed to between the Applicants, Waygar and Ironbridge, provided that Waygar's approval rights shall terminate upon the closing of the transaction contemplated by the Asset Purchase Agreement, to replace it with another substantially similar 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 Applicants 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 Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5A. THIS COURT ORDERS that, notwithstanding paragraph 5 hereof or the provision of any documents under which the Cash Management System operates, any disbursement of funds which may have been deposited into or accrued in the Blocked Account (as defined in the Affidavit of Don Rogers sworn July 24, 2023) shall be made only on the consent of the Monitor (as herein defined), and without the need for the consent of Waygar or its advisors, provided that the Monitor shall only approve the disbursement if the Monitor is satisfied, acting

reasonably, that such disbursement is necessary to comply with any payment contemplated to be made under this Order, including payments for suppliers of goods and services to the Applicants in the ordinary course of business and consistent with the Cash Flow Projections.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably 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; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants 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 Applicants to any of its creditors as of ~~this date~~ [August 4th, 2023](#); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents ~~and~~ [the DIP Term Sheet \(each](#) as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 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 of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. ~~12.~~ THIS COURT ORDERS that until and including September 5, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. ~~13.~~ THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant 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 security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. ~~14.~~ THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. ~~15.~~ THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants 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 date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. ~~16.~~ THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any

person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. ~~17.~~ THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof (including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court. Upon delivering such Notices of Lien, the Lien Claims will be considered preserved and perfected and no further steps need be taken by the Lien Claimant.

subject to paragraph 21,

20. ~~18.~~ THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over any Property of the Applicants relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value and in accordance with the priority that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge"), and shall rank in priority in accordance with the priority afforded to such Charge at law.

other than the Borrower's Account

21. ~~19.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and approve reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. ~~20.~~ THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a

Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under paragraphs 45 and 47 of this Order.

23. ~~21.~~ THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. ~~22.~~ THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. ~~23.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

27. ~~25.~~ THIS COURT ORDERS that the directors and officers of the Applicant 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 \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. ~~26.~~ THIS COURT ORDERS that, 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) the Applicants' 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 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. ~~27.~~ THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge

other than the Borrower's Account

shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. ~~28.~~ THIS COURT ORDERS that RSM Canada Limited (the “Monitor”) is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

31. ~~29.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants’ 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants’ cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the

Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;

(f) [intentionally deleted];

(g) [intentionally deleted];

(h) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(i) 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

(j) perform such other duties as are required by this Order or by this Court from time to time.

32. ~~30.~~ THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. ~~31.~~ THIS COURT ORDERS that nothing herein contained shall require 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 *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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. 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.

34. ~~32.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants 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 Applicant may agree.

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

36. ~~34.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis ~~and~~, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~.~~ For clarity, in no circumstances shall Waygar be

responsible for the Financial Advisor's monthly Work Fee (as that term is defined in the A&M Engagement Letter), including, without limiting the foregoing, by way of payment from the proceeds of sale of the Applicants' assets (including accounts receivable collections).

37. ~~35.~~ THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

38. ~~36.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) 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 ~~\$700,000~~ 750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

other than the Borrower's Account

DIP FINANCING

39. ~~37.~~ THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed ~~\$5,000,000~~ 3,500,000 unless permitted by further Order of this Court.

40. ~~38.~~ THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 24, 2023 (the "DIP Term Sheet"), filed, and the definitive documentation to be entered into pursuant thereto.

41. ~~39.~~ THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order

42. THIS COURT ORDERS that the Applicants shall deposit all Advances (as defined in the DIP Term Sheet) into a bank account designed by the Borrower (the "Borrower's Account") and utilized by the Borrower in accordance with the terms of the DIP Term sheet and other Definitive Documents.

, including the Borrower's Account

43. ~~40.~~ THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings made on August 4, 2023. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

44. ~~41.~~ THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, ~~upon [four (4)] days' notice to the Applicants and the Monitor,~~ may immediately exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the

Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

45. ~~42.~~ THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. ~~43.~~ THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, and the DIP Lender's Charge ~~and the Lien Charge~~, as among them, shall be as follows:

First – The DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time;

Second - the Administration Charge (to a maximum amount of \$~~700,000~~750,000);

~~Second~~Third – the Directors' Charge (to a maximum amount of \$600,000);

~~Third~~Fourth – the DIP Lender's Charge (to a maximum of \$~~5,000,000~~), ~~provided, however, that if the purchase and sale transaction with Ironbridge closes with the approval of this Court, the DIP Facility shall not be repayable and the DIP Lender's Charge shall not be relied upon or enforced~~3,500,000);

~~Fourth~~Fifth – the Financial Advisor's Charge (to a maximum of \$950,000); and

~~Fifth—the Lien Charge, to the extent necessary to secure such Lien Claims as may arise.~~

47. ~~44.~~ THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, the DIP Lender's Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

and the Borrower's Account, as applicable,

48. ~~45.~~ THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

[NTD I made this change because they do to have a priority over the Charges just by virtue of having priority over any existing Encumbrances. They need to have priority over the Charges by statute]

the Charges

49. ~~46.~~ THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

50. ~~47.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

51. ~~48.~~ THIS COURT ORDERS that the Charges 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") thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, 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 Applicants 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 Applicants 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.

52. ~~49.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

53. ~~50.~~ THIS COURT ORDERS that service of the Applicants' Application Record and Supplementary Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

54. ~~51.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, 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.

55. ~~52.~~ THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “Guide”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

56. ~~53.~~ THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

57. ~~54.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute 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 facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

58. ~~55.~~ THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender's Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants ~~and Waygar~~ are directed to identify and segregate into a separate bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

59. ~~56.~~ THIS COURT ORDERS that nothing herein impacts or detracts from the provisions of the Order of this Court made on August 4, 2023 in these proceedings and in the Waygar application (the "August 4 Order"); provided, however, that upon the filing with this Court of a certificate of the Monitor confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order has been paid in full net of the amount of \$707,000, the Interim Lender's Charge in favour of Waygar in the August 4 Order shall be finally discharged and no longer enforceable.

60. ~~57.~~ THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

61. ~~58.~~ THIS COURT ORDERS that 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 the Applicants, the Business or the Property.

62. ~~59.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

63. ~~60.~~ THIS COURT ORDERS that each of the Applicants 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 that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

65. ~~62.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

- [1.](#) Timeline Floors Inc.
- [2.](#) Ontario Flooring Ltd
- [3.](#) Weston Hardwood Design Centre Inc
- [4.](#) Malvern Contract Interiors Limited

A.2 Holding Companies

- [5.](#) Quality Commercial Carpet Corporation;
- [6.](#) Joseph Douglas Pacione Holdings Ltd.;
- [7.](#) John Anthony Pacione Holdings Ltd.;
- [8.](#) Jopac Enterprises Limited;
- [9.](#) Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

Court File No.: CV-23-00703933-00CL

collectively, The Applicants

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</p>
<p>INITIAL ORDER</p>
<p>Gardiner Roberts LLP Bay Adelaide Centre 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3</p> <p>Christopher Besant (LSO# <>) Email: cbesant@grllp.com Tel: (416) 865 4022</p> <p>Lawyer for the Applicants<></p>