

**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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.
(the "APPLICANT")

MOTION RECORD

**(Advanced Glazing Approval and Vesting Order)
(Returnable December 18, 2014)**

December 16, 2014

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1	Notice of Motion returnable December 18, 2014
A	Draft Approval and Vesting Order
B	Draft Sealing Order
2	Affidavit of Richard Black (sworn December 16, 2014) without confidential exhibits

Tab 1

Court File No. CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

**NOTICE OF MOTION
(Motion for Approval and Vesting and Sealing Orders)
(Returnable December 18, 2014)**

GrowthWorks Canadian Fund Ltd. (the “**Applicant**” or the “**Fund**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on December 18, 2014 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

THE MOTION IS FOR:

- (a) An Approval and Vesting Order relating to the sale of shares in Advanced Glazing Technologies Limited (“**Advanced Glazing**”) substantially in the form attached hereto as Schedule “A”;
- (b) A Sealing Order substantially in the form attached hereto as Schedule “B” sealing the agreement of purchase and sale (the “**APS**”); and
- (c) Such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

2. GrowthWorks Canadian Fund Ltd. (the “**Fund**”) and Englefield House No. 4 (“**Engelfield**”) are owners of the preferred shares of Advanced Glazing. Englefield owns 58% of the preferred shares, and the Fund owns the remaining 42%.
3. Englefield and the Fund have been seeking a sale of their shares of Advanced Glazing, in part due to protracted litigation involving Englefield, the Fund and Doug Milburn, the founder of Advanced Glazing.
4. Engelfield and the Fund have received four offers for the purchase of their shares in Advanced Glazing. For various reasons, all of the offers were unsuitable and did not result in a sale. However, an offer has been made by Armin Schabel (the “**Purchaser**”) for the purchase of all of the shares, which the parties believe is the best offer under the circumstances.
5. The parties have settled an APS in the form attached to the Affidavit of Richard Black at Exhibit “B”, and intend complete negotiations. The parties now seek an order pursuant to s. 36 of the CCAA approving the sale and vesting the shares in the Purchaser. As the APS contains commercially sensitive information that would cause harm if disclosed publicly, the parties also seek a sealing order over the APS.
6. The Fund relies upon the following:
 - (a) Section 11.02, 36 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

- (b) Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Richard Black sworn December 16, 2014 in support of this motion and exhibits thereto;
2. Such further and other materials as counsel may advise and this Court may permit.

December 16, 2014

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TO: ATTACHED SERVICE LIST

Court File No. CV-13-10279-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.
(the "**APPLICANT**")

**APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED**

**SERVICE LIST
(as of December 15, 2014)**

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<p>LENCZNER SLAGHT 130 Adelaide St W Suite 2600 Toronto, ON M5H 3P5</p> <p>Ronald G. Slaght Email: rslaght@litigate.com Tel: 416-865-2929</p> <p>Eli Lederman Email: elederman@litigate.com Tel: 416-865-3555</p> <p>Ian MacLeod Email: imacleod@litigate.com Tel: 416-865-2895</p> <p>Fax: 416-865-9010</p>	<p>Counsel for Allen-Vanguard Corporation (Court File No. 08-CV-43544)</p>
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<p>ONTARIO SECURITIES COMMISSION Mostafa Asadi Legal Counsel, Investment Funds Branch Ontario Securities Commission 20 Queen Street West, 19th Floor Toronto, Ontario M5H 3S8 Email: masadi@osc.gov.on.ca Tel: (416) 593-8171</p>	<p>Counsel for Ontario Securities Commission</p>
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Schedule A

Court File No.: CV-13-10279-00CL

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

THE HONOURABLE) THURSDAY , THE 18TH
)
MR. JUSTICE PATTILLO) DAY OF DECEMBER, 2014

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

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

APPROVAL AND VESTING ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Fund**”) for an order approving the sale (the “**Transaction**”) of all of the issued and outstanding Class B Preferred shares of Advanced Glazing Technologies Limited (the “**Corporation**”), as contemplated by an agreement of purchase and sale between Armin Schabel (the “**Purchaser**”) and the Fund (the “**Purchase Agreement**”), and vesting in the Purchaser all of the Fund’s right, title and interest in and to the issued and outstanding Class B Preferred shares of the Corporation held by the Fund (the “**Purchased Shares**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, the twelfth report of FTI Consulting Canada Inc. (the “**Monitor**”), and on hearing the submissions of counsel for the Fund and the Monitor, no one else appearing although properly served as appears from the Affidavit of ●, sworn ●:

1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that all capitalized terms not otherwise defined in this Order

shall have the meanings ascribed to them in the Sale Agreement.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Purchase Agreement in substantially the same form and substance as appended as Exhibit “B” to the Affidavit of Richard Black sworn December 16, 2014, is hereby authorized and approved, with such minor amendments that the parties may deem necessary. The Fund and Monitor are hereby authorized and directed to take such additional steps and execute such additional documentation as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Shares to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that upon delivery of the Monitor’s Certificate in substantially the same form as appended at Schedule A hereto, all of the Fund’s right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), purchase options, liens, executions, writs of seizure and sale, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any Orders of the Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

5. THIS COURT ORDERS that, for the purposes of determining the nature and priority of Claims and Encumbrances, the Purchase Price shall stand in the place and stead of the Purchased Shares, and from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the Purchase Price as delivered, with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession

or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

7. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Shares in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. 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 Fund and Monitor and their 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

Court File No.: CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "**Court**") dated October 1, 2013, FTI Consulting, Inc. was appointed as the Monitor in these proceedings.
- B. Pursuant to an Order of the Court dated ●, the Court approved the share purchase agreement made as of ● (the "**Purchase Agreement**") between the Applicant, GrowthWorks Canadian Fund Ltd. (the "**Fund**") and Armin Schabel (the "**Purchaser**") and provided for the vesting in the Purchaser of the Fund's right, title and interest in and to all of the issued and outstanding Class B Preferred shares of Advanced Glazing Technologies Limited (the "**Purchased Shares**"), which vesting is to be effective upon delivery by the Monitor to the Purchaser of a certificate confirming that the conditions set out in Sections 5.01, 5.02 and 5.03 in the Purchase Agreement have been satisfied or waived, which certificate is to be held in escrow upon sole condition of the receipt of the amounts referred to in Section 2.04(a) of the Purchase Agreement (the "**Purchase Price**") and filed with the Court.
- C. Unless otherwise indicated herein, capitalized terms are defined in the Purchase Agreement.

NOW THEREFORE, THE MONITOR CERTIFIES that:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions as set out in Article 5 of the Purchase Agreement have been satisfied or waived by the Fund and the Purchaser, and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at [● a.m./p.m.] on [●], 2014.

**FTI Consulting, Inc., in its capacity as
Monitor**

Per: _____

Name:

Title:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

MONITOR'S CERTIFICATE

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**ONTARIO
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APPROVAL AND VESTING ORDER

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Schedule B

Court File No.: CV-13-10279-00CL

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

THE HONOURABLE) THURSDAY , THE 18TH
)
MR. JUSTICE PATTILLO) DAY OF DECEMBER, 2014

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
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SEALING ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Fund**”) for an order sealing the Confidential Exhibit (as defined below) which was filed in support of the Fund’s motion for an order approving the sale transaction of all of the issued and outstanding Class B Preferred shares of Advanced Glazing Technologies Limited held by the Fund (the “**Transaction**”), as contemplated by an agreement of purchase and sale between Armin Schabel (the “**Purchaser**”) and the Fund appended to the Affidavit of Richard Black sworn December 16, 2014 (the “**Confidential Exhibit**”).

ON READING the Motion Record of the Fund, the twelfth report of FTI Consulting Canada Inc. (the “**Monitor**”), and on hearing the submissions of counsel for the Fund, the Monitor and the Purchaser, no one else appearing although properly served as appears from the Affidavit of ●, sworn ●:

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

2. THIS COURT ORDERS that, until further order of the Court, the Confidential Exhibit shall 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 on which is affixed a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding Commenced at Toronto

SEALING ORDER

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND
LTD.

Court File No: CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE **DECEMBER 18, 2014**)**

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Tab 2

Court File No. CV-13-10279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

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OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
GROWTHWORKS CANADIAN FUND LTD.

AFFIDAVIT OF RICHARD BLACK,
SWORN DECEMBER 16, 2014

I, Richard Black, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner of Walsingham Partners, a manager of investment funds including Englefield House No. 4 Inc. ("**Englefield**"). Englefield owns 58% of the preferred shares of Advanced Glazing Technologies Limited ("**Advanced Glazing**"). GrowthWorks Canadian Fund Ltd., (the "**Fund**") owns 42% of the preferred shares of Advanced Glazing. In my role at Walsingham Partners, I am responsible for the investment of Englefield in Advanced Glazing and matters related to that investment.
2. Advanced Glazing develops and sells a translucent glass material called Solera that reduces the need for indoor lighting and provides twice the insulation value over normal transparent glass. It is located in Sydney, NS.
3. Englefield and the Fund first invested a total of \$6 million in preferred shares of Advanced Glazing in April, 2006. Advanced Glazing has also issued common shares. All of the shareholders of Advanced Glazing are subject to shareholders agreements. Under the

shareholders agreements, the preferred shareholders have governance rights (the right to appoint directors) and rights to control the sale of Advanced Glazing through rights of first refusal and drag along rights among other rights.

4. Conflicts between Englefield and the Fund, on the one hand, and Advanced Glazing and the founder of Advanced Glazing, Mr. Doug Milburn, on the other, have led to protracted litigation which is still pending in Nova Scotia (the “**Milburn Litigation**”).

5. At this stage, it is unclear when the Milburn Litigation can be completed. Mr. Milburn is, to the best of my knowledge, self-represented in the Milburn Litigation. The Milburn Litigation has been expensive and time consuming for Englefield.

6. Because of the disappointing performance of the business of Advanced Glazing and the distracting and expensive Milburn Litigation, Englefield and the Fund have been seeking to sell their preferred shares in Advanced Glazing for a number of years. Englefield took the lead in the sales effort with the support of the Fund.

7. Attached at Exhibit “A” is a summary of the offers that have been received and considered by Englefield and the Fund, which is being filed on a confidential basis.

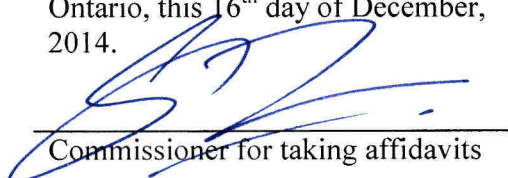
8. The initial offer from Mr. Schabel was for less than the last offer received. However, we were successful in negotiating an increase of the offer to match the previous offer. I am advised by Donna Parr and believe that the Fund has settled a form of conditional agreement of purchase and sale of its preferred shares in Advanced Glazing to Mr. Schabel. Attached hereto as Exhibit “B” is a copy of the form of agreement of purchase and sale that the Fund has negotiated.

9. The form of agreement of purchase and sale and summary of offers is being filed separately as it contains commercially sensitive information that would harm the parties if disclosed publicly. A sealing order will be sought. Englefield intends to complete the negotiations and to enter into a share purchase agreement on substantially the same financial terms for the sale of its preferred shares in Advanced Glazing.

10. The completion of the sale to Mr. Schabel is conditional on the dismissal of the Milburn Litigation and completion of the Englefield sale of its preferred shares. I believe that Mr. Schabel has already obtained Mr. Milburn's cooperation and that this condition can be met. In any event, from Englefield's experience of this investment and its previous attempts to sell its interests in Advanced Glazing, any sale while the Milburn Litigation outstanding will be extremely difficult to complete.

11. No investment banker has been hired to attempt to market Advanced Glazing for sale on any basis, be it by liquidation or as a going concern. Given the ongoing Milburn Litigation, I believe that any such sale would be impossible. In the circumstances, I do not believe that an investment banker could produce a better offer than the offer from Mr. Schabel.

12. I swear this affidavit in support of a motion to approve a sale of the shares held by the Fund in Advanced Glazing, and for no other or improper purpose.

SWORN BEFORE ME at the City)
of Toronto, in the Province of)
Ontario, this 16th day of December,)
2014.)
)
_____)
Commissioner for taking affidavits)


_____)
RICHARD BLACK

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND LTD.

Court File No: CV-13-10279-00CL

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

Proceeding commenced at Toronto

**AFFIDAVIT OF RICHARD BLACK
(Motion for Approval of Sale of Advance Glazing
Technologies Limited)
(sworn December 16, 2014)**

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND
LTD.

Court File No: CV-13-10279-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOTION RECORD
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