

**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**  
**(Stay Extension and Approval of Claims Procedure Order**  
**Returnable January 9, 2014)**

January 6, 2014

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**ONTARIO  
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**Tab 1**

**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")**

**NOTICE OF MOTION  
(Stay Extension and Approval of Claims Procedure Order  
Returnable January 9, 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 January 9, 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:**

1. An Order, substantially in the form attached to the Motion Record at Tab 3 (the "**Claims Procedure Order**"):
  - (a) if necessary, abridging the time for service of the Notice of Motion such that the motion is properly returnable January 9, 2014 and dispensing with further service thereof;
  - (b) extending the Stay Period (the "**Stay Period**") as defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated

October 1, 2013, as amended and restated on October 29, 2013 (the "Initial Order"), to March 7, 2014;

- (c) approving the proposed claims process to identify and determine claims of creditors of the Fund (the "Claims Process") and, among other things, authorizing, directing and empowering FTI Consulting Canada Inc., in its capacity as monitor of the Applicant (the "Monitor") to take such actions as contemplated by the Claims Process; and
  - (d) approving the Third Report of the Monitor dated November 15, 2013, the Fourth Report of the Monitor dated November 26, 2013, and the Monitor's activities as described therein; and,
2. Granting such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background:**

3. On October 1, 2013, the Court granted the Initial Order, which was amended and restated on October 29, 2013.
4. On November 18, 2013, the Honourable Mr. Justice Morawetz granted an order approving a Sale and Investor Solicitation Process (the "SISP"), the purpose of which is to canvass the market to solicit interest in purchasing or investing in the Fund's business and property.
5. The deadline for bids in Phase 1 of the SISP was on December 13, 2013. Multiple bids were received by that date and entering Phase 2 of the SISP was authorized on December 20, 2013.

6. Phase 2 of the SISP is presently underway, and the bid deadline (the "**Phase 2 Bid Deadline**") will be February 3, 2014 or February 18, 2014 if extended pursuant to the terms of the SISP. If a sale or investment proposal is identified in the SISP and ultimately selected, the Fund would work towards closing any such transaction forthwith thereafter.

#### **The Proposed Claims Procedure Order**

7. Conducting a claims process to identify and ultimately quantify and adjudicate claims against the Fund is important to provide potential bidders in the SISP with clarity, to the extent required for the form of transaction they may propose, regarding the claims against the Fund.

8. Identifying the disputed and undisputed claims against the Fund may be required shortly after the Phase 2 Bid Deadline, depending on the form of transaction identified and the closing date of any such transaction.

9. The draft Claims Procedure Order is appropriate, flexible and expeditious.

10. The Claims Procedure Order includes appropriate claims bar dates:

- (a) The proposed Claims Bar Date for claims against the Fund and its Directors and Officers (as defined in the Claims Procedure Order) is 5:00 pm Toronto time on March 6, 2014 (the "**Claims Bar Date**"), 45 days after the deadline for the Monitor to publish notice in The Globe and Mail.
- (b) claims against the Fund for indemnity by Directors or Officers are to be filed within 15 business days after the applicable D&O Proof of Claim (as

defined in the Claims Procedure Order) is received by the relevant Director or Officer (as set out in the Claims Procedure Order).

11. The Claims Procedure Order refers specifically to the following known claimants: Roseway Capital S.a.r.l ("**Roseway**"); the former manager of the Fund GrowthWorks WV Management Ltd. (the former "**Manager**"); Allen-Vanguard Corporation ("**Allen-Vanguard**"); and Douglas Milburn and certain other common shareholders (the "**AGTL Shareholders**") of Advanced Glazing Technologies Limited ("**AGTL**").

12. The proposed Claims Procedure Order separately addresses the claims advanced by the Manager and Allen-Vanguard and provides for a "Proof of Claim Document Package" to be delivered to AGTL. The claims by Roseway are excluded from the proposed Claims Procedure Order since such claims are secured obligations. The Fund intends to seek to resolve the disputed portion of the Roseway Claims, with the assistance of the Monitor, and, if necessary, will seek direction of the Court regarding a process to resolve such dispute.

13. Generally, the draft Claims Procedure Order does not provide a specific method of adjudicating claims that cannot be resolved on a consensual basis. To the extent that a dispute occurs that cannot be resolved, the Monitor will seek further advice and direction of the Court.

14. The Monitor is supportive of the Claims Process, including the Claims Bar Date.

#### **Stay Extension**

15. On October 1, 2013, the Court granted the Initial Order, which included a stay of proceedings as against the Fund. The Stay Period was extended by Order of this Court on October 29, 2013. The Stay Period currently expires on January 15, 2014.



16. The Fund has acted in good faith and with due diligence since the granting of the Initial Order, including that the Fund have commenced a SISP, which is currently in Phase 2, and has been working with the Monitor and its financial advisor in relation thereto.

17. The Fund seeks an extension of the Stay Period to March 7, 2014. This extension is necessary and appropriate in the circumstances, in particular to allow the Fund to continue to implement the SISP.

18. The Fund has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period.

19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

20. The Fund also relies upon the following:

- (a) Section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) Rules 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 C. Ian Ross sworn January 6, 2014, and exhibits thereto;
- 2. The Fifth Report of the Monitor; and

3. Such further and other materials as counsel may advise and this Court may permit.

January 6, 2014

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TO: ATTACHED SERVICE LIST

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE January 9, 2014)**

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Lawyers for the Applicant

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.  
(the "APPLICANT")

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

**SERVICE LIST  
(as of November 28, 2013)**

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<p><b>DELOITTE RESTRUCTURING INC.</b>  2300 – 360 Main Street  Winnipeg, MB R3C 3Z3</p> <p><b>John R. Fritz</b>  Email: jofritz@deloitte.ca  Tel: (204)942-0051  Fax: (204)947-2689</p>	<p><b>Deloitte Restructuring Inc.</b>  <b>In its capacity as Monitor of The  Puratone Corporation, Niverville  Swine Breeders Ltd., and Pembina  Valley Pigs Ltd.</b></p>

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**ONTARIO SECURITIES COMMISSION****Mostafa Asadi**

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Commission**



**Tab 2**

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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(the "APPLICANT")

**AFFIDAVIT OF C. IAN ROSS,  
SWORN January 6, 2014  
(Claims Procedure Order and Stay Extension)**

I, C. Ian Ross, of the Town of The Blue Mountains, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), the Applicant in these proceedings. I am a director of the Fund and interim chief executive officer of the Fund, in which role I am responsible for the daily operations of the Fund, acting under the oversight of a special committee of the Fund's Board of Directors. As such, I have personal knowledge of the facts to which I depose, except where I have indicated that I have obtained facts from other sources, in which case I believe those facts to be true.
2. I have sworn a series of affidavits in these *Companies Creditors' Arrangement Act* ("**CCAA**") proceedings, including an affidavit on September 30, 2013 in support of the initial application of the Fund pursuant to the CCAA, which I shall refer to herein as my "**Initial Affidavit**". Capitalized terms contained but not defined herein, have the meanings provided in my Initial Affidavit.

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3. I swear this affidavit in support of a motion for an order in the form to be attached to the Motion Record of the Fund (the "**Claims Procedure Order**"), among other things, approving a claims procedure and extending the Stay Period as defined in paragraph 14 of the Initial Order (defined below) (the "**Stay Period**") to March 7, 2014 and for no other or improper purpose.

#### **BACKGROUND AND CCAA PROCEEDINGS**

4. The Fund is a labour-sponsored venture capital fund with a diversified portfolio of investments in small and medium-sized Canadian businesses (as defined in my Initial Affidavit, the "**Portfolio Companies**").

5. In the face of a series of challenges described in my Initial Affidavit, the Fund sought and received Court protection pursuant to the CCAA in the form of an initial order of the Honourable Mr. Justice Newbould dated October 1, 2013, which was amended and restated on October 29, 2013 by the Honourable Justice Mesbur (as amended and restated, the "**Initial Order**").

6. Also on October 29, 2013, the Stay Period was extended by order of Justice Mesbur to January 15, 2014.

7. On November 18, 2013, the Honourable Mr. Justice Morawetz granted an order approving a Sale and Investor Solicitation Process (the "**SISP**"). The purpose of the SISP is to canvass the market to solicit interest in purchasing or investing in the Fund's business and property.

## SALE AND INVESTOR SOLICITATION PROCESS UPDATE

8. Since the order approving the SISP was granted in November, 2013, the Fund together with its financial advisor, The Commercial Capital Corporation (operating as CCC Investment Banking) (the “**Financial Advisor**”) and FTI Consulting Canada Inc. in its capacity as monitor in these proceedings (the “**Monitor**”), have been working diligently to complete the SISP.

9. The SISP is divided into two phases. The deadline for bids in Phase 1 of the SISP occurred on December 13, 2013 (the “**Phase 1 Bid Deadline**”).

10. During Phase 1, among other things:

- (a) The Financial Advisor (with the assistance of the Fund, and under the supervision of the Monitor and in accordance with the terms of the SISP) solicited non-binding indications of interest in the form of non-binding letters of intent (each an “**LOI**”) from prospective strategic or financial parties to acquire the Fund’s property or to invest in the Fund; and
- (b) Parties that qualified as “**Qualified Bidders**”, as defined in the SISP (the “**Qualified Bidders**”), were provided with a Confidential Information Memorandum and access to an electronic data room of due diligence information.

11. Multiple parties delivered LOIs to the Financial Advisor by the Phase 1 Bid Deadline.

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12. The Special Committee, in consultation with the Financial Advisor and the Monitor, assessed the LOIs received by the Phase 1 Bid Deadline in accordance with the criteria set out in the SISP.

13. The Special Committee, in consultation with the Financial Advisor and with the consent of the Monitor, determined that there is a reasonable prospect of obtaining a Qualified Bid, as defined in the SISP and, on December 20, 2013, authorized the commencement of Phase 2 of the SISP, which commenced on December 20, 2013.

14. During Phase 2, in accordance with the SISP, Qualified Bidders that have not been eliminated from the SISP will be granted further access to due diligence materials and information relating to the Fund's property and business, including, as appropriate, information or materials reasonably requested by Qualified Bidders, and if permitted by the Portfolio Companies, presentations by senior management of Portfolio Companies and access to further information in the electronic data room.

15. Parties will have the opportunity to submit a final, binding proposal in the form of Purchase Agreement or form of Investment Agreement (each as defined in the SISP) by the Phase 2 bid deadline, which is February 3, 2014, which date may be extended in accordance with the SISP by an additional 15 days to February 18, 2014 (the "Phase 2 Bid Deadline").

#### **NEED TO IDENTIFY CLAIMS AGAINST THE FUND**

16. Conducting a claims process to identify and ultimately quantify and adjudicate claims against the Fund is important to provide potential bidders with clarity, to the extent required for the form of transaction they may propose, regarding the claims against the Fund.

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17. In particular, such clarity is important and likely essential for any proposed merger transaction since:

- (a) I am advised by our counsel, McCarthy Tétrault LLP, that a merger transaction can only preserve the favourable tax treatment that the existing shareholders of the Fund receive (as holders of shares in a labour sponsored fund) if all of the shares issued to the Fund as consideration in a "merger" transaction are distributed to the Fund's shareholders; and
- (b) If all of the shares issued to the Fund as consideration in a merger transaction are distributed to the Fund's shareholders, then any proposed merger transaction must either provide for a cash payment of all creditor claims against the Fund or for the assumption of such creditor claims by the merger partner.

18. Accordingly, any potential merger partner (and possibly other bidders depending on the type of transaction proposed) will want to identify the claims against the Fund and either adjudicate and quantify such claims prior to closing or specifically identify the disputed and undisputed claims and address them in their bid.

19. As noted above, the deadline for bids in Phase 2 of the SISP is February 3, 2014 or February 18, 2014 if extended pursuant to the terms of the SISP. Ideally, to the extent a sale or investment proposal is identified in the SISP, the parties would move forward to close any such transaction forthwith thereafter.

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20. Accordingly, identifying the disputed and undisputed claims against the Fund may be required shortly after the Phase 2 Bid Deadline, depending on the form of transaction identified and the closing date of any such transaction.

21. The timely identification of claims against the Fund is also important for the restructuring process generally and for the Fund's stakeholders, in particular, in order to permit distributions to be made (beyond distributions to Roseway Capital S.a.r.l. ("**Roseway**") in relation to its agreed upon secured obligations) to the extent possible.

#### **KNOWN CLAIMS AGAINST THE FUND**

22. At this stage, I am aware of only a few claims or potential claims against the Fund. This includes the claims advanced or alleged by Roseway, Allen-Vanguard Corporation ("**Allen-Vanguard**"), GrowthWorks WV Management Ltd, the former manager of the Fund (the "**Manager**"), Douglas Milburn and certain other common shareholders (the "**AGTL Shareholders**") of Advanced Glazing Technologies Limited ("**AGTL**"), which respectively relate generally to the following:

- (a) **Roseway:** Certain obligations are payable by the Fund to Roseway pursuant to the Participation Agreement dated May 28, 2010, which obligations are secured. One element of Roseway's claim (the "**Roseway Claim**") in the amount of approximately \$1.9 million is disputed; however, the balance of the Roseway Claim has been quantified and, on November 28, 2013, Justice Mesbur ordered that the Fund, with the consent of the Monitor, was entitled to distribute funds to Roseway, provided certain conditions (relating to ensuring payment of priority amounts) were met;

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- (b) **Allen-Vanguard:** In Court File No. 08-CV-43544 (the "**Allen-Vanguard Action**"), Allen-Vanguard claims \$650 million of which it states \$40 million would be recovered from an escrow account, plus costs and interest against the Fund and the other Offeree Shareholders (as defined therein). The Fund disputes this claim in its entirety. Allen-Vanguard brought a motion in these CCAA proceedings for, among other things, an order that the stay of proceedings in the Initial Order does not apply to the continuation of proceedings in the Allen-Vanguard Action. The Fund brought a cross-motion seeking to have certain questions arising in the Allen-Vanguard Action determined in a mini-trial in these CCAA proceedings. A motion is presently scheduled for February 11, 2014 to address these issues;
- (c) **The Manager:** Prior to September 30, 2013, the Fund had outsourced all of its day-to-day operations, monitoring of the Fund's investments and other management and operational oversight to the Manager pursuant to a management agreement dated July 15, 2006 (the "**Management Agreement**"). On September 30, 2013, the Fund terminated the Management Agreement in accordance with its terms as a result of the Manager's material defaults in respect of certain of its obligations thereunder. The Manager's counsel has delivered a letter disputing the termination of the Management Agreement and claiming damages from the Fund relating thereto. The Fund has claims against the Manager that should be resolved at the same time as the Manager's claims against the Fund; and



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- (d) AGTL: In the Supreme Court of Nova Scotia Court File No. SN296202, the AGTL Shareholders claim, among other things, \$28 million in damages from the Fund and certain other defendants. The Fund disputes this claim in its entirety.

23. In addition, while I am not presently aware of any claims against the directors or officers of the Fund, the directors and officers of the Fund have unlimited indemnities from the Fund. Therefore, it is also important to identify, quantify and adjudicate claims against the directors and officers of the Fund for which they would have a claim against the Fund for indemnity (as defined in the Claims Procedure Order, a “**D&O Indemnity Claim**”).

#### **PROPOSED CLAIMS PROCEDURE ORDER**

24. In the proposed Claims Procedure Order, the Fund seeks to identify any and all claims against the Fund whether they are direct claims (as defined in the Claims Procedure Order, a “**Claim**”) or D&O Indemnity Claims against the Fund by directors and officers. In order to identify the D&O Indemnity Claims against the Fund, the proposed Claims Procedure Order also seeks to identify claims against the directors and officers of the Fund that may give rise to a D&O Indemnity Claim.

25. The proposed Claims Procedure Order includes the following terms (capitalized terms used in this paragraph and not defined herein have the meanings given in the proposed Claims Procedure Order):

- (a) Notice: the Monitor is to provide notice of the claims process by posting a copy of the Proof of Claim Document Package on its website, publishing a notice in The Globe and Mail newspaper and sending a

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Proof of Claim Document Package to all known Creditors according to the Fund's books and records, among other things;

- (b) Claims Bar Date: Proofs of Claim relating to Claims and D&O Claims must be filed by March 6, 2014 (which is 45 days after the deadline for the Monitor to publish notice in The Globe and Mail newspaper) and all Claims or D&O Claims not filed by that date are forever barred and extinguished;
- (c) D&O Indemnity Claims Bar Date: A copy of any D&O Proof of Claim will be provided to the Director(s) and/or Officer(s) named therein and such Directors and Officers will have 15 Business Days after deemed receipt thereof to file a D&O Indemnity Claim; D&O Indemnity Claims not filed by that date are forever barred and extinguished;
- (d) Excluded Claims: Certain Claims are excluded and such Claimants are not required to file a Proof of Claim, including any Claim entitled to the benefit of the Administration Charge, the Claims of Roseway pursuant to the Participation Agreement dated May 28, 2010, including the disputed portion of such Claims (which shall be determined separately in the CCAA Proceedings), and any Post-Filing Claims;
- (e) Review of proofs of claim: The Monitor is to review the proofs of claim, may request additional information, may request a revised proof of claim, may resolve and settle any issue or claim arising in a Proof of Claim or D&O Proof of Claim (with the consent of the Fund and any Person whose liability may be affected or with Court approval), may accept a D&O Indemnity Claim in whole or in part, and may revise or

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disallow a claim in whole or in part (in consultation with the Applicant with respect to the Proofs of Claim and the named Directors and Officers with respect to D&O Proofs of Claim);

- (f) Notice of Revision or Disallowance: Where a Claim is revised or disallowed in whole or in part, the Monitor is to deliver a Notice of Revision or Disallowance, attaching the form of Dispute Notice;
- (g) Dispute Notice: A Person who disputes a Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor not later than the fifteenth (15<sup>th</sup>) Business Day following deemed receipt of the Notice of Revision or Disallowance; otherwise, the amount of such Claim will be deemed to be as set out in the Notice of Revision or Disallowance;
- (h) Resolution: as soon as practicable after the delivery of the Dispute Notice, the Monitor shall attempt to resolve and settle the purported claim and, in the event it is not settled within a time period or in a manner satisfactory to the Monitor in consultation with the Fund and the applicable Claimant, the Monitor shall seek directions from the Court concerning an appropriate process for resolving the dispute; and
- (i) Related claims: Any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding and any Claims of the Applicant against a purported Claimant may, at the option of the Applicant, be determined at the same time and in the same proceeding as the Claims by the purported Claimant against the Applicant.

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26. The proposed Claims Procedure Order also separately addresses the claims advanced by Roseway, the Manager, Allen-Vanguard and the AGTL Shareholders, including that the Roseway Claims are "Excluded Claims", excluded from the proposed Claims Procedure Order since such Claims are secured obligations and since a distribution order has already been sought and obtained in relation to obligations owing to Roseway. The Fund intends to seek to resolve the disputed portion of the Roseway Claims with the assistance of the Monitor, and, if necessary, will seek direction of the Court regarding a process to resolve such dispute in the CCAA proceedings.

27. I believe that the proposed Claims Procedure Order is appropriate and will assist the Fund in identifying and ultimately quantifying and adjudicating claims against it in a timely manner, which may be important for a successful restructuring of the Fund.

#### **STAY EXTENSION**

28. The Initial Order included a stay of proceedings as against the Applicant until and including October 31, 2013, or such later date as the Court may order.

29. By order dated October 29, 2013, the Stay Period was extended to January 15, 2014.

30. The Fund seeks a further extension of the Stay Period to March 7, 2014, a date shortly after the Phase 2 Bid Deadline, if extended pursuant to the SISP.

31. The Applicant has acted in good faith and with due diligence since the granting of the Initial Order, including that the Applicant has been conducting the SISP as set out above.

32. In addition and among other things, the Fund has been:
- (a) working with the former manager of the Fund in relation to providing certain critical transition services to the Fund;
  - (b) updating and working with Roseway, including supporting a motion for distribution of funds to Roseway in relation to which an order was granted by Justice Mesbur on November 28, 2013;
  - (c) taking steps to address the claim by Allen-Vanguard against the Fund, including bringing a cross-motion seeking to have certain questions relating to the Allen-Vanguard Action determined in a mini-trial in these CCAA proceedings; and
  - (d) preparing the Claims Procedure Order to identify claims against the Fund and its directors and officers.
33. The requested extension of the Stay Period is necessary and appropriate in the circumstances, in particular to allow the Applicant to complete Phase 2 of the SISP, and to commence the claims procedure.
34. The requested extension of the Stay Period is to a date shortly after the Phase 2 Bid Deadline, if extended pursuant to the SISP, such that the Fund will be in a position to know whether a sale or investment proposal has been identified in the SISP and to advise the Court of the next steps in these CCAA Proceedings in light of that information.

35. I believe that the Fund and its stakeholders would benefit from having sufficient time and the protection of a CCAA stay to enable these steps to be taken, including in particular completion of the SISP.

36. The cash flow projection that I understand will be attached to the Monitor's fifth report shows that the Applicant has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period.

**RELIEF REQUESTED**


37. Accordingly, this affidavit is sworn in support of a motion by the Fund for an order pursuant to the CCAA, among other things:

- (a) if necessary, abridging the time for service of the Notice of Motion such that the motion is properly returnable January 9, 2014 and dispensing with further service thereof;
- (b) approving the proposed claims process in the Claims Procedure Order;
- (c) extending the Stay Period to March 7, 2014; and
- (d) granting such further and other relief as Counsel may request and this

Honourable Court may deem just.

SWORN BEFORE ME at the )  
 City of Toronto, in the Province )  
 of Ontario, this 6th day of )  
 January, 2014. )  
 \_\_\_\_\_ )  
 Commissioner for taking )  
 affidavits )

Kelly Peters

  
 \_\_\_\_\_  
 C. IAN ROSS

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

Proceeding commenced at Toronto

**AFFIDAVIT OF C. IAN ROSS  
(Re: Claims Procedure Order)  
(sworn January 6, 2014)**

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Lawyers for the Applicant  
13066561

**Tab 3**



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

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

THE HONOURABLE ) THURSDAY, THE 9<sup>TH</sup>  
 )  
JUSTICE ● ) DAY OF JANUARY, 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.

**CLAIMS PROCEDURE AND STAY EXTENSION ORDER**

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Applicant**”) for an order establishing a claims procedure to identify, determine and resolve claims of creditors of the Applicant and extending the stay period defined in paragraph 14 of the Initial Order (defined below) (the “**Stay Period**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of C. Ian Ross sworn on January 6, 2014, and the Fifth Report (the “**Fifth Report**”) of FTI Consulting Canada Inc., in its capacity as monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, the Monitor, Roseway Capital S.a.r.l. (“**Roseway**”) and GrowthWorksWV Management Ltd. (the “**Manager**”), no one appearing for any other party although duly served as appears from the affidavit of service.

**SERVICE**

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

**STAY EXTENSION**

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including March 7, 2014.

**DEFINITIONS AND INTERPRETATION**

3. THIS COURT ORDERS that, for the purposes of this Order establishing a claims process for the Creditors (as defined herein) of the Applicant (and in addition to terms defined elsewhere herein), the following terms shall have the following meanings ascribed thereto:

“**Administration Charge**” has the meaning given to that term in paragraph 37 of the Initial Order.

“**AGTL Shareholders**” means the plaintiffs in the Supreme Court of Nova Scotia action, Court File No. SN296202, against the Applicant and certain other defendants.

“**Allen-Vanguard**” means Allen-Vanguard Corporation.

“**Allen-Vanguard Action**” means the proceedings in Court File No. 08-CV-43544.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C36, as amended.

“**CCAA Proceedings**” means the proceedings commenced by the Applicant in the Court at Toronto under Court File No. CV-13-10279-00CL.

“**CCAA Service List**” means the service list in the CCAA Proceedings posted on the Monitor’s Website, as amended from time to time.

“**Claim**” means any right or claim of any Person, other than an Excluded Claim, but including an Equity Claim, that may be asserted or made in whole or in part against the

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Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors and Officers) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, (B) relates to a time period prior to the Claims Bar Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Claims Bar Date.

**“Claimant”** means any Person having a Claim, including a D&O Indemnity Claim, or a D&O Claim and includes the permitted transferee or assignee of a Claim, a D&O Indemnity Claim or a D&O Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through any such Person.

**“Claimants’ Guide to Completing the D&O Proof of Claim”** means the guide to completing the D&O Proof of Claim form, in substantially the form attached as Schedule “C-2” hereto.

**“Claimants’ Guide to Completing the Proof of Claim”** means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule “B-2” hereto.

**“Claims Bar Date”** means March 6, 2014.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“Creditor”** means any Person having a Claim, D&O Claim and/or a D&O Indemnity Claim and includes, without limitation, the transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim transferred and recognized as a Creditor in accordance with paragraph 55 hereof or a trustee, executor, liquidator, receiver, receiver and manager or other Person acting on behalf of or through such Person.

**“Creditors’ Meeting”** means any meeting of creditors called for the purpose of considering and/or voting in respect of any Plan, if one is filed, to be scheduled pursuant to further order of the Court.

**“Director”** means any natural person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a) a director or *de facto* director of the Applicant or b) a Portfolio Company Director.

**“Directors’ Charge”** has the meaning given to that term in paragraph 25 of the Initial Order.

**“Dispute Notice”** means a written notice to the Monitor, in substantially the form attached as Appendix “1” to Schedule “E” hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance.

**“D&O Claim”** means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting,

constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, or (B) relates to a time period prior to the Claims Bar Date, but not including an Excluded Claim.

**“D&O Indemnity Claim”** means any existing or future right of any Director or Officer against the Applicant, which arose or arises as a result of any Person filing a D&O Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant.

**“D&O Indemnity Claims Bar Date”** has the meaning set out in paragraph 20 hereof.

**“D&O Indemnity Proof of Claim”** means the indemnity proof of claim in substantially the form attached as Schedule “D” hereto to be completed and filed by a Director or Officer setting forth its purported D&O Indemnity Claim and which shall include all supporting documents in respect of such D&O Indemnity Claim.

**“D&O Proof of Claim”** means the proof of claim, in substantially the form attached as Schedule [“C”] hereto, to be completed and filed by a Person setting forth its D&O Claim and which shall include all supporting documentation in respect of such D&O Claim.

**“Equity Claim”** has the meaning set forth in Section 2(1) of the CCAA.

**“Excluded Claim”** means:

- (i) any Claim entitled to the benefit of the Administration Charge;

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- (ii) the Claims of Roseway pursuant to the Participation Agreement dated May 28, 2010, including the disputed portion of such Claims, which shall be determined separately in these CCAA Proceedings; and,
- (iii) any Post-Filing Claims.

**“Filing Date”** means October 1, 2013.

**“Government Authority”** means a federal, provincial, state, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over the Applicant.

**“Initial Order”** means the Initial order of the Honourable Justice Newbould made October 1, 2013 in the CCAA Proceedings, as amended and restated on October 29, 2013 and as may be amended, extended, restated or varied from time to time.

**“Manager Claim”** has the meaning ascribed thereto in paragraph 49.

**“Monitor’s Website”** means <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

**“Notice of Revision or Disallowance”** means a notice, in substantially the form attached as Schedule “E” hereto, advising a Claimant that the Monitor has revised or disallowed all or part of a Claim, D&O Claim or D&O Indemnity Claim submitted by such Claimant pursuant to this Order.

**“Notice to Claimants”** means the notice to Claimants for publication in substantially the form attached as Schedule “A” hereto.

**“Officer”** means any natural person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant.

**“Person”** is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory

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body, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

**“Plan”** means any proposed plan(s) of compromise or arrangement to be filed by the Applicant pursuant to the CCAA as amended, supplemented or restated from time to time in accordance with the terms thereof.

**“Portfolio Company Directors”** has the meaning given to that term in paragraph 23 of the Initial Order.

**“Portfolio Company Directors’ Charge”** has the meaning given to that term in paragraph 26 of the Initial Order.

**“Post-Filing Claims”** means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business.

**“Proof of Claim”** means the proof of claim in substantially the form attached as Schedule “B” hereto to be completed and filed by a Person setting forth its purported Claim and which shall include all supporting documentation in respect of such purported Claim.

**“Proof of Claim Document Package”** means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the D&O Proof of Claim form, the Claimants’ Guide to Completing the Proof of Claim form, the Claimants’ Guide to Completing the D&O Proof of Claim form, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable.

**“Proven Claim”** means each Claim, D&O Claim or D&O Indemnity Claim that has been proven in accordance with this Order.

4. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. EST on such Business Day unless otherwise indicated herein.

5. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

## **GENERAL PROVISIONS**

6. THIS COURT ORDERS that the Monitor, in consultation with Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where it is satisfied that a Claim, a D&O Claim or a D&O Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of completion, execution and time of delivery of such forms. Further, the Monitor may request any further documentation from a Person that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Claim, a D&O Claim or a D&O Indemnity Claim.

7. THIS COURT ORDERS that if any purported Claim, D&O Claim or D&O Indemnity Claim arose in a currency other than Canadian dollars, then the Person making such Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim in such currency, rather than in Canadian dollars or any other currency.

8. THIS COURT ORDERS that a Person making a Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the Claim, D&O Claim or D&O Indemnity Claim, including interest calculated to the Filing Date.

9. THIS COURT ORDERS that the form and substance of each of the Notice to Claimants, Proof of Claim, Claimants’ Guide to Completing the Proof of Claim, D&O Proof of Claim, Claimants’ Guide to Completing the D&O Proof of Claim, D&O Indemnity Proof of Claim, Notice of Revision or Disallowance and the Dispute Notice attached as Appendix “1” thereto, substantially in the forms attached as Schedules “A”, “B”, “B-2”, “C”, “C-2”, “D” and “E”,



respectively, to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the Applicant, may from time to time make non-substantive changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or advisable.

10. THIS COURT ORDERS that copies of all forms delivered by a Creditor or the Monitor hereunder, as applicable, shall be maintained by the Monitor and, subject to further order of the Court, the relevant Creditor will be entitled to have access thereto by appointment during normal business hours on written request to the Monitor.

### **MONITOR'S ROLE**

11. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

12. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, other orders in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, the Directors and Officers and any Claimant, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

### **NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS**

13. THIS COURT ORDERS that:

- (a) the Monitor shall, no later than two (2) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on the Monitor's Website;
- (b) the Monitor shall, no later than seven (7) Business Days following the making of this Order, cause the Notice to Claimants to be published once in The Globe and Mail

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newspaper (National Edition) and any other newspaper or journals as the Monitor, in consultation with the Applicant, considers appropriate, if any;

- (c) the Monitor shall, provided such request is received in writing by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person requesting such material; and
- (d) the Monitor shall send to any Director or Officer named in a D&O Proof of Claim received on or before the Claims Bar Date a copy of such D&O Proof of Claim, including copies of any documentation submitted to the Monitor by the D&O Claimant, as soon as practicable.

14. THIS COURT ORDERS that within seven (7) Business Days following the making of this Order, the Monitor shall send a Proof of Claim Document Package to all known Creditors, including the Manager and the AGTL Shareholders, other than Allen-Vanguard, in accordance with the Applicant's books and records.

15. THIS COURT ORDERS that, except as otherwise set out in this Order or any other orders of the Court, neither the Monitor nor the Applicant is under any obligation to send or provide notice to any Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and, without limitation, neither the Monitor nor the Applicant shall have any obligation to send or provide notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment or transfer of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons shall be bound by any notices published pursuant to paragraphs 13(a) and 13(b) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

16. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by

the Applicant or the Monitor of any liability of the Applicant or any Director or Officer to any Person.

## **CLAIMS BAR DATE**

### *Claims and D&O Claims*

17. THIS COURT ORDERS that Proofs of Claim and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim has been previously commenced.

18. THIS COURT ORDERS that, in respect of any Claim, any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and/or the Property (as defined in the Initial Order) and all such Claims shall be forever extinguished, barred, discharged and released as against the Applicant and the Property, and the Applicant shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant and/or against the Property; (c) shall not be entitled to vote such Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such Claim.

19. THIS COURT ORDERS that, in respect of any D&O Claim, any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Director or Officer or the insurers of such Director or Officer, and all such D&O Claims shall be forever extinguished, barred, discharged and released as against the Directors and Officers and the Property and the Directors and Officers shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby

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forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Director or Officer and/or against the Property; (c) shall not be entitled to receive any distribution in respect of such D&O Claim; and (d) shall not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such D&O Claim.

*D&O Indemnity Claims*

20. THIS COURT ORDERS that any Director or Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor in accordance with paragraph 59 hereof so that it is received by no later than fifteen (15) Business Days after the date of deemed receipt of the D&O Proof of Claim pursuant to paragraph 58 hereof by such Director or Officer (with respect to each D&O Indemnity Claim, the “**D&O Indemnity Claims Bar Date**”).

21. THIS COURT ORDERS that, in respect of any D&O Indemnity Claim, any Director or Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the applicable D&O Indemnity Claims Bar Date: (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished, barred, discharged and released as against the Applicant and the Property and the Applicant shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant and/or against the Property; (c) shall not be entitled to vote such D&O Indemnity Claim at any Creditors’ Meeting or to receive any distribution in respect of such D&O Indemnity Claim; and (d) shall not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such D&O Indemnity Claim.

*Excluded Claims*

22. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

### **PROOFS OF CLAIM**

23. THIS COURT ORDERS that each Person shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.

24. THIS COURT ORDERS that each Person shall include any and all D&O Claims it asserts against one or more Directors or Officers in a single D&O Proof of Claim.

25. THIS COURT ORDERS that each Person shall include any and all D&O Indemnity Claims it asserts against the Applicant in a single D&O Indemnity Proof of Claim.

26. THIS COURT ORDERS that if a Person submits a Proof of Claim and a D&O Proof of Claim in relation to the same matter, then that Person shall cross-reference the D&O Proof of Claim in the Proof of Claim and the Proof of Claim in the D&O Proof of Claim.

### **REVIEW OF PROOFS OF CLAIM & D&O PROOFS OF CLAIM**

27. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all Proofs of Claim and D&O Proofs of Claim filed, consult with the Applicant with respect thereto, and at any time:

- (a) may request additional information from a Claimant;
- (b) may request that a Claimant file a revised Proof of Claim or D&O Proof of Claim, as applicable;
- (c) (i) with the consent of the Applicant and any Person whose liability may be affected or (ii) with Court approval in a further order of the Court, may resolve and settle any issue or Claim arising in a Proof of Claim or D&O Proof of Claim or in respect of a Claim or D&O Claim and/or accept the Claim in a Proof of Claim or D&O Proof of Claim; and

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- (d) may, in consultation with the Applicant with respect to the Proofs of Claim and the Directors and Officers named in the applicable D&O Proof of Claim with respect to the D&O Proofs of Claim, as applicable, revise or disallow (in whole or in part) any Claim or D&O Claim.

28. THIS COURT ORDERS that where a Claim or D&O Claim has been accepted by the Monitor in accordance with this Order such Claim or D&O Claim, as applicable, shall constitute such Claimant's Proven Claim.

29. THIS COURT ORDERS that where a Claim or D&O Claim is revised or disallowed (in whole or in part), the Monitor (or the Applicant, where applicable) shall deliver to the Claimant a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

30. THIS COURT ORDERS that where a Claim or D&O Claim has been revised or disallowed (in whole or in part), the revised or disallowed Claim or D&O Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 39 to 42 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 43 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

31. THIS COURT ORDERS that the failure by the Monitor (or the Applicant, where applicable) to send a Notice of Revision and Disallowance shall not result in any Claim or D&O Claim being accepted as a Proven Claim or being deemed to be accepted as a Proven Claim.

#### **REVIEW OF D&O INDEMNITY PROOFS OF CLAIM**

32. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all D&O Indemnity Proofs of Claim filed, and at any time:

- (a) may request additional information from a Director or Officer;
- (b) may request that a Director or Officer file a revised D&O Indemnity Proof of Claim;
- (c) may attempt to resolve and settle any issue or Claim arising in a D&O Indemnity Proof of Claim or in respect of a D&O Indemnity Claim;

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- (d) may accept (in whole or in part) any D&O Indemnity Claim; and
- (e) may, by notice in writing, revise or disallow (in whole or in part) any D&O Indemnity Claim.

33. THIS COURT ORDERS that where a D&O Indemnity Claim has been accepted by the Monitor in accordance with this Order such D&O Indemnity Claim shall constitute such Director or Officer's Proven Claim.

34. THIS COURT ORDERS that where a D&O Indemnity Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Director or Officer a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

35. THIS COURT ORDERS that where a D&O Indemnity Claim has been revised or disallowed (in whole or in part), the revised or disallowed D&O Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 39 to 42 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 43 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

36. THIS COURT ORDERS that the failure by the Monitor to send a Notice of Revision and Disallowance shall not result in any D&O Indemnity Claim being accepted as a Proven Claim or being deemed to be accepted as a Proven Claim.

#### **DISPUTE NOTICE**

37. THIS COURT ORDERS that a Person who has received a Notice of Revision or Disallowance in respect of a Claim, a D&O Claim or a D&O Indemnity Claim and who intends to dispute such Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor not later than the fifteenth (15<sup>th</sup>) Business Day following deemed receipt of the Notice of Revision or Disallowance pursuant to paragraph 58 of this Order. The filing of a Dispute Notice with the Monitor in accordance with this paragraph shall result in such Claim, D&O Claim or D&O Indemnity Claim being determined as set out in paragraphs 39 to 42 (or, with respect to the

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Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 43 to 46 or 47 to 54, respectively) of this Order.

38. THIS COURT ORDERS that where a Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the requisite time period provided in this Order, the amount of such Claimant's Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount, if any, shall constitute such Claimant's Proven Claim (or, if the Claim, D&O Claim or D&O Indemnity Claim, as applicable, is disallowed in full in the Notice of Revision or Disallowance, the applicable Claimant shall be deemed to accept such disallowance and the Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be fully disallowed), and the balance of such Claimant's Claim, D&O Claim, or D&O Indemnity Claim, as applicable, if any, shall be forever extinguished, barred, discharged and released as against the Applicant, the Property and the Directors and Officers, as applicable, and the Property and the Applicant and/or Directors and Officers, as applicable, shall not have any liability whatsoever in respect thereof.

#### **RESOLUTION OF CLAIMS, D&O CLAIMS AND D&O INDEMNITY CLAIMS**

39. THIS COURT ORDERS that, as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Monitor shall attempt to resolve and settle the Claim or D&O Claim with the Claimant, subject to the terms of this Order.

40. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a D&O Indemnity Claim to the Monitor, the Monitor shall attempt to resolve and settle the purported D&O Indemnity Claim with the applicable Director or Officer.

41. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor in consultation with the Applicant and the applicable Claimant, the Monitor shall seek directions from the Court concerning an appropriate process for resolving the dispute.

42. THIS COURT ORDERS that any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding and any



claims of the Applicant against a purported Claimant may, at the option of the Applicant, be determined at the same time and in the same proceeding as the claims by the purported Claimant against the Applicant.

#### **ALLEN-VANGUARD CLAIM**

43. THIS COURT ORDERS that, notwithstanding anything in this Order, Allen-Vanguard shall be deemed to have submitted a Proof of Claim in the amount of \$650,000,000, of which they state \$40,000,000 shall be distributed from the Escrow Agreement (as defined in the Statement of Claim of Allen-Vanguard filed in the Allen-Vanguard Action (the “**Allen-Vanguard Statement of Claim**”) plus pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended and costs on a substantial indemnity basis, in reliance on the grounds set out in the Allen-Vanguard Statement of Claim and Reply of Allen-Vanguard in the Allen-Vanguard Action (the “**Allen-Vanguard Claim**”).

44. THIS COURT ORDERS that the Monitor shall be deemed to have delivered a Notice of Revision and Disallowance disallowing the Allen-Vanguard Claim in its entirety in reliance on the grounds set out in the Statement of Defence of the “Offeree Shareholders” in the Allen-Vanguard Action and that Allen-Vanguard shall be deemed to have submitted a Dispute Notice disputing such disallowance in its entirety.

45. THIS COURT ORDERS that, for greater clarity, nothing contained in this Order shall prejudice the Applicant’s or the Monitor’s rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of the Claims asserted by Allen-Vanguard.

46. THIS COURT ORDERS that, notwithstanding any provision of this Order (except paragraphs 43 to 45, inclusive), the procedure for determining the Allen-Vanguard Claim shall not be determined until after the hearing or other determination of the pending motion of Allen-Vanguard and cross-motion of the Applicant, now scheduled for February 11, 2014, unless otherwise agreed by the Applicant, the Monitor and Allen-Vanguard.

#### **MANAGER CLAIM**

47. THIS COURT ORDERS that notwithstanding any other term of this Order, the Manager shall, for purposes only of crystalizing its maximum damages claim as against the Applicant, be deemed to have submitted a Proof of Claim in the amount of \$18,000,000 pursuant to the letter of Dentons LLP dated and delivered to the Applicant's counsel on November 26, 2013 (the "**Manager's Proof of Claim**").

48. Notwithstanding paragraph 47 and any other term of this Order, the Manager Claim (as defined below) shall be determined in accordance with the procedure set out in paragraphs 49 to 54. For greater certainty, neither the deemed submission of the Manager's Proof of Claim nor any other term of this Order shall operate or be deemed in any way to prejudice the Manager's right to have the Manager Claim determined on the basis of the record and in accordance with such procedure.

49. THIS COURT ORDERS that, in addition of the Manager Proof of Claim, the Manager may deliver a Statement of Claim setting out its claim against the Applicant (collectively with the Manager's Proof of Claim the "**Manager Claim**"), which Statement of Claim shall comply with the rules of pleading in the *Rules of Civil Procedure*(Ontario) (the "**Rules of Pleading**"). The Manager Claim, if any, shall be delivered to the Applicant and the Monitor on or before the Claim Bar Date.

50. THIS COURT ORDERS that, notwithstanding any provision of this Order, the Applicant, in consultation with the Monitor, may revise or disallow the Manager Claim (in whole or in part) and dispute any allegation contained in the Manager Claim, if any, by delivering to the Manager a Notice of Revision or Disallowance in accordance with the terms of this Order, which shall attach a Statement of Defence and Counterclaim setting out the basis for the revision or disallowance and any counterclaims against the Manager, which Statement of Defence and Counterclaim shall comply with the Rules of Pleading.

51. THIS COURT ORDERS that, to the extent the Manager intends to dispute the Notice of Revision or Disallowance (including any allegations contained in the attached Statement of Defence and Counterclaim), the Manager shall deliver a Notice of Dispute in accordance with the terms of this Order (including the deadlines therefor), and shall attach a Reply and Defence to Counterclaim, which shall comply with the Rules of Pleading.

52. THIS COURT ORDERS that, in the discretion of the Applicant, in consultation with the Monitor, the Applicant may deliver to the Manager and the Monitor a Reply to Defence to Counterclaim, which shall comply with the Rules of Pleading.

53. THIS COURT ORDERS that if a dispute in relation to the Manager's Claim and any counterclaim by the Applicant (the "**Manager Dispute**") is not settled within a time period satisfactory to the Monitor in consultation with the Applicant and the Manager (after delivery of the pleadings described in paragraphs 48 to 52) or in a manner satisfactory to the Monitor in consultation with the Applicant and the Manager, then the Applicant, the Manager and the Monitor shall attend before a judge of the Court to set a timetable for all procedural steps necessary for the hearing of the Manager Dispute, which shall include (unless this Court orders otherwise) discoveries, delivery of expert reports (if any), mediation, and a hearing (which shall be before a judge of the Court), among other possible steps.

54. THIS COURT ORDERS that, the pleadings described in paragraphs 48 to 52 shall not be issued by the Court. The pleadings shall form part of the record in the event a Manager Dispute occurs.

#### **NOTICE OF TRANSFEREES**

55. THIS COURT ORDERS that neither the Monitor nor the Applicant shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of the permitted transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, D&O Claim or D&O Indemnity Claim. Any such transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

56. THIS COURT ORDERS that the transferee or assignee of any Claim, D&O Claim or D&O Indemnity Claim (i) shall take the Claim, D&O Claim or D&O Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, D&O Claim or D&O Indemnity Claim, and subject to the rights of the Applicant and any Director or Officer against any such transferor or assignor, including any rights of set-off which the Applicant, Director, or Officer had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, D&O Claim or D&O Indemnity Claim to reduce any amount owing by the transferee or assignee to the Applicant, Director or Officer, whether by way of set off, application, merger, consolidation or otherwise.

### **DIRECTIONS**

57. THIS COURT ORDERS that the Monitor, the Applicant and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

### **SERVICE AND NOTICE**

58. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, the D&O Indemnity Proof of Claim, the Notice of Revision or Disallowance, and any letters, notices or other documents to Claimants, Directors, Officers, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Applicant or set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim. Any such service or notice shall be deemed to have been received: (i) if sent by ordinary mail, on the fourth Business Day after mailing; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 6:00 p.m. on a Business Day, on such Business Day, and if delivered after 6:00 p.m. or on a day other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 58,

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Notices of Revision or Disallowance shall be sent only by (i) email or facsimile to a number or email address that has been provided in writing by the Claimant, Director or Officer, or (ii) courier.

59. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, D&O Proofs of Claims, D&O Indemnity Proofs of Claim and Notices of Dispute) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, prepaid registered mail, courier, personal delivery or electronic transmission addressed to:

FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor

Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010  
P.O. Box 104  
Toronto, Ontario Canada  
M5K 1G8

Fax No.: (416) 649-8101

Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)

Attention: Paul Bishop and Jodi Porepa

Any such notice or other communication by a Person shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

60. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

61. THIS COURT ORDERS that, in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amendment.

#### **INSURANCE**

62. THIS COURT ORDERS that, except as provided in paragraph 19 hereof, nothing in this Order shall prejudice the rights and remedies of any Directors, Officers or other Persons under the Directors' Charge or Portfolio Company Directors' Charge, as applicable; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or D&O Claim or portion thereof for which the Person receives payment directly from or confirmation that she is covered by the Applicant's insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors, Officers and/or other Persons shall not be recoverable as against the Applicant or Director or Officer, as applicable.

#### **MISCELLANEOUS**

63. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, D&O Claims, D&O Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, D&O Claims, D&O Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan or further order of the Court and the class or classes of Creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further order of the Court.

64. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, 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 and to the Monitor, as an officer of the 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 and the Monitor and their respective agents in carrying out the terms of this Order.

#### **MONITOR'S ACTIVITIES AND REPORT**

65. THIS COURT ORDERS that the Third Report of the Monitor dated November 15, 2013, the Fourth Report of the Monitor dated November 26, 2013, and the activities described therein are hereby approved.

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**SCHEDULE "A"**

**NOTICE TO CLAIMANTS  
AGAINST GROWTHWORKS CANADIAN FUND LTD.  
(hereinafter referred to as the "Applicant")**

**RE: NOTICE OF CLAIMS PROCEDURE FOR THE APPLICANT PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (the "CCA")**

PLEASE TAKE NOTICE that on January 9, 2014, the Superior Court of Justice of Ontario issued an order (the "Claims Procedure Order") in the CCA proceeding of the Applicant requiring that all Persons who assert a Claim (capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Claims Procedure Order) against the Applicant, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against Directors or Officers of the Applicant (as defined in the Claims Procedure Order, a "D&O Claim"), **must file a Proof of Claim (with respect to Claims against the Applicant) or D&O Proof of Claim (with respect to D&O Claims) with FTI Consulting Canada Inc. (the "Monitor") on or before 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date"), by sending the Proof of Claim or D&O Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**  
**Address:** TD Waterhouse Tower  
 79 Wellington Street West  
 Suite 2010, P.O. Box 104  
 Toronto, Ontario Canada, M5K 1G8  
**Fax No.:** (416) 649-8101  
**Email:** [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
**Attention:** Paul Bishop and Jodi Porepa

Pursuant to the Claims Procedure Order, Proof of Claim Document Packages, including the form of Proof of Claim and D&O Proof of Claim will be sent to known Creditors as specified in the Claims Procedure Order by mail, on or before January 20, 2014. Claimants may also obtain the Claims Procedure Order and a Proof of Claim Document Package from the website of the Monitor at <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or by contacting the Monitor by telephone (1-855-431-3185).

Only Proofs of Claim and D&O Proofs of Claim actually received by the Monitor on or before **5:00 p.m. (prevailing Eastern time) on March 6, 2014** will be considered filed by the Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the Claims Bar Date.**

**CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

DATED this • day of •, 2014.



**SCHEDULE "B"**

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST  
GROWTHWORKS CANADIAN FUND LTD.**  
(hereinafter referred to as the "Applicant")

**1. Original Claimant (the "Claimant")**

Legal Name of Claimant _____	Name of Contact _____
Address _____	Title _____
_____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email _____
Postal/Zip Code _____	

**2. Assignee, if claim has been assigned**

Legal Name of Assignee _____	Name of Contact _____
Address _____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email: _____
Postal/Zip Code _____	

**3 Amount of Claim**

The Applicant was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Claim	Secured Claim
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

**4. Documentation**

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Applicant to the Claimant and estimated value of such security.

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<b>5. Certification</b>	
I hereby certify that:	
<ol style="list-style-type: none"> <li>1. I am the Claimant or authorized representative of the Claimant.</li> <li>2. I have knowledge of all the circumstances connected with this Claim.</li> <li>3. The Claimant asserts this Claim against the Applicant as set out above.</li> <li>4. Complete documentation in support of this claim is attached.</li> </ol>	
Signature: _____	Witness: _____
Name: _____	(signature)
Title: _____	(print)
Dated at _____ this _____ day of _____, 2014	

**6. Filing of Claim**

**This Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8**

**Attention: Paul Bishop and Jodi Porepa  
Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
Fax No.: (416) 649-8101**

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

## **SCHEDULE “B-2”**

### **CLAIMANT’S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR CLAIMS AGAINST GROWTHWORKS CANADIAN FUND LTD.**

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against GrowthWorks Canadian Fund Ltd. (the “Applicant”). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor’s website at <http://cfcanada.fticonsulting.com/gcfl/default.htm> or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor’s website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on January 9, 2014 (the “Claims Procedure Order”), the terms of the Claims Procedure Order will govern.

#### **SECTION 1 – ORIGINAL CLAIMANT**

1. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Applicant.
2. The Claimant shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.
3. The full legal name of the Claimant must be provided.
4. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
5. If the Claim has been assigned or transferred to another party, Section 2 must also be completed.
6. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

#### **SECTION 2 – ASSIGNEE**

7. If the Claimant has assigned or otherwise transferred its Claim, then Section 2 must be completed.
8. The full legal name of the Assignee must be provided.
9. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
10. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

**SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST APPLICANT**

11. Indicate the amount the Applicant was and still is indebted to the Claimant.

**Currency, Original Currency Amount**

12. The amount of the Claim must be provided in the currency in which it arose.

13. Indicate the appropriate currency in the Currency column.

14. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

**Unsecured Claim**

15. Check this box ONLY if the Claim recorded on that line is an unsecured claim.

**Secured Claim**

16. Check this box ONLY if the Claim recorded on that line is a secured claim.

**SECTION 4 - DOCUMENTATION**

17. Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Applicant to the Claimant and estimated value of such security.

**SECTION 5 - CERTIFICATION**

18. The person signing the Proof of Claim should:

(a) be the Claimant or authorized representative of the Claimant.

(b) have knowledge of all the circumstances connected with this Claim.

(c) assert the Claim against the Applicant as set out in the Proof of Claim and certify all supporting documentation is attached.

(d) have a witness to its certification.

19. By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Applicant.

**SECTION 6 - FILING OF CLAIM**

20. The Proof of Claim **must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date") by prepaid ordinary mail,**

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registered mail, courier, personal delivery or electronic transmission at the following address:

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address:** TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
**Attention:** Paul Bishop and Jodi Porepa  
**Email:** growthworkscanadianfundltd@fticonsulting.com  
**Fax No.:** (416) 649-8101

**Failure to file your Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these CCAA proceedings.**



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**4. Documentation**

Provide all particulars of the D&O Claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the D&O Claim.

**5. Certification**

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this D&O Claim against the Director(s) and/or Officer(s) as set out above.
4. Complete documentation in support of this claim is attached.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**6. Filing of Claim**

This D&O Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8**

**Attention: Paul Bishop and Jodi Porepa  
Email: growthworkscanadianfundltd@fticonsulting.com  
Fax No.: (416) 649-8101**

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

## SCHEDULE "C-2"

### CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF GROWTHWORKS CANADIAN FUND LTD.

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for claims against the Directors or Officers of GrowthWorks Canadian Fund Ltd. (the "Applicant"). If you have any additional questions regarding completion of the D&O Proof of Claim, please consult the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm> or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim form is for Claimants asserting a claim against the Directors and/or Officers of GrowthWorks Canadian Fund Ltd., and NOT for claims against GrowthWorks Canadian Fund Ltd. itself. For claims against GrowthWorks Canadian Fund Ltd., please use the form titled "Proof Of Claim Form For Claims Against GrowthWorks Canadian Fund Ltd.", which is available on the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

Additional copies of the D&O Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on January 9, 2014 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

#### SECTION 1 – ORIGINAL CLAIMANT

1. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the Directors or Officers (as defined in the Claims Procedure Order) of the Applicant.
2. The Claimant shall include any and all D&O Claims it asserts against the Directors or Officers of the Applicant in a single D&O Proof of Claim.
3. The full legal name of the Claimant must be provided.
4. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
5. If the claim has been assigned or transferred to another party, Section 2 must also be completed.
6. Unless the claim is assigned or transferred, all future correspondence, notices, etc. regarding the claim will be directed to the address and contact indicated in this section.

#### SECTION 2 – ASSIGNEE

7. If the Claimant has assigned or otherwise transferred its claim, then Section 2 must be completed.
8. The full legal name of the Assignee must be provided.



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9. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
10. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

### **SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DIRECTOR OR OFFICER**

11. Indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant and provide all other requested details.

#### **Currency, Original Currency Amount**

12. The amount of the claim must be provided in the currency in which it arose.
13. Indicate the appropriate currency in the Currency column.
14. If the claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

### **SECTION 4 - DOCUMENTATION**

15. Attach to the D&O Proof of Claim form all particulars of the claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the D&O Claim.

### **SECTION 5 - CERTIFICATION**

16. The person signing the D&O Proof of Claim should:
  - (a) be the Claimant or authorized representative of the Claimant.
  - (b) have knowledge of all the circumstances connected with this claim.
  - (c) assert the claim against the Director(s) and/or Officer(s) as set out in the D&O Proof of Claim and certify all supporting documentation is attached.
  - (d) have a witness to its certification.
17. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Director(s) and Officer(s) identified therein.

### **SECTION 6 - FILING OF CLAIM**

18. **The D&O Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date") by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

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**FTI Consulting Canada Inc., GrowthWorksCanadian Fund Ltd. Monitor**

**Address:** TD Waterhouse Tower  
79 Wellington Street West, Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8

**Attention:** Paul Bishop and Jodi Porepa

**Email:** [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)

**Fax No.:** (416) 649-8101

**Failure to file your D&O Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a claim against the Directors and Officers of the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these CCAA proceedings.**

## SCHEDULE "D"

### PROOF OF CLAIM FORM FOR INDEMNITY CLAIMS BY DIRECTORS OR OFFICERS OF GROWTHWORKS CANADIAN FUND LTD. (the "D&O Indemnity Proof of Claim")

This form is to be used only by Directors and Officers of GrowthWorks Canadian Fund Ltd. (the "Applicant") who are asserting an indemnity claim against the Applicant in relation to a D&O Claim against them and NOT for claims against the Applicant itself or for claims against Directors and Officers of the Applicant. For claims against the Applicant, please use the form titled "Proof Of Claim Form For Claims Against GrowthWorks Canadian Fund Ltd.". For claims against Directors and Officers of the Applicant, please use the form titled "Proof of Claim Form for Claims Against Directors or Officers of GrowthWorks Canadian Fund Ltd.". Both forms are available on the Monitor's website at <http://cfcanada.fticonsulting.com/qcfl/default.htm>.

#### 1. Director and/or Officer Particulars (the "Indemnitee")

Legal Name of  
Indemnitee \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

City \_\_\_\_\_

Prov  
/State \_\_\_\_\_

email \_\_\_\_\_

Postal/Zip  
Code \_\_\_\_\_

#### 2. Indemnification Claim

Position(s)  
Held \_\_\_\_\_

Dates Position(s)  
Held: From \_\_\_\_\_ to \_\_\_\_\_

Reference Number of Proof of Claim with respect to which  
this D&O Indemnity Claim is made: \_\_\_\_\_

Indicate whether the D&O Indemnity Claim is asserted as: unsecured claim

secured claim<sup>1</sup>

Particulars of and basis for D&O Indemnity Claim:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> A secured claim means a claim secured against the court-ordered Director's Charge or otherwise.

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**3. Documentation**

Provide all particulars of the D&O Indemnity Claim and supporting documentation giving rise to the Claim.

**4. Filing of Claim**

This D&O Indemnity Proof of Claim and supporting documentation must be received by the Monitor within fifteen (15) Business Days of the date of deemed receipt by the Director or Officer of the D&O Proof of Claim form by **ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8**

**Attention: Paul Bishop and Jodi Porepa  
Email: paul.bishop@fticonsulting.com and jodi.porepa@fticonsulting.com  
Fax No.: (416) 649-8101**

**Failure to file your D&O Indemnity Proof of Claim in accordance with the Claims Procedure Order will result in your D&O Indemnity Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Indemnity Claim against the Applicant.**

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Per: \_\_\_\_\_  
Name

Signature: \_\_\_\_\_ (Former Director and/or Officer)

For more information see <http://cfcanada.fticonsulting.com/qcfl/default.htm>, or contact the Monitor by telephone (1-855-431-3185)

**SCHEDULE "E"**

**NOTICE OF REVISION OR DISALLOWANCE**

**For Persons that have asserted Claims against GrowthWorks Canadian Fund Ltd.,  
D&O Claims against the Directors and/or Officers of GrowthWorks Canadian Fund Ltd. or  
D&O Indemnity Claims against GrowthWorks Canadian Fund Ltd.**

Claims Reference Number: \_\_\_\_\_

TO: \_\_\_\_\_  
(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court in the CCAA proceedings of GrowthWorksCanadian Fund Ltd. dated January 9, 2014 (the "Claims Procedure Order").

The Monitor hereby gives you notice that it has reviewed your Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, D&O Claim or D&O Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		Amount allowed by Monitor
	Currency		
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
D. D&O Indemnity Claim		\$	\$
<b>E. Total Claim</b>		<b>\$</b>	<b>\$</b>

**Reasons for Revision or Disallowance:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**SERVICE OF DISPUTE NOTICES**

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is fifteen (15) Business Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 58 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

FTI Consulting Canada Inc., GrowthWorksCanadian Fund Ltd. Monitor  
 Address: TD Waterhouse Tower  
 79 Wellington Street West  
 Suite 2010, P.O. Box 104  
 Toronto, Ontario Canada, M5K 1G8  
 Fax No.: (416) 649-8101  
 Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
 Attention: Paul Bishop and Jodi Porepa

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

**IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014

FTI Consulting Canada Inc., solely in its capacity as Court-appointed Monitor of GrowthWorksCanadian Fund Ltd., and not in its personal or corporate capacity

Per: \_\_\_\_\_

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

**APPENDIX "1" to SCHEDULE "E"**

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**NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE**  
**With respect to GrowthWorksCanadian Fund Ltd.**

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Claims Reference Number: \_\_\_\_\_

**1. Particulars of Claimant:**

Full Legal Name of Claimant (include trade name, if different)

\_\_\_\_\_

(the "Claimant")

Full Mailing Address of the Claimant:

\_\_\_\_\_

\_\_\_\_\_

Other Contact Information of the Claimant:

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

2. **Particulars of original Claimant from whom you acquired the Claim, D&O Claim or D&O Indemnity Claim, if applicable:**

Have you acquired this purported Claim, D&O Claim or D&O Indemnity Claim by assignment?

Yes:

No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): \_\_\_\_\_

3. **Dispute of Revision or Disallowance of Claim, D&O Claim or D&O Indemnity Claim, as the case may be:**

The Claimant hereby disagrees with the value of its Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as follows:

	Currency	Amount allowed by Monitor: (Notice of Revision or Disallowance)	Amount claimed by Claimant:
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
D. D&O Indemnity Claim		\$	\$
<b>E. Total Claim</b>		<b>\$</b>	<b>\$</b>

**REASON(S) FOR THE DISPUTE:**  
*(Please attach all supporting documentation hereto).*

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**SERVICE OF DISPUTE NOTICES**

**If you intend to dispute a Notice of Revision or Disallowance, you must, no later than 5 p.m. (prevailing time in Toronto) on the day that is fifteen (15) Business Days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 58 of the Claims Procedure Order), deliver this Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic or digital transmission to the address below.**

FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor  
Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
Fax No.: (416) 649-8101  
Email: growthworkscanadianfundltd@fticonsulting.com  
Attention: Paul Bishop and Jodi Porepa

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

**IF YOU FAIL TO FILE THIS NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Name of Claimant: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Name:  
Title:  
*(please print)*

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.

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

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

Proceeding Commenced at Toronto

**CLAIMS PROCEDURE AND STAY  
EXTENSION ORDER**

**McCARTHY TÉTRAULT LLP**  
Barristers and Solicitors  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

**Kevin McElcheran** LSUC# 22119H  
Tel.: (416) 601-7730  
Fax: (416) 868-0673

**Heather Meredith** LSUC# 48354R  
Tel.: (416) 601-8242  
Fax: (416) 868-0673

Lawyers for Growth Works Canadian  
Fund Ltd.

#13033974

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.

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

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

Proceeding commenced at Toronto

**MOTION RECORD**  
**(STAY EXTENSION AND APPROVAL OF**  
**CLAIMS PROCEDURE ORDER)**

**McCarthy Tétrault LLP**  
Barristers and Solicitors  
Box 48, Suite 5300,  
Toronto Dominion Bank Tower  
Toronto ON M5K 1E6

**Kevin McElcheran** LSUC#: 22119H  
Tel: (416) 601-7730  
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Fax: (416) 868-0673

Lawyers for the Applicant

#13022151