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.

Applicant

MOTION RECORD

(Distribution, Termination and Discharge Order)
(Returnable December 13, 2022)

December 2, 2022

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TAB 1

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

NOTICE OF MOTION
(Distribution, Termination and Discharge Order)
(Returnable December 13, 2022)

GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on December 13, 2022 at 10:00 a.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: This motion is to be heard orally.

THE MOTION IS FOR:

(a) an order substantially in the form of the draft order included at Tab 3 of the Motion Record of the Fund (the "**Proposed Distribution, Termination and Discharge Order**"), among other things:

(i) extending the Stay Period[1] until and including the earlier of: (i) December 31, 2024; and (ii) the CCAA Termination Time (defined below) (the "**Stay Extension Period**");

(ii) granting certain relief related to the liquidation of the Applicant's portfolio;

(iii) authorizing the making of distributions to Class "A" and Class "B" shareholders of the Applicant;

(iv) ordering that the Class "C" shareholder of the Applicant is not entitled to receive any further dividends or payments on account of the Class "C" shares;

(v) providing releases and discharges in favour of the Monitor, the Representatives of the Monitor, and the Representatives of the Applicant;

(vi) at the CCAA Termination Time (defined below), dissolving the Applicant, discharging the Monitor, terminating the CCAA Proceedings and discharging the Administration Charge and Directors' Charge;

(vii) sealing Confidential Exhibit "H" to the Affidavit of C. Ian Ross sworn December 2, 2022 until the CCAA Termination Time (defined below); and

(viii) approving an extension to the Second Amended and Restated Investment Advisor Agreement with Crimson Capital Inc. ("**Crimson Capital**") to and including the last day of the Stay Extension Period; and

[1] All capitalized terms used but not defined herein shall have the meanings given to them in the Affidavit of C. Ian Ross, sworn December **[2]**, 2022.

(b) such other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

2. The Fund is a labour-sponsored venture capital fund with a portfolio of investments consisting primarily of minority equity interests in small and mid-sized companies. It was granted protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an initial order dated October 1, 2013 (as amended and restated, the "**Initial Order**").

3. Given the illiquid nature of its assets, the Fund has required time to realize on its assets in the ordinary course by identifying and capitalizing on exit opportunities as they arise. The Fund conducted two formal solicitation processes in an effort to surface offers for all or a portion of the Fund's investment portfolio as an alternative to continuing an orderly disposition process. However, the Fund's board of directors (the "**Board**") determined that neither of those processes properly valued the Fund's assets.

4. Crimson Capital, the Fund's investment advisor, estimates that the disposition of the Fund's investment positions may generate further recoveries for stakeholders in excess of $18 million by the end of 2024, and material recoveries are not expected after that time.

5. The Fund has determined that it is now appropriate to commence a dissolution process that will allow the Fund a reasonable period of time to pursue these significant divestitures while minimizing ongoing costs and providing a clear end-time (December 31, 2024) for the realization process and related distributions.

Stay Extension

6. The Stay Period in the Initial Order has been extended several times and is currently set to expire on December 31, 2022.

7. The Fund is seeking a final extension of the Stay Period up to the earlier of: (i) December 31, 2024, and (ii) the CCAA Termination Time (defined below). The Fund believes that this length of stay extension is appropriate in the circumstances as:

(a) the Fund has committed that this will be the final stay extension that is sought in the CCAA Proceedings;

(b) the Fund has been advised by Crimson Capital that any proceeds of its remaining portfolio investments are anticipated in 2023 or 2024;

(c) the Fund may end its efforts to liquidate its investment portfolio and conclude the CCAA Proceedings sooner if appropriate;

(d) all existing secured and unsecured creditor claims have been resolved and paid and the ongoing administration costs of the Fund have been minimized;

(e) holders of Class A Shares will not suffer any material prejudice from the delay as the current liquid assets of the Fund would only result in a distribution of approximately $40 to each shareholder; and

(f) this will limit the professional fee costs of seeking multiple stay extensions, which are among the largest costs that continue to be incurred by the Fund and would erode the potential recovery to holders of Class A Shares.

8. The Fund continues to act in good faith and with due diligence and is expected to have sufficient liquidity to meet its obligations through to the end of the proposed Stay Extension Period.

Completion of Orderly Liquidation

9. The Proposed Distribution, Termination and Discharge Order would authorize the Fund to continue to take such steps as the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor as appropriate, determines is appropriate to effect an orderly liquidation of its investment portfolio during the Stay Extension Period.

10. If the Fund determines that it would be appropriate to cease those efforts at any time before December 31, 2024, considering the estimated cost of such efforts and such other factors as the Fund determines relevant in the circumstances, the Fund would be authorized to cease those efforts and donate any security that it continues to hold to one or more charities or otherwise deal with it in the manner determined by the Fund, in consultation with the Monitor.

Distributions to Shareholders

11. The Proposed Distribution, Termination and Discharge Order would authorize the Fund to make one or more distributions to its Class “A” and Class “B” shareholders in accordance with the respective terms of those shares on a Dissolution Event.

12. With respect to the Class B Shares, which are all held by the Canadian Federation of Labour (the “**Sponsor**”), the Fund’s labour sponsor, the Fund would be authorized to make a distribution

to the Sponsor in accordance with the terms of the Class B Shares. This amount must be paid before any assets of the Fund are distributed to the holders of the Class A Shares or Class C Shares.

13. With respect to the Class A Shares, which are held by 115,859 individual retail investors, the Fund will be authorized to make one or more Distributions from the Class A Distribution Pool to Class A Eligible Shareholders in accordance with the respective terms of the various outstanding series of Class A Shares of the Fund.

14. The Class A Distribution Pool is defined as available cash and cash equivalents of the Applicant (the "**Available Cash**") on the date that is seven Business Days prior to the date upon which a Distribution is made (each, a "**Distribution Record Date**") less (i) the amount of any Distributions to be made to the holder of the Class B Shares, (ii) any amounts due and owing to creditors of the Applicant on such Distribution Record Date, if any, (iii) the estimated cost of such Distribution, and (iv) a reserve for the estimated costs of the Applicant, the Monitor and their respective Representatives from such Distribution Record Date to the CCAA Termination Time, in each case determined by the Applicant in consultation with the Monitor.

15. If any Distributions are returned as undelivered or are not cashed within six months of a Distribution Date, the applicable shareholder's entitlement to that amount will be extinguished, the shareholder will not be eligible for any further Distributions and the amount of the Distribution that shareholder will be added to the Available Cash and available for subsequent Distributions, if appropriate.

16. With respect to the Class C Shares, the Proposed Distribution, Termination and Discharge Order provides that the holder of the Class C Shares is not entitled to receive any further dividends or payments on account of those shares.

17. The terms of the IPA Shares stipulate that various conditions must be met before dividends are payable, one of which is that the total net realized and unrealized gains and income of the Fund from its portfolio of venture investments since the IPA Start Date must have generated an annualized rate of return greater than a cumulative annualized threshold rate of return equal to the average annual rate of return on a five year guaranteed investment certificate ("**GIC**") offered by a major Canadian chartered bank plus 2% (the "**Portfolio Test**").

18. The posted rate for a non-redeemable 5-year GIC from Royal Bank of Canada is currently 4.25%.

19. The Fund has experienced significant losses in its investment portfolio since 2012. Accordingly, the Fund does not believe that the "Portfolio Test" described above will be met on the date of the Dissolution Event (i.e. the date on which the Court issues the Proposed Distribution, Termination and Discharge Order, should it decide to issue it). As a result, no dividends are payable with respect to the Class C Shares.

20. The Fund currently has approximately $5.4 million in liquid assets. The estimated cost of making a distribution to the Fund's 115,859 Class A shareholders is approximately $125,000.

21. Given the significant cost of subsequent distributions, the proposed Distribution, Termination and Discharge Order provides that if the Applicant determines, in consultation with the Monitor, that the costs of making a Distribution are likely to exceed the Available Cash, the Applicant, in consultation with the Monitor, may donate any portion of the Available Cash to one or more charities or otherwise deal with the Available Cash in the manner determined by the Applicant and the Monitor.

Termination, Discharge and Dissolution

22. Upon the Fund concluding the liquidation of its investment portfolio, paying all creditor claims, making distributions to shareholders and otherwise completing all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the Monitor will file with the Court the Monitor's CCAA Completion Certificate, which will designate the "**CCAA Termination Time"**.

23. As of the CCAA Termination Time:

(a) the CCAA Proceedings will be terminated;

(b) the Fund will be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority;

(c) the Monitor will be discharged and released from its duties, obligations and responsibilities and will be forever released, remised and discharged from any claims against it relating to its activities as Monitor;

(d) the releases and injunctions provided for in the Distribution, Termination and Discharge Order (detailed below) will become effective; and

(e) the Administration Charge and Directors' Charge provided for in the Initial Order will be terminated, released and discharged.

24. This relief is necessary to conclude the CCAA Proceedings in an orderly manner. The Fund has determined that it is not practicable to seek approval from its shareholders to dissolve the Fund

given the costs associated with doing so. Section 11 of the CCAA provides the Court with the jurisdiction to order the dissolution of the Fund, as obviating the need to call a shareholder meeting for this purpose will preserve the funds available for distributions to shareholders.

Sealing of Confidential Exhibit

25. The Confidential Exhibit contains details regarding Crimson Capital's particularized estimates of the value that could be realized from each of the Fund's remaining investments, together with details regarding the investments in these private companies. Disclosure of this information would be prejudicial to the Fund's ongoing efforts to realize on such investments and maximize value from them for the benefit of the Fund's stakeholders.

26. As such, the Fund seeks an order to seal the Confidential Exhibit until further order of the Court.

Extension of Second Amended and Restated IAA Agreement

27. Crimson Capital is engaged through an Amended and Restated Investment Advisor Agreement (the "**Second Amended and Restated IAA Agreement**"), which the Court authorized the Fund to enter on March 22, 2019. It is currently set to expire on December 31, 2022.

28. The Board has determined that it would be in the best interests of the Fund and its stakeholders to extend the term of the Second Amended and Restated IAA Agreement for the duration of the Proposed Stay Extension. During this time, Crimson Capital will continue to seek out opportunities to realize maximum value for the Fund's remaining assets.

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

(a) Affidavit of C. Ian Ross sworn December 2, 2022; and

(b) The Thirtieth Report of the Monitor, to be filed; and

(c) Such further and other materials as counsel may advise and this Honourable Court may permit.

December 2, 2022

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

NOTICE OF MOTION

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TAB 2

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

ONTARIO
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(COMMERCIAL LIST)

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

AFFIDAVIT OF C. IAN ROSS
(sworn December 2, 2022)

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

INTRODUCTION

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the "**Fund**"), the applicant in these proceedings. I am a director and the interim chief executive officer of the Fund. In that role, I am responsible for the daily operations of the Fund, acting under the oversight of the Fund's board of directors (the "**Board**"). 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 make this affidavit in support of the motion by the Fund for an order (the "**Distribution, Termination and Discharge Order**"), substantially in the form of the draft order included at Tab 3 of the Motion Record of the Fund, among other things (and with capitalized terms as defined below):

(a) extending the Stay Period until and including the earlier of: (i) December 31, 2024; and (ii) the CCAA Termination Time;

(b) granting certain relief related to the liquidation of the Applicant's portfolio;

(c) authorizing the making of distributions to Class "A" shareholders and Class "B" shareholders of the Applicant;

(d) providing releases and discharges in favour of the Monitor, the Representatives of the Monitor, and the Representatives of the Applicant;

(e) at the CCAA Termination Time, dissolving the Applicant, discharging the Monitor, terminating the CCAA Proceedings and discharging the Administration Charge and Directors' Charge;

(f) sealing the Confidential Exhibit; and

(g) approving an extension to the Second Amended and Restated IAA to and including the last day of the Stay Extension Period.

BACKGROUND

3. The Fund is a labour-sponsored venture capital fund with a portfolio of investments consisting primarily of minority equity interests in small and midsize private Canadian companies (the "**Portfolio Companies**"). The Fund is a corporation incorporated under the *Canada Business Corporations Act* (the "**CBCA**"). The Fund is a labour-sponsored investment fund ("**LSIF**") for purposes of applicable tax laws and a "reporting issuer" in each of the provinces and territories of Canada for purposes of applicable securities laws.

Formation and Management of the Fund Prior to CCAA Proceedings

4. The Fund was formed in 1988 for the purpose of raising capital from retail investors by way of annual prospectus offerings of separate series of Class A shares (the "**Class A Shares**") of the Fund. The Fund would, in turn, use the proceeds of those offerings to make venture investments in a diversified portfolio of small and midsize Canadian growth businesses with the objective of achieving long-term capital appreciation for shareholders.

5. As a LSIF, the Fund is required to have a labour sponsor. The Fund's labour sponsor is the Canadian Federation of Labour (the "**Sponsor**"), which is an unincorporated national central labour body. The Sponsor, which does not receive any fees from the Fund, holds all of the issued and outstanding Class B shares (the "**Class B Shares**") of the Fund.

6. Subsequent to its formation, and prior to the commencement of these proceedings, the Fund elected to outsource the management and day-to-day operations of the Fund to GrowthWorks WV Management Ltd. (the "**Former Manager**"), a third party manager, pursuant to an amended and restated management agreement dated July 15, 2006 (the "**Management Agreement**").

7. The Manager received from the Fund annual management and administration fees based upon the net assets of the Fund from time to time (collectively, the "**Management Fees**"), which were payable monthly. As I stated in my affidavit sworn September 30, 2013 in support of the Fund's application for the Initial Order, the Management Fees were substantial. Over the two fiscal years prior to the commencement of the CCAA Proceedings, the Fund paid Management Fees to the Manager of approximately $14.3 million.

8. In addition, the Fund issued to the Former Manager a series of Class "C" shares of the Fund (the "**Class C Shares**", or the "**IPA Shares**"). The Former Manager holds all of the outstanding Class C Shares of the Fund.

Circumstances Leading to the CCAA Proceedings

9. In 2009, the Province of Ontario began phasing out a tax credit related to investments in LSIFs. The tax credit ended on December 31, 2011. As a result, the Fund began to experience declining levels of fundraising and increasing levels of mature capital in the Fund.

10. On May 28, 2010, the Fund entered into a participation agreement (the "**Participation Agreement**") with Roseway Capital S.a.r.l. ("**Roseway**"), a third party investment firm. Pursuant to the Participation Agreement, Roseway advanced $20 million to the Fund in exchange for a participating interest in selected venture investment holdings of the Fund. The Fund was required to repay the $20 million advanced by Roseway by May 28, 2013, which was subsequently extended by agreement to October 1, 2013.

11. The Fund ceased its Class A share offerings effective September 30, 2011 given the steep decline in the sales of Class A Shares resulting from the tax incentive changes in the Province of Ontario. As a result, the Fund's only source of liquidity became the net proceeds realized upon the disposition of the Fund's portfolio of venture investments. The ability of the Fund to divest itself of these relatively illiquid investments at a profit is largely dependent on favourable market conditions to provide opportunities for the Fund to exit profitably, typically at the stage of an initial public offering or merger or acquisition involving a Portfolio Company. Those opportunities became more limited as a result of the 2008 financial crisis and other market constraints.

12. Due to a lack of liquidity, the Fund did not pay the amounts owing to Roseway under the Participation Agreement when they became due in 2013 and, on October 1, 2013, Roseway declared the Fund in default of its obligations under that agreement.

13. On September 30, 2013, the Fund terminated the Management Agreement on the basis that the Former Manager had materially breached its obligations under the Management Agreement, as detailed further below.

Suspension of Dividends and Redemptions

14. In the fall of 2011, the Board determined to close Class A Share redemptions in order to preserve the Fund's capital resources and ensure the Fund remained in compliance with the requirements of the CBCA.

15. Under applicable securities laws, the holders of Class A Shares were still able to request redemptions of their Class A Shares. As at September 20, 2013, there were outstanding redemption requests from holders of Class A Shares for a total of approximately 4,165,589 Class A Shares which, based on the applicable net asset value ("**NAV**") of those Class A Shares at the time, had an aggregate redemption price of $11,460,905.

16. In addition to suspending redemptions of Class A Shares and for the same reason, the Fund suspended payment of dividends on, and redemptions of, Class C Shares.

Commencement of CCAA Proceedings

17. On October 1, 2013, the Fund was granted protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an initial order dated October 1, 2013 (as amended and

restated on October 29, 2013, the "**Initial Order**"). The Initial Order is attached hereto as **Exhibit "A"**.

18. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as the monitor of the Fund (the "**Monitor**").

SALE AND LIQUIDATION PROCESSES UNDERTAKEN BY THE FUND

19. Prior to the commencement of the CCAA Proceedings, and throughout their duration, the Fund undertook multiple strategic reviews, market canvasses and sale processes to evaluate the opportunities available to realize on its investment portfolio. As detailed below, these processes consistently indicated that an orderly liquidation of the Fund's investment portfolio was the approach that would maximize value for the Fund's stakeholders.

Pre-Filing Sale Process and Strategic Review

20. In June 2012, prior to the commencement of the CCAA Proceedings, a special committee of the Board (the "**Special Committee**") began exploring ways to address the Fund's liquidity requirements, including by way of a sale of a portion of its investment portfolio. As part of this process, the Special Committee retained Triago Americas, Inc. as its financial advisor to conduct a solicitation of potential purchasers of certain of the Fund's venture investments (the "**Pre-Filing Sale Process**").

21. The Pre-Filing Sale Process generated interest from several potential purchasers but the Fund received only one written offer to purchase certain of the Fund's venture investments. The Fund completed that transaction on December 31, 2012. Given the illiquid nature of the Fund's

investment portfolio, the venture investments were disposed of at a discount of approximately 58% to the Fund's carrying value of the investments.

22. In February 2013, the Special Committee, as part of its strategic review process, retained The Commercial Capital Corporation (operating as CCC Investment Banking) ("**CCC**") as independent financial advisor to the Board, to examine the strategic alternatives available to the Fund and report to the Board on its findings. In April 2013, CCC delivered its report to the Special Committee.

23. In its report, CCC considered a number of potential alternatives available to the Fund, including renegotiation of the Fund's secured obligations to Roseway; raising new financing to fund payment of the Fund's secured obligations; an orderly disposition of the Fund's investment portfolio; an en bloc sale of the investment portfolio; and a merger with another labour-sponsored investment fund.

24. CCC concluded that a merger with a similar fund was likely to produce the best outcome for the Fund and its stakeholders. If such an option could not be identified and completed, then CCC concluded that an orderly disposition of the holdings of the Fund in the Portfolio Companies was likely to generate greater proceeds of disposition to the Fund than an *en bloc* sale.

Sale and Investment Solicitation Process

25. Following the granting of the Initial Order, on November 18, 2013, the Honourable Justice Morawetz granted an order approving a Sale and Investment Solicitation Process (the "**SISP**"). The purpose of the SISP was to canvass the market to solicit interest in purchasing or investing in

the Fund's business and property. The Fund retained CCC to assist with this process. A copy of the order approving the SISP is attached hereto as **Exhibit "B"**.

26. Two proposals were submitted by the Phase 2 bid deadline of February 3, 2014, neither of which constituted a "Qualifying Bid" as defined in the SISP. One proposal received at the Phase 2 bid deadline contemplated a purchase of only a portion of the Fund's assets at a price that, after taking into consideration the advice of CCC, was unacceptable to the Fund. The second proposal was neither a sale nor investment offer but rather was a proposal to take over the management of the Fund's investment portfolio for a fee. No offer to complete a merger transaction was received during the SISP.

Roseway IAA and the Orderly Liquidation of the Fund's Assets

27. Given that the SISP revealed no acceptable offer to purchase all of the Fund's assets in a single transaction and no merger option was identified, the Fund determined that it would be preferable to realize on its venture investments in the ordinary course, with an investment advisor in place to identify and capitalize on exit opportunities as they arose and perform certain other functions. The Fund inquired whether Roseway would be interested in performing such a role, utilizing its expertise and knowledge of the Fund's portfolio.

28. On May 9, 2014, the Fund entered into an investment advisor agreement (the "**Roseway IAA**") with Roseway pursuant to which Roseway agreed to act as investment advisor to the Fund. The Roseway IAA was approved by order of the Honourable Justice D.M. Brown on May 14, 2014.

29. The Roseway IAA permitted Roseway to delegate its obligations under the IAA. Roseway retained Crimson Capital Inc. ("**Crimson Capital**"), and its principal Donna Parr, as a sub-contractor for that purpose.

30. On May 22, 2015, the Fund and Roseway entered into a settlement agreement (the "**Settlement Agreement**") which fixed the amounts payable to Roseway in full and final satisfaction of its secured debt. The Settlement Agreement was approved by order of the Honourable Justice Newbould on June 8, 2015. The Fund made distributions to Roseway in full satisfaction of its secured debt in accordance with the terms of the Settlement Agreement on June 10, 2015 and September 4, 2015 and the Roseway IAA was terminated on December 9, 2015.

Orderly Liquidation of the Fund's Assets Continued Under the Crimson Capital IAA

31. In order to maintain the continuity of Crimson Capital's efforts to realize on the Fund's venture portfolio, the Fund entered into an investment advisor agreement with Crimson Capital on December 8, 2015 (the "**Crimson Capital IAA**") whereby the Fund retained Crimson Capital directly to provide investment advisory and other services. As detailed below, the Crimson Capital IAA has been amended and extended on several occasions and currently expires on December 31, 2022.

CLAIMS PROCEDURES

Claims Procedure Order

32. Pursuant to the order of McEwen J. dated January 9, 2014 (the "**Pre-Filing Claims Procedure Order"**), the Monitor commenced a claims process (the "**Pre-Filing Claims**

Procedure") that called for the following claims (each as defined in the Pre-Filing Claims Procedure Order):

(a) Claims consisting of all pre-filing claims other than claims entitled to the benefit of the Administration Charge (as defined in paragraph 37 of the Initial Order) or claims by Roseway pursuant to the Participation Agreement;

(b) D&O Claims; and

(c) D&O Indemnity Claims.

33. A copy of the Pre-Filing Claims Procedure Order is attached hereto as **Exhibit "C"**.

34. The claims bar date for Claims and D&O Claims was March 6, 2014. The bar date for D&O Indemnity Claims was 15 days after receipt of D&O Claims.

35. In order to enable the Pre-Filing Claims Procedure to continue in a cost-effective manner at a time at which the realizable value of the Fund's portfolio relative to claims against the Fund was unclear, the Pre-Filing Claims Procedure Order did not provide a set date for the Monitor to send Notices of Revision or Disallowance (as defined in the Pre-Filing Claims Procedure Order). This permitted the Monitor to use discretion as to if and when to adjudicate disputed claims in accordance with the Pre-Filing Claims Procedure Order.

Resolution of Roseway Claim

36. Roseway was previously the Fund's largest creditor and only secured creditor. As described in the Monitor's Sixth Report dated March 5, 2014 at paragraph 31, the Fund and Monitor deferred the adjudication of the other claims filed pursuant to the general claims process until such time as

Roseway was paid in full, with such an adjudication to proceed only in the event that there would be funds remaining for distribution to unsecured creditors of the Fund. As detailed above, Roseway was paid in full in 2015.

Former Manager Litigation

37. Following the resolution of the Roseway claim, there were relatively few unresolved claims remaining against the Fund. The most significant of these, by far, was the claim filed by the Former Manager (the "**Former Manager Claim**").

38. Pursuant to paragraphs 47 to 54 of the Pre-Filing Claims Procedure Order, the Former Manager was deemed to have submitted a Proof of Claim in the amount of $18 million in relation to the termination of the Management Agreement and a procedure was set out to determine the Former Manager Claim.

39. Given the significant quantum of the Former Manager Claim relative to the remaining assets of the Fund, the Fund and the Monitor determined that it would not be sensible to complete the claims process and consider any process whereby distributions could be made to the shareholders of the Fund until such time as the Former Manager Claim was fully and finally determined.

40. The litigation of the Former Manager Claim pursuant to the Pre-Filing Claims Procedure Order was undertaken diligently. A trial proceeded on July 17, 2017 for two weeks before the Honourable Justice Wilton-Siegel.

41. On May 18, 2018, Justice Wilton-Siegel issued his reasons for judgment (the "**Reasons**"). A copy of the Reasons are attached hereto as **Exhibit "D"**. The judgment of Justice Wilton-Siegel

was not settled and entered until January 8, 2020 (the "**Judgment**"). A copy of the Judgment is attached hereto as **Exhibit "E"**.

42. In the Reasons, Justice Wilton-Siegel found that the Former Manager had breached its contractual standard of care and that such breach constituted a "material breach" of the Management Agreement by the Former Manager. As a result, Justice Wilton-Siegel held that the Fund had properly terminated the Management Agreement in September 2013 and therefore dismissed the Former Manager's claim for damages, except to the extent of its claim for certain unpaid management, administration, financing and capital retention fees accrued to the date of termination and its claim for certain expenses the Former Manager maintains it incurred following the termination of the Management Agreement. Justice Wilton-Siegel also concluded that the Former Manager was not entitled to its claim for payment of accrued "IPA Dividends", as detailed further below.

43. Justice Wilton-Siegel denied the Fund's counter-claim for damages arising as a result of the Former Manager's breach of the standard of care on the basis that the Fund's claim was statute barred under applicable limitations legislation. However, Justice Wilton-Siegel awarded to the Fund damages in respect of certain other claims made by the Fund in relation to the Former Manager's other breaches of its obligations under the Management Agreement.

44. On August 8, 2019, the Honourable Mr. Justice Wilton-Siegel issued a costs endorsement awarding costs to the Fund in the amount of $400,000 payable by the Former Manager to the Fund forthwith (the "**Costs Award**"). A copy of the costs endorsement is attached hereto as **Exhibit "F"**.

45. The net result of the Judgment and the Costs Award was that amounts were owing from the Former Manager to the Fund. The Fund subsequently entered into an agreement with the Former Manager to, among other things, address the outstanding liability to the Fund associated with the Former Manager Litigation.

46. Leave to appeal the Judgment was not sought by either party. As such, the claims of the Former Manager against the Fund have been finally determined.

Post-Filing Claims Procedure

47. Following the disposition of the Former Manager Claim, the Monitor proceeded to review and adjudicate the remaining claims filed in the Pre-Filing Claims Procedure.

48. To identify all creditors entitled to a distribution, particularly given the length of time that had elapsed since the initial claims bar date of March 6, 2014, the Fund obtained an order of the Honourable Justice Penny dated November 30, 2021 (the "**Post-Filing Claims Procedure Order**") providing a process to solicit, quantify and adjudicate post-filing claims (the "**Post-Filing Claims Procedure**"). A copy of the Post-Filing Claims Procedure Order is attached hereto as **Exhibit "G"**.

49. The Post-Filing Claims Bar Date (as defined therein) was January 21, 2022. The Monitor did not receive any claims in the Post-Filing Claims Procedure, except one shareholder claim.

STRATEGIC REVIEW AND CONTINUATION OF ORDERLY LIQUIDATION

2019-2020 Strategic Review

50. Following receipt of the decision in respect of the Former Manager Litigation in May 2018, the Fund conducted an analysis of strategic alternatives, including a limited market check with respect to portfolio value. The strategic alternatives considered included the continued orderly disposition of the Fund's remaining venture investments, a sale of all or substantially all of the Fund's assets, and a sale of the Fund itself.

51. The Fund engaged CCC as a financial advisor to assist the Board in its strategic review and to conduct a market check process, in consultation with the Monitor. CCC was engaged to, among other things,

(a) identify alternatives reasonably available to the Fund, including but not limited to, an outright sale of all or a portion of the Fund's assets or a sale of the Fund itself;

(b) analyse the feasibility and qualitative and quantitative impact of each alternative identified, together with other related financial analysis;

(c) execute non-disclosure agreements with interested parties;

(d) solicit expressions of interest; and

(e) make recommendations on next steps.

52. Based on this strategic review, which continued into the first half of 2020, the Board ultimately determined, in consultation with CCC and the Monitor, that continuation of an orderly

liquidation of the Fund's investment portfolio was in the best interests of stakeholders, principally being the shareholders of the Fund.

Status of Orderly Liquidation

53. Crimson Capital has continuously and actively sought out opportunities to liquidate the Fund's remaining assets to maximize value since 2014. I have been provided with regular updates on Crimson Capital's progress in this regard throughout.

54. The strategy of pursuing an orderly liquidation of the Fund's investment portfolio has been successful. At the commencement of the CCAA Proceedings, the Fund held venture investments in 71 Portfolio Companies. The Fund has divested its interest in all but 13 remaining Portfolio Companies. The Fund has received net proceeds from investment portfolio dispositions of approximately $50.0 million plus cash balances on hand or recovered from third parties of approximately $7 million for a total of $57 million in proceeds, which has enabled it to satisfy all of the secured and unsecured creditor claims against it.

55. On November 29, 2022, Crimson Capital delivered a confidential summary of the Fund's remaining portfolio investments to the Board (the "**Confidential Summary**"). The Confidential Summary estimates that the disposition of the Fund's investment positions may generate the following returns over the next two years and beyond:

(a) 2023: $17.65 million

(b) 2024 and onwards: $0.67 million

56. A copy of the Confidential Summary is attached hereto as **Confidential Exhibit "H"** (the "**Confidential Exhibit**").

Administration Costs

57. The Fund undertook various steps to reduce its administration costs while the CCAA Proceedings are ongoing. As the Fund has no internal management team and relies on third parties to provide material services to enable it to continue operating, there are certain limited costs that are necessary to ensure the Fund is able to continue the asset realization process. These costs include the fees of the Fund's investment advisor, Crimson Capital; the fees of the Fund's shareholder administration services provider, The Investment Administration Solution Inc. ("**IAS**"), a significant portion of which are fixed; the professional fees relating to the CCAA proceedings; and the costs associated with the daily affairs of the Fund, such as accounting and responding to shareholder requests and inquiries.

58. The Fund has also taken steps to reduce the costs associated with financial reporting by changing the Fund's auditors and dispensing with audited financial statements.

59. In addition, the size of the Board was reduced from eleven to three directors at the time Roseway was appointed as investment advisor, thereby reducing the costs of maintaining the Board. Further, in 2014, the Fund reduced the amount paid to its directors by way of board retainers and board meeting fees, and has not incurred any costs for director travel in relation to Board meetings.

APPROPRIATE TO COMMENCE DISSOLUTION PROCESS

60. In the course of granting a stay extension on June 29, 2021, the Honourable Justice Dunphy indicated that while the "portfolio has been successfully managed over the years to the point of repaying the secured creditors in full and resolving two large contingent claims", the Fund should develop a "concrete game plan for winding up the liquidation process and exiting from the court process." Justice Dunphy further stated that:

> I understand that the portfolio of VC investments left in the fund is getting down to a relatively small number of investments that it is hoped will yield a material amount of money that can be distributed to the long-suffering investors… There will come a time … that the benefits of the patient work-out of the portfolio to maximize value will not justify the expense and delay of doing so and a more rapid sale of some or all of the remaining portfolio to new owners willing to take the time needed to realize that value will be the preferable course.

A copy of Justice Dunphy's endorsement dated June 29, 2021 is attached hereto as **Exhibit "I"**.

61. The Fund has been very mindful of these comments. Since that time the Fund has been considering, in consultation with Crimson Capital and the Monitor, the appropriate timing and process for concluding the orderly liquidation of its portfolio, making distributions to shareholders, dissolving the Fund and concluding the CCAA Proceedings.

62. The last time the Fund was before the Court seeking an extension of the Stay Period (defined below) was on March 30, 2022. At that time, Crimson Capital was estimating that the disposition of the Fund's investment positions in 2022 may generate total gross proceeds of approximately $26.8 million. On that basis, the Board was of the view at that time that it was best to continue the orderly liquidation process throughout 2022 as planned.

63. In granting the stay extension sought by the Fund, Justice Penny noted in his endorsement, among other things:

> I am satisfied that the stay extension sought by the company is warranted. The Monitor supports the request. Significant progress has been made in realizations

> and there is a *prima facie* sensible plan for the completion of the necessary steps. The Board and the Monitor are cognizant of the fact that some of the assets may not be best handled by the debtor in this process, given the time and risk that may be required to realize significant value.

A copy of the endorsement of Justice Penny dated March 30, 2022 is attached hereto as **Exhibit "J"**.

64. The Fund did not realize any proceeds from dispositions in 2022 owing to, among other things, the deterioration of the equity markets more broadly and specifically with respect to software and biotech companies which comprise most of the Fund's remaining portfolio investments.

65. The Fund, with the support of the Monitor, has determined that it is now appropriate to commence a dissolution process that will allow the Fund a reasonable period of time to pursue significant divestitures (estimated to be in excess of $18 million) while minimizing ongoing costs and providing a clear end-time for the realization process and related distributions. In reaching this conclusion, the Fund was mindful of the following factors:

(a) the duration of the CCAA Proceedings, which were commenced over nine years ago on October 1, 2013;

(b) the relatively small number of investments remaining in the Fund's investment portfolio of material value;

(c) Crimson Capital's estimate that significant proceeds from those remaining investments are expected to be realized in 2023-2024, with very little expected to be realized thereafter; and

(d) the desire of the Board to reduce the operating expenses of the Fund to preserve its available cash for distributions to its shareholders.

66. The Fund is accordingly seeking the Distribution, Termination and Discharge Order which includes the relief set out below. This relief is necessary and appropriate to facilitate the Fund concluding the orderly liquidation of its portfolio, making distributions to shareholders, dissolving the Fund and concluding the CCAA Proceedings for the benefit of its stakeholders.

RELIEF SOUGHT ON THIS MOTION

Stay Extension

67. The Stay Period (as defined in paragraph 14 of the Initial Order, the "**Stay Period**") has been extended a number of times, most recently until December 31, 2022. A copy of the most recent order of Justice Penny dated March 30, 2022 is attached hereto as **Exhibit "K"**.

68. The Fund is seeking a final extension of the Stay Period up to the earlier of: (i) December 31, 2024, and (ii) the CCAA Termination Time (defined below) (the "**Stay Extension Period**"). While the Fund recognizes that this is longer than the nine-month stay extensions that it has been seeking over the last several years, and longer than stay extensions that are typically granted in CCAA proceedings, the Fund believes that this length of stay extension is appropriate in the circumstances as:

(a) the Fund has committed that this will be the final stay extension that is sought in these proceedings;

(b) the Fund has been advised by Crimson Capital that any proceeds of its remaining portfolio investments are anticipated in 2023 or 2024;

(c) the Fund may end its efforts to liquidate its investment portfolio and conclude the CCAA Proceedings sooner if appropriate, as detailed further below;

(d) all existing secured and unsecured creditor claims have been resolved and paid;

(e) in order to minimize the ongoing administration costs of the Fund even further, the Fund intends to further reduce the size of the Board from three directors to one effective December 31, 2022;

(f) holders of Class A Shares will not suffer any material prejudice from the delay as the current liquid assets of the Fund would only result in a distribution of approximately $40 to each shareholder; and

(g) this will limit the professional fee costs of seeking multiple stay extensions, which are among the largest costs that continue to be incurred by the Fund and would erode the potential recovery to holders of Class A Shares.

69. The Fund requires an extension to the Stay Period in order to ensure that it is able to continue the realization process for a period of no longer than two years and then distribute its available cash to shareholders in equitable manner in accordance with its articles. If the Stay Period was terminated prior to distributions being made, the Fund may face additional redemption requests and claims which would result in certain shareholders and other stakeholders potentially obtaining an advantage over others and the Fund being required to incur costs to respond to such

claims, both of which would erode the amounts available for an equitable distribution to all shareholders.

70. As described herein, the Fund has acted and continues to act in good faith and with due diligence. Among other things:

(a) the Fund has continued to engage Crimson Capital to complete an orderly liquidation process;

(b) the Fund has continued to consider ways to reduce administration costs, including the further reduction of the Board from three directors to one; and

(c) the Fund has developed this proposed dissolution process

71. I understand that a cashflow forecast covering the proposed extension of the Stay Period will be appended to the Monitor's Thirtieth Report, to be filed (the "**Thirtieth Report**") that will demonstrate the Fund has sufficient liquidity to meet its obligations through to the end of the extension of the Stay Period.

Completion of Orderly Liquidation

72. The proposed Distribution, Termination and Discharge Order would authorize the Fund to continue to take such steps as the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor as appropriate, determines is appropriate to effect an orderly liquidation of its investment portfolio during the Stay Extension Period. The order provides a clear end-date for that process: December 31, 2024.

73. The Applicant will continue to evaluate the appropriateness of continuing its efforts to liquidate its investment portfolio throughout the Stay Extension Period considering the proceeds likely to be realized, the estimated cost of such efforts and such other factors as the Applicant determines relevant in the circumstances. The proposed Order would authorize the Applicant to cease that orderly liquidation if it determines that it would be appropriate to do so, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor as appropriate. In those circumstances, in accordance with the proposed Order, the Applicant may donate any security that it continues to hold to one or more charities or otherwise deal with it in the manner determined by the Applicant, in consultation with the Monitor.

Distributions to Shareholders

74. As noted above, the authorized capital of the Fund consists of (i) Class A Shares, which were issued in 17 series and are held by 115,859 Class A shareholders, (ii) Class B Shares, which are held by the Sponsor, and (iii) Class C shares, which are held by the Former Manager.

75. The articles of the Fund set out the respective amounts payable to the holders of each outstanding class and series of shares of the Fund upon the occurrence of a "Dissolution Event" and the relative priorities of those payments among the various share classes. A copy of a certificate of amendment dated November 10, 2003 setting out the share terms of the Class A Shares and Class B Shares is attached hereto as **Exhibit "L"**. A copy of a certificate of amendment dated February 12, 2010 setting out the share terms of the IPA Shares are attached hereto as of the Fund are attached hereto as **Exhibit "M"**.

76. The share terms define the term "**Dissolution Event**" as "the liquidation, dissolution or winding-up of the [Fund], whether voluntary or involuntary, or any other distribution of the assets of the [Fund] among its shareholders for the purpose of winding up its affairs".

Class A Shares

77. On a Dissolution Event, the holders of Class A Shares are entitled to share rateably the remaining property and assets of the Fund after the holders of shares of any other class having priority have received all amounts to which they are entitled. Each holder of a series of Class A Shares is entitled on a Dissolution Event to an amount equal to the amount the shareholder would be entitled to receive on a full redemption of their Class A Shares.

78. If, on a Dissolution Event, the Fund does not have sufficient funds to satisfy all amounts payable to all Class A Shareholders, a shareholder is entitled to receive their *pro rata* portion of the available funds. The holders of the Class A Shares rank equally with holders of Class C Shares/IPA Shares on a Dissolution Event.

79. The Class A Share terms provide that (i) any determination made by the directors of the Fund in good faith regarding any matters set out in Part 2 (Class A Shares) of the Fund's articles will be final and binding on all shareholders and former shareholders of the Fund and all other interested parties; and (ii) the directors of the Fund will not be liable to the Fund or to any shareholder of former shareholder of the Fund or any other interested party for, or with respect to, any matter arising directly or indirectly from any such determination made or action taken by them in good faith pursuant to Part 2 of the Fund's articles.

Class B Shares

80. On a Dissolution Event, the holder of the Class B Shares (i.e. the Sponsor) is only entitled to receive an amount equal to the purchase price it paid for its Class B Shares, which is a nominal amount. This amount must be paid before any assets of the Fund are distributed to the holders of the Class A Shares and Class C Shares.

Class C Shares

81. The Former Manager, as the holder of the IPA Shares, is entitled to receive dividends ("**IPA Dividends**") based on realized gains and income from venture investments held by the Fund. The IPA Share terms stipulate that IPA Dividends cannot be paid in respect of any venture investment unless the following conditions have been met:

(a) Portfolio Test: the total net realized and unrealized gains and income of the Fund from its portfolio of venture investments since the IPA Start Date must have generated an annualized rate of return greater than a cumulative annualized threshold rate of return equal to the average annual rate of return on a five year

guaranteed investment certificate ("**GIC**") offered by a major Canadian chartered bank plus 2%;

(b) Venture Investment Test: the compounded annual internal rate of return (including realized and unrealized gains and income from prior partial dispositions of that venture investment or otherwise) from the venture investment since its acquisition by the Fund must equal or exceed 12% per year; and

(c) Principal Test: the Fund must have fully recovered a cash amount at least equal to the principal invested in the venture investment.

82. For the purposes of applying the Portfolio Test above, I note that, as of the date of swearing this affidavit, the posted rate for a non-redeemable 5-year GIC from Royal Bank of Canada is 4.25%.

83. Section 4.2(f) of the IPA Share terms provides that, if the holder of the IPA Shares is terminated as a manager of the Fund, the holder of the IPA Shares will be entitled to receive an amount equal to the sum of:

(a) all declared but unpaid dividends on the IPA Shares; and

(b) dividends in an amount equal to the cumulative dividends to which the holder of the IPA Shares would have been entitled pursuant to paragraph 4.2(d) of the IPA Share terms (which sets out the formula for calculating IPA Dividends), whether or not dividends were actually declared by the directors, assuming that all Venture Investments had been disposed of as of the effective date of such termination at the

> estimated fair value of such investments calculated in accordance with the Fund's usual valuation policies.

84. Any amount in (i) above must be paid promptly and any dividend payable in (ii) above is payable as and when the particular Venture Investment is disposed of.

85. The term "**Venture Investment**" is defined in the Fund's articles as, in effect, any securities of a person held by the Fund (other than reserves) on the "**IPA Start Date**" (being November 26, 2002) and any securities acquired by the Fund (other than reserves) after November 26, 2002.

86. In the Former Manager Litigation, the Former Manager claimed that it was entitled, pursuant to section 4.2(f)(ii) of the IPA Share terms, to payment of dividends on the IPA Shares equal to the total of realized gains and income from four venture capital investments that were divested prior to termination of the Management Agreement. The total amount claimed was $672,390.61. In his ruling of May 18, 2018 in the Former Manager Litigation, Justice Wilton-Siegel rejected the Former Manager's claim for that amount. In the Reasons, His Honour held:

> [378] The Former Manager claims that it is entitled pursuant to section 4.2(f)(ii) to payment of dividends on the IPA Shares equal to the total of realized gains and income from four venture capital investments that were divested prior to termination of the Management Agreement. The total amount claimed is $672,390.61.
>
> [379] In support of its position that it is entitled to the earned, undeclared and unpaid dividends, the Former Manager relies on: (1) the language of section 4.2(f)(ii); and (2) the Fund's treatment of earned, undeclared and unpaid dividends in its financial statements.
>
> [380] The Fund does not dispute that this amount was earned in the sense that the Former Manager is entitled to receive dividends in such amount pursuant to the provisions of section 4.2(d)(i) of the share conditions of the IPA Shares, subject to compliance with the terms of that provision. However, it submits that the Former Manager is not entitled to be paid such amount in the absence of a

Board resolution declaring a dividend in such amounts on the IPA Shares, which the Board is prevented from passing in view of the solvency provisions of section 42 of the CBCA. In my view, the language of section 4.2(f)(ii) does not support the Former Manager's position that it is entitled to payment of the amount claimed by way of an IPA Dividend on the IPA Shares in the present circumstances for the following reasons.

[381] The Former Manager relies on the words "whether or not dividends were actually declared by the directors" in section 4.2(f)(ii). If section 4.2(f)(ii) provided that the Former Manager was entitled to receive the amount contemplated thereby otherwise than as "dividends," the result might well be different. However, section 4.2(f)(ii) is quite explicit. It provides that the Former Manager is entitled to "dividends in an amount equal to the cumulative dividends to which [the Former Manager] would have been entitled pursuant to paragraph (d) above…" (emphasis added). Section 4.2(d)(i) provides, among other things, that "the directors shall declare where permitted by the Act and the [Fund] shall pay" the earned amounts (emphasis added). This language requires the Fund to make any amount owing pursuant to section 4.2(f)(ii) payable by way of a dividend. It also makes the Board's obligation to declare the contemplated dividend dependent upon the CBCA and, in particular, satisfaction of the solvency provisions in section 42 of that statute.

[382] As the share provisions are clear that the earned amounts are to be paid to the Former Manager in the form of dividends, and, in any event, as it is not disputed that, in the present circumstances, the directors could not satisfy section 42 of the CBCA if they were to declare a dividend in respect of such amounts, the Board has no obligation to declare such dividend and the Fund therefore has no obligation to pay any amount to which the Former Manager is otherwise entitled pursuant to section 4.2(f)(ii). In short, there is no amount to which the Former Manager would have been entitled pursuant to section 4.2(d)(i) of the share conditions of the IPA Shares.

[383] In addition, I do not find the financial statement treatment of these earned amounts as probative of the legal issue in this proceeding for three reasons.

[384] First, the financial statement treatment of these amounts as a liability in years prior to 2013 is undoubtedly correct in the context of a going-concern entity. Regardless of any legal issue surrounding the need for a declaration of a dividend, these amounts were required to comply with the business arrangements between the Fund and the Former Manager.

[385] Second, the concept of a liability for accounting purposes is broader than the concept of a legally enforceable obligation at law. In fact, the accrual of a contingent liability in respect of the IPA Shares demonstrates this reality. There is, therefore, no necessary inference of a legally enforceable obligation to be derived from the accounting treatment of this claim in the financial statements of the Fund.

> [386] Third, there is no evidence of any issue of compliance with the CBCA solvency test that was raised in respect of such earned amounts at the time of finalization of the financial statements. Further, and in any event, there is no evidence that the legal issue presented by this action was addressed in the preparation of the financial statements.
>
> [387] I also note that Mesbur J. reached a similar conclusion on similar language in another case also involving the Former Manager reported at 2017 ONSC 5009, which is currently under appeal. While I agree with the reasoning in that case, I have not relied specifically on that decision in reaching the conclusion expressed herein.
>
> [388] Based on the foregoing, I conclude that the Former Manager is not entitled to its claim for the amount of accrued IPA Dividends in the amount of $672,390.61.

87. In the Judgment, Justice Wilton-Siegel ordered that while the Former Manager's claim for IPA Dividends as a result of the termination of the Management Agreement was dismissed, the Former Manager was not precluded from making a claim with respect to IPA Dividends based on a Dissolution Event:

> **2. THIS COURT ORDERS** that the claim of the Former Manager for $672,390.61 for unpaid incentive payment amounts ("**IPA**") as a result of the termination of the Management Agreement, but not any potential claim for IPA based on a Dissolution Event as defined in the Articles of Amendment for Class C Shares (which potential claim was not before the court on this trial), is dismissed.

88. On a Dissolution Event, Section 4.2(e) of the IPA Share terms provides that the Former Manager, as the sole holder of IPA Shares, will be entitled to receive an amount equal to the sum of:

(a) all declared but unpaid dividends on the IPA Shares; and

(b) an amount equal to the cumulative dividends to which the holder of the IPA Shares would have been entitled pursuant to paragraph 4.2(d) of the IPA Share terms (which sets out the formula for calculating IPA Dividends), whether or not dividends were actually declared by the directors, assuming that all Venture

> Investments (as described below) had been disposed of as of the date of the Dissolution Event at the estimated fair value of such investments calculated in accordance with the Fund's usual valuation policies

89. The term "Venture Investments" when used in section 4.2(e) of the IPA Share terms in relation to the date of dissolution means the Venture Investments held by the Fund at the time of the dissolution and not all Venture Investments held since the IPA Start Date in 2002.

90. The Fund has experienced significant losses in its investment portfolio since 2012. Accordingly, the Fund does not believe that the "Portfolio Test" described above will be met on the date of the Dissolution Event (i.e. the date on which the Court issues the Distribution, Termination and Discharge Order, should it decide to issue it).

91. As noted above, the Fund has received a total of $57.0 million in proceeds from realizations on its portfolio investments since the commencement of the CCAA Proceedings. The sum of those realizations plus the estimated current fair value of the Fund's remaining portfolio investments, as set out in the Confidential Summary, is significantly less than the cost of those investments as set out in the audited financial statements of the Fund for the year ended August 31, 2013 (being the most recent audited financial statements prepared by the Fund) (the "**2013 Financial Statements**"). A copy of the 2013 Financial Statements are attached hereto as **Exhibit "N"**.

92. As a result, the Fund is of the view that no distribution is payable in respect of the Class C/IPA Shares.

Relief Related to Distributions

93. The proposed Distribution, Termination and Discharge Order provides for distributions to holders of Class A Shares, Class B Shares and Class C Shares that are consistent with the rights on a Dissolution Event set out above.

94. With respect to Class B Shares, the proposed Distribution, Termination and Discharge Order contemplates that a distribution will be made to the Sponsor on the initial date that a distribution is made pursuant to the Distribution, Termination and Discharge Order (each, a "**Distribution Date**") in accordance with the terms of the Class "B" shares in full and final satisfaction of any and all entitlement that the Class "B" shareholder has to receive dividends or any other payments pursuant to the terms of the Class B Shares.

95. With respect to the Class C Shares, the proposed Distribution, Termination and Discharge Order provides that the holder of the Class C Shares is not entitled to receive any further dividends or payments on account of those shares. This relief is necessary as the Class C Share Terms and IPA Share terms do not include provisions protecting the directors from liability related to determinations they make in good faith on entitlement of the Class C Shares to dividends, as the Class A Shares do.

96. With respect to the Class A Shares, the proposed Distribution, Termination and Discharge Order authorizes the Applicant to make one or more Distributions from the Class A Distribution Pool to Class A Eligible Shareholders in accordance with the respective terms of the various outstanding series of Class A shares of the Applicant.

97. The Class A Distribution Pool is defined as available cash and cash equivalents of the Applicant (the "**Available Cash**") on the date that is seven Business Days prior to the date upon which a Distribution is made (each, a "**Distribution Record Date**") less (i) the amount of any Distributions to be made to the holder of the Class B Shares, (ii) any amounts due and owing to creditors of the Applicant on such Distribution Record Date, if any, (iii) the estimated cost of such Distribution, and (iv) a reserve for the estimated costs of the Applicant, the Monitor and their respective Representatives from such Distribution Record Date to the CCAA Termination Time, in each case determined by the Applicant in consultation with the Monitor.

98. On each Distribution Date, the Monitor will serve on the Service List and post on the Monitor's Website a Monitor's Distribution Certificate certifying that a Distribution has been made and specifying the aggregate amount of the Distribution to Class A Eligible Shareholders and the amount of the Distribution made on account of each Class A Share held by a Class A Eligible Shareholder. The purpose of this certificate is to provide public notice of the distributions that have been made on account of Class A Shares to inform all stakeholders of the Applicant.

99. If any Distributions are returned as undelivered or are not cashed within six months of a Distribution Date, the applicable shareholder's entitlement to that amount will be extinguished, the shareholder will not be eligible for any further Distributions and the amount of the Distribution that shareholder will be added to the Available Cash and available for subsequent Distributions, if appropriate.

Disposition of Remaining Funds

100. The Fund presently has approximately $5.4 million in liquid assets. The Board obtained a quote from the Fund's transfer agent, IAS, for the costs of a distribution to the Fund's 115,859

Class A shareholders. Based on the quote provided and the Fund's estimate of associated legal and other expenses, the estimated cost of distribution to holders of Class A Shares is approximately $125,000.

101. Given the significant cost of subsequent distributions, the proposed Distribution, Termination and Discharge Order provides that if the Applicant determines, in consultation with the Monitor, that the costs of making a Distribution are likely to exceed the Available Cash, the Applicant, in consultation with the Monitor, may donate any portion of the Available Cash to one or more charities or otherwise deal with the Available Cash in the manner determined by the Applicant and the Monitor.

Termination, Discharge and Dissolution

102. Upon the Fund concluding the liquidation of its investment portfolio, paying all creditor claims, making distributions to shareholders and otherwise completing all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the Monitor will file with the Court the Monitor's CCAA Completion Certificate, which will designate the "**CCAA Termination Time"**.

103. As of the CCAA Termination Time:

(a) the CCAA Proceedings will be terminated;

(b) the Fund will be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority;

(c) the Monitor will be discharged and released from its duties, obligations and responsibilities and will be forever released, remised and discharged from any claims against it relating to its activities as Monitor;

(d) the releases and injunctions provided for in the Distribution, Termination and Discharge Order (detailed below) will become effective; and

(e) the Administration Charge and Directors' Charge provided for in the Initial Order will be terminated, released and discharged.

104. The Fund has determined that it is not practicable to seek approval from its shareholders to dissolve the Fund. If the Fund were required to hold a meeting of its shareholders in order to authorize a dissolution, the significant costs associated with calling a meeting of its 115,859 Class A shareholders would only serve to reduce the recovery available to those shareholders.

105. The Distribution, Termination and Discharge Order provides for releases in favour of the current and former directors, officers and agents of the Fund and the Monitor from all claims that in any way relate to or arise out of or in connection with (i) the assets, obligations, business or affairs of the Fund; or (ii) the CCAA Proceedings or any matter, transaction or occurrence involving the Fund or its current and former directors, officers and agents occurring in or in connection with the CCAA Proceedings. Any claims claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA are carved out of the releases.

Sealing Order

106. The Fund is seeking an order to seal the Confidential Exhibit until further order of the Court. The Confidential Exhibit contains details regarding Crimson Capital's particularized estimates of the value that could be realized from each of the Fund's remaining material investments, together with details regarding the investments in these private companies.

107. While the Fund has disclosed the overall estimated proceeds above, disclosure of the particularized, detailed information would be prejudicial to the Fund's ongoing efforts to realize on such investments and maximize value from them for the benefit of the Fund's stakeholders. As such, I believe it is appropriate to seal the Confidential Exhibit, subject to a further order of the Court.

Second Amended and Restated IAA Agreement

108. Crimson Capital is engaged through an Amended and Restated Investment Advisor Agreement (the "**Second Amended and Restated IAA Agreement**"), which the Court authorized the Fund to enter on March 22, 2019 pursuant to the Stay Extension Order of the Honourable Justice Hainey (the "**March 22, 2019 Stay Extension Order**"). A copy of the Second Amended and Restated IAA Agreement is attached hereto as **Exhibit "O"**. A copy of the March 22, 2019 Stay Extension Order is attached hereto as **Exhibit "P"**.

109. The terms of the Second Amended and Restated IAA Agreement initially expired on December 31, 2019. Pursuant to section 8.1 of the Second Amended and Restated IAA Agreement, the Fund may, upon mutual agreement of the Fund and Crimson Capital, extend the term.

110. On each of December 18, 2019, September 22, 2020, June 29, 2021 and March 30, 2022, this Court authorized the Fund to extend the term of the Second Amended and Restated IAA Agreement and ordered that paragraphs 4 to 7 of the March 22, 2019 Stay Extension Order continued to apply during the extended term. On these occasions, the Fund entered into an amending agreement extending the term.

111. The term of the Second Amended and Restated IAA Agreement is currently set to expire on December 31, 2022. As Crimson Capital is continuing to seek out opportunities to liquidate the Fund's remaining assets to maximize value, the Board has determined that it would be in the best interests of the Fund and its stakeholders to extend the term of the Second Amended and Restated IAA Agreement until the earlier of (i) December 31, 2024, or (ii) the CCAA Termination Time, which mirrors the length of the stay extension sought.

NOTICE

112. Given the amount of time required and the associated cost, it would not be practicable or cost-efficient to provide notice of this motion by mail or similar means to each of the individual shareholders of the Fund. As noted above, the Fund has 115,859 Class A shareholders. Accordingly, the Fund intends to provide notice of this motion by:

(a) serving its motion materials on the service list in the CCAA Proceedings, which includes counsel to the Former Manager;

(b) arranging for its motion materials to be posted on the website established by the Monitor in respect of the CCAA Proceedings (the "**Monitor's Website**"); and

(c) issuing a press release in the form attached hereto as **Exhibit "Q"**, describing the background to the Fund's motion and the relief being sought and including a link to the Monitor's Website for accessing the motion materials.

113. I believe that the above measures are the most practical and cost-effective means of providing notice of this motion to the shareholders of the Fund.

CONCLUSION

114. For the reasons set out above, the Fund respectfully requests that the Court issue the Distribution, Termination and Discharge Order.

SWORN BEFORE ME VIA VIDEOCONFERENCE, the affiant being located in the City of Collingwood, in the Province of Ontario, Canada and the Commissioner being located in the City of Toronto, in the Province of Ontario, Canada on December 2, 2022, in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely.

C. Ian Ross

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits

TAB A

This is Exhibit "**A**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

Court File No.: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAME	)	TUESDAY, THE 29TH
	)	
JUSTICE MESBUR	)	DAY OF OCTOBER, 2013

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**")

ORDER

THIS MOTION, made by the Applicant, for an order extending the Stay Period (the "**Stay Period**") defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 (the "**Initial Order**") until January 15, 2014, and amending and restating the Initial Order to, among other things, declare certain persons critical suppliers and permit the Applicant to provide an indemnity for certain Applicant-nominated directors of companies in the Applicants' investment portfolio and a related charge, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn October 25, 2013 and the Exhibits thereto (the "**Ross Affidavit**") and the Second Report (the "**Second Report**") of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), on being advised that Roseway Capital S.a.r.l. consents to the relief requested in this motion, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Growthworks WV Management Ltd. (the "**Manager**"), no one appearing for any other party although duly served as appears from the affidavit of service,

or "counsel for Roseway," les

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so 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 January 15, 2014.

MONITOR'S ACTIVITIES AND REPORT

3. THIS COURT ORDERS that the First Report of the Monitor dated October 8, 2013 and the Second Report of the Monitor and the activities described therein are hereby approved.

AMENDED AND RESTATED INITIAL ORDER

4. THIS COURT ORDERS AND DECLARES that the Initial Order is hereby amended and restated in the form attached hereto as Schedule "A".

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

OCT 2 9 2013

SCHEDULE "A" – AMENDED AND RESTATED INITIAL ORDER

Court File No.: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 1ST
	)	
JUSTICE NEWBOULD	)	DAY OF OCTOBER, 2013

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**")

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of C. Ian Ross sworn September 30, 2013 and the Exhibits thereto (the "**Ross Affidavit**"), and on being advised that Roseway Capital S.a.r.l. ("**Roseway**"), the secured creditor who is likely to be affected by the charges created herein was given notice, and on hearing the submissions of counsel for the Applicants, counsel for Roseway and counsel for the proposed Monitor, FTI Consulting Canada Inc., counsel for the Manager (defined below) and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor,

THIS APPLICATION, made by the Applicant, pursuant to the CCAA was heard this day at 330 University Avenue, Toronto, Ontario.

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to utilize a central cash management system (a "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or

application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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

(a) all reasonable transition costs of the Manager (as defined below) pursuant to the terms of the Critical Transition Services Agreement (as defined below), and all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing management agreements, compensation policies and arrangements; and

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

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) Follow on Investments in Portfolio Companies (as defined in the Ross Affidavit, the "**Portfolio Companies**", each a "**Portfolio Company**") for which provision is made in the Cash Flow Projection (as defined in the Ross Affidavit) or which are approved by the Monitor; and

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area

maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $25,000 in any one transaction or $100,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and terminate the provision of transitional services by the Manager (as defined below); and

(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**"). For greater clarity, dispositions of the Applicant's interest in a Portfolio Company as part of a liquidity event, is an ordinary course transaction that does not require Court approval.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including October 31,2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process

in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

16. THIS COURT ORDERS that any rights or obligations, including any right or obligation under a contract, an agreement or other document affecting or relating to a Portfolio Company, that arise, come into effect or are "triggered" by the insolvency of the Applicant, by the commencement of these proceedings or the making of this Order shall be of no effect and no person shall be entitled to exercise any rights or remedies in connection therewith.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

CRITICAL SUPPLIERS

20. THIS COURT ORDERS AND DECLARES that this Order is without prejudice to any arguments of the Fund, Growthworks WV Management Ltd. (the "**Manager**") or GrowthWorks Capital Ltd. ("**GWC**"), in connection with the purported termination of the Management Agreement described in the Ross Affidavit (the "**Management Agreement**").

21. THIS COURT ORDERS that, the Manager, GWC, and each Person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with providing transitional services to the Applicant pursuant to the Management Agreement on or after October 1, 2013 is a critical supplier to the Applicant as contemplated by Section 11.4 of the CCAA (each, a "**Critical Supplier**") and each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the **"Critical Suppliers' Charge")** on the Property of the Applicant in an amount equal to the lesser of (a) the value of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services; and, (b) the amount to which the Manager is entitled to be paid under the Critical Transition Services Agreement attached hereto as Schedule "1". The Critical Supplier Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. THIS COURT ORDERS that each Critical Supplier shall, in addition to any other obligations it has under this Initial Order, supply and continue to supply the Applicant with transitional services pursuant to the Management Agreement. In the case of the Manager, it shall supply and continue to supply the Critical Transition Services (as defined in the Critical Transition Services Agreement) pursuant to and as set out in the Critical Transition Services Agreement. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of such services after the date of this Order.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, or against any current or future Applicant-nominated director of any of the Portfolio Companies (the "**Portfolio Company Directors**") with respect to any claim against the directors, officers or Portfolio Company Directors that arose before, on or after the date hereof and that relates, (i) in the case of the former, current or future directors or officers of the Applicant, to any obligations of the Applicant, or (ii) in the case of the Portfolio Company Directors, to any obligations of the Portfolio Companies, and in either case whereby the directors, officers or Portfolio Company Directors are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers, and may indemnify the Portfolio Company Directors if, in its own discretion and in consultation with the Monitor, it elects to do so, against obligations and liabilities that they may incur as directors or officers of the Applicant or directors of a Portfolio Company after the commencement of the within proceedings, except to the extent that, with respect to any director, officer or Portfolio Company Director, the obligation or liability was incurred as a result of the director's, officer's or Portfolio Company Director's gross negligence or wilful misconduct. The Applicant and the Portfolio Company Directors will use reasonable commercial efforts to address any dispute regarding the indemnity coverage with the guidance and assistance of the Monitor, and, if required, this Court.

25. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on

the Property, which charge shall not exceed an aggregate amount of $1,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

26. THIS COURT ORDERS that the Portfolio Company Directors shall be entitled to the benefit of and are hereby granted a charge (the "**Portfolio Company Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $10,000,000, as security for the indemnity referred to in paragraph 24 of this Order, to the extent one is provided by the Applicant. The Portfolio Company Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge or the Portfolio Company Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order, and the Portfolio Company Directors shall only be entitled to the benefit of the Portfolio Company Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified by the Applicant, to the extent an indemnity is provided by the Applicant accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

28. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its

powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements;

(d) advise the Applicant in respect to the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) establish one or more accounts to hold any proceeds of the disposition of the Portfolio Companies (the "**Proceeds Accounts**");

(i) administer the Proceeds Accounts for and on behalf of the Applicants and to distribute funds from such Proceeds Accounts from time to time to satisfy expenses that the Applicant is entitled and/or required to pay pursuant to this Order, as directed by the Applicant and in accordance with the Cash Flow Projection and any update cash flow projections; and

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

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

31. THIS COURT ORDERS that McCarthy Tétrault LLP is entitled to transfer the funds held by it in trust as described in the Ross Affidavit at paragraph 88, and any future proceeds that may be received by it from time to time from the disposition of the Portfolio Companies, to the Monitor for deposit into the Proceeds Accounts to be held by the Monitor for and on behalf of the Applicant in accordance with the terms of this Order.

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in

addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant and CCC (as defined in the Ross Affidavit), retainers in the amount of $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $500,000);

Second – Directors' Charge (to the maximum amount of $1,000,000);

Third – Critical Suppliers' Charge (to the maximum amount of $50,000); and,

Fourth – Portfolio Company Directors' Charge and Critical Suppliers' Charge to the extent that it exceeds $50,000.

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

40. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and that the entire Directors' Charge, the entire Administration Charge and the Critical Suppliers' Charge to a maximum amount of $50,000 shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. To the extent the Critical Suppliers' Charge exceeds $50,000, such additional amount, together with the Portfolio Company Directors' Charge, shall rank *pari passu* with one another behind the Encumbrances.

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

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at http://cfcanada.fticonsulting.com/gcfl.

GENERAL

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

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, a Portfolio Company, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, 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 this Court, as may be necessary or desirable to give effect to this Order, to grant representative

status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

_____

SCHEDULE "1" – CRITICAL TRANSITION SERVICES AGREEMENT

CRITICAL TRANSITION SERVICES AGREEMENT

This agreement is made as of the 15th day of October, 2013.

BETWEEN

GROWTHWORKS CANADIAN FUND LTD.
(the "Fund")

OF THE FIRST PART

and

GROWTHWORKS WV MANAGEMENT LTD.
(the "Manager")

OF THE SECOND PART

WHEREAS the Fund and the Manager were parties to an amended and restated management agreement dated July 15, 2006 (the "**Management Agreement**") in relation to which the Fund delivered a termination notice on September 30, 2013 (the "**Notice**");

AND WHEREAS the Manager disputes the validity of the Notice;

AND WHEREAS sections 8.4, 8.5 and 8.6 of the Management Agreement (the "**Transition Provisions**") provide, among other things, that the Manager is to (i) deliver to the Fund all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in its custody, possession or control, and (ii) use reasonable commercial efforts to co-operate with the Fund and any successor manager to facilitate an orderly transition such that the Services (as defined in the Management Agreement) will be provided to the Fund by the successor without delay or compromise of service; and that the Fund will pay to the Manager all reasonable transfer, wind-down and transition costs incurred by or put to the Manager as a result of having to transition operations to a successor manager;

AND WHEREAS the Fund applied for and obtained an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**") on October 1, 2013 (the "**Initial Order**"), which, among other things, appointed FTI Consulting Canada Inc. as the Court-appointed monitor (the "**Monitor**");

AND WHEREAS the Fund's application to have the Manager declared a critical supplier of transition services (the "**Critical Transition Services**") was adjourned pending discussions among the parties;

AND WHEREAS, without prejudice to the parties' respective rights under the Management Agreement, and/or the parties' claims as they relate to the Notice, the parties hereto have agreed on the scope of the Critical Transition Services to be provided as critical supplies under the Initial Order and the payments to be made by the Fund to the Manager in relation thereto;

NOW THEREFORE in consideration of the promises and the agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), it is agreed as follows:

1. This agreement and the performance of the parties' obligations under this agreement, are without prejudice to claims that arose prior to the Notice and claims relating to the Notice and the Manager's conduct under the Management Agreement (the "**Pre-Filing Dispute**"). For greater clarity, nothing herein shall prevent the parties from exercising their set-off rights in any action, proceeding, litigation or claim regarding the Pre-Filing Dispute.

2. The Critical Transitional Services to be provided by the Manager to the Fund pursuant to the Management Agreement shall include the following:

   (a) Assistance with the Fund's ongoing audit and valuation for fiscal 2013 as required by KPMG, which includes signing the management representation letter in favour of the auditor and assistance of certain employees of the Manager to complete and provide working papers to KPMG, answer questions, provide follow up information, and otherwise assist KPMG, as required.

   (b) Providing to the Fund copies of any agreements, retainer letters or other paperwork, if any, documenting the relationship with any third party vendors used or retained by the Manager in relation to the services provided by the Manager to the Fund under the Management Agreement as well as the names and contact details for such third party vendors. In addition, with respect to the software provider, Just Systems, providing access to the data in a form that is accessible in their system.

   (c) Attendance by the Manager's employees Tim Lee, Peter Clark, Diane Vaselenak and Pat Brady (collectively, the "**Nominee Directors**") at meetings in relation to the issue of the Fund's representation on boards of Portfolio Companies (as defined in the affidavit of Ian Ross, dated September 30, 2013) during which meetings the Nominee Directors will be expected to provide a verbal outline of the issues and relevant information relating to the Fund's interest in each of the Portfolio Companies.

   (d) Providing information to the Fund based on reasonable requests made by the Fund.

   (e) The Nominee Directors will resign from their respective positions on the boards of the Portfolio Companies by no later than October 31, 2013, unless such date is extended by mutual agreement.

3. The Fund will pay the Manager for the Critical Transition Services on the following basis:

   (a) The Manager will provide estimates of its costs related to the Critical Transition Services to the Fund. The costs will be calculated as the sum of the time expected to be spent by each employee performing Critical Transitional Services at an hourly rate equal to the actual annual salary of the individual employee, plus benefits and other employment costs related to that person, divided by 1840 working hours per year.

(b) The Fund and the Monitor will review the cost estimates provided by the Manager in relation to the Critical Transition Services to determine if they are reasonable. The Fund acknowledges that the estimate provided by the Manager on October 11, 2013 was reviewed by the Monitor and is reasonable.

(c) The Fund will include payment of these costs in a revised cash flow projection, which will be adjusted as necessary to the extent the scope of the Critical Transition Services is modified.

(d) The Manager's employees will keep detailed timesheets with respect to the Critical Transition Services and the Manager will invoice the Fund weekly for the cost of these Critical Transition Services, which invoice will include copies of the detailed timesheets.

(e) The Monitor and Fund will review the invoices to ensure the services invoiced are consistent with the Critical Transition Services agreed upon, that the time spent is reasonable, and that the Critical Transition Services were performed by an appropriate person.

(f) The Fund will pay the Manager within two weeks of receiving an invoice, as set out above, provided the invoice meets the reasonability requirement in step (e). If it does not meet that requirement, the Fund and Manager will use best efforts to address the dispute about the invoice quickly, with the guidance and assistance from the Monitor and, if required, by the Court in the CCAA proceedings of the Fund.

(g) On or before October 29, 2013, the Fund shall obtain an order substantially in the form attached hereto as **Schedule '1'**.

4. This agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

5. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this agreement by any party hereto to each other party hereto by facsimile transmission or e-mail in pdf format, shall be as effective as delivery to the other parties hereto of a manually executed counterpart hereof.

IN WITNESS WHEREOF the parties have executed this Critical Transition Services Agreement as of the date set out at the commencement hereof.

GROWTHWORKS CANADIAN FUND LTD.

Per _____
Name:
Title: INTERIM CEO

Per: _____
Name:
Title:

GROWTHWORKS WV MANAGEMENT LTD.

Per _____

Name: David Lari

Title: President & CEO

Per: _____

Name:

Title:

SCHEDULE "1" - ORDER

Court File No.: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 29TH
	)	
JUSTICE	)	DAY OF OCTOBER, 2013

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**")

ORDER

THIS MOTION, made by the Applicant, for an order extending the Stay Period (the "**Stay Period**") defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 (the "**Initial Order**") until January 15, 2014, and amending and restating the Initial Order to, among other things, declare certain persons critical suppliers and permit the Applicant to provide an indemnity for certain Applicant-nominated directors of companies in the Applicants' investment portfolio and a related charge, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn October 25, 2013 and the Exhibits thereto (the "**Ross Affidavit**") and the Second Report (the "**Second Report**") of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), **[on being advised that Roseway Capital S.a.r.l. consents to the relief requested in this motion]**, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Growthworks WV 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 the Notice of Motion and the supporting materials is hereby abridged and validated so 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 January 15, 2014.

MONITOR'S ACTIVITIES AND REPORT

3. THIS COURT ORDERS that the First Report of the Monitor dated October 8, 2013 and the Second Report of the Monitor and the activities described therein are hereby approved.

AMENDED AND RESTATED INITIAL ORDER

4. THIS COURT ORDERS AND DECLARES that the Initial Order is hereby amended and restated in the form attached hereto as Schedule "A".

SCHEDULE "A" – AMENDED AND RESTATED INITIAL ORDER

Court File No.: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 1ST
	)	
JUSTICE NEWBOULD	)	DAY OF OCTOBER, 2013

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**")

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of C. Ian Ross sworn September 30, 2013 and the Exhibits thereto (the "**Ross Affidavit**"), and on being advised that Roseway Capital S.a.r.l. ("**Roseway**"), the secured creditor who is likely to be affected by the charges created herein was given notice, and on hearing the submissions of counsel for the Applicants, counsel for Roseway and counsel for the proposed Monitor, FTI Consulting Canada Inc., counsel for the Manager (defined below) and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor,

THIS APPLICATION, made by the Applicant, pursuant to the CCAA was heard this day at 330 University Avenue, Toronto, Ontario.

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to utilize a central cash management system (a "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or

application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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

(a) all reasonable transition costs of the Manager (as defined below) pursuant to the terms of the Critical Transition Services Agreement (as defined below), and all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing management agreements, compensation policies and arrangements; and

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

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) Follow on Investments in Portfolio Companies (as defined in the Ross Affidavit, the "**Portfolio Companies**", each a "**Portfolio Company**") for which provision is made in the Cash Flow Projection (as defined in the Ross Affidavit) or which are approved by the Monitor; and

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area

maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $25,000 in any one transaction or $100,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and terminate the provision of transitional services by the Manager (as defined below); and

(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**"). For greater clarity, dispositions of the Applicant's interest in a Portfolio Company as part of a liquidity event, is an ordinary course transaction that does not require Court approval.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including October 31,2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process

in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

16. THIS COURT ORDERS that any rights or obligations, including any right or obligation under a contract, an agreement or other document affecting or relating to a Portfolio Company, that arise, come into effect or are "triggered" by the insolvency of the Applicant, by the commencement of these proceedings or the making of this Order shall be of no effect and no person shall be entitled to exercise any rights or remedies in connection therewith.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

CRITICAL SUPPLIERS

20. THIS COURT ORDERS AND DECLARES that this Order is without prejudice to any arguments of the Fund, Growthworks WV Management Ltd. (the "**Manager**") or GrowthWorks Capital Ltd. ("**GWC**"), in connection with the purported termination of the Management Agreement described in the Ross Affidavit (the "**Management Agreement**").

21. THIS COURT ORDERS that, the Manager, GWC, and each Person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with providing services to the Applicant pursuant to the Management Agreement is a critical supplier to the Applicant as contemplated by Section 11.4 of the CCAA (each, a "**Critical Supplier**") and each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the **"Critical Suppliers' Charge")** on the Property of the Applicant in an amount equal to the lesser of (a) the value of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services; and, (b) the amount to which the Manager is entitled to be paid under the Critical Transition Services Agreement attached hereto as Schedule "1". The Critical Supplier Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. THIS COURT ORDERS that each Critical Supplier shall, in addition to any other obligations it has under this Initial Order, supply and continue to supply the Applicant with transitional services pursuant to the Management Agreement. In the case of the Manager, it shall supply and continue to supply the Critical Transition Services (as defined in the Critical Transition Services Agreement) pursuant to and as set out in the Critical Transition Services Agreement. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of such services after the date of this Order.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, or against any current or future Applicant-nominated director of any of the Portfolio Companies (the "**Portfolio Company Directors**") with respect to any claim against the directors, officers or Portfolio Company Directors that arose before, on or after the date hereof and that relates, (i) in the case of the former, current or future directors or officers of the Applicant, to any obligations of the Applicant, or (ii) in the case of the Portfolio Company Directors, to any obligations of the Portfolio Companies, and in either case whereby the directors, officers or Portfolio Company Directors are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers, and may indemnify the Portfolio Company Directors if, in its own discretion and in consultation with the Monitor, it elects to do so, against obligations and liabilities that they may incur as directors or officers of the Applicant or directors of a Portfolio Company after the commencement of the within proceedings, except to the extent that, with respect to any director, officer or Portfolio Company Director, the obligation or liability was incurred as a result of the director's, officer's or Portfolio Company Director's gross negligence or wilful misconduct. The Applicant and the Portfolio Company Directors will use reasonable commercial efforts to address any dispute regarding the indemnity coverage with the guidance and assistance of the Monitor, and, if required, this Court.

25. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on

the Property, which charge shall not exceed an aggregate amount of $1,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

26. THIS COURT ORDERS that the Portfolio Company Directors shall be entitled to the benefit of and are hereby granted a charge (the "**Portfolio Company Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $10,000,000, as security for the indemnity referred to in paragraph 24 of this Order, to the extent one is provided by the Applicant. The Portfolio Company Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge or the Portfolio Company Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order, and the Portfolio Company Directors shall only be entitled to the benefit of the Portfolio Company Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified by the Applicant, to the extent an indemnity is provided by the Applicant accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

28. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its

powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

(a) monitor the Applicant's receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicant in its preparation of the Applicant's cash flow statements;

(d) advise the Applicant in respect to the Plan and any amendments to the Plan;

(e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) establish one or more accounts to hold any proceeds of the disposition of the Portfolio Companies (the "**Proceeds Accounts**");

(i) administer the Proceeds Accounts for and on behalf of the Applicants and to distribute funds from such Proceeds Accounts from time to time to satisfy expenses that the Applicant is entitled and/or required to pay pursuant to this Order, as directed by the Applicant and in accordance with the Cash Flow Projection and any update cash flow projections; and

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

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

31. THIS COURT ORDERS that McCarthy Tétrault LLP is entitled to transfer the funds held by it in trust as described in the Ross Affidavit at paragraph 88, and any future proceeds that may be received by it from time to time from the disposition of the Portfolio Companies, to the Monitor for deposit into the Proceeds Accounts to be held by the Monitor for and on behalf of the Applicant in accordance with the terms of this Order.

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in

addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant and CCC (as defined in the Ross Affidavit), retainers in the amount of $50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $500,000);

Second – Directors' Charge (to the maximum amount of $1,000,000);

Third – Critical Suppliers' Charge (to the maximum amount of $50,000); and,

Fourth – Portfolio Company Directors' Charge and Critical Suppliers' Charge to the extent that it exceeds $50,000.

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

40. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and that the entire Directors' Charge, the entire Administration Charge and the Critical Suppliers' Charge to a maximum amount of $50,000 shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. To the extent the Critical Suppliers' Charge exceeds $50,000, such additional amount, together with the Portfolio Company Directors' Charge, shall rank *pari passu* with one another behind the Encumbrances.

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

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at http://cfcanada.fticonsulting.com/gcfl.

GENERAL

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

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, a Portfolio Company, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, 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 this Court, as may be necessary or desirable to give effect to this Order, to grant representative

status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

SCHEDULE "1" – CRITICAL TRANSITION SERVICES AGREEMENT

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

Court File No: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicant
#12547919

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

Court File No: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(STAY EXTENSION AND AMENDING AND RESTATING INITIAL ORDER)

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Lawyers for the Applicant
#12883346

TAB B

This is Exhibit "**B**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

Court File No.: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	MONDAY, THE 18TH
	)	
JUSTICE MORAWETZ	)	DAY OF NOVEMBER, 2013

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**")

ORDER

THIS MOTION, made by the Applicant, for an order extending approving a Sale and Investor Solicitation Process was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn November 14, 2013 and the Exhibits thereto (the "**Ross Affidavit**") and the Third Report (the "**Third Report**") of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Roseway Capital S.a.r.l. ~~and counsel for Growthworks WV 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 the Notice of Motion and the supporting materials is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

MARKETING PROCESS

2. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence the Sale and Investor Solicitation Process attached hereto as Schedule "A" (the "**SISP**") for the purpose of offering the opportunity for potential investors to purchase or invest in the property or business of the Applicant.

3. THIS COURT ORDERS that the SISP is hereby approved and the Applicant, the Monitor and the Financial Advisor (as defined in the SISP), are hereby authorized and directed to perform their respective obligations thereunder.

~~**MONITOR'S ACTIVITIES AND REPORT**~~

~~4. THIS COURT ORDERS that the Third Report of the Monitor and the activities described therein are hereby approved.~~

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

NOV 18 2013

Schedule "A"

Growthworks
Sale and Investor Solicitation Process

Introduction

On October 1, 2013, Growthworks Canadian Fund Ltd. ("**Growthworks**") obtained an initial order (as it may be amended from time to time, "**Initial Order**") under the *Companies' Creditors Arrangement Act* ("**CCAA**") from the Ontario Superior Court of Justice, Commercial List (Toronto) (the "**Court**"). The purpose of this Sale and Investor Solicitation Process ("**SISP**") is to seek Sale Proposals and Investment Proposals from Qualified Bidders and to implement one or a combination of them in respect of the Property and the Business.

This SISP describes, among other things: (a) the Property available for sale and the opportunity for an investment in the Business, (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property and the Business, (c) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, (d) the evaluation of bids received, (e) the ultimate selection of a Successful Bidder, and (f) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid.

Capitalized terms used in this SISP and not otherwise defined have the meanings given to them in paragraph 1 below.

Defined Terms

1. The following capitalized terms have the following meanings when used in this SISP:

   (a) "Approval Motion" is defined in paragraph 33.

   (b) "Business" means the business of Growthworks.

   (c) "Business Day" means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.

   (d) "Claims and Interests" is defined in paragraph 6.

   (e) "Confidential Information Memorandum" is defined in paragraph 3.

   (f) "Deposit" is defined in paragraph 24(k).

   (g) "Final Bid" is defined in paragraph 23.

   (h) "Financial Advisor" means CCC Investment Banking.

   (i) "Form of Purchase Agreement" means the form of purchase and sale agreement to be developed by Growthworks in consultation with the Monitor and the Financial Advisor and provided to Qualified Bidders that submitted a Qualified LOI for a Sale Proposal.

   (j) "Form of Investment Agreement" means the form of investment agreement to be developed by Growthworks in consultation with the Monitor and the Financial Advisors

and provided to Qualified Bidders that submitted a Qualified LOI for an Investment Proposal.

(k) "Growthworks" has the meaning set out in the recitals hereto.

(l) "Investment Proposal" is defined in paragraph 15.

(m) "LOI" is defined in paragraph 12.

(n) "Monitor" means FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of Growthworks.

(o) "NDA" means a non-disclosure agreement in form and substance satisfactory to the Monitor, the Financial Advisor, and Growthworks, which will inure to the benefit of any purchaser of the Property or any investor in the Business or Growthworks substantially in the form of the draft NDA attached hereto as **Schedule "2"**.

(p) "Outside Date" means June 30, 2014, or such later date as may be agreed to by Growthworks, the Financial Advisor, the Monitor and Roseway.

(q) "Phase 1" is defined in paragraph 12.

(r) "Phase 1 Bid Deadline" is defined in paragraph 14.

(s) "Phase 2" is defined in paragraph 20.

(t) "Phase 2 Bid Deadline" is defined in paragraph 23.

(u) "Portfolio Companies" has the meaning ascribed to that term in the Initial Order.

(v) "Potential Bidder" is defined in paragraph 8.

(w) "Property" means all of property, assets and undertakings of Growthworks, specifically including Growthworks' interests and investments in the Portfolio Companies and any agreements or rights it holds in respect of the Portfolio Companies.

(x) "Qualified Bid" means a third party offer or combination of third party offers, in the form of a Sale Proposal or Sale Proposals or an Investment Proposal or including elements of both, in which the aggregate purchase price or funds to be invested are in an amount sufficient to pay the Roseway Claims in full in cash (or provide for such other consideration as may be acceptable to Roseway in its sole and absolute discretion) and which, in any case, meets the requirements of paragraph 24.

(y) "Qualified Bidder" is defined in paragraph 9.

(z) "Qualified LOI" is defined in paragraph 15.

(aa) "Roseway" means Roseway Capital S.a.r.l, and all of its affiliates, assignees and advisors in respect of Roseway Claims.

(bb) "Roseway Claims" means the aggregate amount owing to Roseway arising from or related to the Participation Agreement dated May 28, 2010, as amended, all accrued and unpaid principal, interest and reasonable fees, costs, charges and expenses all as may be due and payable under the aforementioned Participation Agreement;

(cc) "Sale Proposal" is defined in paragraph 15.

(dd) "Selected Qualified Bid" is defined in paragraph 30.

(ee) "SISP Order" means an order of the Court, among other things, approving this SISP.

(ff) "Special Committee" means a committee established by board of directors of Growthworks to supervise, among other things, the implementation of the SISP.

(gg) "Successful Bid" is defined in paragraph 30.

(hh) "Successful Bidder" is defined in paragraph 30.

The terms Final Bid, Qualified Bid, Qualified Bidder, Qualified LOI, Selected Qualified Bid, Successful Bid and Successful Bidder, in each case, may include a combination of offers, bids, bidders or LOIs, if the Special Committee, exercising its reasonable business judgement and following consultation with the Financial Advisor and Roseway and with the consent of the Monitor, wishes to consider or accept such a combination of offers, bids, bidders, or LOIs that, in the aggregate, would otherwise qualify as a Final Bid, Qualified Bid, Qualified Bidder, Qualified LOI, Selected Qualified Bid, Successful Bid or Successful Bidder under the terms of this SISP.

Supervision of the SISP

2. The Monitor will supervise, in all respects, the SISP and any attendant sales or investments and, in particular, will supervise the Financial Advisor's performance under its engagement by Growthworks in connection therewith. Growthworks is required to assist and support the efforts of the Monitor and the Financial Advisor as provided for herein. In the event that there is disagreement or clarification required as to the interpretation or application of this SISP or the responsibilities of the Monitor, the Financial Advisor or Growthworks hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or Growthworks.

Sale and Investment Opportunity

3. A confidential information memorandum (the "**Confidential Information Memorandum**") describing the opportunity to acquire all or a portion of the Property or invest in the Business/Growthworks will be made available by the Financial Advisor to Qualified Bidders. One or more Qualified Bids for less than substantially all of the Property will not be precluded from consideration, either alone or in combination, as a Qualified Bid, Final Bid or a Successful Bid.

4. A bid may, at the option of the Qualified Bidder, involve one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of Growthworks as a going concern; a sale of the Property to the Qualified Bidder or to a newly formed acquisition entity; or a plan of compromise or arrangement pursuant to the CCAA.

"As Is, Where Is"

5. The sale of the Property or investment in the Business/Growthworks will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, Growthworks or any of their respective agents or estates, except to the extent set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Free Of Any And All Claims And Interests

6. In the event of a sale of all or a portion of the Property, all of the right, title and interest of Growthworks in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and there against (collectively, the "**Claims and Interests**") pursuant to such court orders as may be desirable, except to the extent otherwise set forth in the definitive sale or investment agreement executed with a Successful Bidder.

Publication Notice

7. As soon as reasonably practicable, but in any event no more than five (5) Business Days after the issuance of the SISP Order, the Monitor will cause a notice of the SISP (and such other relevant information which the Monitor, in consultation with the Financial Advisor, Roseway and Growthworks, considers appropriate) to be published in The Globe and Mail (National Edition) and any other newspaper or journals as the Monitor, in consultation with Growthworks, considers appropriate, if any. On the same date, Growthworks will issue a press release setting out the notice and such other information, in form and substance satisfactory to the Monitor in consultation with the Financial Advisor and Growthworks, with Canada Newswire designating dissemination in Canada and major financial centres in the United States.

Participation Requirements

8. In order to participate in the SISP, each person (a "**Potential Bidder**", which shall not include Roseway) must deliver to the Financial Advisor at the address specified in **Schedule "1"** hereto (including by email or fax transmission):

   (a) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder; and

   (b) an executed NDA which shall include provisions whereby the Potential Bidder agrees to accept and be bound by the provisions contained herein.

9. A Potential Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Special Committee, in its reasonable business judgement, in consultation with the Financial Advisor and the Monitor, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate a Sale Proposal or an Investment Proposal on or before the Outside Date will be deemed a "**Qualified Bidder,**" and will be promptly notified of such determination by the Financial Advisor.

10. Roseway has agreed that it shall not qualify as a Qualified Bidder. Notwithstanding Roseway's agreement not to participate as a bidder herein, Growthworks, the Financial Advisor and/or the Monitor shall provide to Roseway weekly updates and relevant information regarding the SISP process that, in the view of Growthworks and the Monitor is reasonable and appropriate. Information with respect to the SISP process shall only be disclosed to Roseway on the condition that such information be kept confidential and shall not be disclosed by Roseway to any other party, including its investors, without such parties first executing an NDA.

11. At any time during Phase 1 or Phase 2, the Special Committee may, in its reasonable business judgment and after consultation with the Financial Advisor and Roseway and with the consent of the Monitor, eliminate a Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a "Qualified Bidder" for the purposes of this SISP.

SISP – Phase 1

Phase 1 Initial Timing

12. For a period of 25 days following the date of the SISP Order ("**Phase 1**"), the Financial Advisor (with the assistance of Growthworks, and under the supervision of the Monitor and in accordance with this SISP) will solicit 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 Property or to invest in the Business/Growthworks.

Due Diligence

13. The Financial Advisor will provide each Qualified Bidder with a copy of the Confidential Information Memorandum and access to an electronic data room of due diligence information. The Monitor, the Financial Advisor and Growthworks make no representation or warranty as to the information (i) contained in the Confidential Information Memorandum or the electronic data rooms; (ii) provided through the due diligence process in Phase 1 or Phase 2; or (iii) otherwise made available, except to the extent expressly contemplated in any definitive sale or investment agreement with a Successful Bidder executed and delivered by Growthworks.

Non-Binding Letters of Intent from Qualified Bidders

14. A Qualified Bidder that wishes to pursue a Sale Proposal or Investment Proposal must deliver a LOI to the Financial Advisor at the address specified in Schedule "1" hereto (including by email or fax transmission), so as to be received by it not later than 5:00 PM (Eastern Daylight Savings Time) on or before December 13, 2013 (the "**Phase 1 Bid Deadline**").

15. A LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if:

    (a) the LOI is submitted on or before the Phase 1 Bid Deadline by a Qualified Bidder;

    (b) it contains an indication of whether the Qualified Bidder is offering to:

        (i) acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"), or

        (ii) make an investment in, or refinance the Business/Growthworks (an "**Investment Proposal**");

    (c) in the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price range in Canadian dollars, including details of any liabilities to be assumed by the Qualified Bidder;

        (ii) the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

        (iii) specific indication of the sources of capital for the Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and Growthworks and each of their respective advisors to make a reasonable business or professional judgment as to the Potential Bidder's financial or other capabilities to consummate the transaction;

        (iv) the structure and financing of the transaction (including, but not limited to, the sources of financing of the purchase price, preliminary evidence of the

availability of such financing, steps necessary and associated timing to obtain such financing and any related contingencies, as applicable);

(v) any anticipated corporate, securityholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(vi) additional due diligence required to be conducted during Phase 2, if any;

(vii) all conditions to closing that the Qualified Bidder may wish to impose; and

(viii) any other terms or conditions of the Sale Proposal which the Qualified Bidder believes are material to the transaction;

(d) in the case of an Investment Proposal, it identifies the following:

(i) how the Qualified Bidder proposes to manage the investments;

(ii) the aggregate amount of the equity and debt investment to be made in the Business/Growthworks in Canadian dollars (including the sources of such capital, preliminary evidence of the availability of such capital and steps necessary and associated timing to obtain the capital and any related contingencies, as applicable);

(iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);

(iv) specific indication of the sources of capital for the Potential Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the Financial Advisor and Growthworks and each of their respective advisors to make a reasonable business or professional judgment as to the Potential Bidder's financial or other capabilities to consummate the transaction

(v) the structure and financing of the transaction, including a sources and uses analysis;

(vi) any anticipated corporate, securityholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;

(vii) additional due diligence required to be conducted during Phase 2, if any;

(viii) all conditions to closing that the Qualified Bidder may wish to impose; and

(ix) any other terms or conditions of the Investment Proposal which the Qualified Bidder believes are material to the transaction;

(e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor, in consultation with the Financial Advisor and Growthworks; and

(f) in the case of either a Sale Proposal or an Investment Proposal, it include cash consideration sufficient to pay the Roseway Claims in full (or provides for such other consideration as may be acceptable to Roseway in its sole and absolute discretion).

16. The Monitor, in consultation with the Financial Advisor and Growthworks, may waive compliance with any one or more of the requirements specified above, except the requirement contained in paragraph 15(f) of this SISP, and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

17. For greater certainty, a Qualified Bidder may submit a Final Bid during Phase 1 instead of submitting an LOI during Phase 1.

Assessment of Qualified LOIs and Continuation or Termination of SISP

18. Within 5 Business Days following the Phase 1 Bid Deadline (or such later date as may be determined by Growthworks, in consultation with the Financial Advisor and Roseway and with the consent of the Monitor), the Special Committee, in consultation with the Financial Advisor and the Monitor, will assess the Qualified LOIs and any Final Bids received during Phase 1, if any, and will determine, using the criteria set out in paragraph 19, whether there is a reasonable prospect of obtaining a Qualified Bid. For the purpose of such consultations and evaluations, Growthworks, the Financial Advisor and/or the Monitor may request clarification of the terms of Qualified LOIs and/or Final Bids.

19. In assessing the Qualified LOIs and any Final Bid submitted in Phase 1, the Special Committee, following consultation with the Financial Advisor and the Monitor, will consider, among other things, the following:

(a) the form and amount of consideration being offered;

(b) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction;

(c) the conditions to closing of the proposed transaction;

(d) the estimated time required to complete the proposed transaction and whether, in the Special Committee's reasonable business judgment, it is reasonably likely to close on or before the Outside Date; and,

(e) in the case of a Final Bid, the criteria as listed in paragraphs 27 or 28 as applicable.

20. If a Qualified LOI is received and the Special Committee, in consultation with the Financial Advisor and with the consent of the Monitor, determines there is a reasonable prospect of obtaining a Qualified Bid, the SISP shall continue for a further 45 days in accordance with these SISP Procedures ("**Phase 2**"). At any time during Phase 2, Growthworks, in consultation with the Financial Advisor and Roseway and with the consent of the Monitor may extend Phase 2 by an additional 15 days.

21. If a Final Bid is received on or before the Phase 1 Deadline which is a Qualified Bid and the Special Committee, in consultation with the Financial Advisor and with the consent of the Monitor, at any time thereafter determines that there is no reasonable prospect of obtaining another Qualified Bid or Final Bid that, using the criteria set out in paragraphs 27 or 28, would be superior to the Final Bid so received, the Special Committee, exercising its reasonable business judgment and following consultation with the Financial Advisor and Roseway and with the

consent of the Monitor, will select the Final Bid, and the Financial Advisor, the Monitor, Growthworks and their advisors shall negotiate and settle the terms of a definitive agreement in respect of that Final Bid, all of which will be conditional upon Court approval.

Phase 2

Due Diligence

22. During Phase 2, each Qualified Bidder that submitted a Qualified LOI and is not eliminated from the SISP, will be granted further access to such due diligence materials and information relating to the Property and the Business as the Financial Advisor, in its reasonable business judgment, in consultation with the Monitor and Growthworks, determines, including, as appropriate, information or materials reasonably requested by Qualified Bidders, and, as may be permitted by the Portfolio Companies, on-site presentations by senior management of the Portfolio Companies and access to further information in the electronic data room.

Final Bids from Qualified Bidders

23. A Qualified Bidder that is not eliminated from the SISP and that wishes to pursue a Sale Proposal or Investment Proposal must deliver a final binding proposal (the "**Final Bid**"):

    (a) in the case of a Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a mark-up of the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

    (b) in the case of an Investment Proposal, a duly authorized and executed investment agreement based on the Form of Investment Agreement and accompanied by a mark-up of the Form of Investment Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto,

    to the Financial Advisor at the address specified in Schedule "1" hereto (including by email or fax transmission) so as to be received by it not later than 5:00 pm (Eastern Time) on or before the date which is 45 days following the commencement of Phase 2, or such other date as determined by Growthworks, in consultation with the Financial Advisor and with the consent of the Monitor and Roseway or approval of the Court unless such day is not a Business Day, in which case, on the next Business Day (the "**Phase 2 Bid Deadline**").

Qualified Bids

24. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder, and (b) the Final Bid complies with, among other things, the following requirements:

    (a) it includes a letter stating that the bidder's offer is irrevocable until the earlier of (a) the approval by a court of competent jurisdiction of a Successful Bid and (b) 30 days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;

    (b) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Special Committee, in consultation with the Financial Advisor and the Monitor, to make a

reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;

(c) it includes, in respect of a Sale Proposal, the Property to be included, and in the case of an Investment Proposal, any Property to be divested or disclaimed prior to closing;

(d) it includes details of any liabilities to be assumed by the Qualified Bidder;

(e) it is not conditional upon, among other things:

(i) the outcome of unperformed due diligence by the Qualified Bidder; or

(ii) obtaining financing;

(f) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;

(g) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;

(h) it identifies with particularity the contracts the bidder wishes to assume and reject, contains full details of the bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder); and it identifies with particularity any executory contract the assumption and assignment of which is a condition to closing;

(i) it provides a timeline to closing with critical milestones;

(j) it includes evidence, in form and substance reasonably satisfactory to the Monitor and Growthworks, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;

(k) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to $3 million, to be held and dealt with in accordance with the terms of this SISP;

(l) it contains other information reasonably requested by the Financial Advisor, in consultation with the Monitor and Growthworks;

(m) it is received by the Phase 2 Bid Deadline;

(n) the purchase price or funds to be invested include cash consideration in an amount sufficient to pay the Roseway Claims in full and in cash (or provide for such other consideration as may be acceptable to Roseway in their sole and absolute discretion) on the closing of the transactions contemplated by the Final Bid;

(o) the Special Committee, with the consent of the Monitor determines that it is reasonably likely that the Qualified Bidder will be able to consummate a Sale Proposal or Investment Proposal on or before the Outside Date in a manner that complies with all requirements of the SISP, including, without limitation, containing cash consideration sufficient to pay the Roseway Claims in full (or provide for such other consideration as may be acceptable to Roseway in its sole and absolute discretion;

(p) in the case of a Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement;

(q) in the case of an Investment Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of Growthworks or the completeness of any information provided in connection therewith, except as expressly stated in the Investment Agreement;

25. The Monitor, in consultation with the Financial Advisor and Growthworks, may waive compliance with any one or more of the requirements specified herein, except the requirements contained in paragraph 24(n) of this SISP, which may not be waived, and deem such non-compliant bids to be Qualified Bids.

Evaluation and Selection of Successful Bid

26. The Special Committee, in consultation with the Financial Advisor and the Monitor, will review and evaluate each Qualified Bid.

27. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to items such as: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the bidder); (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such bid in relation to other bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) other factors affecting the speed, certainty, closing risk, risks arising from deferred redemption of shares, risks associated with the Portfolio Companies and value of the transaction (including any regulatory approvals required to close the transaction); (g) planned treatment of stakeholders; (h) the assets included or excluded from the bid; (i) any transition services required from Growthworks post-closing and any related restructuring costs; and (j) the likelihood and timing of consummating the transaction.

28. Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as: (a) the amount of equity and debt investment and the proposed sources and uses of such capital; (b) the firm, irrevocable commitment for financing the transaction; (c) the debt to equity structure post-closing; (d) the counterparties to the transaction; (e) the terms of the transaction documents; (f) other factors affecting the speed, certainty, closing risk, risks arising from deferred redemption of shares, risks associated with the Portfolio Companies and value of the transaction (including any regulatory approvals required to close the transaction); (g) planned treatment of stakeholders; and (h) the likelihood and timing of consummating the transaction.

29. If one or more Qualified Bids is received, the Special Committee, exercising its reasonable business judgment and following consultation with the Financial Advisor and Roseway and with the consent of the Monitor, will select a Qualified Bid, and the Financial Advisor, the Monitor, Growthworks and their advisors shall negotiate and settle the terms of a definitive agreement in respect of that Qualified Bid, all of which will be conditional upon Court approval.

30. If a definitive agreement has been negotiated and settled in respect of the Qualified Bid as selected by the Special Committee in accordance with the provisions hereof – whether that bid is

selected in Phase 1 (in accordance with paragraph 21 hereof) or in Phase 2 (the "**Selected Qualified Bid**"), the Selected Qualified Bid will be the "**Successful Bid**" hereunder and the person(s) who made the Selected Qualified Bid will be the "**Successful Bidder**" hereunder.

31. If the Special Committee, after consultation with the Financial Advisor, Roseway and the Monitor, determines that no Qualified Bid has been received at the end of Phase 2, Growthworks shall advise the Court and apply to the Court for directions.

32. If the Special Committee, after consultation with the Financial Advisor, Roseway and the Monitor, determines at any point during Phase 2 that there is no reasonable prospect of obtaining a Qualified Bid, Growthworks or the Monitor shall advise the Court and apply to the Court for directions.

Approval Motion for Successful Bid

33. Growthworks will apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid and authorizing Growthworks to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid.

34. The Approval Motion will be held on a date to be scheduled by the Court upon application by Growthworks. The Approval Motion may be adjourned or rescheduled by Growthworks or the Monitor without further notice by an announcement of the adjourned date at the Approval Motion.

35. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

Other Terms

Deposits

36. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid or investment amount to be made by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid, subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the SISP is terminated in accordance with these procedures.

37. If a Successful Bidder breaches its obligations under the terms of the SISP (including without limitation under any Qualified Bid), its Deposit shall be forfeited as liquidated damages and not as a penalty.

Approvals

38. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

No Amendment

39. There will be no amendments to this SISP without the consent of the Monitor, the Financial Advisor, Growthworks and Roseway or, in the absence of consent, the approval of the Court.

Reservation of Rights

40. Growthworks, after consultation with the Financial Advisor and Roseway and with the consent of the Monitor (or in the absence of such consent, the approval of the Court), may:

    (a) impose additional terms and conditions and otherwise seek to modify the SISP at any time;

    (b) reject all bids;

    (c) after the Phase 2 Bid Deadline and prior to determining whether any Final Bids are Qualified Bids or selecting a Qualified Bid to recommend to the Special Committee, seek clarifications and modifications to any Final Bids received.

41. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between Growthworks and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with Growthworks. At any time during the SISP, the Monitor may, following consultation with the Financial Advisor and Growthworks, upon reasonable prior notice to Roseway, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

Schedule "1"

Address for Notices and Deliveries

To the Monitor:

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

Fax : 416-649-8101

Attn : Paul Bishop and Jodi Porepa
Email : Paul.Bishop@fticonsulting.com and Jodi.Porepa@fticonsulting.com

With a copy to
Osler, Hoskin & Harcourt LLP
1 First Canadian Pl,
Toronto, ON M5X 1C1

Fax: 416-862-6666

Attn: Marc Wasserman and Caitlin Fell
Email: MWasserman@osler.com and CFell@osler.com

To the Financial Advisor:

CCC Investment Banking
150 King Street West, Suite 2020
Toronto, Ontario
M5H 1J9

Fax: 416-599-9250

Attn: Bill Rogers, Rob Bird and Boris Tsimerinov
Email: brogers@cccinvestmentbanking.com, rbird@cccinvestmentbanking.com and btsimerinov@cccinvestmentbanking.com

To Growthworks Canadian Fund Ltd.:

Growthworks Canadian Fund Ltd.
c/o CCC Investment Banking
150 King Street West, Suite 2020
Toronto, Ontario
M5H 1J9

Fax: 416-599-9250

Attn: Ian Ross, Acting Chief Executive Officer
Email: ianross@bell.net

with a copy to:

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Fax: 416-868-0673

Attn: Kevin McElcheran, Jonathan Grant and Heather Meredith
Email: kmcelcheran@mccarthy.ca, jgrant@mccarthy.ca and hmeredith@mccarthy.ca

SCHEDULE "2-1"

Confidentiality Agreement

(Lenders)

• _____,
2013

Private and Confidential

GrowthWorks Canadian Fund Ltd.
c/o CCC Investment Banking
150 King St. W., Suite 2020
Toronto, Ontario
M5H 1J9

Dear Sirs/Mesdames:

The undersigned ("**Recipient**") has requested an opportunity to review information from GrowthWorks Canadian Fund Ltd. (the "**Corporation**") concerning the Corporation's venture investments and other assets, business and affairs for the purpose (the "**Purpose**") of considering and evaluating a possible negotiated debt financing transaction between the Recipient, as lender, and the Corporation (the "**Transaction**"). This letter sets out the terms and conditions upon which the Corporation is willing to disclose to Recipient, on a confidential basis, such information.

In consideration of the provision of information by the Corporation and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Recipient), by signing and returning the acknowledgement copy of this letter, the Recipient covenants and agrees with the Corporation as follows:

1) In this Agreement:

"**affiliate**" and "**associate**" have the respective meanings attributed thereto in the *Securities Act* (Ontario).

"**Agreement**" means this letter agreement, as amended from time to time.

"**Confidential Information**" means all information concerning the Corporation, any of its affiliates or associates or any person in which the Corporation or any of its affiliates holds, directly or indirectly, an interest, and their respective businesses and affairs furnished or otherwise made available by or on behalf of the Corporation to the Recipient or any of its Representatives, regardless of the manner in which it is furnished or made available (whether oral or in writing or in any other form or media) but does not include information that:

is already published or otherwise is or becomes readily available to the public, other than by a breach of this Agreement;

is rightfully received by the Recipient from a third party not in breach of any obligation of confidentiality to the Corporation;

is proven to be known by the Recipient on a non-confidential basis prior to disclosure hereunder; or

is proven to be developed by the Recipient independent of any disclosure by the Corporation.

"**Representatives**" means, in respect of any person, such person, such person's affiliates, its and their respective directors, officers, employees, agents, and advisors (including, without limitation, financial advisors and legal counsel) and prospective banks or other institutional lenders in respect of a Transaction and the directors, officers and employees of any such agents, advisors and lenders; but, in the case of the Recipient, excludes Matrix Asset Management Inc., GrowthWorks WV Management Ltd., GrowthWorks Capital Ltd. and their respective affiliates, associates and directors, officers, employees, agents and advisors and the respective directors, officers, employees, agents and advisors of any such affiliate or associate.

"**persons**" includes individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental organizations.

2) The Corporation will at its discretion provide such of the Confidential Information to the Recipient as is required for the Purpose. Nothing in this Agreement obligates the Corporation to make any particular disclosure of Confidential Information.

3) The Recipient will not use any Confidential Information in any manner except as required for the Purpose.

4) The Recipient acknowledges and agrees that (i) the Corporation has commenced proceedings (the "**CCAA Proceedings**") to obtain court protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") and that an initial order was granted by the Ontario Superior Court of Justice (the "**Initial Order**", which term will include any amendments to the Initial Order that may be made from time to time); (ii) pursuant to the Initial Order, FTI Consulting Canada Inc. has been appointed as the monitor (the "**Monitor**") with the powers and responsibilities set out in the Initial Order; and (iii) that the Recipient will be bound by the terms of any sales and investor solicitation process ("**SISP**") approved by the Court in the CCAA Proceedings and that the process leading up to a Transaction shall be governed by the applicable terms therein.

5) The Recipient acknowledges that the Transaction, if it proceeds, will be subject to and conditional on court approval in the CCAA proceedings and, notwithstanding anything in this Agreement, it will be necessary to obtain such court approval to disclose information, including the information described in paragraph 7) hereof, sufficient to satisfy the court that the Transaction is fair and reasonable and beneficial to the creditors, shareholders and other stakeholders of the Recipient. Subject to compliance with paragraph 12) below, the Recipient hereby consents to such disclosure to the court.

6) The Recipient will protect interest of the Corporation or other applicable person in the Confidential Information and keep it confidential. All right, title and interest in and to the Confidential Information will remain the exclusive property of the Corporation or other applicable person and the Confidential Information will be held in trust by the Recipient for the Corporation or other applicable persons. No interest, licence or any right respecting the Confidential Information, other than as may be expressly set out herein, is granted to the Recipient under this Agreement by implication or otherwise. Except as otherwise specified herein, the Recipient will not directly or indirectly disclose, allow access to, transmit or transfer any Confidential Information without the Corporation's prior written consent. The Recipient may disclose the Confidential Information to those of its Representatives who have a need to know the Confidential Information for the Purpose. The Recipient will

a) prior to disclosing Confidential Information to any such Representative, issue appropriate instructions to such Representative to satisfy its obligations herein and obtain its agreement to receive and use the Confidential Information on a confidential basis on the same conditions as contained in this Agreement and to otherwise comply with the terms hereof and

b) be responsible for any and all breaches of the terms of this Agreement by any of its Representatives.

7) Subject to paragraphs 6) and 9) hereof, without the prior written consent of the Corporation, the Recipient will not disclose to any person

a) the existence of this Agreement or its terms, or the fact that Confidential Information has been made available to the Recipient; or

b) any information concerning a Transaction, or the terms and conditions or other facts related thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof.

8) The Recipient represents and warrants that the Recipient is not acting as a broker for or other Representative of any other person in connection with the Transaction, and is considering the Transaction only for its own account. Except with the prior written consent of the Corporation, the Recipient agrees that, except as expressly permitted hereunder, (i) it will not act as a joint bidder or co-bidder with any other person with respect to the Transaction, and (ii) neither the Recipient nor any of the Recipient's Representatives (acting on behalf of the Recipient or its affiliates) will enter into any discussions, negotiations, agreements, arrangements or understandings (whether written or oral) with any other person regarding the Transaction, other than the Corporation and its Representatives and the Recipient's Representatives (to the extent permitted hereunder). The Recipient hereby represents and warrants that neither it nor any of the Recipient's Representatives is party to any agreement, arrangement or understanding (whether written or oral) that would restrict the ability of any other person to provide financing (debt, equity or otherwise) to any other person for the Transaction or any similar Transaction, and the Recipient hereby agrees that neither it nor any of the Recipient's Representatives will directly or indirectly interfere with, or restrict, the ability of any other person to provide any such financing. Notwithstanding

anything to the contrary contained herein, without the prior written consent of the Corporation, the Recipient agrees that neither the Recipient nor any of the Recipient's Representatives will disclose any Confidential Information to any actual or potential sources of financing (debt, equity or otherwise), other than *bona fide* third party institutional lenders who are or may be engaged to provide debt financing to the Recipient or its affiliates. Notwithstanding the foregoing, to the extent the Recipient wishes to discuss the Transaction or furnish Confidential Information to any person other than its Representatives with a view to their participation in relation to the Transaction as a co-investor, equity partner, financial sponsor, or the like, the Recipient will first advise the Corporation of the identity of such proposed person(s) and the Corporation will have the right to first approve or prohibit such discussions with, and the dissemination of Confidential Information to, such proposed or other person(s) and may require such person to sign an agreement with the Corporation substantially in the form of this Agreement prior to the occurrence of any such discussions or the disclosure of any Confidential Information.

9) If the Recipient or any of its Representatives is requested pursuant to, or required by, applicable law or legal process to disclose any Confidential Information, the existence of this Agreement or any of the terms hereof, the Recipient may make such disclosure but must first provide the Corporation with prompt notice of such request or requirement, unless notice is prohibited by law, in order to enable the Corporation to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Recipient will not oppose any action by the Corporation to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by the Corporation, such disclosure is required, the Recipient will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

10) The Confidential Information will not be copied, reproduced in any form or stored in a retrieval system or data base by the Recipient without the prior written consent of the Corporation, except for such copies and storage as may be required by the Recipient or its Representatives in connection with considering and evaluating the Purpose.

11) For a period of two years from the date of this Agreement, neither the Recipient nor any of its Representatives, either directly or indirectly or jointly or in concert with any other person, will, without the prior written consent of the Corporation's board of directors:

a) in any manner, directly or indirectly, acquire, offer to acquire or agree to acquire any securities of the Corporation or any venture investments or other assets of the Corporation;

b) make, or in any way participate in any solicitation of proxies to vote, or seek to advise or influence any person with respect to the voting of any voting securities of the Corporation;

c) make any proposal for, or offer of, (with or without conditions) an extraordinary transaction involving the Corporation, any of its affiliates or its securities or assets (including, without limitation, an arrangement, amalgamation, merger or other business combination);

d) engage in any discussions, or enter into any agreement, commitment or understanding with any person (other than as permitted pursuant to paragraph 0 hereof) related to a Transaction or any acquisition of securities or venture investments or other assets of the Corporation;

e) seek to influence or control (including, without limitation, indirectly by means of communication with the press or media) the management of the Corporation, the board of directors of the Corporation or the policies of the Corporation or otherwise seek the removal of any director of the Corporation;

f) make any public announcement or private disclosure (except to its Representatives as provided in this Agreement) with respect to any of the foregoing or any intention, plan or arrangement with respect to the same; or

g) assist, advise or encourage any person in doing any of the foregoing (including, without limitation, by providing or arranging financing).

The Recipient will promptly give notice to the Corporation of any proposal made to it with respect to any of the foregoing.

12) This Agreement does not constitute any representation, warranty or guarantee with respect to the accuracy or completeness of any Confidential Information and the Recipient will not be entitled to rely on the accuracy or completeness of the Confidential Information, or any of it, except as otherwise may be provided in specific representations and warranties in a definitive agreement entered into by the Corporation in connection with a Transaction. Neither the Corporation nor any of its Representatives will be held liable for any errors or omissions in the Confidential Information or the use or the results of the use of the Confidential Information.

13) The Recipient will promptly advise the Corporation if it determines not to seek to proceed with a Transaction. In such event, or at any time upon request of the Corporation, the Recipient will immediately return or cause the return to the Corporation of all Confidential Information and all copies thereof in any form whatsoever under the power or control of Recipient or its Representatives and delete the Confidential Information from all retrieval systems and data bases or destroy the same as directed by the Corporation and furnish to the Corporation a certificate by an officer of the Recipient of such deletion or destruction; provided, however, that the Recipient will not be required to delete electronic copies stored in backups or archives that are generally not available to the individual user. Notwithstanding the foregoing, the Recipient or its Representatives may keep one copy of the Confidential Information (in electronic or paper form) if required by any applicable law or rules of a Canadian or foreign stock exchange to which the Recipient or one of its affiliates is subject or if otherwise required by any applicable law.

14) The Recipient acknowledges and agrees that:

a) until a definitive agreement regarding a Transaction has been executed by the Recipient and the Corporation, neither the Corporation nor any of its Representatives will be under

any legal obligation or have any liability to the Recipient of any nature whatsoever with respect to a Transaction by virtue of this Agreement or otherwise;

b) the process that may or may not result in a Transaction between the Recipient and the Corporation will be conducted in accordance with any SISP (including, without limitation, negotiating and entering into a definitive agreement with any third party); and

the Corporation will be entitled to change (in its sole discretion without notice to Recipient) the procedures relating to the consideration or evaluation of a Transaction in accordance with any SISP (including, without limitation, terminating discussions and negotiations with the Recipient with respect to the Transaction at any time for any reason).

The Recipient will maintain and, upon request by the Corporation, promptly provide to the Corporation a list containing the full name, title, location and function of each of its Representatives having access to or copies of the Confidential Information.

The Recipient will indemnify and save harmless the Corporation and its Representatives from and against all losses, damages, expenses, liabilities, claims and demands of whatever nature or kind including all legal fees and costs on a solicitor and client basis resulting from any breach of this Agreement by the Recipient or any of the Recipient's Representatives.

The Recipient acknowledges that only the directors and selected Representatives of the Corporation currently are aware of this Agreement or the possibility of a Transaction involving the Recipient. The Recipient agrees that, without the prior written consent of the Corporation or the Monitor, neither the Recipient nor any of the Recipient's Representatives will approach, correspond with, talk to or contact in any other manner, any director, officer or employee of the Corporation or of the former manager of the Corporation or any of their respective affiliates or associates concerning this Agreement, any Transaction or the fact that this Agreement exists or that a Transaction is being considered. All communications regarding this Agreement and any Transaction will initially be made through C. Ian Ross or either of Bill Rogers or Rob Bird of CCC Investment Banking, in each case with a copy of such communications to the Monitor.

If any provision of this Agreement is held to be invalid or unenforceable in whole in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

No failure or delay by the Corporation in exercising any right, power or privilege under this Agreement or otherwise will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or otherwise.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that this Agreement may not be assigned by the Recipient without the prior written consent of the Corporation.

The terms of this Agreement will expire 24 months after the date hereof, except that paragraphs 2), 6), 7) and 9) hereof will continue in full force and effect for such period of time as is permitted by law.

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient thereof as follows:

to the Corporation:

GrowthWorks Canadian Fund Ltd.
c/o CCC Investment Banking
150 King St. W., Suite 2020
Toronto, Ontario
M5H 1J9

Attention: C. Ian Ross
Email: ian.ross@bell.net

to the Recipient:

•

Attention: •
Facsimile No.: •

to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010
Toronto, Ontario M5K 1G8

Attention: Paul Bishop
Facsimile No.: (416) 649-8101

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given

by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the day during which such normal business hours next occur if not given during such hours on any day.

The Recipient agrees that monetary damages would not alone be sufficient to remedy any breach by the Recipient or the Recipient's Representatives of any term or provision of this Agreement and that the Corporation will also be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof and in addition to any other remedy available pursuant to this Agreement or at law or in equity. The Recipient further waives any requirement for the deposit of security or posting of any bond in connection with any equitable remedy.

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Recipient hereby attorns to the jurisdiction of the courts of the Province of Ontario.

Please confirm your agreement with the foregoing by signing and returning the attached acknowledgement copy of this letter. Delivery of an executed copy of this letter by electronic transmission will be as effective as delivery of a manually executed copy of this letter by a party.

[*Remainder of page intentionally left blank*]

[Name of Recipient]

By: _____
Name:
Title:

Confirmed and agreed as of _____, 2013.

GROWTHWORKS CANADIAN FUND LTD.

By: _____
Name: C. Ian Ross
Title: Chairman

SCHEDULE "2-2"

Confidentiality Agreement

(Purchasers)

•, 2013

Private and Confidential

GrowthWorks Canadian Fund Ltd.
c/o CCC Investment Banking
150 King St. W., Suite 2020
Toronto, Ontario
M5H 1J9

Dear Sirs/Mesdames:

The undersigned ("**Recipient**") has requested an opportunity to review information from GrowthWorks Canadian Fund Ltd. (the "**Corporation**") concerning the Corporation's venture investments and other assets, business and affairs for the purpose (the "**Purpose**") of considering and evaluating a possible consensual sale of the assets of the Corporation or other transaction involving the Corporation and/or its shareholders (collectively, the "**Transaction**"). This letter sets out the terms and conditions upon which the Corporation is willing to disclose to Recipient, on a confidential basis, such information.

In consideration of the provision of information by the Corporation and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Recipient), by signing and returning the acknowledgement copy of this letter, the Recipient covenants and agrees with the Corporation as follows:

In this Agreement:

"**affiliate**" and "**associate**" have the respective meanings attributed thereto in the *Securities Act* (Ontario).

"**Agreement**" means this letter agreement, as amended from time to time.

"**Confidential Information**" means all information concerning the Corporation, any of its affiliates or associates or any person in which the Corporation or any of its affiliates holds, directly or indirectly, an interest, and their respective businesses and affairs furnished or otherwise made available by or on behalf of the Corporation to the Recipient or any of its Representatives, regardless of the manner in which it is furnished or made available (whether oral or in writing or in any other form or media) but does not include information that:

is already published or otherwise is or becomes readily available to the public, other than by a breach of this Agreement;

is rightfully received by the Recipient from a third party not in breach of any obligation of confidentiality to the Corporation;

is proven to be known by the Recipient on a non-confidential basis prior to disclosure hereunder; or

is proven to be developed by the Recipient independent of any disclosure by the Corporation.

"**Representatives**" means, in respect of any person, such person, such person's affiliates, its and their respective directors, officers, employees, agents, and advisors (including, without limitation, financial advisors and legal counsel) and prospective banks or other institutional lenders in respect of a Transaction and the directors, officers and employees of any such agents, advisors and lenders; but, in the case of the Recipient, excludes Matrix Asset Management Inc., GrowthWorks WV Management Ltd., GrowthWorks Capital Ltd. and their respective affiliates, associates and directors, officers, employees, agents and advisors and the respective directors, officers, employees, agents and advisors of any such affiliate or associate.

"**persons**" includes individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental organizations.

The Corporation will at its discretion provide such of the Confidential Information to the Recipient as is required for the Purpose. Nothing in this Agreement obligates the Corporation to make any particular disclosure of Confidential Information.

The Recipient will not use any Confidential Information in any manner except as required for the Purpose.

The Recipient acknowledges and agrees that (i) the Corporation has commenced proceedings (the "**CCAA Proceedings**") to obtain court protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") and that an initial order was granted by the Ontario Superior Court of Justice (the "**Initial Order**", which term will include any amendments to the Initial Order that may be made from time to time); (ii) pursuant to the Initial Order, FTI Consulting Canada Inc. has been appointed as the monitor (the "**Monitor**") with the powers and responsibilities set out in the Initial Order; and (iii) that the Recipient will be bound by the terms of any sales and investor solicitation process ("**SISP**") approved by the Court in the CCAA Proceedings and that the process leading up to a Transaction shall be governed by the applicable terms therein.

The Recipient acknowledges that the Transaction, if it proceeds, will be subject to and conditional on court approval in the CCAA proceedings and, notwithstanding anything in this Agreement, it will be necessary to obtain such court approval to disclose information, including the information described in paragraph 7) hereof, sufficient to satisfy the court that the Transaction is fair and reasonable and beneficial to the creditors, shareholders and other

stakeholders of the Recipient. Subject to compliance with paragraph 12) below, the Recipient hereby consents to such disclosure to the court.

The Recipient will protect interest of the Corporation or other applicable person in the Confidential Information and keep it confidential. All right, title and interest in and to the Confidential Information will remain the exclusive property of the Corporation or other applicable person and the Confidential Information will be held in trust by the Recipient for the Corporation or other applicable persons. No interest, licence or any right respecting the Confidential Information, other than as may be expressly set out herein, is granted to the Recipient under this Agreement by implication or otherwise. Except as otherwise specified herein, the Recipient will not directly or indirectly disclose, allow access to, transmit or transfer any Confidential Information without the Corporation's prior written consent. The Recipient may disclose the Confidential Information to those of its Representatives who have a need to know the Confidential Information for the Purpose. The Recipient will

prior to disclosing Confidential Information to any such Representative, issue appropriate instructions to such Representative to satisfy its obligations herein and obtain its agreement to receive and use the Confidential Information on a confidential basis on the same conditions as contained in this Agreement and to otherwise comply with the terms hereof and

be responsible for any and all breaches of the terms of this Agreement by any of its Representatives.

Subject to paragraphs 6) and 9) hereof, without the prior written consent of the Corporation, the Recipient will not disclose to any person

the existence of this Agreement or its terms, or the fact that Confidential Information has been made available to the Recipient; or

any information concerning a Transaction, or the terms and conditions or other facts related thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof.

The Recipient represents and warrants that the Recipient is not acting as a broker for or other Representative of any other person in connection with the Transaction, and is considering the Transaction only for its own account. Except with the prior written consent of the Corporation, the Recipient agrees that, except as expressly permitted hereunder, (i) it will not act as a joint bidder or co-bidder with any other person with respect to the Transaction, and (ii) neither the Recipient nor any of the Recipient's Representatives (acting on behalf of the Recipient or its affiliates) will enter into any discussions, negotiations, agreements, arrangements or understandings (whether written or oral) with any other person regarding the Transaction, other than the Corporation and its Representatives and the Recipient's Representatives (to the extent permitted hereunder). The Recipient hereby represents and warrants that neither it nor any of the Recipient's Representatives is party to any agreement, arrangement or understanding (whether written or oral) that would restrict the ability of any other person to provide financing (debt, equity or otherwise) to any other person for the Transaction or any similar Transaction, and the

Recipient hereby agrees that neither it nor any of the Recipient's Representatives will directly or indirectly interfere with, or restrict, the ability of any other person to provide any such financing. Notwithstanding anything to the contrary contained herein, without the prior written consent of the Corporation, the Recipient agrees that neither the Recipient nor any of the Recipient's Representatives will disclose any Confidential Information to any actual or potential sources of financing (debt, equity or otherwise), other than *bona fide* third party institutional lenders who are or may be engaged to provide debt financing to the Recipient or its affiliates. Notwithstanding the foregoing, to the extent the Recipient wishes to discuss the Transaction or furnish Confidential Information to any person other than its Representatives with a view to their participation in relation to the Transaction as a co-investor, equity partner, financial sponsor, or the like, the Recipient will first advise the Corporation of the identity of such proposed person(s) and the Corporation will have the right to first approve or prohibit such discussions with, and the dissemination of Confidential Information to, such proposed or other person(s) and may require such person to sign an agreement with the Corporation substantially in the form of this Agreement prior to the occurrence of any such discussions or the disclosure of any Confidential Information.

If the Recipient or any of its Representatives is requested pursuant to, or required by, applicable law or legal process to disclose any Confidential Information, the existence of this Agreement or any of the terms hereof, the Recipient may make such disclosure but must first provide the Corporation with prompt notice of such request or requirement, unless notice is prohibited by law, in order to enable the Corporation to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Recipient will not oppose any action by the Corporation to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by the Corporation, such disclosure is required, the Recipient will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

The Confidential Information will not be copied, reproduced in any form or stored in a retrieval system or data base by the Recipient without the prior written consent of the Corporation, except for such copies and storage as may be required by the Recipient or its Representatives in connection with considering and evaluating the Purpose.

For a period of two years from the date of this Agreement, neither the Recipient nor any of its Representatives, either directly or indirectly or jointly or in concert with any other person, will, without the prior written consent of the Corporation's board of directors:

in any manner, directly or indirectly, acquire, offer to acquire or agree to acquire any securities of the Corporation or any venture investments or other assets of the Corporation;

make, or in any way participate in any solicitation of proxies to vote, or seek to advise or influence any person with respect to the voting of any voting securities of the Corporation;

make any proposal for, or offer of, (with or without conditions) an extraordinary transaction involving the Corporation, any of its affiliates or its securities or assets

(including, without limitation, an arrangement, amalgamation, merger or other business combination);

engage in any discussions, or enter into any agreement, commitment or understanding with any person (other than as permitted pursuant to paragraph 0 hereof) related to a Transaction or any acquisition of securities or venture investments or other assets of the Corporation;

seek to influence or control (including, without limitation, indirectly by means of communication with the press or media) the management of the Corporation, the board of directors of the Corporation or the policies of the Corporation or otherwise seek the removal of any director of the Corporation;

make any public announcement or private disclosure (except to its Representatives as provided in this Agreement) with respect to any of the foregoing or any intention, plan or arrangement with respect to the same; or

assist, advise or encourage any person in doing any of the foregoing (including, without limitation, by providing or arranging financing).

The Recipient will promptly give notice to the Corporation of any proposal made to it with respect to any of the foregoing.

This Agreement does not constitute any representation, warranty or guarantee with respect to the accuracy or completeness of any Confidential Information and the Recipient will not be entitled to rely on the accuracy or completeness of the Confidential Information, or any of it, except as otherwise may be provided in specific representations and warranties in a definitive agreement entered into by the Corporation in connection with a Transaction. Neither the Corporation nor any of its Representatives will be held liable for any errors or omissions in the Confidential Information or the use or the results of the use of the Confidential Information.

The Recipient will promptly advise the Corporation if it determines not to seek to proceed with a Transaction. In such event, or at any time upon request of the Corporation, the Recipient will immediately return or cause the return to the Corporation of all Confidential Information and all copies thereof in any form whatsoever under the power or control of Recipient or its Representatives and delete the Confidential Information from all retrieval systems and data bases or destroy the same as directed by the Corporation and furnish to the Corporation a certificate by an officer of the Recipient of such deletion or destruction; provided, however, that the Recipient will not be required to delete electronic copies stored in backups or archives that are generally not available to the individual user. Notwithstanding the foregoing, the Recipient or its Representatives may keep one copy of the Confidential Information (in electronic or paper form) if required by any applicable law or rules of a Canadian or foreign stock exchange to which the Recipient or one of its affiliates is subject or if otherwise required by any applicable law.

The Recipient acknowledges and agrees that:

until a definitive agreement regarding a Transaction has been executed by the Recipient and the Corporation, neither the Corporation nor any of its Representatives will be

under any legal obligation or have any liability to the Recipient of any nature whatsoever with respect to a Transaction by virtue of this Agreement or otherwise;

the process that may or may not result in a Transaction between the Recipient and the Corporation will be conducted in accordance with any SISP (including, without limitation, negotiating and entering into a definitive agreement with any third party); and

the Corporation will be entitled to change (in its sole discretion without notice to Recipient) the procedures relating to the consideration or evaluation of a Transaction in accordance with any SISP (including, without limitation, terminating discussions and negotiations with the Recipient with respect to the Transaction at any time for any reason).

The Recipient will maintain and, upon request by the Corporation, promptly provide to the Corporation a list containing the full name, title, location and function of each of its Representatives having access to or copies of the Confidential Information.

The Recipient will indemnify and save harmless the Corporation and its Representatives from and against all losses, damages, expenses, liabilities, claims and demands of whatever nature or kind including all legal fees and costs on a solicitor and client basis resulting from any breach of this Agreement by the Recipient or any of the Recipient's Representatives.

The Recipient acknowledges that only the directors and selected Representatives of the Corporation currently are aware of this Agreement or the possibility of a Transaction involving the Recipient. The Recipient agrees that, without the prior written consent of the Corporation or the Monitor, neither the Recipient nor any of the Recipient's Representatives will approach, correspond with, talk to or contact in any other manner, any director, officer or employee of the Corporation or of the former manager of the Corporation or any of their respective affiliates or associates concerning this Agreement, any Transaction or the fact that this Agreement exists or that a Transaction is being considered. All communications regarding this Agreement and any Transaction will initially be made through C. Ian Ross or either of Bill Rogers or Rob Bird of CCC Investment Banking, in each case with a copy of such communications to the Monitor.

If any provision of this Agreement is held to be invalid or unenforceable in whole in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

No failure or delay by the Corporation in exercising any right, power or privilege under this Agreement or otherwise will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or otherwise.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or

collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that this Agreement may not be assigned by the Recipient without the prior written consent of the Corporation.

The terms of this Agreement will expire 24 months after the date hereof, except that paragraphs 2), 6), 7) and 9) hereof will continue in full force and effect for such period of time as is permitted by law.

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery or by electronic means of communication addressed to the recipient thereof as follows:

to the Corporation:

GrowthWorks Canadian Fund Ltd.
c/o CCC Investment Banking
150 King St. W., Suite 2020
Toronto, Ontario
M5H 1J9

Attention: C. Ian Ross
Email: ian.ross@bell.net

to the Recipient:

•

Attention: •
Facsimile No.: •

to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010
Toronto, Ontario M5K 1G8

Attention: Paul Bishop
Facsimile No.: (416) 649-8101

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by electronic facsimile, on the day of transmittal thereof if given during the normal business hours of the recipient and on the day during which such normal business hours next occur if not given during such hours on any day.

The Recipient agrees that monetary damages would not alone be sufficient to remedy any breach by the Recipient or the Recipient's Representatives of any term or provision of this Agreement and that the Corporation will also be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof and in addition to any other remedy available pursuant to this Agreement or at law or in equity. The Recipient further waives any requirement for the deposit of security or posting of any bond in connection with any equitable remedy.

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Recipient hereby attorns to the jurisdiction of the courts of the Province of Ontario.

Please confirm your agreement with the foregoing by signing and returning the attached acknowledgement copy of this letter. Delivery of an executed copy of this letter by electronic transmission will be as effective as delivery of a manually executed copy of this letter by a party.

[*Remainder of page intentionally left blank*]

[Name of Recipient]

By: _____
Name:
Title:

Confirmed and agreed as of _____, 2013.

GROWTHWORKS CANADIAN FUND LTD.

By: _____
Name: C. Ian Ross
Title: Chairman

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

148

Court File No: CV-13-10279-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(APPROVAL OF SALE AND INVESTOR SOLICITATION PROCESS

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

Kevin McElcheran
Tel: (416) 601-7539
Fax: (416) 868-0673
Law Society No. 22119H

Heather L. Meredith
Tel: (416) 601-8342
Fax: (416) 868-0673
Law Society No. 48354R

Lawyers for the Applicant
#12938416

TAB C

This is Exhibit "**C**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE T. McEWEN) THURSDAY, THE 9TH

JUSTICE MCEWEN) 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 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, 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.

DEFINITIONS AND INTERPRETATION

2. 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 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 19 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;

(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 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.

3. 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.

4. 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

5. 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.

6. 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.

7. 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.

8. 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.

9. 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

10. 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.

11. 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

12. 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 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.

13. 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.

14. 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 12(a) and 12(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.

15. 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

16. 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.

17. 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.

18. 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 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

19. 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**").

20. 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

21. 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

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

23. 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.

24. 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.

25. 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 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

26. 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

(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.

27. 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.

28. 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.

29. 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 38 to 41 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

30. 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

31. 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;

(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.

32. 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.

33. 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.

34. 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 38 to 41 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

35. 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

36. 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^{th}) 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 38 to 41 (or, with respect to the

Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) of this Order.

37. 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

38. 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.

39. 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.

40. 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.

41. 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

42. 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 it states $40,000,000 shall be distributed to Allen-Vanguard in accordance with the terms of 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**").

43. 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.

44. THIS COURT ORDERS that, for greater clarity, nothing contained in this Order shall prejudice Allen-Vanguard's rights in respect of the Allen-Vanguard Action (Court File No. 08-CV-43544), related actions involving Allen-Vanguard (Court File Nos. 08-CV-43188 and 08-CV-41899), or the pending motion of Allen-Vanguard in these proceedings, now scheduled for February 11, 2014.

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 42 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, or by further Order of the Court.

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 except that it shall have 30 days to file such Notice of Dispute with the Monitor, 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, 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
Attention:	Paul Bishop and Jodi Porepa

Any such notice or other communication by a Person to the Monitor shall be deemed received only upon actual receipt thereof by the Monitor 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

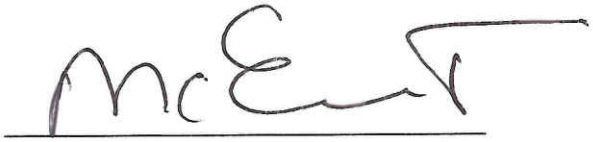
62. THIS COURT ORDERS that, except as provided in paragraph 18 hereof, nothing in this Order shall prejudice the rights and remedies of any Directors, Officers or other Persons under the Directors' Charge or Portfolio Company Directors' Charge, as applicable; provided, however, that nothing in this Order 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.



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 "CCAA")

PLEASE TAKE NOTICE that on January 9, 2014, the Superior Court of Justice of Ontario issued an order (the "Claims Procedure Order") in the CCAA 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**
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 _____

Address

_____

_____

City _____ Prov /State _____

Postal/Zip Code _____

Name of Contact _____

Title _____

Phone # _____

Fax # _____

email _____

2. Assignee, if claim has been assigned

Legal Name of Assignee _____

Address _____

_____

City _____ Prov /State _____

Postal/Zip Code _____

Name of Contact _____

Phone # _____

Fax # _____

email: _____

3 Amount of Claim

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

Currency	Original Currency Amount	Unsecured Claim	Secured Claim
_____	_____	☐	☐
_____	_____	☐	☐
_____	_____	☐	☐
_____	_____	☐	☐
_____	_____	☐	☐

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.

_____

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 Claim against the Applicant as set out above.
4. Complete documentation in support of this claim is attached.

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
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,**

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.

SCHEDULE "C"

PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF GROWTHWORKSCANADIAN FUND LTD. (the "D&O Proof of Claim")

This form is to be used only by 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.

1. Original Claimant (the "Claimant")

Legal Name of Claimant _____

Address

_____

_____

City _____ Prov /State _____

Postal/Zip Code _____

Name of Contact _____

Title _____

Phone # _____

Fax # _____

email _____

2. Assignee, if claim has been assigned

Legal Name of Assignee _____

Address _____

_____

City _____ Prov /State _____

Postal/Zip Code _____

Name of Contact _____

Phone # _____

Fax # _____

email: _____

3 Amount of Claim

The Director(s) or Officer(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s) and/or Officers	Currency	Original Currency Amount	Amount of Claim

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: _____	Witness:
Name: _____	_____ (signature)
Title: _____	_____ (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.

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**:

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**
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/gcfl/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[1] ☐

Particulars of and basis for D&O Indemnity Claim:

_____

_____

_____

_____

[1] A secured claim means a claim secured against the court-ordered Director's Charge or otherwise.

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/gcfl/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		$	$
E. Total Claim		**$**	**$**

Reasons for Revision or Disallowance:

_____

_____

_____

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
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"

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

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		$	$
E. Total Claim		**$**	**$**

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

_____

_____

_____

_____

SERVICE OF DISPUTE NOTICES

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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)

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF 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
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Heather Meredith LSUC# 48354R
Tel.: (416) 601-8242
Fax: (416) 868-0673

Lawyers for GrowthWorks Canadian Fund Ltd.

#13033974

TAB D

This is Exhibit "**D**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

CITATION: Growthworks WV Management Ltd. v. Growthworks Canadian Fund Ltd., 2018 ONSC 3108
COURT FILE NO.: CV-13-10279-00CL
DATE: 20180518

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
GROWTHWORKS WV MANAGEMENT LTD.	)	*Melvyn L. Solmon* and *Nancy J. Tourgis*, for the Plaintiff
Plaintiff	)	
	)	
- and -	)	
	)	
GROWTHWORKS CANADIAN FUND LTD.	)	*Geoff R. Hall, Atrisha Lewis, Sapna Thakker* and *Sharanya Thavakumaran*, for the Defendant
Defendant	)	
	)	
	)	
	)	**HEARD:** July 18, 19, 20, 21, 24, 25, 26, 27 and 28, 2017
	)	

Wilton-Siegel J.

REASONS FOR JUDGMENT

[1] In this action, GrowthWorks WV Management Ltd. (the "Former Manager") claims fees it says are owing pursuant to a management agreement pertaining to the GrowthWorks Canadian Fund Ltd. (the "plaintiff" or the "Fund") and certain additional amounts for transition services after termination of the management agreement. The Fund asserts that it terminated the management agreement for cause and asserts certain damage claims against the Former Manager for breach of the management agreement.

The Fund, the Former Manager and their Contractual Relationship

The Parties

[2] The Fund is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "CBCA"), which carried on the business of a mutual fund as a labour-sponsored venture capital corporation (an "LSVCC"). It was formed in 1988 with the investment objective of achieving long-term appreciation for its Class A shareholders, which principally

consist of retail investors. LSVCCs, including the Fund, must be "sponsored" by a labour organization. The Fund's sponsor is the Canadian Federation of Labour (the "Sponsor").

[3] The Fund is registered under the *Income Tax Act (Canada)*, the *Labour-Sponsored Venture Capital Corporations Act (Manitoba)* and the *Community Small Business Investment Funds Act (Ontario)*, and was approved under the *Labour-sponsored Venture Capital Corporations Act (Saskatchewan)*. The Fund is also an "investment fund" and a "mutual fund" for the purposes of the *Securities Act (Ontario)* and a "reporting issuer" under applicable securities laws in each of the provinces and territories of Canada.

[4] The Former Manager is also a corporation incorporated under the CBCA. The Former Manager is a wholly-owned subsidiary of GrowthWorks Ltd. ("GrowthWorks"), which also owns GrowthWorks Capital Ltd. ("GWC"). In these reasons, the term "Former Manager" includes GWC unless the context specifically requires otherwise.

[5] The Former Manager, GrowthWorks and GWC are direct or indirect subsidiaries of Matrix Asset Management Inc. ("Matrix"), which was a TSX-listed diversified asset management company until it filed a proposal in bankruptcy which was accepted by its creditors in 2015.

[6] During the period addressed in these Reasons, the Former Manager along with GWC also managed three investment funds apart from the Fund, namely the Working Opportunity Fund (EVCC) Ltd. (the "WOF"), based in British Columbia, the Commercialization Fund (the "Comm Fund") and the Atlantic Venture Fund (collectively the "Other GrowthWorks Funds").

[7] David Levi ("Levi") was the President and Chief Executive Officer of the Former Manager at all relevant times until the date of termination of the Management Agreement. He is the President and Chief Executive Officer of GrowthWorks and the Executive Vice President and a Director of GWC. Levi was also the president and chief executive officer of Matrix or its predecessor from 2010 until 2015.

The Equity Capital of the Fund

[8] The authorized capital of the Fund consists of (i) an unlimited number of Class A Shares ("Class A Shares"), issuable in series; (ii) an unlimited number of Class B Shares ("Class B Shares"); and (iii) an unlimited number of Class C shares ("Class C Shares"), issuable in series.

[9] On September 30, 2013, there were 30,630,098.8815 Class A Shares outstanding, all of which were held by individuals or registered plans established for the benefit of individuals.

The Class A Shares

[10] The Class A Shares may be issued to individuals, registered retirement savings plans and other persons permitted by legislation. Class A Shares are voting shares and were issued to the public on a "continuous offering basis" by way of a prospectus filed with Canadian securities regulatory authorities. As described below, the Fund ceased offering Class A Shares for sale to

the public on September 30, 2011 due to poor sales activity, primarily resulting from a change in the tax incentives available in the Province of Ontario for LSVCCs that is described below.

[11] The Class A Shares (i) are retractable (i.e. redeemable on demand by the holder), after eight years, subject to certain conditions and the restrictions in the CBCA generally applicable to the purchase and redemption of shares; (ii) subject to some restrictions, entitle the holder to receive dividends at the discretion of the Board; and (iii) entitle the holder to share rateably with other Class A shareholders in distributions on wind-up or dissolution of the Fund. In these Reasons, the retraction privilege is referred to as a right of redemption in line with the usage of the Fund.

[12] The Class A Shares are not listed or quoted on any stock exchange or over-the-counter market and no market exists through which Class A Shares may be sold. As a practical matter, Class A shareholders must therefore rely on redemptions to dispose of their Class A Shares. A Class A shareholder who elected to redeem Class A Shares prior to the eighth anniversary of the date the shareholder purchased the Class A Shares would generally have had to repay an amount in respect of the tax credit received by the shareholder on the purchase of their Class A Shares and would have been required to pay an early redemption fee to the Manager that varied according to the series of Class A Shares held.

The Class B Shares

[13] All of the outstanding Class B Shares are held by the Sponsor. The holder of the Class B Shares is not entitled to receive dividends. The holder of the Class B Shares is, however, entitled to elect a majority of the Fund's directors. Of the twelve members of the Board, eight were elected by the holder of the Class B Shares. On dissolution of the Fund, the holder of the Class B Shares would only be entitled to receive an amount equal to the purchase price paid for such shares, which is a nominal amount.

The Class C Shares

[14] The Fund also created a non-transferable series of Class C Shares designated as "IPA Shares." All of the outstanding Class C Shares, being 100 IPA Shares, have been issued to and are held by the Former Manager. The IPA Shares are the vehicle by which the Former Manager participated in realized gains and the cumulative performance of the Fund's venture capital investments. The share conditions of the IPA Shares are described in Schedule "A."

Management of the Fund

The Board of Directors

[15] The board of directors of the Fund (the "Board") was responsible for providing strategic direction to the Fund and oversight of the management of the Fund. It consisted of twelve members. As of September 30, 2013, the directors of the Fund included Levi, C. Ian Ross ("Ross"), the Chairman of the Board, and Nancy E. Hopkins ("Hopkins"), all of whom testified at this trial.

Committees of the Board

[16] The Board established a number of committees, of which the investment committee (the "IC") and the audit and valuation committee (the "AVC") existed from the time of the Former Manager's engagement and were involved in the events giving rise to this litigation.

[17] The mandate of the IC was to establish policies and procedures for the Fund's acquisition, management and disposition of investments and to monitor existing investments on an on-going basis. Subsequently, the IC assumed the role of monitoring the liquidity position and challenges of the Fund until the creation of the SC described below.

[18] In November 2007, the Board created an independent review committee (the "IRC") whose mandate was principally to review conflict of interest matters involving the Former Manager as well as to review and report on the adequacy and effectiveness of the Former Manager's written policies and procedures.

[19] In the second half of 2010, the Board also created a special committee (the "SC") chaired by Ross. The SC's mandate was to address two significant issues – initially the Proposed VenGrowth Transaction described below and subsequently the liquidity status and challenges of the Fund.

The Officers of the Fund

[20] Consistent with the scope of the Services (as defined below), Levi was appointed as the President and Chief Executive Officer of the Fund, and the Former Manager's legal counsel was appointed as the Fund's corporate secretary. In addition, an employee of the Former Manager, Clint Matthews, was appointed the Chief Financial Officer of the Fund in the spring of 2008. These individuals held these positions with the Fund until the termination of the Management Agreement in September 2013.

The Former Manager

[21] The Fund retained the Former Manager to manage the business of the Fund. The Fund had previously managed its affairs internally since its formation. The Former Manager was first engaged by the Fund in 2002, after being selected in a competitive bid process, and entered into a management agreement with the Fund at that time (the "initial management agreement"). As a consequence of engaging the Former Manager, the Fund ceased to have any employees. Between 2002 and 2006, the Fund acquired several other LSVCCs pursuant to merger transactions with their shareholders.

[22] The relationship between the Former Manager and the Fund was then restated pursuant to an amended and restated management agreement dated July 15, 2006 (the "Management Agreement"). The services to be performed by the Former Manager are set out in paragraphs 3.1 and 3.2 of the Management Agreement (herein, the "Services"). The scope of the Services is very broad and effectively includes all management services necessary to properly manage the day-to-day operations and business of the Fund, including managing the Fund's investment activities and administering its operations. It is agreed that the Services included providing

advice and recommendations to the Board regarding the strategic direction of the Fund, including its liquidity management.

[23] Section 3.4 of the Management Agreement contains a specific provision that required the Former Manager to comply with securities laws and regulations and the requirements of the Canadian securities administrators and policy statements of securities regulatory authorities insofar as they related to the Former Manager's duties and obligations under the Management Agreement.

[24] Section 3.5 of the Management Agreement constitutes a contractual obligation of care and skill of the Former Manager. It provides as follows:

> The [Former] Manager shall exercise the powers and authorities granted hereunder and discharge its duties hereunder honestly, in good faith and in the best interests of the Fund and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

This contractual obligation is hereinafter referred to as the “Standard of Care.”

[25] As described further below, the Former Manager was obligated to pay from its own resources, without reimbursement, all usual operating expenses of the Fund incurred in providing the Services. The Fund was responsible for paying the fees payable to the Former Manager described below, the fees of the Board and certain other expenses and tax obligations of the Fund, including as addressed below any expenses that were unusual and not expenses of the usual day to day operations of the Fund.

[26] As compensation for performance of the Services, the Manager was entitled to receive management and administration fees (collectively, the "Fees"). The Fees were calculated based upon the average net asset value ("NAV") from time to time of the assets of the Fund, being the total value of all securities in the Fund's portfolio less the Fund's liabilities. The Former Manager was required to calculate the NAV once a week. The value of the Fund’s venture capital investments was based, among other things, on the amount invested in each company and the projection for the timing and value of divestiture proceeds for such investments.

[27] In addition, the Former Manager was also entitled to receive additional compensation as the manager of the Fund based upon the returns realized by the Fund upon the disposition of the Fund's venture capital investments. As mentioned, such compensation took the form of dividends on the IPA Shares (the “IPA Dividends”).

[28] In accordance with its rights under the Management Agreement, the Former Manager delegated all of its obligations under the Management Agreement to GWC. GWC was a "registrant" for purposes of applicable provincial securities laws and conducted those activities of the Former Manager which required registration under those laws. As such, GWC was subject to the regulatory oversight and authority of the British Columbia Securities Commission (the "BCSC") and other provincial securities regulatory authorities. The BCSC had primary

jurisdiction over GWC due to the fact that the GWC's principal offices were, at all relevant times, located in Vancouver, British Columbia.

[29] In addition, pursuant to paragraph 3.6 of the Management Agreement, the Former Manager was permitted to engage third party service providers in connection with providing the Services. Pursuant to this provision, the Former Manager, directly or through GWC, engaged, among others, Just Systems Inc., now Unitholder Management Plus Inc. ("Just Systems"), FundSERV Inc. ("FundSERV"), and Concentra Trust ("Concentra"). The Former Manager asserts certain claims for reimbursement of the fees of these entities, which are addressed below.

The Business of the Fund

[30] The Fund is a retail venture capital fund. As such, the Fund raised capital, made venture capital investments, and sold its investments in the ordinary course of its business. The Fund invested in a diversified portfolio of small and medium-sized Canadian businesses. The Fund typically made venture capital investments in early to mid-stage private companies. On the date of termination of the Management Agreement, the Fund had approximately 20 active investee corporations and 60 inactive investee corporations.

[31] The timing of the Fund's sale or divestment of its venture capital investments was driven by a number of factors, including the Fund's liquidity needs, the stage of development and prospects of its investments, and the state of the IPO and M&A markets, which are the markets in which the Fund typically sold or divested its venture capital investments. Venture capital investments typically require time for favourable divestiture or exit opportunities to arise even after an investment has developed to the stage where it can be sold or divested. Forced sales of venture capital investments prior to the occurrence of viable exit or divestiture opportunities generally result in divestiture values that are lower than prevailing carrying values, which would result in portfolio losses.

[32] In order to achieve the Fund's objective of disposing of an investment at a time that would maximize returns for the Fund, the Fund generally made an initial investment in a company, which was followed by rounds of subsequent or "follow-on" investments. Follow-on investing is a key element of the investment life cycle of a venture capital fund. Venture capital funds do not typically provide initial funding that will fully support a portfolio company's development to a stage at which it can generate income sufficient to sustain its operations. Rather, follow-on investments are made as each portfolio company achieves financial or operational milestones. Of note, however, the failure to participate in follow-on rounds of financing could often lead to adverse consequences for a fund, including: (1) significant dilution of the fund's shareholdings in a portfolio company; (2) penalties such as loss of anti-dilution rights and board representation; and (3) forced conversion of preferred shares into common shares.

[33] It is also important that, unlike private venture capital funds, the Fund as an LSVCC could not raise additional capital to fund its liquidity needs by capital calls on its investors. The Fund had to rely instead on the sales of additional Class A Shares. Further, unlike a private venture capital fund, it was subject to redemption requests of holders of Class A Shares, which presented an additional liquidity consideration.

Tax Matters Pertaining to the Fund

[34] To encourage Canadian retail investors to invest in LSVCCs, the federal government and some provincial governments offered investment tax credits in respect of the shares of LSVCCs. Beginning in the 1980s, the federal government offered LSVCC investors a 15% tax credit on a maximum investment amount of $5,000 per year, providing up to $750 in federal tax relief. Most provincial governments also offered an additional 15% tax credit on eligible LSVCC investments, creating a total federal and provincial tax credit of 30%.

[35] As described above, Class A Shares that were redeemed earlier than eight years from their date of acquisition attracted penalties by way of repayment of the favourable tax treatment received at the time of acquisition. Conversely, after the eight-year hold period, the Class A Shares were retractable without any penalty. Because most Class A Shares were typically purchased during RRSP season (being January and February in each year), redemption requests also tended to be made during the RRSP season in any given year.

[36] Accordingly, the Fund was required to retain sufficient cash reserves to be able to satisfy the redemption demands in respect of all Class A Shares to which the eight-year hold no longer applied. Such shares are referred to as "hot money" shares or "hot money" capital. As set out below, redemptions historically ran at the approximate rate of 35% of all "hot money" shares in the relevant period. However, because of the sales history in earlier periods, the total amount of "hot money" capital was scheduled to increase significantly, relative to prior years, beginning with the 2009 RRSP season (being January and February 2009) necessitating larger cash reserves in 2009 and following.

[37] In mid-2005, the Ontario Government announced that it would phase out the Ontario investment tax credit over a five-year period, subsequently extended by one year, with the amount of the tax credit declining over the period. As discussed below, this had a significant adverse effect on the ability of the Fund to raise capital by the sale of Class A Shares in Ontario, which was the principal market for the Fund.

Overview of the Activities of the Fund from the Engagement of the Former Manager

[38] The following summarizes the factual background leading to the termination of the Management Agreement and this litigation.

[39] The Former Manager took over day-to-day management of the Fund on December 1, 2002. On November 27, 2003, the initial management agreement was entered into by the Fund and the Former Manager.

[40] Sales of Class A shares generated by the Fund were respectively $35,669,000, $11,754,000, $9,130,000 and $12,988,000 in the fiscal years ending August 31, 2002, 2003, 2004 and 2005, respectively. As mentioned, given the eight-year hold associated with the taxation credit, the Fund anticipated a heavy redemption experience commencing with the twelve-month period ending with the 2009 RRSP season.

Events Between 2005 and 2009

[41] As at August 31, 2005, the Fund had cash and liquid assets totaling $124,974,000 and a total NAV of $269,144,000. At this time, the Fund was in the course of negotiating acquisition transactions with the Canadian Science & Technology Growth Fund ("CSTGF") and the Capital Alliance Ventures Inc. ("CAVI"), both of which were suffering from a lack of liquidity. These transactions were approved by the Board on October 20, 2005, were approved by the shareholders of the Fund on November 17, 2005, and closed on November 29, 2005.

[42] On August 29, 2005, the Government of Ontario announced that it intended to eliminate the tax credit for LSVCCs by the end of the 2005 taxation year. As mentioned above, subsequently, on September 30, 2005, the Government of Ontario announced that it had decided to phase out the investment tax credit for LSVCCs by the end of the 2010 taxation year, reducing the taxation credit gradually over the five-year period. Legislation giving effect to this subsequent announcement was passed on December 15, 2005.

[43] Accordingly, the ability of LSVCC's, including the Fund, to count on receiving substantial additional funds annually from new Ontario retail investors was significantly reduced after 2005 and was necessarily going to be severely restricted after the 2010 fiscal year. Ontario was the predominant market for the sale of the Fund's Class A shares. In the short-term, however, in the case of a number of LSVCCs, the change in the tax credit created or exacerbated liquidity problems that presented favourable merger opportunities for other LSVCCs which had sufficient liquid assets, including the Fund.

[44] In the spring of 2006, the Former Manager pursued two further acquisition transactions on behalf of the Fund. On March 22, 2006, the Board approved the purchase of the First Ontario Fund ("FOF"), which was completed on July 14, 2006.

[45] As at August 31, 2006, the Fund had cash and liquid assets totaling $176,218,000.

[46] On December 13, 2007, the Government of Ontario announced certain amendments to the phase-out of the provincial tax credit for investors in LSVCC shares, including a one-year extension to March 1, 2011. However, the announcement confirmed the Government's intention to proceed with the phase out.

[47] As of August 31, 2007, the Fund's NAV was approximately $366 million and it had liquid assets totaling approximately $118 million. This large liquidity position reflected two successful divestitures of venture capital investments of $95.6 million over the period between 2004 and 2007 and $73 million in 2007, respectively. As of August 31, 2008, the comparable figures were $321 million and $126 million. In short, the Fund had no liquidity issues up to and including this latter date and, in particular, had sufficient funds to meet its projected redemptions.

[48] As described further below, however, the economic crisis that developed in the fall of 2008 significantly affected the venture capital financing market and the M&A and IPO markets for divestitures of venture capital investments. Notwithstanding this development, during the remainder of 2008, the Fund was able to negotiate the acquisition of another LSVCC that had

encountered liquidity problems – the ENSIS Growth Fund Inc. This transaction (the "ENSIS Transaction") closed on October 22, 2008.

[49] In the spring of 2009, the Fund entered into a further merger transaction with the Canadian Medical Discoveries Fund ("CMDF"), which had suspended redemptions due to liquidity problems (the "CMDF Transaction"). The CMDF Transaction was approved by the Board on April 23, 2009 and closed on May 25, 2009.

Events in 2010

[50] By late 2009, the Fund was experiencing a significant reduction in its liquidity as a result of several factors, principally the following: (1) the adverse markets for the divestiture of its venture capital investments following the 2008 economic crisis, which continued to depress markets in 2009 and into 2010; (2) the decline in sales of its Class A Shares as a result of the announced tax changes; and (3) an increase in redemptions of such shares as well as an increase in the amount of "hot money" shares, which reflected the level of sales eight years earlier.

The WOF Credit Facility

[51] In early 2010, in anticipation of possible increased redemptions or reduced fundraising during the 2010 RRSP season, the Former Manager arranged for a credit facility of $15 million to be made available to the Fund by the WOF. The WOF credit facility was approved by the Board at its meeting on March 1, 2010. The minutes of the Board meeting describe this WOF credit facility as a short-term, secured bridge loan to the Fund to enable it to address "short-term liquidity needs" pending a longer-term financing solution. This WOF credit line was put in place on March 23, 2010, could be drawn down until June 30, 2010 and was to be repaid by November 30, 2010. However, the WOF credit facility was never drawn upon and, instead, was rescinded on payment of a fee of $100,000 on June 28, 2010 after the Roseway Transaction (described below) was implemented. Levi says that the Former Manager had also arranged for a potential credit facility in the amount of $4 million from Matrix during the same period that was not however put in place.

The Roseway Transaction

[52] In April 2010, the Former Manager recommended a transaction with Roseway Capital LP ("Roseway") pursuant to which the Fund borrowed $20 million repayable after three years (the "Roseway Transaction"). The Roseway Transaction was approved at a Board meeting on April 27, 2010 and closed on May 28, 2010, at which time all of the monies available under the loan arrangements were drawn down by the Fund.

[53] The Roseway Transaction was set out in a participation agreement dated May 28, 2010 (the "Participation Agreement") under which Roseway advanced $20 million to the Fund in exchange for a "participation interest" in a defined basket of the Fund's venture capital investments (the "Defined Portfolio"). The participation interest generally entitled Roseway to receive participation payments equal to 20% of the proceeds realized by the Fund on the disposition of the investments in the Defined Portfolio. However, regardless of the performance of the Defined Portfolio, the Fund was also required to make minimum annual participation

payments to Roseway of $5.7 million in each of the first three years for a total of $17.1 million, which equated to a simple rate of interest of 28.5% per annum based on the original $20 million advance, and was required to repay the $20 million to Roseway on May 28, 2013. The Fund's payment obligations under the Participation Agreement are herein referred to as the "Roseway Obligations".

[54] The Roseway Obligations were secured by way of a security interest over all of the Fund's assets, subject to certain exceptions that are not material for present purposes, granted by the Fund in favour of Roseway pursuant to a security agreement dated May 28, 2010 (the "Roseway Security Agreement" and, together with the Participation Agreement, the "Roseway Documents").

[55] Concurrently with the execution of the Participation Agreement, the Former Manager also entered into a defined portfolio services agreement with Roseway pursuant to which the Former Manager agreed to provide certain monitoring and reporting services to Roseway in relation to the Defined Portfolio in exchange for an annual fee of $100,000.

Events in 2011

[56] By the beginning of 2011, the Fund required further liquidity to fund redemptions during the 2011 RRSP season and to remain compliant with certain financial covenants in the Roseway Transaction. The Former Manager explored financing possibilities with a number of Canadian and foreign banks, secondary investors and institutional funds with alternative high-yield alternative vehicles. None of these discussions resulted in viable offers of financing.

The WOF Loan

[57] In the absence of other alternatives, the Former Manager recommended to the Board that the Fund enter into a loan agreement for a loan of $9.5 million (the "WOF Loan") from the WOF. The WOF Loan bore interest at the rate of 12% per annum and originally matured on March 31, 2012. The WOF Loan was secured by a charge over the Fund's assets pursuant to a security agreement dated as March 31, 2011 between the Fund, WOF and 2275177 Ontario Inc., a company controlled by the Former Manager. The terms of the WOF Loan and related security were structured and negotiated on behalf of the Fund by the Former Manager.

[58] The WOF Loan was approved by the Board on February 21, 2011 and was finalized on March 31, 2011. However, the first draw under the WOF Loan did not occur until June 2011, due principally to lower than projected redemptions during the 2011 RRSP season. The WOF Loan was initially conceived of as a bridge loan until the credit facility for the Proposed VenGrowth Transaction described below was drawn down. However, the WOF Loan was eventually drawn down notwithstanding the fact that the Proposed VenGrowth Transaction did not proceed.

The Proposed Vengrowth Transaction

[59] Commencing in November 2010, the Former Manager pursued a further acquisition transaction with VenGrowth Funds with the approval of the Board (the "Proposed VenGrowth

Transaction"). While the initial impetus for this transaction may have been discussions with a prospective lender to the Fund, the Former Manager recommended this action, among other reasons, because it would increase the liquidity position of the Fund if it were completed on the terms proposed by the Former Manager. On May 30, 2011, the Board approved the Former Manager's proposal to acquire the VenGrowth Funds by way of a merger. Ultimately, however, in July 2011, the shareholders of the VenGrowth Funds rejected the Fund's offer in favour of a competing merger proposal.

[60] In connection with the Proposed VenGrowth Transaction, however, the Former Manager also pursued financing options to address potential liquidity requirements of the Fund if the merger were implemented. This resulted in a financing facility being put in place, although not drawn down, in March 2011 and a fee being paid to a third party agent who had arranged the facility.

The Suspension of Share Sales

[61] By the fall of 2011, sales of Class A Shares had decreased significantly. In a memorandum to the Board for its meeting on September 27, 2011, the Former Manager recommended to the Board that the Fund cease offering such shares to the public. The Board accepted this recommendation. The Fund ceased offering its Class A Shares on September 30, 2011.

The Suspension of Redemptions of Class A Shares

[62] In October 2011, the Board concluded that the Fund's liquidity was no longer sufficient to support continued redemptions of Class A Shares and to satisfy its liabilities, including minimum participation payments to Roseway under the Participation Agreement, principal and interest payments under the WOF Loan, and the fees payable to the Former Manager.

[63] At a special Board meeting held on October 27, 2011, the Former Manager recommended a redemption management plan (herein the "RMP") that would limit shareholder redemptions of Class A Shares on a managed basis, essentially as the Fund's cash flow resources permitted commencing with a cap of $20 million annually. For comparative purposes, redemptions in the period ending March 31, 2011 totalled $48.4 million and, in the Former Manager's memorandum provided for the June 8, 2011 Board meeting, were projected to be $40.6 million, $48.5 million and $38.4 million for the 12-month periods ending March 31, 2012, 2013 and 2014, respectively.

[64] With the concurrence of Ross, the Former Manager had previously approached the BCSC to seek permission to implement a cessation of redemptions on general terms to be determined by the Board. The BCSC indicated, however, that it was only prepared to grant such permission after a review which would take time. Counsel therefore decided to apply instead for an order authorizing a complete cessation of redemptions of Class A Shares for a limited period of time until the RMP could be implemented. Accordingly, the BCSC issued an interim order on November 10, 2011 permitting the complete cessation of redemptions of Class A Shares for a limited period of time and, on that date, the Fund suspended redemptions of Class A Shares.

[65] The BCSC order was effective until April 12, 2012. Subsequently, the BCSC also required shareholder approval, which was obtained. In the meantime, certain discussions which are discussed below took place between the BCSC and both the Former Manager and the Board. Pending the outcome of the BCSC's review of the Fund's application for approval of the RMP, the BCSC order was extended to July 31, 2012 and then to November 30, 2012. Ultimately, on November 30, 2012, the BCSC denied the Fund's request for approval of the RMP. However, by that date, the liquidity position of the Fund was such that it was unable to comply with the solvency test in section 36 of the CBCA in respect of redemptions of the Class A Shares. Accordingly, the Fund continued to suspend redemptions thereafter for this reason.

The Kirchner Letter

[66] On October 12, 2011, the Fund received an expression of interest from Kirchner Portfolio Management Corp. ("Kirchner Letter") respecting a possible purchase of Fund assets by that firm. The Kirchner Letter suggested that the applicable discount to net asset value in the transaction that it contemplated would be in the range of 60% to 90%, subject to due diligence. The proposal was addressed by the Board at its meeting held on November 16, 2011 at which time the Board decided not to pursue the offer. The reasons for this decision are not in evidence.

Events in 2012

[67] The Fund continued to face liquidity challenges in early 2012. By February 3, 2012, the WOF Loan had been fully drawn. There continued to be reduced divestiture activity in the M&A markets and a payment of $5.7 million was due to Roseway on May 28, 2012.

The Board Strategy for Addressing Liquidity Management

[68] To address its liquidity needs, on the recommendation of the Former Manager, the Board resolved on a policy of selling part of the Fund's portfolio and of funding its liquidity requirements in the interim by means of new financing arrangements. Accordingly, in May 2012, the Former Manager negotiated an extension of the maturity date of the WOF Loan from May 15, 2012 to December 20, 2012 in exchange for a fee. In addition, the Former Manager recommended that the Fund take on additional debt by way of a $4 million loan from Matrix, which, as mentioned earlier, is the parent corporation of the Former Manager (the "Matrix Loan"). The Matrix Loan is described further below. The extension of the WOF Loan and the Matrix Loan permitted the Fund to pay the amount due to Roseway on May 28, 2012, to make follow-on investments, and to pay some of the outstanding fees of the Former Manager. At about the same time, the Fund also retained an independent financial advisor, Triago Americas, Inc. ("Triago"), to solicit expressions of interest for a possible sale of a portion of the Fund's venture capital portfolio. This engagement resulted in the Newbury Transaction, which is also described below.

The Matrix Loan

[69] The Matrix Loan originally matured on July 31, 2014, bore interest at 18% per annum for the first year and 20% per annum thereafter and was secured by a charge over all of the Fund's assets. The Matrix Loan was funded by way of a $4 million loan extended by Growthpoint

Capital Corp. ("Growthpoint") to a subsidiary of Matrix (the "Growthpoint Loan") pursuant to a loan agreement dated May 18, 2012 (the "Growthpoint Loan Agreement") that was guaranteed by the Former Manager. The Matrix Loan utilized the financing facility that had been put in place for the Proposed Vengrowth Transaction. Levi says that the Matrix Loan was originally conceived of as bridge financing pending conclusion of a sale of assets that became the Newbury Transaction.

[70] The Matrix Loan and the Growthpoint Loan were back-to-back loans such that the terms of the Matrix Loan and the Growthpoint Loan with respect to interest, maturity and events of default were substantially the same. As a result, the occurrence of an event of default under the Growthpoint Loan would constitute an event of default under the Matrix Loan. A default under the Matrix Loan would, in turn, have triggered an event of default under the Roseway Documents and under the WOF Loan.

[71] The events of default under the Growthpoint Loan Agreement included the following: (i) a failure by the Fund or by the Comm Fund to pay when due any management fees owing to the Former Manager; (ii) a reduction of more than 30% of those management fees; and (iii) a breach of any of Matrix's covenants under the Growthpoint Loan Agreement. The effect of the default provisions of the Matrix Loan and the Growthpoint Loan was to put the Fund at risk of a liquidity crisis should it be unable to pay any management fees owing to the Former Manager or in the event that the Former Manager or certain of its affiliates failed to comply with the terms of the Growthpoint Loan Agreement. As a consequence of these provisions, a substantial portion of the proceeds from the Matrix Loan were used to pay management fees to the Former Manager that had been accrued.

Discussions with the OSC and the BCSC

[72] The announcement of the Matrix Loan by a press release of the Fund on May 23, 2012 prompted a letter to the Fund from the Ontario Securities Commission (the "OSC") raising certain questions relating to that transaction. The questions pertained to the purpose of the financing, the structure of the Matrix Loan, the role of Matrix in the financing arrangements as an affiliate of the Former Manager, the extent to which monies were being used to pay unpaid management fees of the Former Manager, the approval process of the Board in concluding that the Matrix Loan was in the best interests of the Fund including alternatives explored, and the basis for the determination of the IRC that the Loan was fair and reasonable for the Fund. By letter dated June 21, 2012, Ross, on behalf of the Fund, responded to each of these questions setting out the basis of the Fund's position that the Matrix Loan was in the best interests of the Fund.

[73] This was followed by a meeting between staff of the BCSC and representatives of the Fund, including Ross, and of the Former Manager, including Levi, which was held on July 11, 2012. Of note, according to the speaking notes prepared for the Fund's presentation to the BCSC at that meeting, Ross stated that "up until September 2011, the Board and the Manager believed that there was a reasonable basis for concluding that the Fund could remain on redemption through peak redemptions in February and March 2012 and beyond."

[74] After reviewing a binder of information provided by the Fund, the BCSC staff requested further information and disclosure respecting the venture capital portfolio of the Fund, the expenses of the Fund, the historical and projected cash flow of the Fund, and the Fund's plans if divestitures were insufficient to repay the WOF Loan in December 2012 or the Roseway Obligations in May 2013. With respect to the last matter, the Fund's response through its legal counsel was essentially that it was pursuing a secondary sale of assets. The Fund also indicated that, if divestitures did not generate sufficient cash flow, the options available to the Fund would include the negotiation of extensions to the applicable payment dates and further secondary sales.

The Newbury Transaction

[75] After conducting an extensive search, Triago was able to identify only one party who was interested in purchasing assets of the Fund, namely Newbury Equity Partners ("Newbury"). The Fund entered into a transaction with Newbury at the end of 2012 under which the Fund sold certain of its venture capital investments to Newbury for a purchase price of $19,159,824 (the "Newbury Transaction"). This sale occurred at a discount of 58% to the value ascribed to these investments on the books of the Fund. The proceeds of sale were applied, among other things, to repay the WOF Loan on or about December 31, 2012.

Events in 2013

[76] The SC, the IRC and the Board met on January 29 and January 30, 2013 to address various matters pertaining to the status of the Fund in light of its continuing liquidity problems at the time. The following decisions were taken at this time, among others.

[77] First, the Board approved an amendment to the Matrix Loan that deferred payment of $1 million due on January 31, 2013 to July 31, 2013 at the cost of a fee payable to Growthpoint of $160,000 plus applicable taxes.

[78] Second, at the instigation of Ross, the Board requested an independent review of the options available to the Fund given its current liquidity position. The Fund engaged The Commercial Capital Securities Inc., which operated as CCC Investment Banking ("CCC"), for this purpose by letter dated February 20, 2013.

The CCC Report

[79] CCC delivered its report in April 2013 (the "CCC Report"). The CCC Report proposed a multi-pronged approach. It concluded that, in the short-term, the Fund should continue its strategy of simultaneously seeking a restructuring of the Roseway Transaction and exploring replacement financing, although it also recommended preparation of a filing under the CCAA in case neither of the other initiatives succeeded. After addressing this short-term liquidity problem, CCC recommended, as longer-term options, consideration of a merger with another LSVCC, if feasible, and otherwise pursuing sales and exits of Fund venture capital investments on an orderly basis, a sale of the Fund's portfolio *en bloc* or in segments, or conversion to a modified closed-end fund.

The PWC Investigation

[80] Concurrently, Roseway retained PriceWaterhouseCoopers ("PWC") to examine transactions within the Defined Portfolio and Roseway's entitlement to the proceeds of sales of investments therein under the Participation Agreement. While the investigation uncovered a number of mistakes in the records maintained by the Former Manager, the only material issues pertained to the Fund's investment in Cytochroma Canada Inc. ("Cytochroma"). These issues are discussed below.

The Compliance Investigation of the BCSC

[81] On April 16, 2013, the BCSC sent GWC a letter describing the results of its compliance field examination of that corporation. The BCSC stated that it had significant concerns about the Former Manager's conduct as a portfolio manager and an investment manager. It identified nine deficiencies in the Former Manager's conduct as portfolio manager and investment fund manager of the Fund and WOF, of which two related specifically to the Fund. The BCSC also sent a further letter on April 30, 2013 regarding the delivery of records in the course of the compliance field examination. However, this letter is not material for present purposes. It should be noted that the BCSC letters represented the views of compliance staff.

[82] The BCSC required Levi and David Balsdon ("Balsdon"), the Former Manager's chief compliance officer at the time, to attend a meeting with the BCSC compliance staff in its offices around the time at which these letters were delivered to the Former Manager. The position of the BCSC compliance staff was read to Levi and Balsdon at that meeting at which time the BCSC speaking notes were apparently given to them.

[83] The Former Manager responded to these letters by letters dated May 15, 2013 and May 31, 2013, respectively, which set out the Former Manager's plans to address the matters raised by the BCSC.

The Position of the BCSC

[84] The BCSC compliance staff commented that the Fund had been in a distressed situation since 2010 and stated that, in their view, GWC had breached its statutory obligations under section 125 of the *Securities Act (British Columbia)*, R.S.B.C. 1996, c. 418 in its handling of the situation, as well as its duty of fair dealing.

[85] Section 125 reads as follows:

> Every investment fund manager must
>
> (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
>
> (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Accordingly, the provisions of the Standard of Care and of section 125 are virtually identical.

[86] In respect of the Former Manager's fiduciary obligations and duty of care, the BCSC compliance staff considered that the Former Manager failed to consider all of the scenarios and actions dealing with the Fund's distressed situation and, in particular, in recommending that the Fund engage in the Roseway Transaction, the WOF Loan and the Matrix Loan. The BCSC staff considered that the Former Manager breached its statutory obligations in failing to assess, on an ongoing basis, the impact of winding down the Fund versus continuing to incur the costs of operations. In particular, the BCSC staff considered that the Former Manager breached its statutory obligations in failing to consider the impact of borrowing versus winding down the Fund on each occasion on which it recommended that the Fund enter into these loan transactions. The BCSC staff noted that there was no record of any wind-down analysis prior to October 2012 and that the report prepared at the time, when the BCSC raised the issue, was "overly simple." The BCSC staff stated that "[a] reasonably prudent person would have considered the possibility and impact of a wind down scenario on an ongoing basis after the [Fund] ran into liquidity issues and exit difficulties in 2010."

[87] In respect of the Former Manager's duty of fair dealing, the BCSC compliance staff stated that the Former Manager's actions in recommending that the Fund borrow money raised an issue of fair dealing with the Fund and its shareholders insofar as the continued operations had the effect of funding the payment of the Former Manager's fees. The BCSC staff noted in particular that the Matrix Loan of $4 million appeared to have funded payment of current and outstanding fees of the Former Manager totalling at least $2.65 million (the BCSC statement actually suggests $3.25 million although their reference totals the lesser amount). The BCSC staff stated that, not only did the high interest rates on the loans worsen the already distressed financial situation of the Fund and reduce the likelihood of redemptions but it also provided a payment priority to the Former Manager that it might not have had in a wind-down scenario.

The Position of the Former Manager

[88] The Former Manager expressed the view that many of the BCSC's statements represented "an attempt, with the benefit of hindsight, to substitute the Commission's business judgment for the business judgment of the Former Manager and the [Fund]." In addressing its handling of the Fund, the Former Manager made the following general comments, among others.

[89] First, it took it as a given that a "liquidation-style" wind-down of the Fund would have eliminated substantially all of the value potential in the Fund's venture capital portfolio and would have generated losses of at least 50% of the portfolio value. Second, it said that, referring to the CCC Report, an external advisor had confirmed that orderly sales of the Fund's portfolio was preferable to a "liquidation-style" wind-down. It considered that an orderly wind-down would have required several years. I note that the CCC says that the Former Manager has not accurately characterized the CCC Report in this regard. Third, the Former Manager was of the view that obtaining external financing for the Fund "on the basis that the value and the value potential preserved by the financing was expected to exceed the cost of the financing was and remains prudent and in the best interests of the [Fund]." Fourth, it said that a decision to pursue a wind-down was outside its mandate and authority and lay instead with the Board, which had approved all borrowing transactions of concern to the BCSC.

[90] The Former Manager expressed the view that, without the financing provided by the Roseway Transaction, which enabled the Fund to complete certain identified follow-on investments between May 2010 and March 2013, the Fund would have been exposed to up to $117.3 million in portfolio losses as a result of substantial or total dilution due to an inability to make the follow-on investments. It also referred to the discount in value of the assets sold pursuant to the Newbury Transaction to fund repayment of the WOF Loan in December 2012 as evidence of the discount in value likely in a "liquidation-style" wind-down.

[91] With respect to the BCSC's concerns regarding fair dealing, the Former Manager stated that the key factors in the decision to obtain external financing for the Fund included not only the ability to make follow-on investments but also the ability to continue honouring redemption requests for Class A Shares. It also referred again to the fact that the decisions were made by the Board not the Former Manager.

Resolution of the BCSC Investigation

[92] Ultimately, by letter dated August 21, 2013, the BCSC required, as a condition of the continued registration of GWC, that the Former Manager, Levi personally, and another LSVCC managed by the Former Manager, among others, provide certain undertakings to the BCSC. These undertakings included, among other things, that GWC (i) not recommend that any of the venture funds managed by it borrow money or engage in leveraging; and (ii) not recommend any transactions between the Fund and any other investment funds managed by it. These conditions did not, however, prevent the Former Manager from continuing to act as the manager of the Fund, subject to resolution of the regulatory capital deficiency described in the following section. The parties dispute the significance attached to the BCSC allegations and their ultimate resolution. This is addressed further below.

The Capital Deficiency of the Former Manager

[93] In addition, as a result of write-downs on the financial statements of GWC for the year ending December 31, 2012, GWC was in a regulatory capital deficit position. By letter dated May 9, 2013, after GWC brought this to the attention of the regulator, the BCSC formally advised GWC that a regulatory capital deficiency had existed since December 31, 2012. GWC responded by a letter dated May 13, 2013.

[94] The Former Manager was required by the terms of the Management Agreement to advise the Board of the capital deficiency. It did so on August 22, 2013 after GWC had agreed with the BCSC on August 21, 2013 to certain conditions to its registration, including giving the Fund notice of this development. Under these conditions, GWC was required, among other things, to cure the regulatory capital deficiency by October 1, 2013.

[95] To do so, among other actions, Matrix arranged to obtain a loan of $5 million from RC Morris & Company pursuant to a loan agreement dated July 31, 2013. The loan was advanced to the extent of $1 million in August 2013. The balance was advanced on October 1, 2013, after re-negotiation of the loan on September 30, 2013 required by the lender as a consequence of the Fund's termination of the Management Agreement on that day. The Former Lender says that this development resulted in more onerous terms under the loan agreement. In September 2013,

Matrix also closed the sale of its mutual funds business to a third party. The funds received from these transactions allowed Matrix to remedy the capital deficiency of GWC on October 1, 2013 as required by the BCSC.

Negotiations with Roseway

[96] During March 2013, the Former Manager conducted negotiations with Roseway with a view to restructuring the Roseway Transaction to avert a default on May 28, 2013, as the Fund did not anticipate being able to make the payments totaling $25.7 million due on that date. The Former Manager also conducted negotiations with another potential lender to refinance the Roseway Transaction, if necessary.

[97] Subsequently, CCC took over the role of negotiator on behalf of the Fund with Roseway. Over the summer of 2013, CCC negotiated a series of one-month extensions of the payment obligations under the Roseway Transaction. These were necessary as the Fund had breached certain covenants in the Roseway Documents creating an event of default thereunder. Ultimately, however, Roseway and the Fund were unable to agree on a restructuring of the Roseway Transaction.

Further Developments During the Summer of 2013

[98] By letter dated June 18, 2013, legal counsel for the Fund advised the Former Manager that the Fund was of the view that a number of expenses charged by the Former Manager to the Fund were the responsibility of the Former Manager pursuant to section 6.1 of the Management Agreement. The Former Manager responded by an email of July 5, 2013 to Ross. This was followed by a further letter dated September 19, 2013 of the Fund's legal counsel to the Former Manager addressing the Former Manager's email, reiterating the Fund's position that the expenses at issue were properly the responsibility of the Former Manager, and requesting a summary, with back-up, of all professional fees charged to the Fund during the preceding ten years. The outstanding issues between the parties pertaining to these expenses are addressed below.

[99] On July 19, 2013, the Fund repaid the Matrix Loan.

[100] In addition, the Special Committee commenced negotiations with Covington Capital Corporation ("Covington") for a possible acquisition of the Fund by one of the Covington funds. The transaction envisaged a transition period during which the Former Manager would be replaced by Covington as the manager of the Fund in order to negotiate arrangements with various parties, including Roseway and the Former Manager, which needed to be settled before a merger agreement could be agreed upon. The SC did not advise the Former Manager of this development.

Termination of the Management Agreement and Insolvency Proceedings of the Fund

[101] On September 30, 2013, the Fund terminated the Management Agreement by a letter of that date (the "Termination Letter"). The relevant provisions of the Termination Letter are set

out in Schedule B below. In asserting material breaches of the Management Agreement, the Fund relied heavily on the alleged findings of the BCSC as a result of its compliance investigation.

[102] On the same day, Covington delivered a formal but non-binding proposal to the Fund for a transition management arrangement with a view to negotiation of a merger agreement by which the Fund's assets would be acquired by a Covington fund.

[103] On October 1, 2013, the Fund obtained an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). FTI Consulting Canada Inc. (the "Monitor") was appointed the monitor in these proceedings. At that date, the NAV of the Fund was approximately $88 million. Subsequent to the filing, the Fund continued discussions with Covington regarding its replacement of the Former Manager as the manager of the Fund in contemplation of the proposed merger. However, after several weeks of negotiations between the parties, this proposal did not proceed further.

[104] As a result, the Fund obtained an order of Mesbur J. dated October 29, 2013 under the CCAA deeming the Former Manager to be a critical supplier in respect of certain services described in a critical transition services agreement dated October 15, 2013 (the "CTSA"). After that date, the Former Manager provided both the services described in the CTSA as well as certain other services. The claims of the Former Manager in respect of these additional services are addressed below.

Liquidity Management of the Fund

[105] A significant issue in this action is the strategic advice provided by the Former Manager to the Board regarding the actual and projected liquidity position of the Fund including the Former Manager's reporting to the Board. This issue was the subject of the expert evidence adduced by the parties, which is described below. The following section describes in some detail the documentary evidence in the record regarding the nature and extent of the Former Manager's reporting regarding the current and projected liquidity status of the Fund between 2005 and November 1, 2011, when the Fund ceased redemptions of Class A Shares. It is divided into four time periods reflecting, among other things, an increasing level of concern, and of correspondingly increasingly detailed reporting, regarding the liquidity position of, and prospects for, the Fund.

2005 to the Onset of the Economic Crisis in 2008

[106] As mentioned above, in August 31, 2005, the Fund had substantial cash and liquid assets. There is no evidence of any reporting to the Board in 2005 of the consequences for the Fund's liquidity of the CSTGF and CAVI transactions. Nor is there any evidence of financial projections in 2005 regarding the longer-term impact of the Government of Ontario's announcement of its intention to phase out the investment tax credit on LSVCC shares.

[107] In 2006, in connection with the FOF Transaction, the Former Manager advised the Board that it did not expect the Transaction to have a material impact on the Fund's liquidity position. This conclusion was supported by three statements: (1) that FOF's venture capital investment portfolio was predominantly at a later stage of development; (2) that one-third of FOF's net

assets of $36 million were in cash; and (3) that only $5.6 million of its capital constituted post-eight year or "hot money." In summary, the FOF Transaction was a relatively small transaction for the Fund.

[108] The materials for the Board meeting of April 5, 2007 contain a very simple cash flow forecast for the period ending March 1, 2008. The forecast contemplated surplus cash at that date of $35 million after deduction of all "hot money" shares and planned investments in 2007.

[109] At the Board meetings held on April 23 and June 18, 2008, the Former Manager reported to the Board that the Fund's liquidity position at December 31, 2007 was strong, being constituted by cash and liquid assets of $145 million, which represented a surplus of $80 million over the total amount of the "hot money" capital in the Fund of $65 million at that date. At the latter Board meeting, the Former Manager also projected a surplus of $80 million over "hot money" capital at December 31, 2008. This projection preceded the economic crisis that developed in the fall of 2008.

[110] The Former Manager also provided the Board and various committees with a number of reports during 2007 and 2008 regarding the impact of the ENSIS Transaction on the Fund's liquidity. In a report dated May 15, 2008, the Former Manager stated that "[w]hile the Merger will draw on [the Fund's] liquidity position, we believe the impact will be manageable." The post-merger liquidity projections provided in the same report contemplated a cash surplus in each of the calendar years between 2007 and 2012, after deduction of all "hot money" capital, although only a small surplus in the calendar year ending December 31, 2010. It is understood that this report was before the Board when it gave its final approval to the ENSIS Transaction at its meeting on June 18, 2008.

The Onset of the Economic Crisis to the Spring of 2010

[111] The economic crisis that commenced in the fall of 2008 profoundly affected financial markets, including the market for venture capital financing, the IPO and M&A markets for venture capital investments, and the market for LSVCC shares. From this point onward, the Fund experienced a deteriorating liquidity position for a number of reasons discussed below.

The Meetings in Late 2008

[112] The Former Manager did not, however, immediately signal any concern for the Fund's liquidity. At the Board meeting on November 18, 2008, the Former Manager stated that it was still projecting a surplus of $80 million after deduction of all "hot money" shares at December 31, 2008. At the IC meeting of December 3, 2008, the Former Manager advised that the Fund was "in a very good cash position."

[113] However, the Former Manager advised the IC at the meeting that it had started using a new reporting tool, being a liquidity analysis template that took into account projected subscriptions, redemptions, new investments, follow-on investments and divestitures/sales. Accordingly, commencing in 2009, the Former Manager's reporting on the Fund's liquidity position became somewhat more detailed although, as described further below, using only a single base-case. Further, in the spring of 2009, the Former Manager advised that, while previous

analyses were done on a calendar year basis, liquidity analyses going forward would be based on a March 31 year-end to incorporate the redemption experience during the RRSP season in January and February of each year.

Reporting Respecting the CMDF Transaction

[114] The Former Manager's analysis of the Fund's liquidity position in the fall of 2008 and the spring of 2009 is found in a number of reports that addressed the impact of the proposed CMDF Transaction. The focus of the reporting was on ensuring that CMDF's adverse liquidity position was not assumed by the Fund, which implicitly was regarded as having a very positive liquidity position. In order to limit any adverse impact, the merger documentation provided for a significant penalty in respect of redemptions of the Class A Shares to be issued to CMDF shareholders which occurred during the first three years after implementation of the CMDF Transaction.

[115] In these reports, the Former Manager was consistently of the opinion that, with this arrangement, the anticipated liquidity of the CMDF venture capital investment portfolio over the period to 2013 would more than offset the anticipated redemption of Class A Shares by former CMDF shareholders. In a memorandum to the IRC in October 2008, however, the Former Manager indicated that its preliminary analysis showed that there would be a net gain to the Fund's liquidity position through 2011, but a net erosion in the liquidity position by the 2012 year-end due to the expiration of the three-year period of the proposed redemption penalty.

[116] In a further memorandum to the IC for its meeting on March 19, 2009 pertaining to the proposed CMDF Transaction, the Former Manager set out the Fund's projected liquidity position both before and after the Transaction. In this context, the Former Manager stated in writing for the first time that the Fund's redemptions would reach their peak over the next few years requiring a "primary focus" on liquidity.

[117] In terms of the Fund's pre-CMDF Transaction position, the Former Manager stated that, at February 28, 2009, the Fund had $80.8 million in non-venture assets but, by the end of March 2009, was projected to encounter a liquidity deficit of approximately $84 million after deducting all of the "hot money" shares totalling $143 million. This is the first report to the Board that is in evidence that mentions the prospect of a liquidity deficit relative to the total of "hot money" shares, rather than an excess over the total of all "hot money" shares. The increase in shares eligible for redemption reflected the large sale of shares eight years earlier mentioned above. Further, the Former Manager stated that, after deducting all of the "hot money" shares in the Fund, the Fund was expected to remain in a deficit position for the foreseeable future, although the deficit was expected to diminish from 2011 onwards. The projections indicated that liquidity was expected to be about 41% of the total "hot money" shares at March 31, 2009 and 35% at March 31, 2010.

[118] In terms of the post-CMDF Transaction, the memorandum focused on the incremental impact of the CMDF Transaction on the Fund's liquidity position. The Former Manager indicated that, given the early redemption fees contemplated in respect of redemptions of the Class A Shares to be issued to the CMDF shareholders and what the Former Manager regarded as "reasonably conservative assumptions," the maturity of the CMDF venture capital investment

portfolio should result in net cash flows to the Fund that would exceed the redemption requirements in respect of such shares. This would improve the Fund's overall liquidity position for all future periods. The anticipated incremental improvement in the Fund's liquidity position from the CMDF Transaction was not, however, material as described below.

[119] The memorandum also provided some projections regarding the Fund's liquidity position assuming completion of the CMDF Transaction. The Former Manager contemplated that liquidity would be 41% of all "hot money" capital at March 31, 2009 and 45% at March 31, 2010 (compared to 41% and 35% respectively under the pre-CMDF Transaction scenario). It should be noted that the projections assumed the Fund's ability to raise significant amounts of new capital through the sale of Class A Shares during the 2010 and 2011 planning years and sizeable capital inflows from divestitures approximating $100 million per year for each of the 2010, 2011 and 2012 planning years (which is the 12-month period ending on March 31 in each of these years). The projections were therefore heavily dependent on a high level of divestiture proceeds and, to a lesser extent, on continuing sales of Class A shares.

[120] In summary, therefore, the projections essentially anticipated significantly reduced liquidity for 2009 and 2010 if the CMDF Transaction were not implemented and only a modest improvement in the projected liquidity position if the Transaction proceeded. Given this outlook, the Former Manager recommended a liquidity plan for 2009 to 2013 focused on the following: (1) generating divestitures; and (2) reducing the level of investment activity, largely by restricting investment activity to follow-on investments. In this regard, the Fund made its last new investment in April 2009.

Further Reporting During 2009

[121] The analysis in the memorandum to the IC meeting was also discussed at the Board meeting on April 23, 2009. The next meeting of the Board was held on June 16, 2009. There is no indication in the minutes of that meeting of any discussion of liquidity projections for the Fund, apart from a reference in Levi's report to the CMDF Transaction, which had closed in May, 2009, having provided the Fund with $18 million in liquidity.

[122] The Board met again on September 16, 2009. The only reference to liquidity in Levi's report to the Board at that time was that the Fund had achieved divestitures of $29.8 million in 2009 and expected to meet its liquidation (i.e. divestiture) targets for the year. However, a liquidity analysis prepared for the meeting indicated that the liquidity position of the Fund continued to be tight.

[123] The memorandum stated that the liquidity focus of the Fund had shifted from having excess liquidity as an acquisition currency for mergers to maintaining a requirement of 35% of "hot money" capital in liquid assets at all times. The memorandum noted that, at December 31, 2008, the liquidity was approximately 85% of "hot money" capital, that it had deteriorated to 40% at August 31, 2009, and that it was projected to be 52% by March 31, 2010. These projections are consistent with the projections in the memorandum to the IC for its meeting on March 19, 2009 described above although somewhat more optimistic for the liquidity position at March 31, 2010. The memorandum noted, however, that liquidity was projected to fall below 35% in February 2010 during RRSP season as a result of predicted redemptions. More

significantly, the memorandum set out four key assumptions upon which the projections were based. These included sales of $10 million and divestitures of $73 million, in each case for the rest of the period ending March 31, 2010. The memorandum noted in particular that "[v]enture exit activity is the key success factor to attaining the liquidity ratio of 52% by March 31, 2010."

[124] In response to the identified risk of a lack of liquidity during the 2010 redemption season, in the spring of 2009, the Former Manager began exploring the possibility of financing to bridge any liquidity shortfalls. At this time, bridge financing was apparently conceived of as short-term financing to bridge redemption requirements in January and February 2010 pending receipt of divestiture proceeds that were projected to restore the Fund's liquidity to approximately 52% of "hot money" capital by March 31, 2010. As discussed above, the Former Manager had discussions with traditional institutional lenders but was unsuccessful in identifying any interested parties. In the Board meetings on September 16, 2009, it reported that discussions with Comerica were not proceeding further. Ultimately, the search resulted in two offers from niche lenders to venture capital funds, including Roseway.

[125] After the September Board meeting, the Fund filed a preliminary prospectus with the provincial securities regulators in connection with its continuous offering of Class A Shares. In the course of its review, the OSC raised the issue of the level of "hot money" capital in the Fund and the level of reserves available to honour redemption requests.

[126] In a letter dated October 30, 2009 to the OSC, counsel for the Fund addressed this issue. Counsel advised the OSC that the Former Manager believed that the Fund had more than adequate liquidity to honour redemptions over the period to March 31, 2010. However, it is not possible to tie these calculations into comparable earlier projections in 2009 in evidence. More importantly, the Former Manager's response both assumed levels of divestitures and sales of Class A Shares that were significantly more than were achieved in the period to March 31, 2010 and did not address the Fund's liquidity relative to the total "hot money" capital at that date.

Reporting During the Spring of 2010

[127] There is little mention of liquidity in the Former Manager's reports to the Board at its meeting on November 17, 2009 as reflected in the minutes. The primary focus regarding liquidity at this time was a proposed amendment to the Fund's reserve policy. There is, however, a statement in a memorandum prepared for that meeting that, after testing various scenarios, "[i]n all tests, the Fund has Projected Reserves sufficient to meet Projected Cash Requirements through March 31, 2010."

[128] The perception of the liquidity position by both the Former Manager and the Fund changed rather markedly in early 2010. During this period, the IC met twice in advance of the Board meeting on April 27, 2010 to consider the deteriorating liquidity position of the Fund and the appropriate strategy going forward. In addition, the IRC met on February 24, 2010 to review the WOF Loan.

[129] The Former Manager provided projections for the Fund's liquidity position in a memorandum to the IRC for its February 24, 2010 meeting. In an appendix to that memorandum, the Former Manager projected a liquidity deficit of approximately $15 million at March 31, 2010

which would require a drawdown under the WOF credit facility of that amount. The appendix also contemplated a similar deficit at March 31, 2011, notwithstanding projected sales of Class A Shares totalling $15 million. As this projection assumed a drawdown and repayment of the WOF credit facility, the Former Manager's conclusion was that the Fund "requires an intermediate funding solution" after drawing down the WOF credit facility. Of particular note are the projections for divestitures for the 2011 planning period in this memorandum. The projected deficit of $15 million at March 31, 2011 assumed the inclusion of divestiture proceeds that were assessed as "probable", which totalled approximately $45 million (not including a $15 million transaction scheduled to close in April 2010). Accordingly, without receipt of divestiture proceeds assessed as "possible", which for the 2011 planning year totalled approximately $57 million, the Former Manager was effectively projecting a longer-term liquidity deficit for the Fund.

[130] According to the minutes, the Former Manager reported to the IC meeting on March 18, 2010 that liquidity stood at $16.9 million, $46.7 million less than had been forecast in 2009. The Former Manager stated that the most significant contributor to the negative variance was a $48.7 million shortfall in the projected divestitures. In the 2010 planning year (which would end on March 31, 2010), divestitures had been projected to be $98.1 million but were only going to be $49.4 million. For the 2011 planning year (which would end on March 31, 2012), the Former Manager indicated that, on a preliminary basis, it was targeting divestitures of $100 million "in order to maintain current liquidity levels." A consequence of the Fund's experience during the 2010 planning year was that it now depended almost entirely on divestiture proceeds to fund redemptions and follow-on investments, having depleted most of its non-venture capital assets.

[131] A memorandum dated April 7, 2010 to the IC for its meeting on April 15, 2010 indicated that the Former Manager had reviewed the venture capital portfolio of the Fund and concluded that the quality of the investments, including their stage of development and diversification, justified the Former Manager's confidence in the Fund's ability to meet its divestiture target for the 2011 planning year of $100 million. This amount must have included the divestiture proceeds characterized as only "possible" in the February memorandum to the IRC. It also noted, however, that the divestiture target had not been met in the 2010 planning year, principally due to lengthened time to achieve exits given the state of the markets and the Fund's inability to control other stakeholders in the investee companies who chose not to exit. Ultimately, as well, the memorandum also noted the need for a return to healthy and stable markets in order to meet its divestiture targets.

[132] In another memorandum prepared for the same IC meeting, the Former Manager addressed the liquidity status of the Fund. The memorandum indicated that the Fund incurred redemptions during the 12 months ending March 31, 2010 of $61.8 million, representing approximately 34% of "hot money" capital. The memorandum also set out the results of a model that projected the Fund's status starting from a cash position of $8.6 million, assuming sales of Class A Shares at $10 million per year, redemptions at 35% of "hot money" capital, and anticipated divestiture proceeds from the Fund's portfolio which, for the 2011 planning year was approximately $91 million. The model predicted a stable fund after eight years having a self-sustaining level of assets under management of approximately $98.5 million. On the basis of this model, the Former Manager concluded that the cash flow of the Fund would support

redemptions at the 35% rate without requiring drawdowns of the WOF Loan and that "the [Roseway] financing alternative is insurance for postponed venture exit activity."

The Board Consideration of the Strategic Options Available to the Fund in April 2010

[133] The Former Manager's recommendation that the Fund enter into the Roseway Transaction is central to this action. As mentioned, the Board took the decision to enter into this Transaction at its meeting on April 27, 2010. In connection with that meeting, the Former Manager prepared a number of memoranda in addition to those previously furnished to the IC, of which the following six are relevant for the issues in this action.

[134] First, at the request of the IC at its meeting on March 18, 2010, the Former Manager provided a memorandum assessing the strategic options available to the Fund. The memorandum expressed confidence in the "continuing prominence" of the Fund in the year ahead based on the following: (1) an assessment that the Fund's venture capital portfolio was in excellent shape; (2) redemption levels continuing at historic levels, being 35% of "hot money" capital; and (3) evidence of a positive change on the government relations side in Ontario. The memorandum addressed the following options: (1) ceasing redemption; and (2) a "secondary transaction" under which the Fund could divest a portion of its portfolio in return for a sufficiently large cash investment that would alleviate liquidity issues over the long-term.

[135] With respect to the option of ceasing redemptions, the memorandum stated as follows:

> Although a number of other retail venture funds in Ontario and Manitoba have chosen to cease redemptions in the past, none of those precedent decisions have proven to be beneficial to the funds' shareholders. The regulatory issues associated with the decision to cease redemptions are not trivial and, at best, give a fund a short period of time to resolve the situation. Given the illiquid nature of venture investments and the "cram-downs" investments are exposed to when follow-on investment capabilities are limited, the practical restrictions placed on a fund that ceases redemptions will almost invariably lead to major reductions in shareholder value.
>
> As a result, there are also litigation risks that must be considered. The regulatory and litigation issues are further discussed in [an attached memorandum regarding regulatory issues described below].

[136] With respect to secondary transactions, the memorandum stated that "[a]lthough the Fund's base-case liquidity analysis shows that such a secondary transaction is not necessary, such a transaction could provide vital insurance against any number of risks (for example, another capital market crisis or an unprecedented spike in redemptions)."

[137] Second, the Former Manager also prepared a short memorandum for the Board addressing "the regulatory process and some of the potential litigation risks for [an LSVCC] that

ceases redemption." Essentially, the memorandum concluded on the basis of the Former Manager's assessment of the experience of certain VenGrowth funds that there was no precedent for regulatory relief from the redemption obligations of the Fund beyond two years and that the Fund would likely have to make a fresh case on an annual basis. It also concluded that, depending upon whether a rumored class action against the VenGrowth funds was commenced and certified, if the Fund were to cease redemptions there was a risk of a similar class action lawsuit that would be expected to be "highly newsworthy" and "would likely have negative implications for the reputation of all concerned, including directors."

[138] In a third memorandum to the IC and the Board dated April 7, 2010, the Former Manager addressed the two secondary proposals to be considered by the Board. The memorandum states that "the [Fund] has a plan in place whereby net positive cash flows from the venture portfolio will be more than sufficient to meet the Fund's redemption obligations, allowing the Fund to sustain its critical mass over the long-run." The memorandum stated that, in the near term, the divestiture target of approximately $90 million for the 2011 planning year would result in net liquidity for the Fund of approximately $26 million by March 31, 2011.

[139] In this memorandum, the Former Manager set out the principal risks to realization of the Fund's cash flow plan as the following: (1) risks of delayed divestitures due to the health of the M&A markets; (2) follow-on investment requirements exceeding projections due to the state of the financing markets; and (3) redemptions exceeding expectations if there are "further material setbacks of a legislative or reputational nature" to LSVCC shares. The memorandum also concluded that the proposed Roseway Transaction would increase liquidity over the term of the Transaction until the year of repayment of principal. The Former Manager described the Roseway Transaction as an option that would provide "greater near-term liquidity to the Fund as a form of insurance against such risks".

[140] The Former Manager's view of the Roseway Transaction was summarized in the concluding paragraph of this memorandum as follows:

> Although the Fund has a considerable amount of mature venture assets to support future liquidity plans on a stand-alone basis, we believe that the [Roseway Transaction] – highlighted by the significant net positive cash flows provided to the Fund over the next 3 years – provides an important measure of insurance against the risks of liquidity that are outside the Fund's control…

[141] In a fourth memorandum, the Former Manager updated the liquidity status memorandum provided to the IC earlier in April 2010. The most significant change to the memorandum appears in the two versions of the model for the Fund which were attached as appendices to the memorandum. In these versions, the divestiture proceeds were assumed to be 75% and 50%, respectively of projected divestitures. Of note, at a level of 50% of projected divestitures, or a total of approximately $57 million (which itself appears high), the model predicted a liquidity deficit of approximately $6 million at March 31, 2011. Notwithstanding these revisions, the memorandum confirmed the conclusions expressed in the earlier liquidity status memorandum with the qualification "except where venture exits are at risk".

[142] Lastly, the Former Manager provided two memoranda regarding the proposed Roseway Transaction. In the first, which principally attached relevant documentation for Board review, the Roseway Transaction was described as "aimed at providing additional capital for follow-on financings in [the Fund's] venture portfolio". In the second memorandum, the Former Manager addressed the cost of capital under the Roseway Transaction and the long-term benefits of the Transaction.

[143] With respect to the former, the memorandum concludes that, "[b]ased on current estimates of exit timing and no changes in asset values in the Defined Portfolio, the cost of capital to [the Fund] would be $20 million paid over four years, equal to an internal rate of return (IRR) of Roseway of 31% ... which is comparable to target IRR's associated with private-company equity investments." The memorandum also indicated that an increase in the value of the Defined Portfolio from $100 million to $133 million would result in the Fund covering all the payments due under the Roseway Transaction. In this regard, the Former Manager's analysis of the value of the Defined Portfolio suggested a "conservative" increase of $47 million and a "more probable" increase of $100 million.

[144] With respect to the long-term benefit of the Transaction, the Former Manager also stated that it believed "that the Roseway transaction serves as valuable insurance, providing [the Fund] with the ability to realize on the full value of its portfolio via orderly and value-optimized exits." Using what the Former Manager described as "base case assumptions," the Former Manager estimated $74.3 million of net gains over time from the Fund's venture capital portfolio of which the Fund would retain $47.6 million, the balance being payable to Roseway pursuant to the Participation Agreement.

[145] The minutes of the Board meeting of April 27, 2010 indicate that the IC had met on April 15, 2010 and considered four strategic options for the Fund. The IC rejected option (1) – accepting the present liquidity risk in the hope that future divestment opportunities would satisfy any liquidity concerns – in favour of action to reduce the liquidity risks of the Fund in case the Fund's projections proved to be materially incorrect. The IC considered option (2) – seeking regulatory approval to ceasing redemptions – to be too uncertain for the following reasons:

> With respect to seeking to cease redemptions of GW Cdn shares, many issues would arise that make that possibility uncertain, including (i) potential class action lawsuits against [the Fund] by shareholders who seek damages for the change in redemption rights, (ii) missing out on future marketing benefits in Ontario once the liquidity issue is addressed, (iii) the conditions securities regulators would place on any request for redemptions, and (iv) the experience of other venture capital funds where redemption suspensions have resulted in lower NAVs and no benefit to shareholders…

The Minutes also reflect that the IC noted that traditional sources of debt financing were unavailable so option (3) was not feasible. As a consequence, the IC had focused on option (4), which involved obtaining external funding from non-traditional sources, and had resolved that

the Roseway Transaction was preferable to the alternative financing proposal and should be presented to the Board in greater detail.

[146] As mentioned above, the Board approved the Roseway Transaction at the meeting. The minutes of the Board meeting further reflect the fact that the Former Manager and the Board considered the Roseway Transaction to be "a form of insurance against risks related to material changes in fundraising, divestments and redemptions" and that the Former Manager recommended the Transaction to the Board. The Former Manager also stated that it considered that a principal reason for acceptance of the Roseway Transaction was that "the Fund could commit to greater amounts of follow-on financing for its entire [venture capital] portfolio, that would in turn increase the realized value of the overall portfolio". In this regard, the Former Manager restated at the Board meeting its assessment of the conservative and probable increases in value of the Fund's venture capital portfolio described above that it anticipated from further follow-on financings.

May 2010 to the Suspension of Redemptions in November 2011

[147] The Board was presented with a liquidity status model at the Board meeting held on September 30, 2010. The model indicated that the Fund's liquidity, after inclusion of the proceeds of the loan in the Roseway Transaction and projected redemptions calculated on the basis of 35% of "hot money" capital, totalled $17 million at August 31, 2010 and was projected to amount to $38 million at March 31, 2011. This represented only 13% and 35%, respectively, of "hot money" shares at these dates. These projections included projected divestiture proceeds of $73.2 million and sales of $14.9 million during the period from August 31, 2010 to March 31, 2011. Of note, the amount of liquidity at August 31, 2010 was less than the amount of the loan advanced in the Roseway Transaction. The minutes also indicate that the Chief Financial Officer reported orally to the Board on the projected results under the alternative scenarios of redemption rates of 35% and 44% of "hot money" capital and divestitures at 100% and 60% of projected divestitures. Under the most conservative of these scenarios, the Fund would experience an absolute shortfall of $2.5 million at March 31, 2011.

Projections to the End of the 2011 RRSP Season

[148] This liquidity status model was updated for the Board meeting of November 17, 2010. At this date, the Former Manager projected Fund liquidity of $15 million at March 31, 2011 after projected redemptions that were more conservatively calculated on the basis of 40% of "hot money" capital. The reduction from $38 million also reflected a reduction in projected divestiture proceeds of $8.5 million and the removal of any projected sales. For apparently the first time, the Former Manager provided alternative scenarios in its written report using 100% and 80% of projected divestiture proceeds and 40% and 44% of "hot money" share redemptions.

[149] In a memorandum to the Board for the same meeting, the Former Manager stated that it was proposing to provide biweekly reports by way of a liquidity dashboard until March 31, 2011 in view of the significance of redemption and divestiture activity for the Fund's liquidity during that period. Reflecting a growing concern, the memorandum also noted that the original projection for the planning period to March 31, 2011 contemplated divestiture proceeds of $98 million, that the projection now contemplated $90 million, and that only $24.8 million of

divestiture proceeds had been received in the seven months ending October 31, 2010. The Former Manager was now projecting divestiture proceeds of $64.2 million for the five months ending March 31, 2011.

[150] Commencing in late 2010, the SC reviewed the Former Manager's efforts to pursue the Proposed VenGrowth Transaction. In a report to the SC dated December 6, 2010, the Former Manager stated its view that the proposed transaction would strengthen the liquidity position of the Fund. It stated further that it believed that the combination of a lack of available venture capital financing and improving M&A markets for divestitures provided "an attractive opportunity to acquire mature venture holdings." In short, the Former Manager's focus on liquidity involved implementing the Proposed VenGrowth Transaction and using the improved liquidity to acquire mature venture capital assets at lowered valuations.

[151] During February 2011, the Former Manager provided a number of memoranda for various Board and committee meetings. At that time, the Board was focused principally on the level of redemptions occurring during the 2011 RRSP season. For planning purposes, the Former Manager was now conservatively projecting redemptions equal to 44% of "hot money" shares. It noted in a memorandum prepared for a Board meeting on February 17, 2011 that, if it continued, this redemption level would require substantial external financing "to supplement liquidity from near-term venture exits." The memorandum also stated that the Former Manager continued to predict a liquidity shortfall as of March 31, 2011 that had been originally projected in a previous report as of January 1, 2011, which is not in evidence. The memorandum also noted that divestitures continued to fall below projected levels. More significantly, it also noted that projected divestiture proceeds for the remaining period to March 31, 2011 were also scaled back.

[152] In a second memorandum reporting on the Fund's status as of February 18, 2011, the Former Manager reported that, at a redemption rate of 44% of "hot money" shares, its projections demonstrated that the Fund would require both the WOF Loan and a loan from Matrix in the amount of $5 million to meet the Fund's cash requirements and the covenant requirements in the Roseway Transaction, with the timing of such need depending upon the redemption experience in February.

The Position Following the End of the 2011 RRSP Season

[153] The next report of the Former Manager in evidence respecting liquidity is contained in a memorandum to the Board for its meeting of April 27, 2011. The memorandum addresses the liquidity position of the Fund as of April 15, 2011, after the end of the 2011 RRSP season. By this time, the Fund's liquidity had improved in the short-term due to two factors: (1) the annual level of redemptions for the period ending March 31, 2011, which ended up being only 24% of "hot money" capital; and (2) the closing of a large divestiture transaction after March 31, 2011, which yielded proceeds of $12 million.

[154] As a result of these factors, the Former Manager projected that "if exits and redemptions continue as expected until August 31st, then no injections from WOF or Matrix will be required." The Former Manager noted, however, that the Fund's ratio of "hot money" capital to NAV continued to rise due to lower redemptions. It also commented that the timing of divestitures

was the Fund's greatest challenge and that the exits totalling $16.9 million projected to August 31, 2011 were critical to maintaining sufficient liquidity. It further suggested that "[e]xternal financing [from the WOF Loan and the Matrix Loan] may be required to supplement liquidity from near term venture exits."

[155] The minutes of the Board meeting of April 27, 2011 reflect a report from the Former Manager that total sales of Class A Shares for the preceding 12 months totalled only $1.4 million. The minutes also state that, for the year ending March 31, 2011, divestiture proceeds totalled $50.7 million, well short of the budgeted $90 million, which was in fact initially budgeted at $98 million. The Chief Financial Officer also commented that "[t]he timing of divestments was generally lower than anticipated, mostly due to market conditions."

[156] In a subsequent memorandum for the June 8, 2011 Board meeting, the Former Manager stated that the projections as of May 27, 2011 suggested "that the Fund may continue to be self-sufficient through the end of the current and subsequent RRSP seasons." However, at a more granular level, the weekly projections that the Former Manager had been creating since the beginning of the year identified certain weekly liquidity deficits in the period to October 31, 2011 that would require short-term draws under the WOF Loan and a deferral of payment of the management fees due to the Former Manager. In the liquidity analysis attached as an exhibit to this memorandum, divestiture proceeds for the remainder of the period to March 31, 2012 were projected to be only $60.9 million.

The Reporting for the Board Meeting of September 30, 2011

[157] The next memorandum of the Former Manager was prepared for the Board meeting on September 27, 2011, at which meeting the Board resolved to cease the sale of Class A Shares. The memorandum states that, while redemptions had been tracking reasonably close to expectations, divestitures for the current planning period had declined by approximately $18 million and investment activity had increased resulting in a combined reduction in projected liquidity of $22.9 million. Total divestiture proceeds for the five months ending August 31, 2012 were $25.2 million. The Former Manager had also reduced its projections for divestitures for the remainder of the period to March 31, 2012 from $41 million to $25 million. As Levi noted, without the WOF Loan, the Fund would have been in a deficit position of approximately $7 million at August 31, 2011.

[158] The memorandum attributed the decreased rate and delayed timing of divestitures to three factors: (1) global economic uncertainty since the early summer; (2) delays in attaining clinical trial data in the case of certain life sciences investments; and (3) shortfalls in the financial performance of a few investments. The memorandum concluded that, of these factors, "the impact of the economic uncertainty seems to be playing the largest role and had been seen in the 2008-2010 timeframe."

[159] The Former Manager also provided a preliminary liquidity analysis and projection of the Fund's liquidity status at December 31, 2011 and at March 31, 2012 under four scenarios, using divestitures of $51 million and $28.7 million and redemptions at the rates of 25% and 35% of "hot money" capital. Combined with five possible redemption options, this analysis set out 20 scenarios for consideration. Under the most positive scenario of $51 million of divestitures and

unrestricted redemptions at a 25% rate of "hot money" capital, however, the projections contemplated excess liquidity of $0.7 million at March 31, 2012 after drawing down fully both the WOF Loan and a $5 million loan from Matrix under discussion. On the basis of this analysis, the Former Manager recommended that the Board convene a special meeting at the end of October, reflecting the urgency of the situation, to address "various redemption modification scenarios to address cash flow concerns…when more accurate divestment and redemption information will be available."

The Reporting for the Special Board Meeting of October 27, 2011

[160] As mentioned above, at a special meeting on October 27, 2011, the Board accepted the Former Manager's recommendation that the Fund adopt the RMP. For the purposes of this meeting, the Former Manager also prepared a lengthy memorandum.

[161] Among other things, the memorandum contained a detailed financial analysis regarding the Fund's current and projected cash position. Most significantly, the memorandum concluded that "[b]ased on the revised projections, going forward from November 1, 2011 the Fund will not have sufficient funds on hand to honour anticipated Class A Share redemption requests while continuing to participate in value-preserving follow-on investments and pay its operating expenses."

[162] The Former Manager opined that divestitures were lower than projected as a result of a heightened level of uncertainty, fears of a new recession, and resulting high levels of market volatility. The memorandum also included an extensive analysis of the 62 venture capital investments in the Fund's portfolio. Among other conclusions, the Former Manager stated its belief that "[the Fund] should be able to maintain its historic rate of $50 million a year in exits even if some targeted exits are delayed and/or exit values are adjusted downwards." Among other things, this statement reflects a downwards revision in the projections for divestitures until 2013 to the level of $50 million annually.

[163] For the first time, the Former Manager acknowledged that the Fund "had closed sales of its Class A Shares and effectively entered a wind-down phase." The memorandum also canvassed in some detail the feasibility of a number of options for managing liquidity based on the activities of the Former Manager in pursuing such options since 2010. The Former Manager recommended adoption of the RMP. It stated that its objective was "to see [the Fund] return to weekly, unrestricted redemptions within 24 to 36 months." In this regard, the memorandum stated that past orders of the securities regulatory authorities issued to other LSVCCs had generally been limited to 24 months but the Fund's application submitted by the Former Manager in respect of the RMP sought a 36-month order as the Former Manager expected that the Fund would be able to divest more than 60% by value of the Fund's venture capital investments over that period.

The Expert Evidence

[164] In this case, the evidence of the expert witnesses is important in establishing the standard of care required of the plaintiff for the purposes of section 3.5 of the Management Agreement. The following summarizes the evidence of the experts. I have then set out certain observations

of the Court regarding these opinions that identify certain of the issues addressed in these Reasons.

Gekiere

[165] The defendants produced as an expert Barry Gekiere ("Gekiere"), whose evidence was contained in an affidavit sworn August 5, 2016 (the "First Gekiere Affidavit"), a further affidavit sworn November 16, 2016 (the "Second Gekiere Affidavit") and a third affidavit sworn June 5, 2017 containing answers to written interrogatories (the "Third Gekiere Affidavit"). Gekiere provided a written opinion (the "Gekiere Opinion"), which was attached to the First Gekiere Affidavit, and a written response to the Varghese Opinion (described below), which was attached to the Second Gekiere Affidavit (the "Gekiere Response").

The Gekiere Opinion

[166] Gekiere was asked by the Fund to provide an expert opinion as to whether the Former Manager met the standard of care required by section 3.5 of the Management Agreement in recommending and implementing the Roseway Transaction, the WOF Loan, the Matrix Loan and the Newbury Transaction. It is his opinion that it did not.

[167] In the First Gekiere Affidavit, Gekiere summarized the basis of his opinion as follows:

> A prudent manager would have better anticipated the liquidity issues that the Fund faced in FY2009 [being the fiscal period ending August 31, 2009] and FY2010 [being the fiscal period ending August 31, 2010]. In the face of these liquidity issues in FY2009 and FY2010, the Former Manager did not take appropriate action (i.e. recommend that the Fund seek regulatory approval to cease redemptions). This caused the reserve for follow-on investments to be insufficient to make needed follow-on investments in FY2010. Accordingly, the Fund was required to take on debt, which is inappropriate for investment funds for reasons outlined [in the Gekiere Opinion]. In addition, the terms of the debt taken on by the Fund were inappropriate.

[168] Gekiere expanded upon the basis for this conclusion in the Gekiere Opinion. In Gekiere's opinion, the announcement of the Government of Ontario significantly changed the economics of the LSVCC business model such that the Former Manager should have planned for significant reductions in cash inflows from the sale of Class A Shares starting in fiscal 2009. The announced withdrawal of the investment tax credit on the sale of Class A Shares implied that, thereafter, the only major source of capital inflows for the Fund would be divestitures of the Fund's venture capital investments. Further, the Former Manager had eight years' notice that redemption levels were likely to be high in fiscal 2009 and thereafter, given the peak sales of Class A Shares in earlier years. In Gekiere's opinion, from as early as the fall of 2005, the Former Manager should therefore have been alerted to the possibility of liquidity problems starting in fiscal 2009 based on the combined impact of these two factors. Further, the Former

Manager would have realized that the Fund would be entirely dependent on divestitures to the extent that sales of Class A Shares declined commencing in or before fiscal 2009.

[169] Accordingly, the Former Manager should have recognized the need to maintain adequate reserves for follow-on investments much earlier than the fall of 2009 (during fiscal 2010), and should have considered various options to ensure such reserves much earlier than fiscal 2010. These options included scaling back or ceasing new investments much earlier than April 2009, reducing marketing and sales expenses given the likely reduction in sales of Class A Shares, analyzing more closely the potential returns on follow-on investments and rationing reserves more strictly according to such analyses, and, if necessary, halting redemptions.

[170] Instead, in Gekiere's opinion, the Former Manager focused on an acquisition strategy and "basically allowed redemptions to deplete the capital that should have remained available for follow-on investments." As a result, the Fund was unable to fund follow-on financings at the commencement of fiscal 2010 as redemptions continued to exceed cash inflows from sales of Class A Shares and divestitures.

[171] In Gekiere's opinion, given the high uncertainty in fiscal 2010 regarding the timing and amount of exits in view of the economic conditions at the time, the Former Manager compounded the situation by recommending that the Fund obtain outside capital from Roseway having fixed repayment terms rather than a true participation arrangement, or "patient capital," under which repayment would be made out of divestiture proceeds as exits occurred. In short, in his opinion, the Former Manager did not act prudently in recommending that the Fund borrow to fund follow-on investments and it was particularly imprudent to borrow on the terms of the Roseway Transaction.

[172] As a related matter, Gekiere also believes that the Former Manager's actions resulted in an unfairness to the Fund shareholders who remained after fiscal 2009 in two respects. By allowing redemptions during fiscal 2009 at the NAV per share at the time, the Former Manager was effectively reducing the NAV per share of the remaining Class A Shares. Further, by allowing redemptions during fiscal 2010 at a NAV per share that did not reflect the $17.1 million interest costs over three years under the Roseway Transaction, the remaining shareholders were bearing such costs by way of a reduction in the NAV per share of their Class A Shares.

[173] More generally, in Gekiere's opinion, the Former Manager's actions created significant and unnecessary expenses for the Fund by way of the costs of the Roseway Transaction, as well as the interest costs of the subsequent WOF Loan and Matrix Loan and the discount on the sale of assets pursuant to the Newbury Transaction. In particular, the Former Manager did not recommend suspension of redemptions of Class A Shares until November 2011, by which time, in Gekiere's opinion, the damage to the Fund's liquidity position had been done and the Fund was in a critical working capital position. This required the Fund to enter into the WOF Loan and the Matrix Loan and to sell assets at a substantial discount pursuant to the Newbury Transaction.

The Gekiere Response

[174] In the Response, Gekiere stated that it remained his opinion after reviewing documentation not previously provided to him that, with respect to the Roseway Transaction, the Former Manager did not discharge its duties in the best interests of the Fund, exercising the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

[175] Gekiere summarized what he characterized as the four key points of the Gekiere Opinion as follows:

> 1. Future potential liquidity problems in the Fund should have been apparent to the Former Manager as early as 2005, when the Province of Ontario announced the phase out of its 15% tax credit starting in 2009. A prudent manager would have acted accordingly to ensure that adequate follow-on reserves would be available, whereas the Fund did not have adequate follow-on reserves in fiscal 2010.
>
> 2. The use of debt is inappropriate in a venture fund and the Roseway Transaction was particularly inappropriate as it was fundamentally used to fund redemptions.
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> 3. The appropriate course of action on the part of the Former Manager should have been to recommend to the Board that the Fund seek regulatory approval to cease redemptions as early as fiscal 2009.
>
> 4. The possible rationale for the Former Manager's reluctance to seek regulatory approval to cease redemptions as early as fiscal 2009 was that it would jeopardize the Former Manager's ability to merge with other funds in order to increase assets under management and generate more fees for the Former Manager.

[176] In the Response, Gekiere reviewed in greater detail the reasons why he believed these points remained valid notwithstanding the Varghese Opinion. In particular, Gekiere made the following relevant points for present purposes.

[177] First, as discussed below, Varghese stated in the Varghese Opinion that, after the Fund had disappointing sales in the first quarter of 2006, a prudent board of directors should have taken preventative measures. Gekiere agrees with the assessment, but considers the responsibility for recommending such measures to have rested with the Former Manager.

[178] Second, Gekiere notes that Varghese's position is that the sole, or at least the predominant, reason for the liquidity problems of the Fund was the financial crisis of 2008, which had an adverse impact on the divestitures projected by the Former Manager. Gekiere's view is that the Former Manager was overly optimistic in its projections of divestitures to the point of failing to meet the required standard of care:

> The Former Manager provided the Board with overly optimistic exit projections giving the Board a false sense of comfort that exits would be sufficient for follow-on requirements and redemptions to be met. A prudent manager, especially in light of the 2008 financial crisis, would not have relied heavily on exits. Even in normal economic times it would not be prudent to rely heavily on projected exits as they are difficult to accurately predict. Given the state of the economy at that time a prudent manager would have at least erred on more conservative forecasts making the Board explicitly aware of the potential risk of not receiving sufficient capital inflows to cover follow-on investments and redemptions.

[179] Third, Gekiere is of the view that the Former Manager did not meet the required standard of care by merely providing the information described above – that is, that such actions cannot be properly characterized as "pro-active" as Varghese suggests:

> Given that the Fund could no longer rely on new sales to be a buffer for follow-on investments the only meaningful capital inflows would have to come from exits/ divestitures. If exits were to prove to be insufficient to fund both follow-on investments and redemptions, then the only logical decision for a prudent fund manager would be to seek regulatory approval to cease redemptions in order to make the follow-on investments.
>
> Given that exits were unpredictable, especially during the aftermath of the 2008 financial crisis and follow-on investments were mostly predictable and necessary to maintain, then a prudent manager would have set trigger points as to when it would be necessary to approach regulatory authorities to cease redemptions, in order to continue to fund follow-on investments. Thus, when exits started to fall below projections, the implications would have been clear to the Board and action to cease redemptions would have been taken.

The Third Gekiere Affidavit

[180] In his answers to interrogatories set out in the Third Gekiere Affidavit, Gekiere further clarified his opinion in the following respects.

[181] First, Gekiere is of the opinion that the Former Manager should have established a liquidity forecasting model by at least April 23, 2008 and should have alerted the Board at the meeting held on that date of the significant reduction in liquidity that would occur in the 2009 RRSP season (January and February 2009) should projected exits not occur. Gekiere believes that not only did this not occur but the Former Manager also provided an overly-optimistic view of the liquidity position of the Fund and its prospects in the spring of 2008 by, among other things, referring to the liquidity position of the Fund as at December 31, 2007 rather than March 31, 2008, which he estimates was $50 million lower.

[182] Gekiere's opinion regarding the course of action that the Former Manager should have taken in the spring of 2008 is expressed as follows:

> Based on all the information that would be available to the Former Manager at April 23, 2008, the Former Manager should have been informing the Board that liquidity at December 31, 2007 was at a seasonal peak and the Fund's liquidity had dropped after the 2008 RRSP season. The Former Manager should have presented the actual liquidity position at March 31, 2008. Then, the Former Manager should have presented the Board with a liquidity forecast showing that a further deterioration in Liquid Assets in the range of $70 million could be expected by March 31, 2009 before exits, with a high level of predictability.
>
> At this time, the Former Manager should have been advising the Board that the Fund would be extremely dependent on future exits, which are difficult to accurately predict. At this point a prudent fund manager would have been recommending to the Board that the level of projected exits must be scrutinized closely and if at any time the amount of Liquid Assets fell below the total projected amount of investments and redemptions, without the benefit of future exits, then ceasing redemptions would have to be considered in order to maintain reserves for follow-on investment.

[183] Second, Gekiere is of the opinion that, during fiscal 2009, the Former Manager should have advised the Board that exits may not hit the level previously projected and should have described the impact of such results on the Fund's liquidity, particularly in view of the upcoming redemptions in the 2009 RRSP season (January and February 2009).

[184] Third, Gekiere is of the opinion that, in the spring of 2009, the Former Manager should have alerted the Board to the need to approach regulatory authorities with a view to ceasing redemptions of Class A Shares prior to the 2010 RRSP season (January and February 2010). He believes that, instead, the Former Manager masked the seriousness of the Fund's liquidity position by moving to reporting of the Fund's liquidity coverage ratio based on coverage of anticipated redemptions (using the historical average of 35% of hot money) rather than on coverage of all "hot money" shares as it had done previously. If the former manner of calculating the liquidity coverage ratio had been maintained, it would have been clear that liquid assets at March 2009 were not materially more than expected redemptions during fiscal 2009. This made the Fund's liquidity very sensitive to the level of redemptions in fiscal 2009 and to the projected level of divestitures, which was in excess of $70 million over the period September 2009 to March 2010. Gekiere regards this projected level of divestitures as unrealistic at the time given the Fund's current and historical experience as well as the state of the economy in the spring of 2009.

[185] Gekiere summarizes his opinion regarding the course of action that the Former Manager should have followed in the spring of 2009 as follows:

> The Former Manager knew the Fund was now in the position that liquid assets were less than the total amount of capital needed for projected follow-on investments and redemptions, without the benefit of future exits. Since exits were not predictable and should not be relied on, a prudent manager should have been recommending to the board the need to cease redemptions.

[186] Gekiere is further of the opinion that, by not having approached the regulatory authorities in advance of the 2010 RRSP season, the Former Manager put the Fund in a position whereby redemptions could not be terminated and the Board had no choice but to approve the Roseway Transaction in April 2010 in order to be in a position to make follow-on investments. He regards the Roseway Transaction as therefore directed, in substance, toward providing financing to fund the Class A Share redemptions that had occurred earlier during the 2010 RRSP season (January and February 2010).

Varghese

[187] The plaintiff presented a report of John Varghese ("Varghese") that was appended to an affidavit sworn November 11, 2016 (the "Varghese Affidavit"). From 2005 to 2011, Varghese was, among other things, a co-owner and the chief executive officer of the VentureLink Group of Funds, which also managed an LSVCC. In addition, as the chairman of the Retail Venture Capital Association of Canada for two years and otherwise, Varghese was, by his own admission, one of the lead lobbyists between 2005 and 2010, together with Levi, for the LSVCC industry seeking to re-establish the viability of the LSVCC industry by reversing the decision of the Government of Ontario or obtaining its acceptance of a replacement programme to encourage investment in LSVCCs.

The Varghese Opinion

[188] Varghese was asked by the plaintiff to provide an opinion with respect to the standard of care of the Former Manager, as set out in the Management Agreement, and whether the Former Manager breached this standard of care and the Former Manager's fiduciary duty to the Fund as a result of the matters alleged in the pleadings in this action, the Termination Letter and the affidavit of Ross sworn August 5, 2016 in this action. It is Varghese's opinion that the Former Manager did not fail to discharge its duties in the best interests of the Fund. His opinion is based on, or relies on, the following principal conclusions.

[189] First, Varghese acknowledges that "the forecasting capabilities of the Former Manager may be questioned using hindsight." However, he is of the view that "the unforeseeable impact of the financial crisis of 2008 and 2011 would also have adversely affected forecasts and projections without it being the responsibility of the Former Manager." In short, he says that it is only with the benefit of hindsight that it is reasonable to expect that actual results could have been negatively affected by these events.

[190] Second, Varghese considered that the Board had the responsibility of establishing the Fund's strategic objectives and monitoring the Former Manager's implementation of these objectives. While he does not expressly state his view of the Former Manager's responsibilities,

it is implied from his approach that they were limited to planning and reporting on investments, redemptions, sales and the liquidity position of the Fund. In Varghese's mind, the Board had sole responsibility for identifying and planning for the Fund's liquidity risks. Accordingly, based on this division of responsibilities as well as the language of the charters of the Board committees, he considers that the Board was solely responsible for ensuring the management of redemptions of Class A Shares and, therefore, "it is not appropriate to blame the Former Manager for its failure in this regard."

[191] Similarly, he acknowledges that the dramatic decline in sales that followed the announcement of the Government of Ontario should have been known and anticipated from 2005 onward. However, Varghese attributes the responsibility for risk assessment and risk management pertaining to this development to the Board rather than the Former Manager.

[192] Further, in his summary, Varghese is clear that, in his opinion, the Board had an obligation immediately after the financial crisis of 2008 to "re-assess its risk and its strategy in the aftermath of the crisis." Varghese says there is no evidence that the Board did so but rather evidence that it continued on a "business as usual" basis. He concludes that "this demonstrates a failure by the Board to fulfill its fiduciary duties."

[193] Varghese does not, however, suggest that the Board disregarded any advice or presentation from the Former Manager proposing, advising or recommending any other course of action. Nor is there any suggestion of any such action in the evidence before the Court.

[194] Third, Varghese considered that, throughout the period following the execution of the Management Agreement in 2006, the Board mandated the Former Manager to make the Fund the largest LSVCC in Canada. He proceeded on the basis that the Board supported this strategy up to and including the Proposed Vengrowth Transaction. In this regard, he states that, in his opinion, ceasing redemptions would have had the immediate and permanent impact of derailing this mandate. Accordingly, Varghese was of the opinion that "[i]t is inappropriate [to] throw the blame upon Former Manager in hindsight for its purported apparent failure to plan for liquidity needs of the Fund in the face of the [m]andate."

[195] Varghese's opinion in this regard is neatly summarized in paragraph 14 of his opinion, which reads as follows:

> In my opinion, the Board of the Fund is not taking responsibility for its shortcomings as it attempts to blame the Former Manager for not providing liquidity planning when such an inherent conflict existed between the Board mandated growth plan and liquidity management. This is especially true given that the responsibility of the Board increased when the business environment of the Fund changed as dramatically as it did in the [LSVCC] industry.

[196] Fourth, in response to the Gekiere Opinion, Varghese noted that Gekiere had not been given access to all of the documentation to which Varghese had been given access. He considered that Gekiere would have reached a different conclusion in the Gekiere Opinion if he had been able to review such materials.

[197] In this regard, Varghese refers to the various documents described above in which the Former Manager either commented upon the likely impact of proposed mergers on the liquidity of the Fund or forecast the liquidity position of the Fund in the future. It is his view that these documents demonstrate that the Former Manager was aware of the importance of liquidity, including the need to provide for follow-on investing, and brought this to the attention of the Board. In particular, Varghese was of the view that Gekiere would not have reached the same conclusions if he had reviewed the documentation provided to the Board and the Board committees in March and April 2010 described above. I note, however, that, as discussed above, Gekiere confirmed his opinion after reviewing such documentation to the extent that he had not already done so.

[198] Fifth, Varghese is of the view that, given the Fund's liquidity position in April 2010, it is unlikely that the Fund would have received regulatory permission to halt redemptions at that time. In this regard, Varghese took a more extreme position than the Fund, which submitted only that it could not have obtained redemption suspension relief for a sufficiently long period of time to avoid a "fire sale" of its assets.

[199] Sixth, Varghese justifies the terms of the Roseway Transaction on two grounds. First, he says that they were the best terms available to the Fund. Second, he says that, had the Defined Portfolio increased in value in the order of magnitude presented to the Board by the Former Manager, Roseway's return would have reflected a true participating interest. He says the timing of the divestiture of the investments in the Defined Portfolio frustrated this increase in value. He considers, however, that the Former Manager gave the Board the necessary analysis to permit it to make an informed decision.

[200] Seventh, Varghese states that, in his opinion with reference to the Kirchner Letter, the Board "made a material error in not pursuing this *bona fide* offer as it might have been a viable solution for the liquidity issues that came in 2012 and 2013."

Observations Regarding the Expert Opinions

[201] Varghese and Gekiere agree on a number of matters that will be addressed below. The principal differences between Varghese and Gekiere come down to the following five matters.

[202] First, Gekiere is of the view that the Former Manager had the responsibility for liquidity risk arrangements, including in particular ensuring adequate reserves for follow-on investments and bringing these matters to the Board's attention. Varghese believes this responsibility lay with the Board and that the Board failed to discharge its responsibilities.

[203] Second, Varghese is also of the view, based on his reading of the record, that to the extent the Former Manager did not discharge its responsibilities, it failed to do so, and should be relieved of any responsibility for failing to do so, because it was implementing a Board-mandated strategy of growth of assets through mergers with other LSVCCs.

[204] Third, Varghese believes that, in any event, the liquidity problems of the Fund, and in particular its inadequate reserves to fund follow-on investments in April 2010, was the result of the economic crisis of 2008, which severely limited divestitures of the Fund's venture capital

investments. He is of the view that it is inappropriate to find the Former Manager liable for failing to anticipate the depth and duration of the adverse effects of this event on divestitures during the period from September 2008 to April 2010.

[205] In contrast, Gekiere is of the opinion that the Former Manager was far too optimistic in its projections of divestures during this period given that divestitures of venture capital investments were inherently uncertain even in the absence of the economic crisis of 2008. He is of the view that the Former Manager should have included much more conservative projections in its reporting to the Board and should have recommended liquidity options to conserve cash, other than debt financing, during 2009 if not earlier.

[206] Fourth, Gekiere is of the opinion that, because the Former Manager did not recommend that the Board consider options to conserve cash in order to manage its liquidity position prior to 2010, its actions left the Fund in the spring of 2010 with the Roseway Transaction as the sole option to address its liquidity problems. As mentioned, Varghese believes that the Board, rather than the Former Manager, was responsible for liquidity management, including ensuring the maintenance of adequate reserves for follow-on investments, and that, accordingly, any failure to address options earlier to maintain cash reserves for follow-on investments was the Board's responsibility.

[207] Fifth, Gekiere is of the opinion that the Roseway Transaction was an inappropriate transaction for the Fund in April 2010 because it was effectively a loan with fixed repayment terms over a relatively short period at a high interest rate. Gekiere is of the opinion that, given the liquidity position of the Fund in April 30, 2010 as a result of the Former Manager's inaction and given the financing options available to the Fund at that time, the Fund should have ceased redemptions as soon as possible, rather than enter into the Roseway Transaction. Varghese believes the Roseway Transaction was a defensible transaction either (1) because it was the best deal available at the time or; (2) because, if the divestiture projections for the Defined Portfolio had materialized, it would have resolved the Fund's liquidity problems and, in his view, the terms of the Roseway Transaction were appropriate for the potential return to the Fund. Varghese also believes these divestiture projections were not realized because of the European financial crisis of 2011, which the Former Manager could not reasonably have foreseen.

[208] For present purposes, these differences are significant because they reflect the principal issues the determination of which underpin the Court's conclusions in this action. I will therefore address the first and second issues in the following section and the remaining issues in the analysis later of whether the Former Manager breached section 3.5 of the Management Agreement.

Observations and Conclusions

[209] The following factual determinations inform the conclusions in these Reasons.

The Significance of the Roseway Transaction

[210] The evidence is clear, and I believe undisputed, that the Fund's decision to enter into the Roseway Transaction set in motion a series of events that led to the CCAA filing in 2013. As

Varghese stated in the Varghese Opinion, "[a]ll future external financing requirements arose because of the Roseway transaction and liquidity concerns created as it related to outside third party investors."

[211] The Roseway Transaction had a finite term and required interest payments of $5.7 million in each of the three years of that term. Given the Fund's inability to sell Class A Shares as a result of the phase out of the Government of Ontario investment tax credit, the Fund's ability to satisfy the Roseway Obligations, and therefore the Fund's viability, were dependent entirely on the generation of sufficient divestiture proceeds to fund such Obligations and to fund redemptions during that period. The Roseway Transaction was intended to provide liquidity as required over this term to permit the Fund to continue to honour redemptions and to make necessary follow-on investments pending receipt of divestiture proceeds sufficient to satisfy the Roseway Obligations and to restore the liquidity of the Fund.

[212] However, as described above, the Fund consistently realized divestiture proceeds of only one-half of the amounts projected at the time of entering into the Roseway Transaction. To address the resulting liquidity gap in 2011 and thereby enable the Fund to continue its activities, including honouring redemption requests, the Fund entered into the WOF Loan. As divestiture proceeds continued to fall below expectations, the Fund was forced to cease redemptions in November 2011.

[213] Notwithstanding the suspension of redemptions, the Fund's cash flow remained insufficient. To address its continuing liquidity problems including payment of interest due to Roseway, the Fund entered into the Matrix Loan in 2012. The Fund also entered into the Newbury Transaction at the end of the year, the proceeds of which were used principally to repay the WOF Loan. While the Matrix Loan was ultimately repaid in 2013, the Fund's cash flow from divestitures remained insufficient to satisfy the Roseway Obligations notwithstanding the continuing suspension of redemptions. Accordingly, when Roseway refused to restructure the Roseway Transaction, in the absence of any refinancing alternatives, the Fund's sole option was a CCAA filing while it negotiated a potential merger that ultimately did not proceed.

[214] Accordingly, the central issue in this action is whether the Former Manager met the Standard of Care in the period prior to and including the spring of 2010 when the Fund entered into the Roseway Transaction. While similar issues are presented by the decisions to enter into the WOF Loan and the Matrix Loan, these transactions are a direct consequence of the Roseway Transaction. Accordingly, the recommendation to enter into these transactions would not have breached the Standard of Care under most circumstances unless the recommendation to enter into Roseway Transaction itself breached the Standard of Care. I have therefore not addressed these latter issues in any detail in these Reasons.

The Respective Responsibilities of the Former Manager and the Board

[215] As discussed above, the obligations of the Former Manager for strategic direction of the Fund are the subject of a significant difference of opinion between the experts and a matter of significance for the conclusions of Gekiere and Varghese. The issue is also important in several respects for the Court's conclusions. However, I do not think that this is a matter within the expertise of the parties' experts as it engages a legal issue.

[216] Gekiere proceeds on the basis that liquidity management was the responsibility of the Former Manager under the Management Agreement. He understands that role to encompass more than merely regular reporting to the Board in a manner that permitted an informed assessment by the Board of the Fund's current and projected liquidity position. In his view, the Former Manager was also responsible for the timely identification of future liquidity problems and pro-active recommendation of options to mitigate such concerns in order to maximize the value of the Fund's venture capital investments by ensuring the capacity to make necessary follow-on investments.

[217] Varghese proceeded on the basis that the Board was responsible for approval and oversight of the "overall vision, objectives and long-term strategy" of the Fund. Conversely, in his view, the Former Manager was responsible for implementing the Board's vision and strategy and achieving its objectives while managing the associated risks. Accordingly, in his view, the Board was responsible for approving a strategic plan and overseeing the Former Manager's implementation of the plan as well as monitoring the Fund's performance against the strategic plan.

[218] In my view, Varghese's approach to the division of responsibilities does not reflect the realities of the relationship between the Board and the Former Manager in the present context for the following reasons.

[219] The venture capital industry is a sophisticated sector of the investment market. It requires expertise not merely in the making and monitoring of investments. It also requires effective management of cash flows to ensure that necessary follow-on investments can be made to maximize the value of a fund's investments. This is particularly the case in respect of LSVCCs because their cash flows are dependent on future sales of shares to fund redemptions as well as divestitures. The Board members were not, and were not expected to be, experts in the management of an LSVCC. It was therefore inherent in the present circumstances that the Board would look to the Former Manager for the development and recommendation of a strategic plan for the Fund.

[220] Further, the management of the Fund's liquidity position could not practically be divorced from oversight of the Fund's objectives and strategic plan. Liquidity management involved an integration of the Fund's current and projected cash inflows and cash outflows as described above. In particular, it required a detailed assessment of the future cash needs, and likely divestiture values and timing, of its venture capital investments. After the announcement of the Government of Ontario, it also required a realistic assessment of the future market for the sale of the Fund's Class A Shares. The Board necessarily had to rely on the Former Manager for all of this advice as part of the Former Manager's reporting of the Fund's current and projected liquidity position. It also had to rely on the Former Manager's advice regarding the likely consequences of the Fund's projected performance for the liquidity position of the Fund and identification on a pro-active basis of policies to address projected liquidity deficits.

[221] I accept that the Board had the obligation to approve and supervise the implementation of a strategic plan for the Fund. That does not, however, exclude the Former Manager's obligation to develop and recommend a viable and realistic strategic plan for the Fund as well as to monitor, on its own, the Fund's performance relative to the plan and to pro-actively recommend options or

changes to the Fund's strategic plan in response to adverse developments. The Board members were not in a position to develop an independent analysis, or additional options for the Fund, particularly in view of the lack of any employees of the Fund itself. On the other hand, they were in a position to, and had an obligation to, assess the quality of the reporting to them, including the analysis and recommendations of alternative courses of action to the Fund, and to require that such reporting and recommendations meet best practices in the industry.

[222] Accordingly, I conclude that, in the present circumstances, the responsibility for the development of the Fund's business strategy was a joint responsibility of the Board and the Fund. In the present circumstances, it is not realistic in my view to find that either the Board or the Former Manager had the sole responsibility, or the principal responsibility, for liquidity management. Each party was intimately and regularly involved in the supervision of the liquidity management of the Fund. I note that, in its closing submissions, the Former Manager accepted that the Services included the provision of strategic advice to the Board regarding, among other matters, liquidity management. This position effective renders the issue of the Board responsibility for liquidity management, as assumed by Varghese, irrelevant, given that the principal issue is not the Board's actions but the Former Manager's actions. In any event, for present purposes, I find for the foregoing reasons that the Former Manager was equally responsible with the Board for the management and oversight of the Fund's liquidity position.

Did the Board Mandate a Growth Strategy?

[223] The Varghese Opinion proceeds on the basis that the Board established and maintained a strategy of asset growth through acquisitions and mergers throughout the period of the Former Manager's engagement. The Former Manager also asserted this position in its pleadings and elsewhere, although, as discussed below, it modified this position somewhat in its closing submissions. The evidence for this alleged growth mandate is principally as follows.

[224] First, section 7.1(b) of the initial management agreement, which dealt with the Former Manager's relationship with the Other GrowthWorks Funds, read as follows:

> The Manager covenants and agrees with the Fund that:
>
> …
>
> (b) the Manager's intent is to work with the Funds to achieve the objective of the [Other GrowthWorks Funds]:
>
> (i) being a truly national fund group, by both raising capital and investing across Canada (other than British Columbia);
>
> (ii) being a national LSVCC leader;
>
> (iii) ultimately being the largest LSVCC group in the country (outside of Quebec); and

(iv) ultimately being the largest LSVCC group managed by the Manager (or its affiliates).

[225] This language was reformulated in the Management Agreement in section 7.1(b) as follows:

> The Manager covenants and agrees with the Fund that:
>
> …
>
> (b) the Manager's intent is to work with the Fund to achieve the objective of the GrowthWorks Funds
>
> (i) being a national LSVCC leader;
>
> (ii) ultimately being part of the largest LSVCC group in the country (outside of Quebec); and
>
> (iii) ultimately being the largest LSVCC group managed by the Manager (or its affiliates).

[226] Second, Varghese refers to a management information circular sent to shareholders in connection with the acquisition of CSTGF and CAVI in 2005, which described as a benefit of these transactions that the Fund would "become one of the largest labour-sponsored investment funds … in Canada." The Former Manager refers to similar language in documentation provided to the Board on April 6, 2006 in connection with the FOF Transaction. Varghese also referred to the language of a recital in the Participation Agreement in the Roseway Transaction, which he considered confirmed the existence of the growth mandate. This recital does not support such an interpretation given the text which refers only to allowing the Fund "to pursue its business objectives" without defining those objectives. It is therefore disregarded.

[227] I am not persuaded that the Board specifically mandated a strategy of asset growth throughout the period of the Former Manager's relationship with the Fund, and in particular after 2007, for the following reasons.

[228] First, the evidence is clear that the growth of the LSVCCs was an objective that made economic sense for the Former Manager. The more the assets under management, the more fees the Former Manager would receive. In addition, the Former Manager was able to achieve economies of scale. More fundamentally, the business model of Growthworks was based on the LSVCC model.

[229] However, growth by itself was not necessarily of any particular benefit to the Fund. In this regard, the reasons given by the Former Manager to explain the Fund's alleged growth strategy are not compelling. While growth could result in greater diversification of assets, diversification is not a necessary consequence of growth. It is dependent on the assets to be acquired. More significantly, diversification is a separate objective that was never formally discussed as a strategic goal, apart from the extent of diversification resulting from particular proposed merger transactions. The Former Manager also considered that size would result in a

greater fund-raising capability through the sale of Class A Shares and an enhanced venture asset deal flow. However, these possible benefits were negated by the decision of the Government of Ontario in 2005 and the lack of liquidity after April 2009 to fund new investments, respectively. The Former Manager also suggested that growth would permit retention of capable investment personnel. This was a benefit to the Former Manager but not the Fund, given that the Former Manager was already obligated contractually to provide capable management. Lastly, as Ross testified, growth might have reduced the management expense ratio of the Fund. However, there is little evidence of a material benefit to the Fund in this regard from the mergers in which it participated.

[230] Second, there is no evidence whatsoever of the alleged growth strategy in the records of the meetings of the Board and its committees. In addition, both Ross and Hopkins deny that the Board ever adopted such a strategy.

[231] Rather, the evidence is that the language for the alleged growth strategy came from the Former Manager. It was initially derived from its proposal in 2002 and incorporated into the initial management agreement in the context of the Former Manager's relationship with the other funds that it managed. There is no evidence of any discussion around the language change in the Management Agreement in 2006. Moreover, a new provision incorporated into the Management Agreement to which the Former Manager points – to accommodate the issuance of shares on future mergers without the need for further amendments to the Management Agreement specific to such shares – did not significantly change the agreement and therefore does not evidence any strategic direction of the Fund. Similarly, there is no evidence of any discussion of the Board specific to this language suggesting a greater significance.

[232] Third, the absence of any reference to the alleged benefits of growth in the documentation pertaining to the merger transactions after 2006 is at least as significant as the language identified by the Former Manager in the earlier documentation. There is no suggestion that the merger transactions were being undertaken in furtherance of the alleged strategy.

[233] Fourth, whatever the truth of the Former Manager's assertion with respect to the circumstances surrounding its original engagement in 2002, the world changed dramatically after the announcement of the Government of Ontario in 2005 and even more dramatically after the economic crisis of 2008. Thereafter, a growth strategy only made sense to the extent that it improved the liquidity position of the Fund directly or indirectly. The evidence establishes that both the Board and the Former Manager approved the merger transactions commencing in 2008 on the basis of criteria that did not include growth *per se* and certainly did not place growth above the impact on the Fund's liquidity.

[234] Lastly, and in any event, as the Former Manager itself acknowledged in its closing oral submissions, the Former Manager had an obligation to act prudently regardless of whether or not it would further a growth strategy even if one existed. That obligation included advising the Board if it considered that a proposed merger transaction or other action was imprudent or inappropriate for the Fund. The Former Manager also acknowledged that the Fund did not participate in any transaction that the Former Manager believed to be imprudent or inappropriate in order to further the alleged growth strategy. In particular, it does not justify the Roseway Transaction on the basis that it furthered the alleged growth strategy in some manner nor does it

say that it would not have recommended the Roseway Transaction but for the alleged growth strategy. More significantly, there are no actions of the Fund that the Former Manager says that it recommended because of the alleged growth strategy but would otherwise have opposed. Accordingly, the Former Manager does not actually justify any of its actions on the grounds of the existence of a Board-mandated growth strategy notwithstanding the comments of its own expert, Varghese. For this reason, I consider the existence of the alleged growth strategy to be irrelevant to the issues in this action.

Was The Former Manager's Reporting on the Fund's Liquidity From 2008 to November 2011 Misleading?

[235] The Fund says that the Former Manager breached the Standard of Care in the comprehensibility of its reporting regarding the Fund's liquidity position. In particular, the Fund says that the liquidity analyses starting in 2009 are difficult, if not impossible, to understand and appear to put forward financial results that conflict with each other. The implication is that the Board was misled by such reports.

[236] The Former Manager's reports to the Board and its committees between 2008 and April 2010, which is the crucial period for the purposes of this action, have been set out above. As they are relevant not only for this issue but also for the central issue of whether the Former Manager breached the Standard of Care, I have summarized the principal themes of the reports in this period in the following paragraphs.

[237] Prior to 2009, the Former Manager's reports contemplated a surplus of liquid non-venture capital assets over the total of all "hot money" shares. The Former Manager indicated for the first time in a memorandum to the IC for its meeting on March 19, 2009 that it projected the following: (1) a liquidity deficit after deducting all "hot money" shares of $84 million at March 31, 2009 with liquidity representing 41% of all "hot money" shares at that date; and (2) a liquidity deficit at March 31, 2010 with liquidity representing 45% of all "hot money" shares, assuming completion of the CMDF Transaction. At this time, the Former Manager recommended a liquidity plan focused on divestitures and reduced investment activity, as a result of which the Fund made its last new investment in April 2009.

[238] These projections were largely repeated in a memorandum for the Board for its meeting on September 16, 2009. That memorandum did, however, set out the four key assumptions on which the projections were based, which included sales of $10 million and divestitures of $73 million in the period between August 31, 2009 and March 31, 2010. By this time, the Former Manager had commenced a search for financing to bridge a possible temporary liquidity deficit during the 2010 RRSP season, starting with traditional institutional lenders.

[239] At the Board meeting of November 17, 2009, however, the Former Manager provided the advice that its testing indicated that the Fund's projected reserves were sufficient to meet projected cash requirements through March 31, 2010. The reporting in March and April 2010 is described in detail above and will not be repeated here. In summary, however, it reflects the Former Manager's advice that the Fund's non-venture capital assets had been liquidated to fund redemptions during the 2010 RRSP season as a result of the negative variance in respect of actual divestiture proceeds over projected levels. However, the Former Manager considered that,

on reasonable assumptions, the Fund could continue having stable cash flow to support a venture capital portfolio of approximately $100 million. To achieve this stability, however, the Former Manager recommended the Roseway Transaction as "insurance" against unanticipated liquidity challenges.

[240] I acknowledge that the presentation of the liquidity position of the Fund in these reports is not entirely "user friendly," particularly as the approach of measuring liquidity as a percentage of "hot money" capital is difficult to assess for reliability until after the end of the projection period. Further, it is not always possible to compare actual historical experience with projections based on the Former Manager's presentations, which are essentially always forward looking, particularly as the Former Manager never reported the projected versus the actual results other than in narrative form from time to time. In addition, the changing use of fiscal periods, calendar years and planning periods poses a challenge to understanding the Former Manager's reports on a comparative basis.

[241] However, the liquidity analyses provided to the Board did set out the Former Manager's assessment of the current and projected liquidity status of the Fund from time to time, as well as certain assumptions underlying the analyses at a high level and the order of magnitude expected for the forecast periods. There is no evidence that the Board regarded these liquidity reports as confusing or incomprehensible notwithstanding the change in the reporting periods. In particular, while the use of the revised liquidity coverage ratio could have had the effect of masking the deterioration in the Fund's liquidity position, there is no evidence prior to the commencement of this litigation that the Board considered that it had been misled in this respect.

[242] Accordingly, the principal issues with the liquidity analyses are: (1) the quality of the reporting regarding the Fund's current and future liquidity position; (2) the timeliness of the presentation of options available to the Fund to conserve cash flow; (3) the adequacy of the presentation of the options available to the Fund regarding liquidity management; and (4) the sufficiency of the presentation of the risks of implementation of the Roseway Transaction in the Former Manager's recommendation of that Transaction. These issues are discussed below.

Applicable Law

[243] The principal issues in this action pertain to the right of the Fund to terminate the Management Agreement pursuant to section 8.2(c) of that Agreement. Section 8.2(c) reads as follows:

> 8.2 The Fund may terminate this Agreement (subject to compliance with any applicable requirements of corporate or securities laws, regulations or policies) as follows:
>
> …
>
> (c) upon a material breach of this Agreement by the Manager where written notice of such breach is given to the Manager by the Fund and, if such breach is capable of being remedied, the

> Manager has not remedied the breach within 60 days after such notice is received by the Manager; …

[244] An important question that arises is the definition of a "material breach" for the purposes of section 8.2(c).

[245] This is a matter of contractual interpretation of the Management Agreement as the term "material breach" is not defined in that Agreement. The general principles pertaining to such an exercise are set out in *Ventra Inc. v. Sunrise Senior Living Real Estate*, 2007 ONCA 205, 85 O.R. (3d) 254, at para. 24. The interpretation of a "material breach" must be informed by the terms of the Management Agreement and the surrounding circumstances known to the parties at the time of the formation of the contract, including the context in which it was negotiated: see *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47.

[246] The Former Manager submits that a "material breach" means a "fundamental breach" as that term is understood in the common law. It relies on certain case law that suggests that a material breach is a breach that is substantial or goes to the root of the contract: see, in particular, *BA Capital Inc. v. Stream Oil & Gas Ltd.*, 2011 ABQB 91 at paras. 21-23.

[247] The Former Manager also says that the interpretation should be informed by the provisions of section 8.2(e). This provision stipulates that the Fund may terminate the Management Agreement on the fifth anniversary following a special resolution of the shareholders ratifying a Board resolution. As a related matter, the Former Manager further suggests that it is relevant for the interpretation of the Management Agreement that the Fund ceased to have any employees upon the Former Manager's assumption of the management of the Fund.In the circumstances in which courts have addressed whether a breach of contract was material in the sense of constituting a fundamental breach justifying the common law remedy of rescission of contract, the issue for the court is whether a party has failed to perform its primary obligation under the contract thereby depriving the other party of substantially the entire benefit of the contract: see, for example, *Syncrude Canada Ltd. v. Hunter Engineering Co.*, [1989] 1 S.C.R. 426. Such cases typically arise in the context of the operation of an exclusion clause in a contract. These are not the present circumstances.

[248] The present action involves the exercise of a contractual right of termination by the Fund, rather than the exercise of a right of termination under the common law by virtue of a fundamental breach. I do not read the decision in *BA Capital Inc.* as providing that, in such case or otherwise, a "material breach" must mean a "fundamental breach" as that term is understood for the purposes of the common law.

[249] Accordingly, I do not find the case law upon which the Former Manager relies to be of any assistance in this case except to the extent that, as the motion judge noted in *BA Capital Inc.*, at para. 23, "[t]he determination of material breach is fact specific and dependent upon the conduct and the contract at issue."

[250] As mentioned, the Former Manager suggests that the Fund's only right of termination is a right to terminate for fundamental breach. In my view, this is far too high a standard. The interpretation of a "material breach" for the purposes of section 8.2(c) of the Management

Agreement must, however, be informed by the relationship between the Former Manager and the Fund. In this regard, the following considerations are relevant.

[251] First, as the Former Manager notes, under the Management Agreement, it is responsible for the management of essentially all of the Fund's operations and day-to-day activities. This requires a considerable investment in employees and infrastructure on the part of the Former Manager. One of the purposes of the five-year transition period contemplated by section 8.1(e) of the Management Agreement is to permit the Former Manager to recover this investment and to phase out its unnecessary operations on an orderly basis in the event of a termination of its role. Another purpose is to allow the Former Manager to participate in profits in the form of the IPA Dividends arising on successful divestitures of the Fund's venture capital assets. This suggests that a "material breach" must be a breach of sufficient significance to warrant overriding the financial benefit to the Former Manager of these transition and profit sharing arrangements.

[252] Second, on the other hand, there is clearly room for a breach that entitles the Fund to terminate the Management Agreement on less than five years' notice for actions that do not amount to a fundamental breach at common law. As a drafting matter, this intention is clear from the inclusion of a separate right of termination in section 8.2(c). As a substantive matter, it should be implied from both the extent of the Former Manager's control over the activities of the Fund as well as from the Former Manager's fiduciary obligations to the Fund.

[253] If a "material breach" had been intended to be a breach that resulted in the Fund not receiving what it contracted to receive – that is, a "fundamental breach" – there would have been no need for an additional contractual event of default. In such circumstances, the Management Agreement would have been terminable in its own right under the common law principles of fundamental breach. If the parties had intended to create a contractual right of termination for fundamental breach, the Agreement would have contained language to that effect either by way of a reference to the concept of a fundamental breach or by way of a description of the circumstances constituting a fundamental breach.

[254] More substantively, this approach to the definition of a "material breach" ignores the significant fact that the Fund represents the investment of the Class A shareholders. In this regard, the Board has fiduciary obligations which effectively must inform the Former Manager's actions. This fiduciary context implies that there must be a right of the Fund to terminate the Management Agreement if the actions of the Former Manager result in a significant adverse effect on the shareholders' investment or otherwise significantly jeopardizes that investment.

[255] Balancing these considerations, I conclude that a "material breach" of a term of the Management Agreement should be interpreted to be a breach that threatens the continued viability of the Fund from either a financial or a reputational perspective or otherwise has, or could reasonably be expected to have, a significant adverse effect on the NAV of the Fund.

Analysis and Conclusions Regarding the Claims of the Parties

[256] There is considerable interaction between the claims of the Former Manager and the counterclaims of the Fund for damages. I propose to address these issues by first addressing the claims of the Former Manager and then turning to the claims of the Fund.

Did the Fund Have the Right to Terminate the Management Agreement?

[257] In the Termination Letter, the Fund alleged six categories of breaches of the Management Agreement. In the course of this proceeding, the Fund has refined the material breaches of the Management Agreement upon which it relies to comprise the following four alleged defaults of the Management Agreement:

1. A breach of section 3.5, that is a failure to meet the Standard of Care;

2. A breach of sections 3.9(a) and 3.11, being a failure to keep proper books and records;

3. A breach of section 3.4, being a failure to comply with applicable securities legislation and regulatory requirements; and

4. A breach of section 6.1, being a failure to pay certain normal operating expenses of the Fund.

The Fund submits that the actions of the Former Manager in respect of each of these breaches constituted a "material breach" for the purposes of section 8.2(c) of the Management Agreement that entitled it to terminate the Management Agreement pursuant to that provision.

[258] The Former Manager submits that its actions did not give rise to any "material breach" for the purposes of section 8.2(c) of the Management Agreement and, accordingly, the Fund did not have the right to terminate the Agreement.

[259] I propose to address this issue by addressing each of these alleged defaults in turn, dealing first with the specific actions upon which the Fund alleges material breaches have occurred and then, to the extent necessary, setting out my conclusions regarding whether such actions constituted a "material breach" for the purposes of section 8.2(c) of the Management Agreement.

Alleged Breach #1: Breach of the Standard of Care

[260] The principal issue in this action is whether the Fund had the right to terminate the Management Agreement pursuant to section 8.2(c) by reason of the existence of a material breach of the Standard of Care by the Former Manager.

[261] More specifically, the Fund says that the Former Manager breached the Standard of Care by failing to exercise the degree of care, diligence and skill that a reasonably prudent person in the position of the Former Manager would have exercised in the period between 2008 and 2010 in failing to recommend that the Fund cease redemptions of its Class A Shares prior to, or during

the spring of, 2010 and, instead, in recommending that the Fund enter into the Roseway Transaction and subsequently both the WOF Loan and the Matrix Loan. As mentioned, I will address this question by addressing first whether the Fund has established a breach of the Standard of Care and then whether any such breach is a "material breach" for the purposes of section 8.2(c) as that term has been interpreted above.

Did the Former Manager Breach the Standard of Care?

[262] The Fund asserts that the Former Manager acted negligently in a number of respects that have been identified by Gekiere, upon whose opinion it relies. I will address this position after first addressing a preliminary issue raised by the Former Manager.

Preliminary Issue

[263] The Former Manager submits that, even if the Court were to determine that the Roseway Transaction was an inappropriate transaction for the LSVCC in hindsight, the Court should not find that it breached the Standard of Care in recommending the Transaction for two reasons.

[264] The first reason is that, according to the Fund, it is protected by the "business judgment" rule. The simple answer to this submission is that the "business judgment" rule is a common law rule whereas the present action addresses whether or not a contractual standard of care has been satisfied. The present action therefore does not engage the "business judgment" rule.

[265] As a related matter, I also do not think that the Board's involvement in the approval of the Roseway Transaction necessarily excludes a finding adverse to the Former Manager except in circumstances in which the Board expressly mandated a course of action that the Former Manager opposed, which are not the present circumstances. There is nothing in the Management Agreement that expressly provides a safe harbour for actions approved by the Board. Nor do I think that the Board's acceptance of the Former Manager's recommendations constitutes evidence in its own right that the recommendations satisfied the Standard of Care, given the Board's oversight responsibilities.

[266] There is also an important policy issue at play in this case. The Fund was a fiduciary for the money of its Class A shareholders. The Board had an obligation to manage that money responsibly. It engaged the Former Manager to perform that management function, including the provision of strategic advice to the Board regarding liquidity management. The Former Manager held itself out as having specialized knowledge in the area of LSVCCs and was well aware of the Board's obligations. The Former Manager had an obligation to make recommendations that satisfied such obligations. I think it is therefore inappropriate to find that the Board's acceptance of the recommendations of the Former Manager, by itself, negatives any finding of a breach of the Standard of Care.

[267] The more difficult issue is the Former Manager's second argument – that the Court should not apply hindsight to decide this issue. I agree to the extent that it is necessary to ask whether the Former Manager's recommendation of the Roseway Transaction was reasonable in the context in which this recommendation was made.

[268] This is a challenging test to apply. A court must be reluctant to second-guess strategic recommendations made by an experienced investment fund manager, or to evaluate the quality of reporting on liquidity management matters upon which such recommendations were based, particularly in circumstances in which the recommendations were considered and accepted by the Board. However, I see no legal impediment to making such determinations even after the fact. The issue is whether, in the circumstances, there was no reasonable justification for the recommendations to the Board and, similarly, whether the reporting to the Board was so inadequate that it did not reasonably support such recommendations. In this case, the issues are informed by expert evidence as to the Standard of Care expected of a fund manager of an LSVCC in the period after the economic crisis of 2008. The Court's determinations herein reflect its findings regarding the applicable Standard of Care, as informed by the expert evidence before the Court, taking into consideration the market environment created by the economic crisis as well as pre-2008 events. It is not simply applying hindsight to fix responsibility for the Fund's subsequent history.

Did the Former Manager Breach the Standard of Care?

[269] While I do not accept the entirety of the Fund's position or Gekiere's analysis, I am of the view that the Former Manager breached the Standard of Care in the following four inter-related actions:

(1) During the period between 2008 and 2010, it provided inadequate reporting to the Board regarding the future liquidity position of the Fund;

(2) It failed to raise the option of ceasing redemptions until after the 2010 RRSP season;

(3) It failed to provide an adequate assessment of the options available to the Fund at the time of its recommendation of the Roseway Transaction; and

(4) It recommended that the Fund enter into the Roseway Transaction despite evidence at the time that this was an inappropriate transaction for the Fund.

I will address each of these findings in turn. I would add that I think the same considerations apply in large measure to the Former Manager's recommendation that the Fund enter into the WOF Loan. However, as mentioned above, given the centrality of the Roseway Transaction, any issues pertaining to the WOF Loan are secondary and I have therefore limited my analysis to the events leading up to and including the Former Manager's recommendation of the Roseway Transaction.

The Former Manager's Reporting of the Liquidity Risks of the Fund and their Potential Consequences During the Period 2008 to April 2010

[270] An important issue in this action is the quality of the Former Manager's reporting to the Board in the period following the economic crisis of 2008. As mentioned, I propose to concentrate on the period to and including the Board meeting of April 27, 2010 at which the

Roseway Transaction was approved, given the significance of the Roseway Transaction for the fate of the Fund.

[271] The experts agree that, in hindsight, the Former Manager's projections for the Fund's liquidity in this period as set out in its reports to the Board were overly optimistic. They also agree that this was principally due to overly optimistic projections of divestitures in this period, and secondarily of sales of Class A Shares. Moreover, they also agree that the low level of divestitures in this period, while due to a number of factors, was principally due to the weak M&A and IPO markets through which the Fund would expect to sell or otherwise divest its venture capital investments. The experts disagree, however, on whether the Former Manager's liquidity reporting met the Standard of Care notwithstanding these overly optimistic liquidity projections.

[272] Varghese believes that the failure of the Fund to meet the liquidity targets in the Former Manager's reports was due to the state of the M&A and IPO markets for the divestiture of the Fund's venture capital investments. He is of the view that the Former Manager should not be held to be responsible because the state of these markets was beyond its control and was unpredictable. Moreover, based on his view of the respective responsibilities of the Former Manager and the Board, he believes that the Former Manager discharged its responsibilities by providing the liquidity reporting to the Board described above and that any failure to appreciate the liquidity problems of the Fund in a timely manner or to consider options to address such liquidity concerns rested with the Board.

[273] Gekiere believes that, given the inherent uncertainty of the markets for venture capital investments in normal markets, and given the Fund's reliance on divestitures to maintain its liquidity for the reasons discussed above, the Former Manager had to meet a higher standard in respect of its liquidity reporting after the economic crisis of 2008. He considers that the Former Manager's reporting was inadequate in two principal respects. First, he considers that the Former Manager failed to apply conservative assumptions for divestitures, or at least to provide alternative projections based on more conservative assumptions, reflecting the Fund's actual experience of divestitures after the economic crisis of 2008. He also considers that the Former Manager should have established thresholds that would have required the Board to address the deteriorating liquidity position of the Fund on a pro-active basis when the thresholds were exceeded.

[274] The Former Manager's reports during the period from the economic crisis to April 2010 have been summarized above. From that summary, I conclude that Varghese is correct in observing that the Former Manager was aware of the significance of liquidity for the Fund and provided reports respecting the projected liquidity position of the Fund as of March 31, 2010. It also recommended a liquidity plan in the spring of 2009 and pursued a financing option commencing in the summer of 2009 to address unanticipated liquidity problems. However, the issue in this section is not merely whether the Former Manager was aware of the future liquidity issues facing the Fund or whether the Former Manager provided the Board with reports on the Fund's liquidity and recommendations for conserving cash or otherwise dealing with liquidity challenges. Rather, the issue is whether such reports and recommendations were adequate given the financial and economic circumstances of the Fund after the economic crisis of 2008.

[275] As mentioned, a court should be cautious about second guessing the actions of an investment fund manager with the benefit of hindsight. In particular, a court should avoid finding that projections were unrealistic at the time of their creation in circumstances in which unanticipated market developments beyond the control of a party were the predominant factor in a failure to meet such projections. Nevertheless, this action presents circumstances that are sufficiently unusual and extreme that I conclude that the Court is justified in finding that the Former Manager's reporting to the Board was inadequate in two inter-related respects: (1) in its overestimation of the liquidity position of the Fund based on unduly optimistic and unjustifiable projections; and (2) in its failure to consider alternative scenarios given the Fund's continuing adverse experience regarding divestitures. I will address the first issue in this section and the second in the next section after addressing my assessment of the expert evidence on these issues.

[276] As a preliminary matter, I regard these issues as matters properly informed by the expert evidence before the Court. In reaching the determinations on these issues, I have preferred the evidence of Gekiere over that of Varghese on these issues, as well as on the remaining issues in respect of the alleged breach of the Standard of Care, for three reasons in particular.

[277] First, the Varghese Opinion is based upon, or coloured by, a number of assumptions that the Court has rejected. In particular, Varghese proceeds on the basis that the Board mandated a strategic plan that placed the highest priority on growth. He considers that the Former Manager was released from responsibility for the consequences of any failure to address liquidity issues as a higher priority because it was required to respond to this mandate. Given the conclusion above that there was no growth mandate, I have rejected this position of Varghese.

[278] Second, the Varghese Opinion relies on the view that the Board's failure to fulfil its responsibilities of oversight and management of the Former Manager relieved the latter of responsibility for any failure to meet the Standard of Care in the performance of the Services. Given my view of the joint responsibility of the Board and the Former Manager for liquidity management, I have also rejected this position of Varghese.

[279] There is a further important implication of the Court's finding on the allocation of responsibilities. Varghese is critical of the Board's inaction in a number of respects, which he is of the opinion constituted negligence. In particular, he is of the opinion that, from the first quarter of 2006, after the disappointing sales in the RRSP season, "a prudent board should have known and anticipated the dramatic decline in sales that followed and should have taken preventative measures from that moment in time." Varghese's view that the Board failed in its risk assessment and management function in relation to this development is equally an indictment of the Former Manager. Similarly, Varghese believes the Board failed in its duty of care to reassess the liquidity risk and business strategy of the Fund in 2008 in the aftermath of the economic crisis in that year. This is equally a failure on the part of the Former Manager. In short, given the Court's view of the joint responsibility of the Former Manager and the Board for liquidity management, Varghese's criticisms of the Board's failure in this regard are equally criticisms of the Former Manager's actions that support the Fund's position that the Former Manager breached the Standard of Care.

[280] Lastly, on occasion, Varghese overstepped his role as an expert and acted as an advocate for the Former Manager. This advocacy was reflected, among other things, in his reliance for the

purposes of his opinion on a number of matters which were well beyond his specific expertise or knowledge, including the likely position of the securities regulatory authorities to a cessation of redemptions in the spring of 2010 and the likely outcome of the transaction proposed in the Kirchner Letter. With respect to the latter in particular, there is no basis for his conclusion that the Kirchner Letter represented a *bona fide* offer in the sense that it would have resulted in a sale in the discount range suggested in the letter nor is there a basis for his conclusion that a consummated transaction would have been a "viable solution" to the Fund's liquidity problems at the time.

[281] In the end, however, the issue comes down to whether the Former Manager's reporting adequately identified and pro-actively addressed the financial and economic circumstances of the Fund in the period following the economic crisis of 2008.

[282] Gekiere says that, given the acknowledged need for increased liquidity in fiscal 2009 and thereafter from circumstances that pre-dated the economic crisis, as discussed above, and given the inherent uncertainty of divestitures apart from the effect of the economic crisis, a higher standard was required of the Former Manager in its reporting on liquidity-related issues in the period between 2008 and April 2010 than was provided to the Board.

[283] In this regard, the Former Manager's reporting of the liquidity position of the Fund evolved over the period between 2008 and November 2011. In broad terms, as set out above, the Former Manager's reporting in the period prior to April 2010 essentially relied on a base case that reflected a single set of assumptions regarding projected sales and divestitures with one exception discussed below. Beginning with the Board meeting of September 30, 2010, the Former Manager began to provide an analysis based on alternative levels of divestiture proceeds and redemptions rates. Ultimately, in its memoranda for the Board meetings on September 27, 2011 and October 27, 2011, the Former Manager provided to the Board a considerably more detailed analysis of the potential outcomes given differing levels of redemption and divestitures.

[284] In my view, the content required of the Former Manager in its reporting to the Board on the actual and projected liquidity position of the Fund from 2008 had to be informed by two general considerations.

[285] First, the Fund's circumstances in 2008 required that the Former Manager elevate the level of its reporting regarding the current and projected liquidity of the Fund over that which it provided prior to the economic crisis of 2008 for the straightforward reason that, even without the 2008 economic crisis, the Fund's liquidity was going to be significantly reduced commencing with the 2009 RRSP season. By 2009, the Fund had a significantly reduced capacity to raise additional capital by the sale of Class A Shares and had made its last new investment. The Fund was also facing a predictable steep increase in redemptions. These factors were reflected in the Fund's equally predictable increasing dependence on divestitures and corresponding increase in the risk of a liquidity default.

[286] Second, the economic crisis of 2008 significantly adversely affected the M&A and IPO markets and thereby further increased the risk of a liquidity default arising from a potential inability to achieve divestitures in the amount and on the timeframe previously anticipated.

[287] Accordingly, as a "mature" fund, the focus of the Fund had to be the maximization of the value of the existing portfolio with a view to maximization of the return of capital to the existing Class A shareholders. That focus, in turn, required that the Fund concentrate on maximizing the ability of the Fund to maintain its capacity to fund follow-on financings of its portfolio to achieve an orderly divestiture of that portfolio. In addition, in its actions, the Fund had to ensure fairness among its Class A shareholders.

[288] The Former Manager's reporting needed to assist the Board in its determination of the course of action that best achieved these objectives. In particular, the Board required credible reporting regarding two principal factors: (1) the increasing level of redemptions, as a result of events that pre-dated the economic crisis of 2008; and (2) capital inflows, given the very uncertain IPO and M&A markets for the divestiture of the Fund's venture capital investments and the increasingly difficult market for the sale of additional Class A Shares.

[289] Based on the evidence before the Court, I accept Gekiere's opinion that the Former Manager's reporting to the Board was inadequate for the following three principal inter-related reasons.

[290] First, the Former Manager's projections regarding the amount and timing of divestitures for the 2009 and 2010 planning years, as well as of further Class A Share sales, were not merely optimistic. The evidence is that they were unrealistic because they were not based on the economic and political environment facing the Fund at the time. I accept Gekiere's assessment that the combination of the factors described above affecting the Fund's liquidity position required that the Former Manager's reporting to the Board contemplate, at a minimum, levels of divestitures and sales of Class A Shares that reflected the actual experience since 2008, rather than the levels necessary to maintain redemptions and follow-on investments at projected levels.

[291] In particular, despite the experience in fiscal 2008 and 2009, the Former Manager optimistically projected divestitures of approximately $100 million in fiscal 2010. Further, despite the experience in that year, it maintained a similar projection for fiscal 2011. There is no discussion in the materials before the Board that justifies the Former Manager's optimism regarding the recovery of the IPO and M&A markets implied by these projections in either fiscal year. Similarly, there was no justification for the Former Manager's projection of the level of continuing sales of Class A Shares in those years. As a related matter, as discussed below, there was also no documentary support for the values ascribed to the Defined Portfolio in connection with the approval of the Roseway Transaction.

[292] Second, as mentioned, the Former Manager's reporting on the Fund's projected liquidity position up to and including April 2010 relied on a single base-case that used a single set of assumptions regarding sales and divestitures. The Former Manager merely referred in narrative form to the risks to the Fund's liquidity of inadequate divestitures. It did not include alternative liquidity scenarios that addressed levels of divestiture proceeds that reflected the Fund's recent experience. Indeed, the reporting lacked any quantitative analysis permitting an assessment of the likelihood of such outcome. This reporting was inadequate given the Fund's circumstances in the period between 2008 and April 2010. If the Former Manager chose to present its base case using optimistic assumptions, it should also have provided alternative scenarios, or a sensitivity

analysis, based on the recent historical experience in order to permit an assessment of the viability of the base case.

[293] The Former Manager did begin liquidity reporting in greater detail using a new template in the spring of 2009. That form of reporting did consider alternative levels of redemptions. However, in fact, the level of redemptions remained close to 35% of "hot money" capital in each of the years between 2008 and 2012. The fluctuations in the level of redemptions during this period were not, by themselves, a significant contributor to the Fund's liquidity problems in 2010, as opposed to the absolute level of redemptions, which was. The real risk to the Fund's liquidity, as the Former Manager repeatedly stated in its memoranda, was the amount and timing of divestitures and, secondarily, the level of sales of new Class A shares. There was, however, no sensitivity analysis presented around various divestiture scenarios.

[294] I acknowledge that the liquidity models appended to the liquidity status memorandum delivered to the Board for the meeting of April 27, 2010 did present a projection for the 2011 planning year using divestiture proceeds amounting to 50% and 75% of projected divestitures, apparently for the first time. However, there is no indication that the Former Manager drew the Board's attention to the implications of these models. Nor did the Former Manager alter its conclusions from the first draft of that memorandum. It simply inserted the phrase "except where venture exits are at risk". Instead, the Former Manager continued to rely on the results of these models to demonstrate the long-run viability of the Fund rather than to focus attention on the risk of a liquidity default in the next twelve months. In short, instead of facing the potential consequences of these alternative scenarios, the Former Manager drove on with its recommendation of the Roseway Transaction.

[295] Accordingly, the memoranda provided eighteen months later in the autumn of 2011 stand in a stark comparison with the extent of reporting and the degree of analysis provided prior to and at the time of the Roseway Transaction. Against this standard of reporting, which I agree with Gekiere represented the quality of reporting that was necessary to satisfy the Standard of Care from and after the 2008 economic crisis, the Former Manager's reporting up to April 2010 was clearly inadequate.

[296] Third, for the same reasons, I conclude that Gekiere is correct in his view that these circumstances required the Former Manager to articulate threshold levels at which it would be necessary to consider alternative means of maintaining follow-on investments and an orderly divestiture process if the cash flow projections proved inadequate. There is no evidence that the Former Manager ever approached its reporting on liquidity management on this basis.

[297] For the foregoing reasons, I therefore find that the Former Manager did not satisfy the Standard of Care in its reporting to the Board regarding the liquidity position of the Fund between the 2008 economic crisis and April 2010.

> *The Former Manager's Recommendations to the Board Regarding Options for Dealing with the Liquidity Challenges of the Fund During the Period Between 2008 and April 2010*

[298] From the summary of the Former Manager's reporting to the Board during the period from 2008 to April 2010, it is clear that the Former Manager did not provide the Board with options for consideration with a view to averting a possible liquidity squeeze until after the 2010 RRSP season, other than a debt financing to address temporary liquidity deficits.

[299] Both Varghese and Gekiere agree that the economic crisis of 2008 fundamentally changed the market for divestitures, and required a re-assessment of the Fund's strategy and its risks, including its liquidity risk. There is, however, no evidence of any formal recognition, let alone action, on the Former Manager's part in this regard, at least until the spring of 2009 when the Former Manager recommended that the Fund cease making new investments and concentrate on divestitures. However, even then, the Former Manager's recommendation of ending new investment was belied by its continued recommendation of the CMDF Transaction. Essentially, as Varghese noted, both the Fund and the Former Manager continued on a "business as usual" basis until the end of 2009.

[300] Further, as Varghese observes, there also does not appear to have been a recognition on the part of the Board, and I would therefore add on the part of the Former Manager, of the need to address the liquidity position of the Fund on an immediate basis in the fall of 2009. There was no discussion of liquidity options at the Board meeting on November 17, 2009 apart from a report on the Former Manager's efforts to obtain traditional financing. Varghese and Gekiere both agree that, by this time, such a discussion had become critical, although Varghese places responsibility for this failing on the Board. This is all the more significant given that the Former Manager was itself aware of the potential for such a situation in the fall of 2009 for the reasons discussed above and had already had discussions with prospective lenders including Comerica Bank and the Royal Bank who declined to offer financing.

[301] The result was two-fold. First, the Board was presented with a radically different liquidity position in the spring of 2010 from the position that the Former Manager projected as late as November and early December of 2009. The Board was effectively presented with a long-term, rather than a temporary, liquidity deficit. Second, as a consequence of the Former Manager's assessment of the Fund's liquidity position and its concentration on its preferred option of a debt financing for which it had not yet been successful in identifying a lender, the Former Manager failed to recommend consideration of the option of ceasing redemptions at any time during 2009. By the time the full extent of the Fund's liquidity difficulties in early 2010 was placed before the Board, the 2010 RRSP season had ended. Accordingly, the option of suspension of redemptions to preserve the cash flow that was paid out on redemptions during that period was lost.

[302] Given the circumstances of the Fund in late 2009, I conclude that, by this time, the Former Manager should have recommended consideration of all of the options for dealing with a liquidity deficit if it materialized in the spring of 2010, including a cessation of redemptions. I therefore also find that, because the Former Manager's actions pre-empted the Fund's consideration of a cessation of redemptions prior to the 2010 RRSP season, the Former Manager further failed to satisfy the Standard of Care.

[303] There is a larger picture to this analysis to be addressed. The Fund attributes the Former Manager's actions to a self-interested desire to maintain or increase its management fees, which

required growth in the value of the Fund's venture capital portfolio. While I do not accept this view as the principal explanation of the Former Manager's actions, it raises a fundamental question regarding its motivation and the consequences for the Fund. As the Former Manager recognized, belated in my view, in a memorandum for the October 27, 2011 Board meeting described above, the Fund "had effectively entered a "wind-down phase." In my view, the Former Manager failed to appreciate that this was the economic reality of the Fund in the spring of 2010 with the significant consequences that these circumstances had for the Fund's prospects as an on-going investment fund. Moreover, the former Manager's denial of this reality continued until the autumn of 2011, by which time it was too late to remedy the situation.

[304] Both Varghese and Gekiere agree that a prudent manager had to appreciate that the LSVCC model was "broken" after the announcement of the Government of Ontario in 2005. While it was not unreasonable to lobby for a reversal of that decision, or for acceptance of a replacement proposal, it was not reasonable to factor any such considerations into projections for share sales unless and until there was an actual legislative change. Nevertheless, despite the significant drop in sales after the announcement of the Government of Ontario, which Varghese describes as "drastic," the Former Manager continued to include sales projections in its liquidity reports for which there was no reasonable basis for the years commencing in 2010 and to refer optimistically to prospective legislative developments as a basis for its optimistic projections.

[305] More generally, as stated above, by late 2009, the Fund was a "mature" fund in the sense that it had only a negligible capacity to raise additional capital by the sale of Class A Shares and had made its last new investment. It was therefore not appropriate to proceed on the basis of a strategic plan for the Fund that assumed an indefinite future for the Fund based on the sale of additional Class A Shares to new shareholders in the absence of an actual legislative change. The focus of the Fund should have been on the maximization of the returns to the existing Class A shareholders of the proceeds of the existing venture capital portfolio.

[306] As mentioned, the Former Manager appears to have turned a blind eye to this reality believing instead that the Fund was fundamentally viable, that it was experiencing temporary liquidity challenges only, and that the Fund would be restored in due course to the status of a viable ongoing fund that was able once more to rely on cash inflows from the sale of Class A Shares. Indeed, the Former Manager ardently wished to believe that the Fund was not only viable as an ongoing retail fund but also that it was able to exploit the opportunities presented by other LSVCCs that were experiencing liquidity problems. The overall impression, which is reflected in certain language in the Former Manager's memoranda, is that the Former Manager's approach was driven by an unquestioned assumption that the best course of action for the Fund was business "as usual" – including, in particular, maintaining redemptions – rather than a course of action which maximized the return of capital to the existing Class A shareholders on an orderly basis based on a more objective assessment of the actual financial and economic circumstances of the Fund in 2009 and 2010. In short, it appears that is, that "the wish was father to the thought."

[307] These unrealistic views of the Former Manager are reflected, for example, in the memorandum to the IC for its meeting on March 18, 2010 in which the Former Manager opined that the Fund was in excellent shape based, among other factors, on an assessment that the Fund's venture capital portfolio was in excellent shape and a positive change on the government

relations side. As mentioned above, there was no basis for assessing the Fund's status based on the state of government relations at the time. More significantly, while comfort regarding the inherent value of the venture capital portfolio in a value-maximizing divestiture process was a necessary condition of proceeding with the Roseway Transaction, the more important issue was the likelihood of completing such a value-maximizing divestiture process within the timeframe imposed by the Roseway Transaction. This was not addressed in any memoranda in April 2010 but was rather assumed.

[308] This mindset also appears to have driven the Former Manager's approach to its projections for divestitures and sales of Class A shares. The best example is found in the Former Manager's report on liquidity to the IC meeting of March 18, 2010. The minutes of that meeting report that "in light of the projected redemptions in the 2011 Planning Year as well as operating expenses, the Manager is proceeding on the assumption that divestitures will need to exceed investment activity by upwards of $70 million to maintain current liquidity levels. Investment activity is estimated at $23 million this coming year…, the Manager is preliminary [sic] targeting $100 million of divestitures in the 2011 Planning Year." In other words, the Former Manager established the divestiture target of $98 million to accommodate the Fund's requirements to maintain redemptions and make its projected follow-on financings despite the historical experience, the continuing impact of the 2008 economic crisis on the markets, and an acknowledged inability to control divestiture decisions of the other shareholders in the Fund's venture capital investments.

[309] Similar language appears in a memorandum to the IC dated April 7, 2010 for its meeting on April 15, 2010. In this memorandum, the Former Manager stated that "[t]o build a strong liquidity position for the Fund, we are planning for another strong years of exits. At this time, we have preliminarily targeted $100 million of venture exits to occur during the 2010/2011 RRSP year." Apart from the suggestion that the planning year just ended was a "strong year of exits", which is clearly incorrect, it is very difficult to reconcile the $100 million projection with the projections in the memorandum to the IRC for its meeting in February 2010 which has been described above. That memorandum suggests that such targets could only be reached if divestitures were achieved that had only a "possible" level of occurrence, i.e. were not "probable" according to the Former Manager's own weighting scale.

[310] I appreciate that this language could be said to evidence no more than an intention on the part of the Former Manager to try to bring to fruition various divestiture opportunities that it had identified. In my reading of all the circumstances, however, this would be a misreading of what was happening. It is one thing to identify possibilities. It is quite another to base projections on such activity without a high probability of realization, as appears to have occurred in this instance.

[311] This mentality is also reflected in the financial model that the Former Manager prepared suggesting that the Fund would settle into a steady-state of approximately $98.5 million. It was also the motivation for a number of actions after the Roseway Transaction – in particular, the pursuit of the Proposed VenGrowth Transaction.

[312] Such a preference for continuation of the Fund as an on-going investment fund is natural enough, given that GrowthWorks' business model was based on LSVCCs. However, by

proceeding in this manner and in concentrating on these activities in 2009, 2010 and 2011, the Former Manager did not provide the Board with any analysis or recommendations regarding alternative views of the best interests of the Class A shareholders as they existed in 2009 and 2010. Rather, the Former Manager's advice and recommendations reflected an unquestioned view of the best interests of the Fund as a going concern having an indefinite future, including on-going turnover in its Class A shareholder base. As a consequence, among other things, not only did the Former Manager fail to consider adequately the risks of a liquidity deficit arising from the continuation of redemptions given the economic environment for divestitures, but it also did not consider the fairness issues identified by Gekiere pertaining to continued redemptions after entering into the Roseway Transaction.

[313] In my view, the foregoing actions constituted a failure on the part of the Former Manager to meet the Standard of Care in its advice to the Board regarding the options available to the Fund in respect of the liquidity management of the Fund and the best interests of its existing Class A shareholders.

The Former Manager's Presentation of the Options Available to the Fund in April 2010

[314] The Fund submits that the Former Manager did not present the options available to the Fund to address its liquidity concerns in the spring of 2010 in an unbiased and thorough manner that satisfied its obligations of diligence and skill. For its part, as evidence that there was a thorough airing of the Fund's options, the Former Manager points, among other things, to the fact that the IC examined the alternatives in two meetings prior to the Board meeting of April 27, 2010. It also points to the memoranda prepared for those meetings of the Board and the IC which have been described above.

[315] I find that the Former Manager failed to present the options available to the Fund in an adequate manner. In this regard, the following five general considerations are of primary significance.

[316] First, the Former Manager characterized the Roseway Transaction as a form of "insurance." In my view, this was not an accurate characterization of the Transaction at the time that it was recommended to the Board for the following reasons.

[317] The evolution of the concept of the Roseway Transaction as "insurance" for the Fund bears close examination. In 2009, the Former Manager initiated a search for a lender with a view to providing short-term financing to bridge redemptions, particularly during the 2010 RRSP season, pending receipt of divestiture proceeds expected shortly after the close of that season. When no traditional lender was identified, the Former Manager arranged the WOF credit facility in early 2010. This credit facility was recommended as fulfilling the need for such short-term financing.

[318] In a memorandum prepared for the April 27, 2010 Board meeting, the Former Manager stated that "the [Fund] has a plan in place whereby net positive cash flows from the venture capital portfolio will be more than sufficient to meet the Fund's redemption obligations, allowing the Fund to sustain its critical mass over the long-run." As described above, in the memoranda presented to the Board by various representatives of the Former Manager, the Roseway

Transaction was presented in a number of ways that treated the Roseway Transaction as a means of ensuring that the Fund was able to realize this plan. In particular, the Roseway Transaction was described as "insurance against the risks to liquidity that arise outside the Fund's control," as "providing the Fund with the ability to realize on the full value of its portfolio via orderly and value-optimized exits" and as "insurance for postponed exit activity."

[319] As actually used, the Roseway Transaction served as a medium-term bridge financing to permit continuing redemptions and to finance follow-on investments over a three-year period pending receipt of divestiture proceeds by the end of that period that would materially exceed the cost of the Roseway Transaction. In other words, the Roseway Transaction was, in essence, a three-year loan that was intended to fund redemptions pending receipt of divestiture proceeds that were not expected to restore the Fund's liquidity on a more permanent basis until the end of that period.

[320] Accordingly, insofar as the Roseway Transaction was presented as "insurance," I think that is a mischaracterization for three reasons. First, the loan was fully advanced in May 2010 rather than dispersed as required from time to time to address short-term liquidity needs and repaid from time to time when liquidity was restored. By the time the Roseway Transaction closed, it funded a long-term liquidity deficit rather than functioned as a temporary bridge loan. Second, I accept Gekiere's characterization that the Roseway Transaction was not used to fund future redemptions. Essentially, it funded the redemptions of Class A Shares that had occurred in the 2010 RRSP season, as such redemptions had resulted in the longer term liquidity deficit that was addressed by the Roseway Transaction. Third, given the foregoing, I do not think there was any reasonable basis for the statement in the memorandum to the IC for the meeting on April 15, 2010 regarding strategic options for the Fund that "the Fund's base-case liquidity analysis shows that… a secondary transaction [i.e. the Roseway Transaction] was not necessary...". In fact, the opposite conclusion was expressed very clearly in the February memorandum delivered in connection with the IRC meeting at that time described above.

[321] The second general consideration is that, in presenting the Roseway Transaction as "insurance," the Former Manager failed to set out the very real inherent risks of the Transaction. As mentioned above, from the outset, the viability of the Roseway Transaction was tied to the timing of, and the proceeds to be realized on, the divestment of the Fund's portfolio of venture capital companies, in particular the investments comprising the Defined Portfolio. The Roseway Transaction made economic sense only if sufficient investments included in the Defined Portfolio could be divested in an orderly way that realized an increase in value of approximately $33 million within three years (from a base of $100 million) and could be carried until such time, including funding any necessary follow-on investments. There is, however, no evidence that the risk that the foregoing scenario would not materialize was discussed with the Board. To the contrary, the only discussion appears to be the Former Manager's statement that it believed the value of the Defined Portfolio to be substantially greater that its $100 million carrying value. As a related matter, there is very little, if any, sensitivity analysis that would have permitted such an assessment of risks.

[322] The third general consideration is that the analysis of the Fund's liquidity position in April 2010 was based on two assumptions that were unduly optimistic at that time. As mentioned, in its memorandum to the IC for its meeting on March 18, 2010, the Former Manager

expressed confidence in the Fund's "continuing prominence" based, among other things, on evidence of a positive change on the government relations side. There was no basis for building such an assumption into a recommendation at that time. In addition, the Former Manager based its projections for the Fund's liquidity on divestitures of approximately $100 million in the 2011 planning period despite, as mentioned, two years of divestitures of approximately $50 million, no evidence of material improvements in the markets at that time, and its own internal probability assessment of the occurrence of divestitures totaling this amount, as set out in the memorandum to the IRC in February 2010.

[323] Fourth, the Former Manager presented the option of cessation of redemptions in an unduly drastic manner without having had any direct discussion with the BCSC regarding its position on such an option. As is demonstrated in its later conversations with the BCSC, the Former Manager conceived of the option of the cessation of redemptions as necessarily implying a "liquidation-style" wind down of the Fund over a very short period of time with significant attendant losses in the realized value of its venture capital investments. It did not consider the possibility that the securities regulatory authorities might have permitted a more orderly wind down over a longer period of time.

[324] I appreciate that the Former Manager had regard to the orders previously granted by securities authorities to other LSVCCs. However, the Fund was not alone among LSVCCs in experiencing a liquidity problem in 2010. This was an ongoing challenge for the securities regulators as well. All parties were concerned with preserving shareholder value on a basis that was fair to all shareholders. As the subsequent discussions with the BCSC, and in particular an email of the BCSC dated July 23, 2012, indicate, it is at least as likely that the securities regulatory authorities would have been prepared to be more flexible than the Former Manager assumed if it had initiated the process much earlier. Further, as the Former Manager itself noted later, the Fund's position was more favourable than the circumstances of the other funds in respect of which orders had been granted by the securities regulators in that a materially larger proportion of the value of its NAV represented investments in advanced stage companies. The Former Manager argued for a three-year period for the RMP eighteen months later on this very basis.

[325] In any event, the Former Manager failed to explore the possibility of a longer-term wind-down scenario with the BCSC prior to providing the advice it did. It was inappropriate for the Former Manager to have advised the Board that the securities commissions would have imposed a liquidation-style wind down over a short period of time in the absence of any such discussions with such authorities.

[326] Finally, in my view, for the reasons set out above, the appropriate manner of comparison of the Roseway Transaction option against a cessation of redemptions was an assessment of which option would maximize returns to the existing Class A shareholders. There is, however, no evidence of any assessment of the options on this basis. As the BCSC noted, there was no assessment of the likely returns in an orderly wind-down scenario until October 2012. Instead, the memoranda on the cessation of redemptions alternative referred to the risk of a class action lawsuit, for which there is no evidence of a real risk in the record, and concluded that the likely result would be the sale of the Fund's assets by merger or otherwise at a steep discount. Even if the merger or sale scenario had occurred, it is not clear on the evidence before the Court that this

would have resulted in lower returns to the existing Class A shareholders as the memoranda assumed. While there would undoubtedly have been a reduction in portfolio value if this option had been pursued rather than the Roseway Transaction, it is certainly arguable that the existing Class A shareholders would have been better off. More fundamentally, it is also arguable that this was the proper course of action from a legal perspective in order to treat all of the existing Class A shareholders fairly in circumstances where there was a real likelihood that the Fund was no longer viable from a liquidity perspective.

[327] Accordingly, I conclude that the Former Manager also failed to satisfy the Standard of Care in its advice to the Board regarding the alternatives to the Roseway Transaction that were available to the Fund in the spring of 2010 to address its liquidity difficulties, in particular, the option of the cessation of redemptions.

The Former Manager's Recommendation of the Roseway Transaction

[328] The central issue in this action, as mentioned, is whether the Roseway Transaction was an appropriate transaction for the Fund in April 2010. This issue must be examined in the context of whether, given the liquidity problems facing the Fund at the end of 2009, the better course of action was for the Fund to enter into the Roseway Transaction or to cease redemptions prior to the 2010 RRSP season. I am satisfied that the evidence establishes that the Board's decision to enter into the Roseway Transaction was objectively a bad decision in that the Fund would have been better advised to cease redemptions in 2009 rather than to enter into the Roseway Transaction for the following reasons.

[329] The summary history set out under "The Significance of the Roseway Transaction" demonstrates that, in retrospect, the Roseway Transaction set in motion the circumstances that resulted in the CCAA proceedings in 2013 given the Fund's insufficient receipt of divestiture proceeds to repay the loan after entering into the Transaction. In this respect, I think both parties agree that the "die was cast" with the Roseway Transaction. After April 2010, because the Roseway Transaction required a fixed repayment after a three-year term, rather than participation in divestiture proceeds from the Defined Portfolio as and when received, the fate of the Fund depended critically upon receipt of divestiture proceeds in an amount and within a time frame sufficient to repay the Roseway Obligations.

[330] I have no doubt that the Former Manager sought unsuccessfully to obtain, and would have preferred to be able to recommend, a financing that did not entail a fixed term for repayment. Nevertheless, the fact that the Roseway Transaction was the best available financing option does not make it an appropriate transaction for the Fund as Varghese appears to argue. Nor, did it relieve the Former Manager of its obligations to consider whether a cessation of redemptions was preferable to the financing that was available to the Fund.

[331] I am also satisfied on the evidence that a cessation of redemptions was a viable option for the Fund if it had been implemented prior to the 2010 RRSP season and perhaps even at the time of acceptance of the Roseway Transaction. In this regard, it is relevant that the experts agree that a decision to cease redemptions prior to the commencement of the 2010 RRSP season would have provided more than adequate cash flow to fund the follow-on investments of the Fund that was, instead, provided by the Roseway Transaction and would have avoided any risk of default

by the Fund thereafter. Further, in the absence of discussions with the BCSC at the time, I do not think that it was reasonable to proceed on the basis that the outcome to the Class A shareholders would have been worse than the actual outcome of the Fund.

[332] I therefore have no hesitation in finding that the Roseway Transaction was an inappropriate transaction for the Fund in the sense that, if they were to have the opportunity to reconsider the decision with the benefit of hindsight, the Former Manager and the Board would have recommended that the Fund cease redemptions prior the 2010 RRSP season rather than enter into the Roseway Transaction.

[333] The issue for the Court, however, is whether the Former Manager failed to meet the Standard of Care in recommending that the Fund enter into the Roseway Transaction. Based on the evidence discussed below in particular, I conclude that the Former Manager did breach the Standard of Care in doing so for the following reasons.

[334] First, and most fundamentally, the Roseway Transaction entailed the Fund's assumption of a level of risk that was inappropriate for a retail venture capital fund. The evidence before the Court from both Gekiere and Varghese establishes that debt financing was inappropriate for an LSVCC except perhaps in the circumstances of short-term borrowings to bridge a temporary liquidity deficit. The inability of the Fund to raise additional capital by the sale of Class A Shares made the Fund entirely dependent upon the timely receipt of divestiture proceeds. However, the inherent uncertainty of the timing and amount of divestiture proceeds, even apart from the effect of the 2008 economic crisis, made debt financing unduly risky. The absence of any similar borrowings by any other LSVCC is powerful evidence that the Roseway Transaction involved a greater level of risk than was prudent for an LSVCC. In short, the Roseway Transaction unduly and unrealistically increased the level of risk associated with the Fund.

[335] In this regard, it is important to note that the venture capital investment fund model, whether private or public, is premised on funding by means of equity capital rather than debt because of the inherent riskiness of venture capital investments. As mentioned above, even before the economic crisis of 2008, venture capital funds relied on equity financing because the timing and amount of divestitures of venture capital assets is unpredictable for a myriad of reasons. It therefore does not make economic sense to lever a venture capital portfolio by incurring debt having a fixed repayment term, particularly a relatively short term of three years. Such a financing could only be justified, if at all, in circumstances where there was a very high level of certainty of receipt of cash inflows to the borrower, whether by way of share sales or divestitures, to fund the debt service including repayment. Otherwise, the effect of such leverage would be to materially increase the investment fund risk without increasing the rate of return.

[336] The Fund points to an internal analysis that the Roseway Transaction permitted the Fund to participate in follow-on financing that resulted in the preservation of value totaling approximately $117 million. This is, however, an incomplete analysis for present purposes. There is no reason why such preservation of value could not have been funded by a cessation of redemptions which would have yielded at least as much cash flow as the principal amount of the loan in the Roseway Transaction. This preservation of value cannot therefore be conceived of an incremental profit that would not also have been obtained if the Fund had ceased redemptions in 2009.

[337] Second, as discussed above, the Roseway Transaction was based on projections regarding the realizable value of the Defined Portfolio within the term of the Transaction, and the Fund's liquidity position in the future, that were also unduly, and unjustifiably, optimistic. With respect to the necessary realized values of the Defined Portfolio, there is no evidence that such values were realized within the term of the loan, much less that the Fund achieved the "conservative" increase in value of $47 million or "the most probable" increase of $100 million referred to in the minutes of the April 27, 2010 Board meeting, which was the Former Manager's assessment of the portfolio value. More importantly, there was no evidence in the memoranda prepared for the Board that supported these higher values for the Fund's venture capital portfolio. With respect to the projections for divestitures, even if the Former Manager's confidence in the realizable value of the Fund's venture capital portfolio in a world of healthy and stable markets was justified (which has not been established), the Former Manager assumed a level of divestitures that was not warranted by the market experience in the two prior years and was not justified in terms of any recent sustainable improvements in the market. As mentioned, it also appears to have been contradicted by its own assessment of "probable" versus "possible" divestiture proceeds during the 2011 planning year as set out in its February 2010 memorandum to the IRC.

[338] Third, although Varghese's evidence was intended to support the Former Manager's position, it was premised on the existence of a growth mandate from the Board and a view of the respective responsibilities of the Former Manager and the Board that the Court does not accept. I understand the implication of Varghese's evidence to be that, if these assumptions are removed, he would not have considered the Roseway Transaction to be an appropriate transaction for the Fund as an LSVCC and would not have recommended it to the Board in the spring of 2010. Further, while the Former Manager and Varghese are of the opinion that the rate of interest in the Roseway Transaction was appropriate for a private venture capital transaction, that is not the same as saying that the loan itself was appropriate for a venture capital fund. In short, I read Varghese's evidence as agreeing that the Roseway Transaction entailed too high a level of risk for an LSVCC.

[339] Fourth, I agree with Gekiere that the adoption of the Roseway Transaction, rather than a cessation of redemptions, entailed a real issue of fairness among the Class A shareholders that was not addressed by the Former Manager in its memoranda to the Board. By permitting redemptions to occur in the 2010 RRSP season and the 2011 RRSP season at a NAV that did not reflect the cost of the Roseway Transaction, much less the ultimate consequences of repayment, the Former Manager's actions resulted in an unfairness to shareholders who did not redeem their Class A Shares in 2010 and 2011.

[340] Fifth, as discussed above, the Former Manager's recommendation was based on an unduly restrictive and, in any event, uninformed view of the likely response of the BCSC and other securities regulatory authorities to a cessation of redemptions. The Former Manager proceeded on the basis that the cessation option would severely limit the time period in which the Fund would be permitted by the BCSC to divest the Fund's investments and wind-down the Fund. As discussed above, I consider that it was at least as likely, based on the status of the Fund's venture capital portfolio and the content of the subsequent discussions with the BCSC staff, that the securities regulators would have been more flexible than the Former Manager

portrayed to the Board if the Fund had approached the securities regulatory authorities on a more timely basis. In any event, it is by no means clear that the returns to the Class A shareholders under a cessation of redemptions scenario would necessarily have been less than the returns after implementation of the Roseway Transaction if the latter had been subjected to an analysis based on more realistic cash flow projections.

[341] Based on the foregoing, I conclude that the Former Manager's recommendation of the Roseway Transaction in the spring of 2010, rather than of a cessation of redemptions, also failed to satisfy the Standard of Care.

Was the Former Manager's Breach of the Standard of Care a "Material Breach"?

[342] The Court's conclusion regarding the nature of a "material breach" for the purposes of section 8.2(c) of the Management Agreement has been set out above. For the following reasons, I find that the actions of the Former Manager addressed above collectively constituted a "material breach" of the Standard of Care entitling the Fund to terminate the Management Agreement pursuant to that provision.

[343] In summary, the Former Manager breached the Standard of Care in recommending that the Fund enter into the Roseway Transaction in April 2010, rather than recommending a cessation of redemptions and commencing an orderly wind-down process at or before that time. In doing so, the Former Manager tied the future viability of the Fund to its ability to achieve divestiture proceeds over a limited three-year term sufficient to repay the principal and to pay the substantial amount of interest due under the Roseway Transaction. For the reasons discussed above, by entering into the Roseway Transaction, the Fund assumed an unduly high level of risk that was not warranted for a public investment vehicle of the nature of an LSVCC. Moreover, the recommendation of the Former Manager regarding the Roseway Transaction was based on an estimate of the value of the Fund's venture capital investment portfolio, in particular the Defined Portfolio, that was not justified by recent experience or otherwise. These actions significantly jeopardized the financial viability of the Fund on and from the date of entering into the Roseway Transaction by materially increasing the risk of a liquidity deficit and consequential material loss of value arising on a default under the Roseway Transaction.

[344] For clarity, this finding is not dependent upon, or based upon, the subsequent insolvency of the Fund. In my view, the Former Manager's recommendation of the Roseway Transaction was the culmination of a number of actions described above that collectively constituted a "material breach" for the purposes of section 8.2(c) of the Management Agreement no later than the date of the Roseway Transaction entitling the Fund to terminate the Management Agreement from and after the date of the Roseway Transaction. Further, this was not a default that was capable of being cured nor, in any event, was it cured at any time thereafter.

[345] Accordingly, I find that the Fund was entitled to terminate the Management Agreement pursuant to section 8.2(c) thereof on September 30, 2013 as contemplated by the Termination Letter.

Alleged Breach #2: Failure to Keep Proper Records

[346] The Fund alleges three independent breaches by the Former Manager of its obligations in sections 3.9(a) and 3.11 of the Management Agreement.

[347] First, the Former Manager has acknowledged that it co-mingled the shareholder data pertaining to the Fund with the shareholder data pertaining to the shareholders of the Other Growthworks Funds. It was therefore unable to deliver an electronic shareholder data base accessible to the Fund after termination of the Management Agreement as required by section 8.5 of the Management Agreement. In order to obtain such a data base, the Fund ultimately engaged a third party referred to as "IAS." It appears to be undisputed that the Fund incurred a cost of $85,400 to separate the data.

[348] Second, the Fund says the accounting records were in a poor state. The evidence in support of this allegation pertains principally to certain mistakes uncovered by PWC when it conducted the investigation on behalf of Roseway in 2013 described above. Of these irregularities, the most material pertained to the Fund's accounting of the Fund's investment in Cytochroma.

[349] This matter appears to have arisen as a result of Roseway's decision to invest $176,085 in a follow-on financing of Cytochroma in excess of the amount of Roseway's follow-on investment contemplated by the Participation Agreement. The Fund did not make its own follow-on investment in this Cytochroma financing. The PWC investigation unearthed two problems with this investment.

[350] First, it appears that there was an accounting error pertaining to the treatment of Roseway's 14% interest in the shares received in this financing. This accounting error was corrected with the result that the Comm Fund received 100% of the shares received on the follow-on financing, of which 14% were held for Roseway.

[351] Second, a dispute arose between the Former Manager, on behalf of the Fund, and Roseway regarding the entitlement to certain "Old Warrants" received by the investors in Cytochroma. This dispute is discussed further below. It was resolved by a settlement agreement in 2015 pursuant to which the amount of $1,045,462 was payable by the Fund together with a percentage of certain future payments described below. The Fund asserts that it suffered a loss of $923,947.12 for which the Former Manager is responsible.

[352] In my view, the foregoing matters do not either individually or collectively constitute a material breach of sections 3.9(a) and 3.11 of the Management Agreement entitling the Fund to terminate the Management Agreement pursuant to section 8.2(c). The co-mingling of shareholder data prior to termination of the Former Manager did not jeopardize the continued viability of the Fund. The aggregate amount of the Fund's damage claim, even including the amount in respect of the Cytochroma interest, does not meet the standard of a "material breach" for the purposes of section 8.2(c) of the Management Agreement set out above. In addition, and in any event, for the reasons set out below, the Fund's claim for damages in respect of its Cytochroma interest is dismissed.

[353] In addition, the Fund says that the Former Manager did not provide the books and records of the Fund for over a year after the termination of the Management Agreement despite several demands of the Fund. The Former Manager disputes this characterization of the circumstances pertaining to its delivery of these books and records. However, as this interaction occurred after the termination of the Management Agreement, it cannot, in any event, give rise to a breach thereunder. The related damage claim of the Fund is addressed later in these Reasons.

Alleged Breach #3: Failure to Comply with Securities Legislation

[354] The Fund alleges two separate bases for termination of the Management Agreement pursuant to section 3.4 of the Management Agreement, which required compliance by the Former Manager of all securities laws, regulations and policies.

Breach of the Statutory Duty of Care, Diligence and Skill

[355] Under section 3.4 of the Management Agreement, the Former Manager agreed to comply with all securities laws and regulations, and other requirements of securities regulatory authorities, insofar as they relate to its duties and obligations under the Management Agreement. As described in detail above, after completing its compliance review, the BCSC compliance staff expressed the view that GWC had breached its fiduciary obligations and its duty of care under s. 125 of the *Securities Act (British Columbia)* and its duty of fair dealing under s. 14 of the *Securities Rules*, B.C. Reg. 194/97 and s. 11.1 of *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

[356] Based on the finding of a "material breach" under s. 3.5 of the Management Agreement above, I think that it necessarily follows that the Former Manager also breached section 3.4 of the Management Agreement for the same reasons. This conclusion is based on the virtually identical language of s. 125 of the *Securities Act (British Columbia)* and section 3.5 of the Agreement.

[357] However, the Fund argues that the Court should attach a far greater significance to the statements of the BCSC compliance staff in its letters in 2013 to the Former Manager. The Fund argues that the matters identified by the BCSC were "serious" and that neither the Former Manager nor the Court can challenge these findings. Because of the virtually identical language of s. 3.5 of the Management Agreement and s. 125 of the *Securities Act (British Columbia)*, the Fund effectively argues that the Former Manager and the Court are bound by the findings of the BCSC compliance staff in respect not only of this alleged breach, but also in respect of alleged breach #1.

[358] For the following reasons, I do not accept this argument of the Fund and I therefore made no mention of it in the analysis above regarding the Former Manager's breach of s. 3.5 of the Management Agreement.

[359] The statements of the compliance staff of the BCSC do not constitute findings that GWC breached the provisions of the securities legislation referred to above. The matters raised by the compliance staff did not proceed to a regulatory hearing before the BCSC. They are therefore not findings, or admissions, made in a hearing before the BCSC. Nor are they findings, or

admissions, agreed to by GWC in a settlement agreement with the BCSC that might give rise to the argument of abuse of process as in *Ciavarella v. Schwartz*, 2014 ONSC 5061 at paras. 35-36, to which the Fund refers. The statements represent only the views of the compliance staff of the BCSC. Moreover, the issues raised by the compliance staff of the BCSC were resolved by undertakings and conditions that permitted GWC to continue to carry on business and, accordingly, that permitted the Former Manager to continue to act as the manager of the Fund.

[360] In support of its position, the Fund retained Patricia Taylor, a lawyer in private practice who formerly acted as Senior Legal Counsel for the BCSC. In that capacity, among other things, Ms. Taylor advised compliance staff regarding potential regulatory action. Her opinion regarding the significance to be attached to the statements made by the compliance staff is the following:

> …the matters raised by the BCSC were substantial events requiring the board of the fund to consider the conduct of the Manager relating to the management of the Fund. The events leading to the imposition of the conditions and undertakings were more than minor or technical matters.

[361] I do not find this opinion to be either relevant or helpful. The issue is not whether the matters raised were "more than minor or technical matters," but rather the legal effect of the conclusions of the BCSC compliance staff. This opinion avoids reaching a conclusion on this issue although it purports to address it.

[362] Accordingly, I do not consider the alleged breach of applicable securities legislation to give rise to an independent event of default under section 3.4 of the Management Agreement that entitled the Fund to terminate the Agreement apart from the finding of a material breach of s. 3.5 of the Management Agreement. Nor do I consider that the position of the BCSC compliance staff demonstrates, or establishes, a breach of the Standard of Care that is *res judicata* in this action. Rather, the breach of s. 3.4 of the Management Agreement is a secondary breach that arises solely by virtue of the fact that the Fund succeeded in demonstrating a breach of the Standard of Care under s. 3.5 of the Agreement.

The Capital Deficiency of GWC

[363] The Fund also purports to rely on the breach of securities regulations arising from the failure of GWC to maintain the required minimum capital. As mentioned, the Former Manager acknowledged this failure in its letter to the BCSC dated May 31, 2013.

[364] The failure of GWC to maintain the required level of capital constituted a default under section 12.1 of *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligation*s. However, section 8.2(c) of the Management Agreement provided that a sixty-day cure period existed in respect of a curable default.

[365] In this case, the Termination Letter was sent on September 30, 2013. GWC cured the capital deficiency on October 1, 2013. Accordingly, the Fund cannot rely upon the capital

deficiency of GWC as an event of default that permitted it to terminate the Management Agreement under section 8.2(c) thereof.

Alleged Breach #4: Failure to Pay Normal Operating Expenses of the Fund

[366] As discussed in greater detail below under the heading "Damages Alleged in Respect of the Alleged Breach #4 Regarding Non-Payment of Certain Expenses," the Fund alleges a number of particular instances in which it says the Former Manager failed to pay expenses of the Fund that it was contractually obligated to pay.

[367] Whether these alleged breaches constitute, either individually or collectively, a "material breach" for the purposes of section 8.2(c) of the Management Agreement depends upon the resolution of these claims. Based on the Court's determination that, of these various claims, the Former Manager is only liable to reimburse the Fund for the amount of the KPMG audit expenses, the Proposed VenGrowth Transaction expenses and the Roseway-related management fee reduction, which total only approximately $1.2 million, I find that these claims do not give rise to a "material breach" for the purposes of section 8.2(c) of the Management Agreement.

Analysis and Conclusions Regarding the Former Manager's Damage Claims in Respect of the Termination of the Management Agreement

[368] The Former Manager claims damages on the termination of the Management Agreement that fall into three categories that will be discussed in turn.

Damages for Breach of Contract

[369] The Former Manager claims damages in the amount of $11,541,364 representing the fees to which it says it would have been entitled if the Management Agreement had been terminated under section 8.2(e). This claim proceeds on the basis that, in the absence of a right to terminate the Management Agreement under section 8.2(c), the Fund should be treated as effectively having been terminated under section 8.2(e). Accordingly, the damages claimed represent its calculation of the amount it would have received over the five-year transition period contemplated by that provision.

[370] Given the finding above that the Fund was entitled to terminate the Management Agreement pursuant to section 8.2(c) as a result of a material breach of the Standard of Care, there is no basis for this claim. There is no language in that provision, nor is there any other provision in the Management Agreement, that provides for a payment to the Former Manager of prospective management or administration fees post-termination in the circumstances of a valid termination under section 8.2(c). This claim is therefore dismissed.

Unpaid Capital Retention Fees

[371] The Former Manager claims the amount of $775,603.72 in respect of "unpaid capital retention" fees. These fees are contemplated by section 5.2(b) of the Management Agreement and pertain to commissions paid to third-party investment dealers on the sale of Class A Shares. The Management Agreement contemplated that the Former Manager would pay all commissions

payable to investment dealers in respect of such sales and that it would, in turn, be repaid by the Fund in equal installments over eight years. The amount claimed represents the aggregate of the amounts to be repaid in respect of Class A Shares sold less than eight years prior to the commencement of the CCAA proceedings.

[372] While the amounts being repaid are included in the administration fees payable under section 5.2 of the Management Agreement, these arrangements amount, in substance, to an interest-free loan by the Former Manager to the Fund repayable in equal installments over eight years. As such, in the absence of language in the Management Agreement that specifically provides otherwise, I see no reason why this amount should not be repayable by the Fund notwithstanding termination of the Management Agreement pursuant to section 8.6(a) thereof.

[373] In this regard, I note that this claim differs from the NAV-based management and administration fees in sections 5.1 and 5.2(a) in an important respect. In the normal course, a fee for future management or administration services would not be payable to a departing manager as it would duplicate the fee to be paid to the incoming manager. Such duplication would not arise, however, in respect of the "unpaid capital retention fees." The only issue would be the risk of an overpayment as a result of future redemptions before the expiry of the eight-year period. This is not, however, a realistic concern in the present circumstances after the commencement of the CCAA proceedings.

[374] I also note that section 8.6(a) refers to any unpaid Administration Fees, as contrasted with any reimbursable expenses accrued to the date of termination. On this basis, I do not think that the Former Manager's claim is limited to the amount of fees that are accrued as of the date of termination or are payable pursuant to section 5.2(b) in the year of termination of the Management Agreement.

[375] Based on the foregoing, I conclude that the Former Manager has a valid claim for reimbursement of the full amount of this claim.

Unpaid Incentive Payment Amounts

[376] Section 4.2(d)(i) of the share conditions of the IPA Shares provides for the payment of IPA Dividends as follows:

> The holder of the IPA Shares shall be entitled to receive, the directors shall declare where permitted by the Act and the Corporation shall pay, cumulative dividends on the IPA Shares payable as of the end of each fiscal quarter, on the following terms and conditions
>
> (i) the dividends shall be equal to:
>
> A. 20% of the Realized Gains and Income on each New Venture Investment; and

> B. 15% of the Realized Gains and Income on each Existing Venture Investment; …

[377] Section 4.2(f) of the share conditions provides for a payment of IPA Dividends on termination of the Former Manager as the manager of the Fund:

> Upon termination of the holder of the IPA Shares as a manager of the Corporation, the holder of the IPA Shares shall be entitled to receive an amount equal to the sum of:
>
> (i) all declared but unpaid dividends on the IPA Shares, and
>
> (ii) dividends in an amount equal to the cumulative dividends to which the holder of the IPA Shares would have been entitled pursuant to paragraph (d) above, whether or not dividends were actually declared by the directors, assuming that all Venture Investments had been disposed of as of the effective date of such termination at the estimated fair value of such investments calculated in accordance with the Corporation's usual valuation policies….

[378] The Former Manager claims that it is entitled pursuant to section 4.2(f)(ii) to payment of dividends on the IPA Shares equal to the total of realized gains and income from four venture capital investments that were divested prior to termination of the Management Agreement. The total amount claimed is $672,390.61.

[379] In support of its position that it is entitled to the earned, undeclared and unpaid dividends, the Former Manager relies on: (1) the language of section 4.2(f)(ii); and (2) the Fund's treatment of earned, undeclared and unpaid dividends in its financial statements.

[380] The Fund does not dispute that this amount was earned in the sense that the Former Manager is entitled to receive dividends in such amount pursuant to the provisions of section 4.2(d)(i) of the share conditions of the IPA Shares, subject to compliance with the terms of that provision. However, it submits that the Former Manager is not entitled to be paid such amount in the absence of a Board resolution declaring a dividend in such amounts on the IPA Shares, which the Board is prevented from passing in view of the solvency provisions of section 42 of the CBCA. In my view, the language of section 4.2(f)(ii) does not support the Former Manager's position that it is entitled to payment of the amount claimed by way of an IPA Dividend on the IPA Shares in the present circumstances for the following reasons.

[381] The Former Manager relies on the words "whether or not dividends were actually declared by the directors" in section 4.2(f)(ii). If section 4.2(f)(ii) provided that the Former Manager was entitled to receive the amount contemplated thereby otherwise than as "dividends," the result might well be different. However, section 4.2(f)(ii) is quite explicit. It provides that

the Former Manager is entitled to "dividends in an amount equal to the cumulative dividends *to which [the Former Manager] would have been entitled pursuant to paragraph (d)* above…" (emphasis added). Section 4.2(d)(i) provides, among other things, that "the directors shall declare *where permitted by the Act* and the [Fund] shall pay" the earned amounts (emphasis added). This language requires the Fund to make any amount owing pursuant to section 4.2(f)(ii) payable by way of a dividend. It also makes the Board's obligation to declare the contemplated dividend dependent upon the CBCA and, in particular, satisfaction of the solvency provisions in section 42 of that statute.

[382] As the share provisions are clear that the earned amounts are to be paid to the Former Manager in the form of dividends, and, in any event, as it is not disputed that, in the present circumstances, the directors could not satisfy section 42 of the CBCA if they were to declare a dividend in respect of such amounts, the Board has no obligation to declare such dividend and the Fund therefore has no obligation to pay any amount to which the Former Manager is otherwise entitled pursuant to section 4.2(f)(ii). In short, there is no amount to which the Former Manager would have been entitled pursuant to section 4.2(d)(i) of the share conditions of the IPA Shares.

[383] In addition, I do not find the financial statement treatment of these earned amounts as probative of the legal issue in this proceeding for three reasons.

[384] First, the financial statement treatment of these amounts as a liability in years prior to 2013 is undoubtedly correct in the context of a going-concern entity. Regardless of any legal issue surrounding the need for a declaration of a dividend, these amounts were required to comply with the business arrangements between the Fund and the Former Manager.

[385] Second, the concept of a liability for accounting purposes is broader than the concept of a legally enforceable obligation at law. In fact, the accrual of a contingent liability in respect of the IPA Shares demonstrates this reality. There is, therefore, no necessary inference of a legally enforceable obligation to be derived from the accounting treatment of this claim in the financial statements of the Fund.

[386] Third, there is no evidence of any issue of compliance with the CBCA solvency test that was raised in respect of such earned amounts at the time of finalization of the financial statements. Further, and in any event, there is no evidence that the legal issue presented by this action was addressed in the preparation of the financial statements.

[387] I also note that Mesbur J. reached a similar conclusion on similar language in another case also involving the Former Manager reported at 2017 ONSC 5009, which is currently under appeal. While I agree with the reasoning in that case, I have not relied specifically on that decision in reaching the conclusion expressed herein.

[388] Based on the foregoing, I conclude that the Former Manager is not entitled to its claim for the amount of accrued IPA Dividends in the amount of $672,390.61.

Unpaid Fees and Financing Fees for September, 2013

[389] The Former Manager also claims unpaid management and administration fees in the amount of $352,668. This amount represents the Former Manager's fees for the period of September 2013 calculated in accordance with the Management Agreement.

[390] The Fund has not disputed the Former Manager's claim for this amount. The Former Manager is therefore entitled to the amount of this claim. I note, however, that payment of this amount is subject to the provisions of the document dated August 14, 2013 entitled "Direction to Pay" regarding the Former Manager's obligation to pay the audit fees of KPMG in respect of the audit for the Fund's fiscal year ending August 31, 2013.

Claims of the Former Manager for Transition Services

[391] The Former Manager makes the following five claims for services that it provided, or contracted for, after the date of termination of the Management Agreement that were not contemplated in the CTSA (collectively, the "Transition Services"). The Fund did not appoint a successor manager for the Fund. The Monitor in these CCAA proceedings has neither provided, nor proposed providing, the services at issue. Even if not directly applicable in the absence of a successor manager, the provisions of section 8.6 of the Management Agreement are also relevant. Section 8.6(b) provides that, if the Agreement was terminated pursuant to section 8.2, the Fund would pay the Former Manager "all reasonable transfer, wind down and transition costs incurred by … the Manager as a result of having to transition operations to a successor manager." I will address each claim in turn.

Concentra

[392] Concentra is the group RRSP trustee for all of the funds managed by the Former Manager. RRSP accounts must be held by a licensed RRSP trustee in order for RRSP tax benefits to accrue to a shareholder of the Fund. As the Former Manager was not a licensed RRSP trustee, it retained Concentra to provide this service.

[393] The Former Manager advised that the cost of processing tax forms on the transfer of Class A shares from RRSPs to RIFs by shareholders who turn 71 would be would be $7,000 for 2013. A year later, it advised that the cost for 2014 would be $63,000. On December 4, 2014, the Fund notified the Former Manager that it would not cover the fees for Concentra. However, the Former Manager continued to engage Concentra until March 31, 2016.

[394] The Former Manager claims $94,781.29 according to the Monitor's Eighteenth Report dated January 26, 2017 (the "Eighteenth Report"), although at trial the Monitor suggested that the amount was now $184,664.75 based on an allocation of the Concentra fees among the Fund and the other GrowthWorks Funds according to the number of shareholders of the funds.

[395] The evidence establishes that it was necessary for the Fund to engage a group RRSP trustee to avoid adverse tax consequences for a material number of its shareholders, not merely for the preparation of tax-related materials for the transfer of Class A Shares from RRSPs to RIFs. While Ross said that the Fund was engaging a third party to provide the tax-related

services for 2014, there is no evidence that the Fund actually finalized an agreement with an alternative trustee to act as the group RRSP trustee nor is there evidence that the Fund engaged a third party service provider to process the tax-related forms during the period for which Concentra provided services. Nor has the Fund demonstrated that the fees associated with Concentra are higher than any alternative trustee that it proposed to engage. On this basis, it is reasonable for the Fund to pay these fees on the *quantum meruit* principle.

[396] The Fund argues that, since the Former Manager has not paid Concentra any of the amounts it seeks in this action, it has not demonstrated a loss. I do not agree. The evidence establishes that Concentra has invoiced the Former Manager a total of $230,377.86 for its fees from October 1, 2013 to March 31, 2014. As such, the Former Manager has incurred a liability or expense for which it is entitled to be reimbursed.

[397] On the other hand, while it is not clear how the Former Manager's claim for $94,781.29 was arrived at, I am not persuaded that an allocation based on the number of shareholders of the Fund is appropriate. The cost of continuing to act as a bare trustee of RRSP accounts would appear to be essentially independent of the number of shareholders. Further, the cost of processing any tax-related materials for the Fund's shareholders would be considerably less for the Fund after sales and redemptions ceased than it would be for the Other GrowthWorks Funds that have remained active.

[398] Accordingly, I find that the Former Manager is entitled to its claim of $94,781.29 for reimbursement of the amount owing to Concentra for services provided by that corporation.

Just Systems

[399] The Former Manager claims $67,259.51, according to the Eighteenth Report, for fees payable to Just Systems for the use of software that permitted the Fund, and the Former Manager, to access the Fund shareholder database. The total fees invoiced by Just Systems to the Fund and the Other GrowthWorks Funds during the relevant period, being January 1, 2014 to September 30, 2014 was $118,500. The Fund has paid $27,550.49 plus taxes, representing its share on an "assets under administration" basis. The Former Manager says the appropriate allocation basis should be the number of shareholders. It therefore claims an additional $67,259.51 as the difference calculated on this latter basis.

[400] The Fund does not dispute that it used the software during the relevant period and therefore is obligated to pay the cost thereof that is attributable to services in respect of the Class A shareholders of the Fund. However, the Former Manager co-mingled the data of the shareholders of all of the funds that it managed with the result that the fees charged to the Former Manager for the use of this software by all of the funds managed by it must be allocated to the Fund on some basis.

[401] The Fund believes that the total fees payable to Just Systems should be allocated based on the assets under management of the Fund relative to total assets under management of the Former Manager. It says this is consistent with the Former Manager's proposal with respect to the Just Systems' fees provided to the Fund on November 27, 2013 and approved by the Fund. The Former Manager says that it mistakenly contemplated an "assets under administration"

allocation basis in its proposal. It advised the Fund in 2014 that it considered that the fees ought to be allocated instead on the basis of the relative number of shareholders of each fund.

[402] The Former Manager's 2013 proposal contemplated the allocation of fees on an "assets under administration" basis. Whether this claim is conceived of as a continuation of the agreement formed when the Fund accepted and acted upon the Former Manager's proposal or as a claim for reimbursement of reasonable expenses on a *quantum meruit* basis, the evidence does not establish a compelling basis for departing from the "assets under administration" principle. In particular, as with the Concerta claim, I am also not satisfied that the relative use of the software is best represented by the number of shareholders of a fund for which there are no sales or redemptions. Accordingly, the Former Manager is only entitled to be paid an amount equal to the Just Systems' fees allocated as between the Fund and the Other GrowthWorks Funds on the basis of "assets under administration".

[403] The Former Manager's claim is therefore dismissed.

FundSERV

[404] FundSERV licensed software to the Former Manager that permitted individual brokers to connect to the shareholder database to make changes to a shareholder's account, including in particular making redemption requests, without having to involve the Former Manager. At the Fund's request, the Former Manager terminated this service in March 2014. The Former Manager seeks reimbursement of the FundSERV fees for the period from September 30, 2013 to March 2014 on a *quantum meruit* basis. The amount of this claim is $34,627.

[405] The Fund says that it did not require this service after the commencement of the CCAA proceedings as there were neither share transfers nor redemptions after that date. The Fund also says that it did not direct the Former Manager to incur this cost.

[406] The evidence establishes that the Fund did not require this service during the period from September 30, 2013 to March 2014, when the service was terminated, as neither redemptions nor transfers could occur after the commencement of the CCAA proceedings, other than transfers from RRSPs to RIFs. The limited amount of account servicing required in respect of changes to shareholder information could have been done manually at a reduced cost and was, in fact, so managed later. This should have been well-known to the Former Manager at the time of commencement of the CCAA proceedings. Insofar as this resulted in an increase in telephone calls to the Former Manager's call centre, the cost is being reimbursed pursuant to a separate claim addressed below.

[407] Based on the foregoing considerations, I conclude that the Former Manager's claim for reimbursement of FundSERV fees to March 2014 should be dismissed.

Accounting Services

[408] Under the CTSA, the Fund agreed to pay for the Former Manager's accounting services. Section 3 of the CTSA provided that payment for the costs of such services:

> …will be calculated as the sum of the time expected to be spent by each employee performing Critical Transitional Services at an hourly rate equal to the actual annual salary of the individual employee, plus benefits and other employment costs related to that person, divided by 1840 working hours per year. [Emphasis added].

[409] The Former Manager submits that "other employment costs related to that person" includes its overhead including rent. Accordingly, in addition to the direct employment costs of $91,698.36 billed to the Fund, the Former Manager applied a further charge of 60% of this amount on account of such "other employment costs".

[410] This issue raises an issue of contractual interpretation of the relevant provision of the CTSA. I think it is clear that "other employment costs related to that person" must relate to other costs directly pertaining to the employment of an individual directly involved in providing accounting services. As such, it excludes the costs of persons who provide support services included in overhead but who do not directly provide accounting services to the Fund.

[411] In this regard, it is significant that the provision speaks to "other employment costs" rather than to "other costs" and it addresses only costs "related to that person" rather than costs related to other persons whose employment indirectly bears on the provision of the services provided under section 3 of the CTSA. Moreover, the term "other employment costs" does not extend to other non-employment costs that are typically included in overhead costs, such as leasehold costs, software licence fees, telecommunications costs, etc. as these cannot be characterized as "employment costs related to that person" regardless of who that person is. This suggests that "other employment costs" was not intended to apply to overhead as that term is generally used. As a related matter, the language also does not support the application of a 60% factor to determine such "other employment costs". The language requires identification of the actual costs of an individual.

[412] Based on the foregoing, I conclude this claim should be dismissed.

Customer Support Services

[413] The Former Manager claims $94,630.96 for the provision of customer support services for the period from October 1, 2013 to February 28, 2014 when it stopped providing these services. These costs appear to relate primarily to a call-centre maintained by the Former Manager for all of the funds that it manages.

[414] The Fund says an agreement to provide these services was negotiated between the parties but it was never signed. It says there was no agreement for the provision of these services, no direction from the Fund to provide these services, and no reference to them in the CTSA.

[415] However, the Fund required a third-party provider to provide information to its shareholders after the commencement of the CCAA. A monitor often provides such services. Nevertheless, in this case, it does not appear that the Fund engaged the Monitor to provide such

services. In any event, there is also no evidence that the Monitor could have provided these services at a lower cost than the costs charged by the Former Manager.

[416] Based on the foregoing, I conclude that the Former Manager is entitled to be reimbursed for the direct employment costs of providing these services on a *quantum meruit* basis.

[417] It is understood that the total amount charged to the Fund and the Other GrowthWorks Funds for the relevant period is $138,040.91. There is a dispute as to whether these costs should be allocated on the basis of the number of shareholders or on an "assets under administration" basis.

[418] I conclude that the Former Manager's costs of providing this service should be allocated between the Fund and the Other GrowthWorks Funds on an "assets under administration" basis, rather than on the basis of the number of shareholders as the Former Manager submits. As mentioned, the extent and nature of shareholder queries regarding a solvent and an insolvent fund are likely to be quite different such that there is no clear basis for concluding that allocation on the basis of the number of shareholders would be more appropriate than an allocation on the basis of the "assets under administration".

[419] The Former Manager also included an overhead charge equal to 60% of the direct employee costs in its claim. In principle, the Former Manager should be entitled to a charge for overhead. However, I agree with the Fund that the 60% figure applied by the Former Manager is not defensible, given that it represents an allocation of employee costs at a single point in time in October 2013, which therefore disregards the acknowledged wind-down of operations after that date. In the absence of evidence that establishes the actual overhead costs over the relevant period and therefore permits a reasonable markup that reflects these costs, I conclude that the Former Manager has failed to establish the amount of the compensable costs for overhead.

Analysis and Conclusions Regarding the Fund's Damage Claims

[420] The Fund asserts claims for damages arising from each of the four breaches of the Management Agreement alleged against the Former Manager that were discussed above. I will address each in turn.

Damages Alleged in Respect of the Breach of the Standard of Care

[421] The Fund seeks damages totalling $28,640,000 for breach of the Standard of Care. This comprises the following:

(1) $17.1 million of interest costs in respect of the Roseway Transaction;

(2) $5 million of default interest payable in respect of the Roseway Transaction;

(3) $1.32 million of interest costs payable in respect of the WOF Loan;

(4) $720,000 of interest costs payable in respect of the Matrix Loan; and

[422] $4.5 million on account of legal, financial advisory and accounting expenses alleged to arise by virtue of the Former Manager's breach. There are two issues regarding this claim, which will be addressed in turn: (1) an assertion of the Former Manager that this claim is barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B; and (2) the principles on which this claim is based. In this latter regard, the claim for $4.5 million is an omnibus claim for expenses incurred in respect of each of the four alleged breaches of the Management Agreement that will be addressed later.

Limitation Period Defence

[423] The Former Manager commenced this action by a Statement of Claim, pursuant to the claims procedure order in the CCAA proceedings, that was filed and served on or about March 5, 2014. The Fund issued and served its Statement of Defence and Counterclaim on or about February 25, 2015. The Former Manager submits that, insofar as the Counterclaim asserts damages for breach of the Former Manager's obligations pursuant to the Standard of Care, the Counterclaim set out therein is statute-barred by virtue of the provisions of s. 4 of the *Limitations Act*, which provides for a two-year limitation period from the date of discovery of a claim.

[424] The Former Manager says that, given the nature of the Fund's claim for breach of the Standard of Care, the Fund knew or ought to have known that it had a claim regarding the Former Manager's alleged breaches of the Management Agreement much earlier, perhaps as early as 2009. The Fund submits that it did not discover the claim for breach of the Standard of Care until mid-2013. It says that it could not have been aware of the facts upon which it bases its claim until that time.

[425] The Fund's position is expressed in paragraph 53 of the Statement of Defense and Counterclaim as follows:

> 53. Despite the significant Management Fees paid by the Fund to the Former Manager, the Former Manager failed to adhere to the Standard of Care required under the Management Agreement, including its obligation to exercise reasonable care and diligence in performing its duties under the Management Agreement. This became apparent to the Fund midway through 2013 as a result of two significant developments: the Fund's attempts to restructure its arrangements with Roseway and avoid defaulting on the Roseway Obligations; and an investigation by securities regulators into the affairs of the Former Manager and its subsidiary, GWC.
> …

[426] In addition, the Fund argues that the assertion of its claim would have been premature prior to termination of the Former Manager. In particular, it says that the Fund could not reasonably have known of its claim prior to 2013 while the Fund was still performing well and was liquid. In addition, it says that the Former Manager was continuing to present potential solutions to the Fund's liquidity problems until the commencement of these legal proceedings and that the Fund reasonably relied on this activity as a potential solution to such problems. The Fund analogizes this situation to the circumstances in *Brown v. Braun*, 2016 ONCA 325, 84

C.P.C. (7th) 231, in which, at paragraph 18, the Court of Appeal concluded that it was not legally appropriate for a claim to be discoverable while the medical treatment at issue in that case was continuing.

[427] I have reached the conclusion, for the reasons set out above, that the Former Manager failed to meet the Standard of Care in 2009 and 2010 and, in particular, in recommending the Roseway Transaction in 2010. The issue is when these actions became discoverable.

[428] Section 5 of the *Limitations Act* provides as follows:

> (1) A claim is discovered on the earlier of,
>
> (a) the day on which the person with the claim first knew,
>
> (i) that the injury, loss or damage had occurred,
>
> (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
>
> (iii) that the act or omission was that of the person against whom the claim is made, and
>
> (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
>
> (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[429] In this case, the losses or damages claimed are the costs incurred by the Fund in respect of the Roseway Transaction principally and, secondarily, of the WOF Loan and the Matrix Loan.

[430] The issue of discoverability pertains to discovery of the facts upon which a claim is based or asserted. In this case, the relevant facts were fully known to the Board by November 2011.

[431] As mentioned above, in a memorandum prepared for the April 27, 2010 Board meeting, the Former Manager stated that "the [Fund] has a plan in place whereby net positive cash flows from the venture capital portfolio will be more than sufficient to meet the Fund's redemption obligations, allowing the Fund to sustain its critical mass over the long-run." The Roseway Transaction was presented by the Former Manager as insurance that would ensure that this plan would be realized. Accordingly, the premise of the Roseway Transaction was that it represented "insurance" to the Fund against potential liquidity problems that would require the Fund to cease redemptions, among other things. On the basis of the Former Manager's projections, the Roseway Transaction would permit the Fund to carry on making redemptions in the ordinary course while, at the same time, making the necessary follow-on investments to achieve value-maximizing divestitures. The WOF Loan was intended to serve a similar purpose.

[432] However, by November 2011, it was abundantly clear that this plan had failed and that the survival of the Fund required a cessation of redemptions. Accordingly, the Fund was in possession of all of the facts necessary to assert the claim of breach of the Standard of Care that is now being asserted no later than November 2011 when the Board resolved to cease redemptions. By that time, it was obvious that the Fund should have been advised to suspend redemptions, or to adopt other cash conserving measures before the commencement of the 2010 RRSP season, rather than to enter into the Roseway Transaction and subsequently the WOF Loan. In addition, it was also obvious that the Former Manager's projections for divestitures and sales of Class A Shares, including the potential value from the Defined Portfolio, upon which the decisions to enter into the Roseway Transaction had been based, were unduly optimistic. Moreover, if there remained any doubt regarding the Board's knowledge of facts establishing its claim for breach of the Standard of Care, the Matrix Loan made the Fund's claim abundantly clear. By the time of this transaction, the circumstances set in motion by the Roseway Transaction required a third loan notwithstanding that redemptions had ceased six months earlier.

[433] I would add that the Newbury Transaction provided further evidence of the basis for the Fund's claim in this action. Each of the Roseway Transaction and the WOF Loan were intended to bridge any liquidity deficits in order to permit the Fund not only to maintain redemptions but also, as mentioned, to fund necessary follow-on investments of its venture capital portfolio companies and thereby ensure an orderly divestiture process that maximized disposition proceeds. The Matrix Loan was required to fund follow-on financings and the interest payable to Roseway notwithstanding, as mentioned, the suspension of redemptions. The Newbury Transaction involved a premature disposition of a number of the Fund's venture capital investments at a significant discount to the Fund's carrying value for those investments at a time when redemptions had already ceased. In short, the need for the Newbury Transaction in order to avoid a further default under the Roseway Transaction, and to repay the WOF Loan, amply demonstrated not only that these transactions had failed to achieve their intended purposes but also that the Fund should, instead, have ceased redemptions, or adopted other cash considering measures, at a much earlier date.

[434] Given the foregoing, I do not see any force to the analogy with the decision in *Brown v. Braun*. This is not a situation in which the Former Manager was in a position to rectify an error acknowledged by the parties. The Fund had incurred liabilities that were irreversible. The only "remedy" was adoption of a completely different strategy that should have been adopted in lieu of the Roseway Transaction.

[435] I also do not accept that the Fund did not discover the cause of action until it received the BCSC letters, or attempted to restructure the Roseway Transaction, in 2013. Discoverability pertains to knowledge of the facts giving rise to a cause of action, not to the receipt of opinions from third parties that the actions of a party may not have met a standard of care. In taking this position, the Board is disregarding its own responsibilities in accepting the recommendations of the Former Manager.

[436] Based on the foregoing, I therefore find that the Fund's counterclaim for damages arising as a result of breach of the Standard of Care is statute barred pursuant to s. 2 of *the Limitations Act*.

The Quantification of Damages

[437] Given the foregoing conclusion, it is unnecessary to address the Fund's damage claim and I therefore decline to address this issue.

Damages Alleged in Respect of the Alleged Breach #2 Regarding the Failure to Keep Proper Books and Records

[438] The Fund asserts two principal claims for damages in respect of this alleged breach by the Former Manager.

The Data Base Claim

[439] The Fund claims $85,400 that it says was incurred to separate the co-mingled shareholder data. As mentioned above, the Former Manager has acknowledged that it co-mingled the shareholder data pertaining to the Fund with the shareholder data pertaining to the shareholders of the Other GrowthWorks Funds. Accordingly, it was unable to deliver an electronic shareholder data base accessible to the Fund after termination of the Management Agreement as required by section 8.5 of the Management Agreement.

[440] It appears to be undisputed that the Fund incurred a cost of $85,400 to engage a third party, IAS, to separate the data, although it is not possible to isolate this work from the IAS invoices in evidence in this action. Accordingly, this amount is payable by the Former Manager to the Fund as damages for breach of section 8.5.

Cytochroma Claim

[441] The Fund claims $923,947.12 as damages in respect of the dispute regarding the entitlement to the "Old Warrants" received by investors in Cytochroma as described above. The Former Manager took the position that the Fund owned these securities and that they formed part of the Defined Portfolio in the Roseway Transaction. Roseway took the position that it received the securities on a Cytochroma follow-on financing in early 2012 in which the Fund did not participate. The Fund's claim represents the value of 86% of the shares of Cytochroma's parent, valued as of the date of their sale, plus 10% of additional sales proceeds payable to Roseway referred to as "milestone payments," representing the difference between the amount stipulated in the settlement agreement referred to above and 14%.

[442] The Fund says these amounts were received by Roseway as the result of the mistaken execution of a document described as an "Acknowledgement and Receipt" (the "Acknowledgment") by a representative of the Former Manager, Joseph Regan. The Fund says the effect of the Acknowledgement was to give Roseway an entitlement to 100% of the proceeds of the sale of the shares into which the Old Warrants were converted on the sale of the Fund's Cytochroma interest, rather than 14% as agreed pursuant to the Participation Agreement.

[443] The Acknowledgment states that "the securities acquired by [the Fund] under the Cytochroma Financing will be owned directly by [the Fund] and form part of the Roseway Portfolio and Roseway shall be entitled to 100% of the Divestment Proceeds from such

securities." For this purpose, "Roseway Portfolio" does not appear to be defined while "Divestment Proceeds," which is defined in the Participation Agreement, means the proceeds received by the Fund from a "Defined Portfolio Company."

[444] The issue between the Fund and Roseway was whether the Old Warrants were "securities acquired by [the Fund] under the Cytochroma Financing," which is defined as "a financing on or around March 26, 2012." As mentioned above, the issue was resolved in a settlement agreement dated May 22, 2015. Pursuant to this agreement, the Fund agreed to pay Roseway $1,045,462 together with the milestone payments referred to above.

[445] While it is quite possible that Regan should not have executed the Acknowledgement, it is not clear that Roseway's position was solely attributable to this document. On its face at least, I do not think that the language in the Acknowledgment is dispositive of the issue. More significantly, the dispute between the Fund and Roseway was never litigated. Instead, the Fund chose to enter into the settlement agreement to resolve this issue and certain other issues between the Fund and Roseway. Therefore, the legal issue of the entitlement to the Old Warrants, and of the alleged negligence of Joseph Regan in executing the Acknowledgement, was never judicially determined. To be clear, the evidence before the Court in this action is not sufficient to establish that Regan was negligent in executing the Acknowledgment.

[446] In these circumstances, the Fund cannot demonstrate that the amounts claimed represent a loss caused by the alleged negligence of the Former Manager either in the form of its record keeping in respect of the Cytochroma investment or as a result of the execution of the Acknowledgement. Accordingly, the Fund's claim for damages in respect of the Cytochroma interest is denied.

Damages Alleged in Respect of the Alleged Breach #3 Regarding the Failure to Comply With Securities Legislation

[447] As noted above, the Fund has asserted two separate breaches by the Former Manager of section 3.4 of the Management Agreement. It also asserts two separate claims in respect of legal fees that it says were incurred in engaging counsel to advise the Fund with respect to each alleged breach.

[448] Specifically, the Fund seeks reimbursement of legal expenses that it says were incurred in connection with the Former Manager's response to the matters raised in the letters of the BCSC compliance staff in 2013 described above. In addition, the Fund seeks reimbursement of its legal expenses incurred in respect of GWC's failure to satisfy the capital adequacy rules under applicable securities legislation in 2013.

[449] In each case, these expenses are attributable entirely to the actions of the Former Manager. The expenses pertain to the Former Manager's obligation under section 3.4 of the Management Agreement to comply with applicable securities legislation, in this case legislation pertaining to its continued registration thereunder. In my view, these expenses constitute expenses that fall under section 6.1 of the Management Agreement for the following reason.

[450] Section 6.1 provides that the Former Manager shall pay all normal operating expenses of the Fund incurred in providing the Services. The Services include, by virtue of section 3.1(c), ensuring compliance in all material respects with securities laws, regulations and policies relating to the operation of the Fund. The legal expenses involved were incurred in addressing issues related to the Former Manager's continued registration under applicable securities legislation which was a condition of the Fund's own compliance with applicable securities legislation. The fact that GWC's registration was not revoked as a result of the BCSC compliance investigation or that it was able to cure its capital deficiency did not exclude a valid concern on the part of the Fund for GWC's status or the need for legal advice regarding that status and its potential impact on the Fund.

[451] In respect of the expenses pertaining to the capital deficiency, I think that they are also payable by the Former Manager by way of indemnification pursuant to section 9.7 of the Management Agreement by virtue of the Former Manager's default under section 3.4 of that Agreement.

[452] Accordingly, I conclude that, in principle, these legal expenses are payable by the Former Manager. I have dealt with the Fund's claim for reimbursement of these expenses as part of the omnibus claim of $2.5 million addressed below.

Damages Alleged in Respect of the Alleged Breach #4 Regarding Non-Payment of Certain Expenses

[453] The Fund alleges a number of instances in which it says the Former Manager failed to pay expenses of the Fund that it was contractually obligated to pay. I will address each allegation after first setting out the relevant provisions of the Management Agreement.

[454] Pursuant to section 6.1 of the Management Agreement, the Former Manager was responsible for paying the normal operating expenses of the Fund as follows:

> 6.1 The Manager shall pay all normal operating expenses of the Fund incurred in providing the Services, including without limitation:
>
> …
>
> (b) audit and legal fees;
>
> (c) insurance premiums for directors and officers liability, errors and omissions and comprehensive business insurance equal to the current aggregate annual amount of insurance coverage carried by the Fund for the most recently completed financial year prior to the date of this Agreement or such higher amount as is reasonably required by the Fund (or such other coverage as is approved by the Board and the Manager from time to time); …

[455] Conversely, the Fund was responsible for paying any "unusual or extraordinary expenses," as set out in section 6.2 of the Management Agreement:

> 6.2 Notwithstanding Section 6.1, the Fund shall be responsible for any expenses or charges incurred in respect of the following:
>
> …
>
> (b) the auditor's fees incurred in connection with more frequent audit of matters other than the annual audit;
>
> …
>
> (e) any unusual or extraordinary expenses incurred by the Fund outside the normal scope of the Services such as, for illustrative purposes: expenses incurred as a result of litigation or arbitration involving the Fund, the previous manager of the Fund or the current or former portfolio companies, payments by the Fund to third parties pursuant to indemnity provisions between the Fund and such third parties under agreements entered into prior to the Effective Date, or interest in other than very short term borrowings to fund redemption of Class A Shares.

Auditing Expenses for the 2013 Fiscal Year

[456] The Fund says it is owed $350,696.83 in respect of auditing expenses for the 2013 fiscal year that ended on August 31, 2013. This claim pertains to an invoice of KPMG for services provided in respect of the audit before the date of termination of the Former Manager. The Former Manager is otherwise obligated to pay these fees pursuant to section 6.1(b) of the Management Agreement. However, the Former Manager resists this claim on the basis that the KPMG invoice was not rendered until after the date of termination. I do not accept the Former Manager's position for the following reasons.

[457] First, these audit services were rendered prior to the termination of the Management Agreement. As such, the obligation to pay these fees accrued prior to such termination. The date of delivery of the KPMG invoices is of no relevance for the determination of the Former Manager's liability to pay such fees under section 6.1(b) in the absence of any express wording in that provision supporting the Former Manager's position.

[458] Further, as mentioned above, the Former Manager is entitled to receive its management and administration fees to the date of termination of the Management Agreement. In return for the receipt of such fees, the Former Manager agreed in section 6.1(b) of the Management Agreement to be responsible for the ordinary course audit fees of the Funds. Given this agreement, I see no reason why audit fees that were incurred in the period for which the Former Manager is receiving its management fees as addressed above should not payable by the Former Manager.

[459] Finally, any issue regarding these fees is also foreclosed by the fact that the KPMG invoice would have been rendered earlier but for discussions between the Former Manager and KPMG regarding a payment schedule to accommodate the Former Manager's cash flow position.

[460] Accordingly, I find that the Former Manager is obligated to reimburse the Fund for the amount of the KPMG audit fees in respect of the Fund's fiscal period ending August 31, 2013.

Roseway Reduction

[461] As mentioned, pursuant to the defined portfolio services agreement with Roseway described above, the Former Manager agreed to provide services to Roseway in relation to the Defined Portfolio for an annual fee of $100,000. The Former Manager also agreed with the Fund to a corresponding reduction to the management fees payable by the Fund. This reduction was applied in 2010. The Former Manager also provided the stipulated services to Roseway in 2011, 2012 and 2013 but was not paid by Roseway in those years. The Former Manager did not apply the fee reduction in any of these years. It takes the position that the reduction of the Fund's management fees does not apply in the circumstances of non-payment by Roseway of its fees.

[462] This matter raises a simple contractual issue between the Former Manager and the Fund. It does not engage the issue of the application of sections 6.1 and 6.2 of the Management Agreement. It is my understanding that no limitation period issue is asserted by the Former Manager in respect of this claim.

[463] There is no merit to the Former Manager's position. There were two separate agreements – one between the Former Manager and Roseway and another between the Former Manager and the Fund. There is no suggestion that the Former Manager tied them together when the Roseway Transaction was entered into. Moreover, given the inherent conflict of interest that was addressed in these arrangements, it would not have been appropriate to tie them together. Most significantly, the Fund is not in a position to pursue Roseway for the amounts payable to the Former Manager as it is not a party to the agreement between the Former Manager and Roseway.

[464] Accordingly, I see no basis for the Former Manager's position. It is in a position to pursue Roseway for payment of its account. However, regardless of payment, it was obligated to reduce the fees owing by the Fund pursuant to the Management Agreement by $300,000. It therefore owes the Fund this amount.

Legal and Advisory Fees for the 2011 to 2013 Fiscal Years

[465] The Fund claims that the Former Manager improperly charged three categories of claims to the Fund during the 2011 to 2013 fiscal years totalling $2,378,933. In each case, the Former Manager treated these expenses as "unusual or extraordinary." The Fund's position is that they were not "unusual or extraordinary" and were therefore payable by the Former Manager under section 6.1 of the Management Agreement. I will address each claim in turn.

Expenses Related to Debt Financings

[466] The Former Manager has charged the Fund with legal and consulting expenses that were incurred in relation to the Fund in respect of the Roseway Transaction, the WOF Loan and the Matrix Loan, including the Growthpoint Loan. The total amount is $939,259.50.

[467] The Fund says that if, as the Former Manager argued, it was reasonable for the Fund to incur this debt, these expenses should not be treated as "unusual or extraordinary." The Fund also says that, as "insurance," such expenses would constitute expenses "reasonably required to conduct the Fund's usual daily operation in an efficient manner" and, as such, would qualify as general expenses covered by section 6.1. In addition, it also says that it would have factored these costs into its decision-making if the Former Manager had advised the Fund of its position at the time of approval of the transactions, particularly the Roseway Transaction.

[468] The Fund cannot have it both ways. It argues on the one hand that the Roseway Transaction, the WOF Loan and the Matrix Loan were extraordinary transactions that addressed enterprise-threatening liquidity risks, that they were imprudent, and that they were unique to the Fund in that there is no evidence of similar borrowings by any other LSVCC. On the other hand, it also suggests that such transactions were reasonably required to conduct the Fund's usual daily operations in an efficient manner and were entered into the ordinary course of its business. It is also disingenuous to suggest that the Fund would not have entered into the Roseway Transaction if the Board had been apprised that it was to be responsible for its legal expenses in connection with this Transaction.

[469] Further, these expenses were disclosed to the AVC and the auditors of the Fund at the time of preparation of the audits of the Fund for the 2010, 2011 and 2012 fiscal years. The failure of either entity to raise the payment of these expenses at the relevant time is itself evidence of their respective views of the proper characterization of these expenses.

[470] Accordingly, I find no breach of section 6.1(b) of the Management Agreement in respect of these expenses and no obligation on the part of the Former Manager to reimburse the Fund for these expenses. Instead, these are "unusual or extraordinary" expenses that are to be borne by the Fund pursuant to section 6.2(c).

Expenses Pertaining to the Proposed Vengrowth Transaction

[471] The Former Manager also charged the Fund expenses totalling $547,104 pertaining to the Proposed Vengrowth Transaction. The Fund says that the Former Manager was obligated to pay these expenses on two grounds. The Fund says that such a finding would be consistent with a specific agreement between the Fund and the Former Manager to the effect that the Former Manager would pay all costs associated with this Transaction. It also says that the Former Manager was obligated to bear such expenses pursuant to *National Instrument 81-102 5.6(i)(h)*, which provides that "mutual funds participating in [the transaction] bear none of the costs and expenses associated with the transaction."

[472] The expenses in question apparently comprise $513,670 incurred in connection with the establishment of the proposed credit facility that was required to support the purchase of the

VenGrowth shares and $33,425 incurred in connection with independent legal advice provided to the Fund with respect to the Transaction.

[473] I would observe that the provisions of *National Instrument 81-102* are not directly relevant to this issue. Section 5.6 of that Instrument merely sets out the conditions for a transaction that would be exempted from the need for approval of the securities regulatory authorities. The issue for the Court is, therefore, the nature of the specific agreement between the parties.

[474] In accordance with the principles set out in sections 6.1 and 6.2 of the Management Agreement as discussed above, the expenses at issue are properly characterized as "unusual or extraordinary expenses" for which the Fund would ordinarily be responsible. However, the Fund says that the Former Manager agreed to bear all of the expenses of the Fund in relation to the Proposed VenGrowth Transaction.

[475] There is evidence of such agreement. Levi acknowledged on his cross-examination that the Former Manager paid the expenses of the Proposed VenGrowth Transaction. David Jennings, the corporate counsel to the Fund, understood that there was such an agreement. Further, the management information circular for the annual and special meeting of the shareholders of the Fund on June 28, 2011, at which the Proposed VenGrowth Transaction was approved, stated at page 24 that "[t]he manager of [the Fund] will pay all of the reasonable, incremental costs associated with the Merger incurred by [the Fund]." I also note that the minutes of the meeting of the Board held on April 27, 2011, at which Levi was present, stated, in connection with a discussion of the status of the Proposed VenGrowth Transaction, that "[a]nother Board member was informed that all costs associated with the potential VenGrowth merger, including the cost of independent counsel, have been borne by the [Former Manager]." None of these references to the Former Manager's obligation were qualified in terms of any particular expenses. The only qualification was the reference to "reasonable expenses" in the management information circular, which is not at issue in respect of this matter as put to the Court.

[476] Based on the foregoing, I conclude that the Former Manager improperly caused the Fund to bear the expenses of the Proposed VenGrowth Transaction at issue in breach of an agreement with the Fund that it would bear all of the Fund's expenses in regard to that Transaction. I would add that, if there had been an issue of whether the agreement was intended to extend to the costs in respect of the credit facility, in view of the agreement, the Former Manager should have raised the issue at the time. The Former Manager is, therefore, obligated to reimburse the Fund the amount of such expenses.

Legal Expenses Incurred in Connection With Certain Sales Transactions and the RMP

[477] The Former Manager also allocated the costs of independent legal advice to the Fund in respect of the potential sales transaction with Kirchner and in connection with the Newbury Transaction. In addition, the Former Manager charged the Fund with the legal expenses associated with the negotiations with the BCSC regarding the RMP. The actual amounts allocated to these matters is not before the Court, although they appear to total $892,569.50.

[478] In my view, these legal expenses are properly charged to the Fund as "unusual or extraordinary" expenses pursuant to section 6.2 of the Management Agreement for the following reasons.

[479] All of these expenses pertain to the orderly wind down of the Fund, which was the consequence of the decision of the Board to cease redemptions in October 2011. From that point forward, it cannot be said that the Fund was carrying on in a "business as usual" manner in its consideration of the sale of assets or the suspension of redemptions. Moreover, the purpose of the sales transactions, and one of the purposes of the RMP, was to prevent an immediate default under the Roseway Transaction and consequential insolvency proceedings.

[480] In respect of expenses for the proposed Kirchner Transaction and the Newbury Transaction, I would add that the principles applied above in respect of the claim for expenses pertaining to the Roseway Transaction, the WOF Loan and the Matrix Loan are equally applicable to these expenses. In respect of the RMP expenses, the fact that the Board may have preferred a complete cessation of redemptions is irrelevant. The Board authorized the Former Manager to pursue the RMP with the result that the Fund is obligated to pay the expenses in connection therewith.

[481] Accordingly, the Fund's claim for damages in respect of the Former Manager's alleged breach of section 6.1 regarding these matters is dismissed. These are also "unusual or extraordinary" expenses that are to be borne by the Fund pursuant to section 6.2(c).

Expenses Incurred in Prior Years

[482] The Fund has also asserted a claim of $781,000 for each of the 2009 and 2010 fiscal years for similar, but unspecified, improper charges for legal and accounting fees in those years. This amount is calculated as one-third of the aggregate amount claimed by the Fund in respect of the 2011 to 2013 fiscal years as discussed above, that is, it represents the average of the Fund's claim of improper expenses in those three fiscal years. The Fund says the Court should draw an adverse inference that similar improper charges occurred during the 2009 and 2010 fiscal years from the failure of the Former Manager to provide a breakdown of the legal and accounting fees for such fiscal years and its actions in charging the challenged expenses to the Fund.

[483] This claim is dismissed for the following three reasons. First, it is entirely speculative and without any evidentiary foundation. Second, given the Court's conclusions regarding the Fund's allegations of improper charges in the 2011 to 2013 fiscal years, there is no basis for inferring that any material amount of expenses were improperly allocated to the Fund as "unusual or extraordinary expenses" in any earlier period. Third, the Fund's position also ignores the fact that the Board and the AVC, as well as the Fund's auditors, were responsible for reviewing the legal and accounting expenses of the Fund in the course of carrying out their respective responsibilities and had a full opportunity to raise the appropriateness of these fees at the time.

Omnibus Claim for Legal, Financial Advisory and Accounting Expenses

[484] In addition to the foregoing claims, the Fund has asserted an omnibus claim for legal, financial advisory and accounting fees, and other expenses totalling $4.5 million that it says were

incurred in respect of each of the categories of damages asserted by the Fund. This claim is dismissed for the following reasons.

[485] First, as set out above, the Fund's claim for breach of the Standard of Care has been dismissed. Accordingly, there can be no associated claim for legal expenses related to pursuing such a claim.

[486] Second, with respect to the Fund's claim for damages alleged to have resulted from a failure to keep proper books and records, the Court has dismissed the substantial majority in amount of these claims, namely the claim in respect of the Cytochroma interest. There is no evidence of any legal expenses associated with the services of IAS in separating the co-mingled shareholder data. The remaining claim in this category pertains to the alleged cost of "repeatedly requesting delivery of the Fund's database and records" after termination of the Management Agreement. This did not involve a material amount of time or cost, is not itemized, and is not evidenced in any way, apart from a few letters, the cost of which would have been modest at best.

[487] Third, with respect to the Fund's claim that the Former Manager breached applicable securities legislation, the Fund says it has incurred the cost of having counsel review and advise on the Former Manager's failure to comply with such legislation in respect of the two matters in 2013 mentioned above. I have concluded above that the Former Manager is obligated to pay any such expenses pursuant to section 6.1 of the Management Agreement. However, there remains the issue of quantum. While there may have been some cost attributable to legal advice regarding each of these matters, it would also appear to have been modest in each case. In any event, there is no evidence of the actual amount of the legal fees or other expenses incurred in respect of either of the alleged breaches of securities legislation. This claim is therefore denied for this reason.

[488] Lastly, with respect to the Fund's claim for reimbursement of certain alleged normal operating and other expenses, although there may have been some expenses associated with these claims, it is not possible to identify the amount of such costs and expenses of the Fund as they have not been itemized and are not evidenced by any invoice or payment. Moreover, most of these claims, namely the KPMG audit fees for 2013, the fee reduction related to the Roseway defined portfolio services agreement and the fees incurred in connection with the Proposed VenGrowth Transaction, do not appear to have involved any legal or other costs beyond the costs of this proceeding.

[489] Accordingly, I find that, to the extent the Fund would otherwise have any remaining claims for legal, financial, advisory and accounting expenses after taking into consideration the larger amount of costs associated with the more significant claims that have been dismissed or otherwise dealt with, the Fund has failed to establish the amount of any such losses.

Conclusion and Costs

[490] For the reasons stated above, the Former Manager's claim for damages as a result of an alleged wrongful termination of the Management Agreement is dismissed except to the extent of its claim for unpaid management and administration fees accrued to the date of termination and

its claim for unpaid incentive payments. The Fund's counterclaim for damages for breach of the Standard of Care is also dismissed on the basis that it is barred by virtue of the provisions of the *Limitations Act, 2002*. The remainder of the claims asserted in this action, being claims of the Former Manager for Transition Services and of the Fund for damages based on certain other alleged breaches of the Management Agreement, are determined as set out above. In this regard, in the course of this trial, the amounts of certain of such claims have been subject to some variation. If there are any outstanding issues between the parties with respect to the application of the determinations herein regarding such amounts, or the quantum thereof, they should schedule a 9:30 a.m. appointment with the Commercial List office. Similarly, if the parties are unable to agree on costs in respect of this action, they should also schedule a 9:30 a.m. conference to address an appropriate procedure for resolution of this issue.

Wilton-Siegel J.

Released: May 18, 2018

SCHEDULE "A"

The IPA Shares have the following rights and restrictions;

(a) the holder of IPA Shares Is entitled to receive dividends (herein, "IPA Dividends") based on realized gains and income from venture capital investments. For venture capital investments made after November 29, 2002 (the "IPA Start Date"), the IPA Dividends will be equal to 20% of the realized gains and income from each such venture, subject to certain adjustments;

(b) before any IPA Dividends can be paid in respect of any venture capital investment, the following conditions must be met:

(i) the total net realized and unrealized gains and income of the Fund from its portfolio of venture capital investments since the IPA Start Date must have generated a minimum annualized rate of return;

(ii) the compounded annual internal rate of return (including realized and unrealized gains and income from prior partial dispositions of that venture capital investment or otherwise) from the venture capital investment since its acquisition by the Fund must equal or exceed 12% per year; and

(iii) the Fund must have fully recovered a cash amount at least equal to the principal invested in the venture capital investment. In addition, the payment of any IPA Dividend is subject to the restrictions in the CBCA generally applicable to the payment of dividends;

(c) IPA Dividends in respect of venture capital investments made prior to the IPA Start Date will be equal to 15% of the realized gains and income from each such venture capital investment subject to certain adjustments;

(d) IPA Dividends are calculated and payable quarterly. To the extent they are not declared by the Board and paid when payable, they are cumulative;

(e) except as required by law, the holder of IPA Shares is not entitled to vote;

(f) subject to the restrictions in the CBCA generally in respect to the payment of dividends, if the holder of the Class C shares is terminated as a manager or investment manager of the Fund, the holder of the IPA Shares will be entitled to receive all declared but unpaid IPA Dividends and an amount equal to the IPA Dividend that would be payable assuming all venture capital investments were sold at that time, with the holder's entitlement to such dividends arising as and when a particular venture investment is disposed of.

SCHEDULE "B"

(a) The Manager is in material breach of Sections 3.4 and 3.5 of the Management Agreement. By letters to GWC dated April 16, 2013 and April 30, 2013 and in comments made by Staff of the BCSC to GWC in a related meeting (copies of which are attached hereto as Exhibits "A", "B" and "C" (a written transcript of such comments, respectively), the British Columbia Securities Commission (the "BCSC") has, as part of its most recent compliance field examination of GWC, found, and it is the position of the Fund, that GWC and the Manager (as GWC conducts registerable activities for the Manager) breached a number of provisions of applicable securities laws in connection with the provisions of Services to the Fund following:

(i) In breach of section 125 of the Securities Act (British Columbia) (the "BC Securities Act") and Section 3.5 of the Management Agreement, GWC breached its fiduciary duty to the Fund. The BCSC found that GWC did not exercise the powers and discharge the duties of its office in the best interests of the Fund, nor did GWC exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances, and that GWC has preferred its own interests to those of the Fund and other funds managed by the Manager and GWC. GWC's failure to consider all the scenarios and actions for dealing with the Canadian Fund's distressed financial situation was not in the best interests of the Fund.

(ii) GWC violated section 2, chapter 3 of its Policies and Procedures Manual ("PPM"). The PPM requires GWC to act "in the best interest of an investment fund managed by GrowthWorks". In violating the provisions of its PPM, GWC also breached section 11.1 and NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103"). Section 11.1 of National Instrument 31-103 required GWC to apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.

(iii) In breach of Section 14 of the Rules, made under the BC Securities Act, GWC did not deal fairly with the Fund when recommending that the Fund borrow $33.5 million over the period from May 2010 to May 2012.

(iv) GWC violated section 2, chapter 3 of its PPM. The PPM requires GWC to avoid any activities, interest or associations which might interfere or give the appearance of interferences with the Independent exercise of their judgment, in the best interest of its managed funds. As GWC did not deal fairly when recommending

the Canadian Fund borrow $33.5 million over the period May 2010 to May 2012, it violated its PPM. In violating the provisions of its PPM, GWC also breached section 11.1 of NI 31-103. Section 11.1 of NI 31-103, required GWC to apply policies and procedures to establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices.

(v) In breach of Section 11.1 of NI 31-103, GWC failed to establish, maintain, and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices.

(b) The Manager is in material breach of Section 3.4 of the Management Agreement. By a memorandum dated August 22, 2013 from GWC to the Board, GWC advised the Board that GWC is in breach of Section 12.1 of NI 31-103 and that certain conditions have been placed on GWC as a registrant for purposes of applicable securities law;

(c) By a memorandum dated June 4, 2013 from the Manager to the Audit Committee to the Board, the Manager admitted that it had made an error in connection with a follow-on financing by the Fund in Cytochroma Inc. ("Cytochroma") in the first quarter of 2012 when the Manager improperly allocated to GrowthWorks Commercialization Fund Ltd. securities of Cytochroma that should have been allocated to the Fund. The Manager subsequently failed to make due inquiries when Cytochroma initially delivered securities to the Manager in respect of that financing. Those securities in Cytochroma were subsequently exchanged for common shares of OPKO Health, Inc. in connection with the sale of Cytochromas. As a result, 88, 403 common shares of OPKO Health, Inc. remain in the control of GrowthWorks Commercialization Fund Ltd., a separate investment fund. The Manager has not taken any action to rectify this matter. Accordingly, the Manager has materially breached its obligations under (i) Section 3.5 of the Management Agreement to (A) act in the best interests of the Fund, and (B) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and (ii) Section 3.9(a) to provide proper books of account and records for the Fund;

(d) In connection with the Cytochroma transaction referred to in clause (c) above, a senior employee of the Manager at the time, Joseph Regan, has advised representatives of the Fund that he did not carefully read, before signing on behalf of the Fund, an Acknowledgement and Receipt between the Fund and Roseway that purports to impose on the Fund material

contractual obligations in favour of Roseway with respect to the beneficial ownership of, and entitlement to divestment proceeded from, the sale of securities of OPKO Health, Inc. That document is now relied upon by Roseway as a basis for claiming from the Fund approximately $1.9 million in proceeds realized by the Fund in connection with the sale of those securities of OPKO Health, Inc. In executing that document without due (or any) consideration to its legal effect from the standpoint of the Fund, the Manager has materially breached its obligations under Section 3.5 of the Management Agreement, to (i) act in the best interests of the Fund, and (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

(e) In connection with a reconciliation prepared by PricewaterhouseCoopers ("PWC") on behalf of Roseway Capital S a.r.l. ("Roseway") with respect to participating interest payments owing by the Fund to Roseway under the Participation Agreement dated May 28, 2010 between the Fund and Roseway, PWC discovered numerous errors by the Manager in relation to the accounts maintained by the Manager on behalf of the Fund and the calculation in payment of those participating interest payments to Roseway. These errors on the part of the Manager have caused the Fund to incur significant payments to Roseway and significant professional fees and expense. Accordingly, the Manager has materially breached its obligations under (i) Section 3.5 of the Management Agreement to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, and (ii) Section 3.9(a) of the Management Agreement to keep proper books of account and records for the Fund; and

(f) As set forth in the letters of the Fund's counsel, McCarthy Tétrault LLP dated June 18, 2013 and September 19, 2013, the Fund has improperly used the authority granted to the Manager under Section 3.1 of the Management Agreement to act on behalf of the Fund by causing the Fun to pay legal and accounting expenses that the Manager is required to pay pursuant to Section 6.1 of the Management Agreement. As a result, the Manager has materially breached its obligations under Sections 3.3, 3.5 and 6.1 of the Management Agreement.

CITATION: Growthworks WV Management Ltd. v. Growthworks Canadian Fund Ltd., 2018 ONSC 3108
COURT FILE NO.: CV-13-10279-00CL
DATE: 20180518

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GROWTHWORKS WV MANAGEMENT LTD.
Plaintiff

- and -

GROWTHWORKS CANADIAN FUND LTD.
Defendant

REASONS FOR JUDGMENT

Wilton-Siegel J.

Released: May 18, 2018

TAB E

This is Exhibit "**E**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 18th
	)	
	)	
JUSTICE WILTON-SIEGEL	)	DAY OF MAY, 2018
	)	

B E T W E E N :

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

JUDGMENT

THIS TRIAL of the claims and counterclaims asserted by GrowthWorks WV Management (the "**Former Manager**") and GrowthWorks Canadian Fund Ltd. (the "**Fund**") was heard on July 18, 19, 20, 21, 24, 25, 26, 27 and 28, 2017 at 330 University Avenue, Toronto, Ontario, in the presence of the lawyers for the Former Manager, the lawyers for the Fund, and the lawyers for FTI Consulting Canada Inc. in its capacity as Monitor for the Fund pursuant to the *Companies' Creditors Arrangement Act*.

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties and for the Monitor, and reserving judgment to this day:

1. **THIS COURT ORDERS** that the Fund shall pay to the Former Manager the following amounts for the following claims:

   (a) $775,603.72 for the unpaid capital retention fees until the date of the termination of the amended and restated management agreement dated July 15, 2006 (the "Management Agreement") under section 5.2 of the Management Agreement;

(b) $352,668.00 for unpaid fees for September, 2013;

(c) $94,781.29 for services provided by the Former Manager after the termination of the Management Agreement for services provided by Concentra Trust;

(d) prejudgment interest on the foregoing amounts in the sum of $73,090.47.

2. **THIS COURT ORDERS** that the claim of the Former Manager for $672,390.61 for unpaid incentive payment amounts ("**IPA**") as a result of the termination of the Management Agreement, but not any potential claim for IPA based on a Dissolution Event as defined in the Articles of Amendment for Class C Shares (which potential claim was not before the court on this trial), is dismissed.

3. **THIS COURT ORDERS** that the remainder of the Former Manager's claims including the claim for wrongful termination of the Management Agreement are dismissed.

4. **THIS COURT ORDERS** that the Former Manager shall pay to the Fund:

(a) $85,400.00 for the Former Manager's failure to promptly deliver proper records of the Fund to the Fund, as required under section 8.5 of the Management Agreement;

(b) $276,979.83 for the Fund's audit expenses for the fiscal year ending in 2013;

(c) $7,115.29 for the Fund's overpayment for services provided by the Former Manager after termination of the Management Agreement for customer support services;

(d) $300,000.00 for the Former Manager's failure to apply the agreed upon reduction in management fees payable by the Fund to the Former Manager as a result of the transaction with Roseway Capital LP;

(e) $547,104.00 to the Fund for the legal and advisory fees associated with the VenGrowth transaction; and

(f) prejudgment interest on the foregoing amounts in the sum of $102,964.92.

5. **THIS COURT ORDERS** that the remainder of the Fund's claims for damages and expenses are dismissed.

6. **THIS COURT ORDERS** that the Former Manager pay $400,000.00 in costs to the Fund.

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

JAN 08 2020

PER / PAR: C.D.

CM CHIBA, Registrar
Superior Court of Justice

393 UNIVERSITY AVE. 393 AVE. UNIVERSITY
6TH FLOOR 6E ÉTAGE
TORONTO, ONTARIO TORONTO, ONTARIO
M5G 1E6 M5G 1E6

THIS JUDGMENT BEARS INTEREST at the rate of 3.0 percent per year commencing on May 18, 2018.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

JUDGMENT

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Lawyers for GrowthWorks Canadian Fund Ltd.

TAB F

This is Exhibit "**F**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

CITATION: Growthworks WV Managements Ltd. v. Growthworks Canadian Fund Ltd., 2019 ONSC 4691
COURT FILE NO.: CV-13-10279-00CL
DATE: 20190808

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Growthworks WV Management Ltd., Plaintiff

AND:

Growthworks Canadian Fund Ltd., Defendant

BEFORE: Mr. Justice H.J. Wilton-Siegel

COUNSEL: *Melvyn Solmon* and *Nancy J. Tourgis*, for the Plaintiff

Geoff R. Hall and *Atrisha Lewis*, for the Defendant

HEARD: In Writing

COSTS ENDORSEMENT

[1] In this proceeding, the Former Manager's claim for an alleged breach of the Management Agreement by the Fund was denied and the Fund's counterclaim for damages arising from a breach of the Management Agreement by the Former Manager was also denied as statute barred. In addition, the Court addressed the validity and quantification of: (1) certain claims of the Former Manager under the Management Agreement arising on its termination and in respect of certain transition services; and (2) certain damage claims of the Fund arising in respect of the Former Manager's management obligations under the Management Agreement and in respect of transition costs (collectively, the "remaining claims"). In this endorsement, capitalized terms that are not defined herein have the meanings ascribed to them in the Court's Reasons for Judgment dated May 18, 2018 (the "Reasons for Judgment").

The Positions of the Parties

[2] The Fund seeks costs of $906,680.57 on an all-inclusive basis. The Fund served an offer on February 24, 2017 pursuant to which each party would consent to a dismissal of all claims between them on a without costs basis and would exchange full releases (the "Offer"). The Fund suggests that the net result to the parties after the trial was substantially identical to the net result contemplated by the Offer. On this basis, the Fund has calculated its costs on a partial indemnity basis to the date of the Offer and on a substantial indemnity basis thereafter.

[3] The Former Manager submits that neither party was successful and therefore no costs should be awarded. Alternatively, it suggests that any costs in favour of the Fund should be limited to the Fund's costs incurred on a partial indemnity basis in respect of the expert evidence pertaining

to the Former Manager's breach of the Standard of Care, which was the principal issue in this proceeding.

Overview of the Litigation for the Purposes of this Award

[4] In my view, this proceeding effectively involved three separate proceedings – the Former Manager's claim, the Fund's counterclaim and the remaining claims. Based on the time devoted to these matters at the trial, I consider that 50% of the time was spent on the Former Manager's claim, 35% was spent on the Fund's counterclaim including the damage calculations and 15% was spent on the remaining claims.

Determination of the Proceedings for Which Costs are Awarded

[5] I agree that the Court should take into consideration the Fund's Offer for the reason that, had it been accepted, the parties would have reached a substantially similar economic outcome without having incurred the expense of the two-week trial. However, I do not think that it is appropriate to consider the entirety of the Fund's fees for the following reasons.

[6] First, the Fund's counterclaim was found to be statute barred for the reasons cited in the Reasons for Judgment which were intimately connected to the Fund's claim that the Former Manager breached the Standard of Care required of it under the Management Agreement. This was a necessary consequence of the fact that the Board and the Former Manager shared responsibility for governance of the Fund. In my view, it should have been clear that the Fund's counterclaim would fail if the Fund successfully defended the Former Manager's claim of breach of the Management Agreement. Accordingly, it would not be appropriate to award costs in respect of the counterclaim on the basis that these costs could have been avoided if the Former Manager had agreed to a dismissal without costs of its claim.

[7] On the other hand, I also do not think that the Former Manager should be awarded any costs in respect of the Fund's counterclaim. The counterclaim was dismissed as a result of inaction by the Board rather than any action on the part of the Fund, let alone any defence on the merits. Given the finding on the principal issue in this litigation that the Former Manager breached the Standard of Care to the detriment of the shareholders of the Fund, I do not think that the Former Manger should be entitled to costs against the Fund for the consequences of the Board's failure to assert the Fund's counterclaim in a timely fashion.

[8] Lastly, a trial was clearly necessary to resolve the remaining claims which were wholly unrelated to the issues in either the Former Manager's claim or the Fund's counterclaim. Further, on an aggregate basis, neither party was materially more successful than the other in respect of the remaining claims. While the amounts of the claims awarded to each of these parties was large, being approximately $1.3 million in each case, the net payment arising after determination of these claims was less than $24,000, which was owed by the Fund to the Former Manager. Accordingly, I am of the view that no costs should be awarded in respect of the costs of either party in respect of the remaining claims.

Scale of Costs Awarded to the Fund

[9] This leaves the Fund's claim for costs in respect of the Former Manager's claim, which amounts to $453,340.28 based on the allocation set out above. As mentioned, this amount is calculated using a substantial indemnity scale after the date of the Offer. The Fund's position is, as mentioned, that these costs would have been avoided if the Former Manager had accepted the Offer.

[10] The Former Manager says that the Court's judgment was not as favourable as the Offer, given that the Offer contemplated an absolute release of all IPA amounts. The parties agree that the issue of any potential claim for IPA Dividends based on a Dissolution Event as defined in the Articles of Amendment for the Class C Shares was not before the Court in this proceeding. I note that the Court is not in a position to assess the extent to which the preservation of this claim is meaningful.

[11] Given the approach to costs in this endorsement and the treatment of the IPA Dividends in the Offer, it is not clear that r. 49.10(2) of the *Rules of Civil Procedure* applies to the Offer. In any event, to the extent it does apply, r. 49.10(2) would provide for costs consequences which differ from those sought by the Fund.

[12] In my view, the Fund should be entitled to its costs in respect of the Former Manager's claim as the successful party. However, such costs should be awarded on a partial indemnity basis given that the Offer was more extensive in respect of the IPA Dividends than was addressed by the Court in this proceeding.

Quantification of Costs Awarded to the Fund

[13] In determining the amount of the costs awarded, I have had regard to the following considerations.

[14] First, this was a complex commercial matter involving extensive productions and expert opinions.

[15] Second, the issues were very important to both parties who engaged in very thorough litigation as a result.

[16] Third, the two preceding considerations justified the use of senior counsel on both sides. There is no suggestion from the Former Manager that the Fund's use of counsel was unreasonable.

[17] Fourth, productions in this proceeding appear to have occurred on an episodic basis over a long period of time culminating in significant productions shortly before trial. I do not attribute this to any particular party. I merely note that this appears to have increased the costs for each party.

[18] Fifth, the Former Manager has not raised any issue regarding the quantum of costs sought by the Fund. More significantly, it has also not provided the Court with its own costs outline which would provide some evidence of its own reasonable expectations. On this basis, I assume that the costs sought by the Fund fall within the Former Manager's reasonable expectations.

[19] Based on the foregoing, I find fair and reasonable costs of the proceeding to be $400,000 on an all-inclusive basis payable by the Former Manager to the Fund forthwith.

Wilton-Siegel J.

Date: August 8, 2019

TAB G

This is Exhibit "**G**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 30TH
	)	
MR. JUSTICE PENNY	)	DAY OF NOVEMBER, 2021

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.

POST-FILING CLAIMS PROCEDURE ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") for an order establishing a supplementary claims process to identify, determine and resolve certain post-filing claims against the Fund and/or its directors and officers, was heard this day by way of judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Motion Record of the Fund, including the Notice of Motion and the affidavit of C. Ian Ross sworn on November 17, 2021, the Twenty-Eighth Report of FTI Consulting Canada Inc. (the "**Twenty-Eighth Report**"), in its capacity as monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant and the Monitor, and such other counsel that were present as listed on the counsel slip, no one else appearing although properly served as appears from the affidavit of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Fund and the Twenty-Eighth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS AND DECLARES** that all capitalized terms used, but not otherwise defined, herein shall have the meanings given to them in the Claims Procedure Order issued in these proceedings and dated January 9, 2014 (the "**Claims Procedure Order**").

3. **THIS COURT ORDERS AND DECLARES** that this Order shall supplement the Claims Procedure Order, which shall continue in full force and effect, subject to any modification hereof, and nothing herein shall extend or be deemed to extend the time period for asserting any Claim, D&O Claim or D&O Indemnity Claim or revive or otherwise affect any Claim, D&O Claim or D&O Indemnity Claim that has been barred or extinguished pursuant to the Claims Procedure Order or other order of this Court. For greater certainty, to the extent of any discrepancy between this Order and the Claims Procedure Order, this Order shall govern.

4. **THIS COURT ORDERS AND DECLARES** that the following terms shall have the following meanings:

(a) "**Claims Officer**" means one or more individuals appointed in accordance with paragraph 34 of this Order to act as a claims officer for the purposes of this Order;

(b) "**Dispute Package**" means the Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim, as applicable, filed by a Post-Filing Claimant, the Post-Filing Notice of Revision or Disallowance delivered by the Monitor in respect of that Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim, as applicable, the Post-Filing Dispute Notice filed by the Post-Filing Claimant in respect of the Post-Filing Notice of Revision or Disallowance, and any ancillary documentation as determined by the Monitor in consultation with the Applicant;

(c) "**Effective Time**" means 5:00 p.m. (Eastern Time) on the date of this Order;

(d) "**Excluded Post-Filing Claim**" means any Post-Filing Claim entitled to the benefit of the Administration Charge;

(e) "**Notice to Post-Filing Claimants**" means the notice to Post-Filing Claimants for

publication in substantially the form attached as Schedule "A" hereto;

(f) "**Portfolio Company**" has the meaning ascribed to it in the Initial Order;

(g) "**Post-Filing Claim**" means a Post-Filing Fund Claim, a Post-Filing D&O Claim and a Post-Filing D&O Indemnity Claim, provided, however, that "Post-Filing Claim" shall not include an Excluded Post-Filing Claim;

(h) "**Post-Filing Claimant**" means any Person having a Post-Filing Claim and includes the permitted transferee or assignee of a Post-Filing Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through any such Person;

(i) "**Post-Filing Claimants' Guide to Completing the Proof of Post-Filing Claim**" means the guide to completing the Proof of Post-Filing Claim form in substantially the form attached as Schedule "C" hereto;

(j) "**Post-Filing Claims Bar Date**" means 5:00 p.m. (Eastern Time) on January 21, 2022;

(k) "**Post-Filing Claims Package**" means the Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim, as applicable, the Notice to Post-Filing Claimants, the Post-Filing Claimants' Guide to Completing the Proof of Post-Filing Claim, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable;

(l) "**Post-Filing Claims Process**" means the procedures outlined in this Order, including the Schedules hereto;

(m) "**Post-Filing 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 Post-Filing Fund 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 arising between the Filing Date and the Effective Time, or (B) relates to a time period between the Filing Date and the Effective Time, provided, however, that "Post-Filing D&O Claim" shall not include an Excluded Post-Filing Claim;

(n) "**Post-Filing D&O Indemnity Claim**" means any existing or future right of any Director or Officer against the Applicant or any Portfolio Company, which arose or arises as a result of any Person filing a Post-Filing 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;

(o) "**Post-Filing D&O Indemnity Claims Bar Date**" means 5:00 p.m. (Eastern Time) on the day which is fifteen (15) Business Days after the date of deemed receipt of the Proof of Post-Filing Claim pursuant to paragraph 40 hereof by the applicable

Director or Officer;

(p) "**Post-Filing Dispute Notice**" means a notice substantially in the form attached as Schedule "E" hereto which must be delivered to the Monitor by any Post-Filing Claimant wishing to dispute a Post-Filing Notice of Revision or Disallowance, with reasons for its dispute;

(q) "**Post-Filing Fund Claim**" means any right or claim of any Person against the Applicant in respect of any indebtedness, liability or obligation of any kind whatsoever of the Applicant that arises after the Filing Date but before the Effective Time and remains unpaid as of the date of this Order, provided, however, that "Post-Filing Fund Claim" shall not include an Excluded Post-Filing Claim;

(r) "**Post-Filing Notice of Revision or Disallowance**" means a notice substantially in the form attached as Schedule "D" hereto advising a Post-Filing Claimant that the Monitor has revised or disallowed all or part of such Post-Filing Claimant's Post-Filing Claim as set out in its Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim, as applicable;

(s) "**Proof of Post-Filing Claim**" means the proof of claim in substantially the form attached as Schedule "B" hereto;

(t) "**Proof of Post-Filing D&O Indemnity Claim**" means the proof of claim substantially in the form attached as Schedule "B-2" hereto; and

(u) "**Proven Post-Filing Claim**" means each Post-Filing Claim that has been proven in accordance with this Order.

5. **THIS COURT ORDERS** that all references as to time herein shall mean Eastern time, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. Eastern Time on such Business Day unless otherwise indicated herein.

6. **THIS COURT ORDERS** that all references herein to the word "including" shall mean "including without limitation", that all references herein to the singular include the plural, the plural

include the singular, and that all references herein to any gender includes all genders.

GENERAL PROVISIONS

7. **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 Post-Filing 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 Post-Filing Claim.

8. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the solicitation by the Applicant or the Monitor of Post-Filing Claims and the filing by any Post-Filing Claimant of any Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim shall not, for that reason only, grant any Person standing in these proceedings.

9. **THIS COURT ORDERS** that all Post-Filing Claims filed shall be denominated in the original currency of the Post-Filing Claim. Where no currency is indicated, the Post-Filing Claim shall be presumed to be in Canadian Dollars. Any Post-Filing Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the last Business Day before the date on which the Effective Time occurs.

10. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of a Post-Filing Claim or an Excluded Post-Filing Claim into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Post-Filing 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 this Court.

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 contemplated 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 it by the CCAA, the Initial Order, and this Order, and as an officer of this 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, except to the extent that the Monitor has acted with gross negligence or wilful misconduct, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, 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 or in any information provided by any Post-Filing Claimant, except to the extent that the Monitor has acted with gross negligence or wilful misconduct.

NOTICE TO POST-FILING CLAIMANTS

13. **THIS COURT ORDERS** that the form and substance of each of the Notice to Post-Filing Claimants, Proof of Post-Filing Claim, Proof of Post-Filing D&O Indemnity Claim, Claimants' Guide to Completing the Proof of Post-Filing Claim, Post-Filing Notice of Revision or Disallowance and Post-Filing Dispute Notice substantially in the forms attached as Schedules "A", "B", "B-2", "C", "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.

14. **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 Post-Filing Claims Package on the Monitor's Website;

(b) the Monitor shall, no later than two (2) Business Days following the making of this Order, serve a copy of this Order and the Post-Filing Claims Package on the CCAA Service List;

(c) the Monitor shall, no later than seven (7) Business Days following the making of this Order, send a Post-Filing Claims Package to all known potential Post-Filing Claimants, based on the Applicant's books and records;

(d) the Monitor shall, no later than seven (7) Business Days following the making of this Order, cause the Notice to Post-Filing Claimants, amended or abridged as the Monitor deems reasonable in its discretion for the purposes of publication, to be published for at least one (1) Business Day in *The Globe and Mail* (National Edition);

(e) the Monitor shall, provided such request is received in writing by the Monitor prior to the Post-Filing Claims Bar Date, send a copy of the Post-Filing Claims Package to any Person requesting such material as soon as reasonably practicable following receipt of such request; and

(f) the Monitor shall send to any Director or Officer named in a Post-Filing D&O Proof of Claim received on or before the Post-Filing Claims Bar Date a copy of such Post-Filing D&O Proof of Claim, including copies of any documentation submitted to the Monitor by the Post-Filing Claimant, as soon as practicable.

15. **THIS COURT ORDERS** that the delivery of a Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity 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.

PROOFS OF CLAIM

16. **THIS COURT ORDERS** that any Person that wishes to assert a Post-Filing Fund Claim must deliver to the Monitor on or before the Post-Filing Claims Bar Date a completed Proof of Post-

Filing Claim, including all relevant supporting documentation in respect of such Post-Filing Fund Claim, in the manner set out in this Order.

17. **THIS COURT ORDERS** that any Person that wishes to assert a Post-Filing D&O Claim must deliver to the Monitor on or before the Post-Filing Claims Bar Date a completed Proof of Post-Filing Claim, including all relevant supporting documentation in respect of such Post-Filing D&O Claim, in the manner set out in this Order.

18. **THIS COURT ORDERS** that any Director or Officer that wishes to assert a Post-Filing D&O Indemnity Claim must deliver to the Monitor on or before the Post-Filing D&O Indemnity Claims Bar Date a completed Proof of Post-Filing D&O Indemnity Claim, including all relevant supporting documentation in respect of such Post-Filing D&O Indemnity Claim, in the manner set out in this Order.

19. **THIS COURT ORDERS** that each Person shall include any and all Post-Filing Fund Claims it asserts against the Applicant and any and all Post-Filing D&O Claims it asserts against one or more Directors or Officers in a single Proof of Post-Filing Claim.

20. **THIS COURT ORDERS** that each Person shall include any and all Post-Filing D&O Indemnity Claims it asserts against the Applicant or Portfolio Company, as applicable, in a single Proof of Post-Filing D&O Indemnity Claim.

21. **THIS COURT ORDERS** that, in respect of any Post-Filing Fund Claim, any Person that does not file a Proof of Post-Filing Claim as provided for herein such that the Proof of Post-Filing Claim is received by the Monitor on or before the Post-Filing Claims Bar Date:

(a) shall be and is hereby forever barred from making or enforcing such Post-Filing Fund Claim against the Applicant and/or the Property (as defined in the Initial Order) and all such Post-Filing Fund 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 Post-Filing

Fund 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 Post-Filing Fund Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution thereunder in respect of such Post-Filing Fund 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 Post-Filing Claims Process or the CCAA Proceedings in respect of such Post-Filing Fund Claim.

22. **THIS COURT ORDERS** that, in respect of any Post-Filing D&O Claim, any Person that does not file a Proof of Post-Filing Claim as provided for herein such that the Proof of Post-Filing Claim is received by the Monitor on or before the Post-Filing Claims Bar Date:

(a) shall be and is hereby forever barred from making or enforcing such Post-Filing D&O Claim against any Director or Officer or any insurer of such Director or Officer, and all such Post-Filing 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 forever barred from making or enforcing such Post-Filing 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 Post-Filing 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 Post-Filing Claims Process or the CCAA Proceedings in respect of such Post-Filing D&O Claim.

23. **THIS COURT ORDERS** that, in respect of any Post-Filing D&O Indemnity Claim, any Director or Officer that does not file a Proof of Post-Filing D&O Indemnity Claim as provided for

herein such that the Proof of Post-Filing D&O Indemnity Claim is received by the Monitor on or before the Post-Filing D&O Indemnity Claims Bar Date:

(a) shall be and is hereby forever barred from making or enforcing such Post-Filing D&O Indemnity Claim against the Applicant, and such Post-Filing 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 Post-Filing 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 Post-Filing D&O Indemnity Claim at any Creditors' Meeting or to receive any distribution in respect of such Post-Filing 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 Post-Filing Claims Process or the CCAA Proceedings in respect of such Post-Filing D&O Indemnity Claim.

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

ADJUDICATION OF POST-FILING CLAIMS

25. **THIS COURT ORDERS** that the Monitor, subject to the terms of this Order, shall review all Proofs of Post-Filing Claims filed, consult with the Applicant and, in the case of a Post-Filing D&O Claim, the applicable Director or Officer with respect thereto, and at any time may:

(a) request additional information from a Post-Filing Claimant;

(b) request that a Post-Filing Claimant file a revised Proof of Post-Filing Claim;

(c) resolve and settle any issue arising in a Proof of Post-Filing Claim or in respect of a Post-Filing Fund Claim or Post-Filing D&O Claim;

(d) accept (in whole or in part), the amount of any Post-Filing Fund Claim or Post-Filing D&O Claim and so notify the Post-Filing Claimant in writing; and

(e) revise or disallow (in whole or in part) the amount of any Post-Filing Fund Claim or Post-Filing D&O Claim and so notify the Post-Filing Claimant in writing.

26. **THIS COURT ORDERS** that the Monitor, subject to the terms of this Order, shall review all Proofs of Post-Filing D&O Indemnity Claims filed, consult with the Applicant with respect thereto, and at any time may:

a. request additional information from a Director or Officer;

b. request that a Director or Officer file a revised Proof of Post-Filing D&O Indemnity Claim;

c. resolve and settle any issue arising in a Proof of Post-Filing D&O Indemnity Claims or in respect of a Post-Filing D&O Indemnity Claim;

d. accept (in whole or in part), the amount of any Post-Filing D&O Indemnity Claim and so notify the Director or Officer in writing; and

e. revise or disallow (in whole or in part) the amount of any Post-Filing D&O Indemnity Claim and so notify the Director or Officer in writing.

27. **THIS COURT ORDERS** that, where a Post-Filing Claim has been accepted by the Monitor in accordance with this Order, such Post-Filing Claim shall constitute such Post-Filing Claimant's Proven Post-Filing Claim. The acceptance of any Post-Filing Claim or other determination of same in accordance with this Order, in whole or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of

the CCAA Proceedings.

28. **THIS COURT ORDERS** that, where a Post-Filing Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Post-Filing Claimant a Post-Filing Notice of Revision or Disallowance, attaching the form of Post-Filing Dispute Notice.

29. **THIS COURT ORDERS** that the failure by the Monitor to send a Post-Filing Notice of Revision or Disallowance shall not result in any Post-Filing Claim being accepted as a Proven Post-Filing Claim or being deemed to be accepted as a Proven Post-Filing Claim.

30. **THIS COURT ORDERS** that a Person who has received a Post-Filing Notice of Revision or Disallowance in respect of a Post-Filing Claim and who intends to dispute such Post-Filing Notice of Revision or Disallowance shall deliver a Post-Filing Dispute Notice to the Monitor by 5:00 p.m. (Eastern Time) on the day that is not later than fifteen (15) Business Days following deemed receipt of the Post-Filing Notice of Revision or Disallowance pursuant to paragraph 40 of this Order. The filing of a Post-Filing Dispute Notice with the Monitor in accordance with this paragraph shall constitute an application to have the amount of such Post-Filing Claim determined pursuant to the Post-Filing Claims Process as provided in this Order.

31. **THIS COURT ORDERS** that where a Post-Filing Claimant that receives a Post-Filing Notice of Revision or Disallowance fails to file a Post-Filing Dispute Notice with the Monitor within the requisite time period provided in this Order, the amount of such Post-Filing Claimant's Post-Filing Claim shall be deemed to be as set out in the Post-Filing Notice of Revision or Disallowance and such amount, if any, shall constitute such Post-Filing Claimant's Proven Post-Filing Claim, and the balance of such Post-Filing Claimant's Post-Filing Claim, 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 POST-FILING CLAIMS

32. **THIS COURT ORDERS** that, as soon as practicable after the delivery of the Post-Filing Dispute Notice to the Monitor, the Monitor shall attempt to resolve and settle the Post-Filing Claim

with the Post-Filing Claimant, subject to the terms of this Order.

33. **THIS COURT ORDERS** that, in the event that a dispute raised in a Post-Filing 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 Post-Filing Claimant, the Monitor, in consultation with the Applicant, shall either: (i) send a Dispute Package to a Claims Officer, or (ii) on notice to the disputing Post-Filing Claimant, schedule an appointment with the Court for the purpose of scheduling a motion to seek a determination by the Court of the disputed Post-Filing Claim, at which appointment directions will be sought from the Court on the process for such determination.

34. **THIS COURT ORDERS** that the appointment of any Claims Officer to adjudicate a disputed Post-Filing Claim shall be subject to mutual agreement between the affected Post-Filing Claimant and the Monitor, in consultation with the Applicant, and if such agreement is not reached within ten (10) Business Days of receipt by the Monitor of the applicable Post-Filing Dispute Notice, such Claims Officer shall be appointed by the Court. Each of the Applicant and the Monitor is hereby authorized to bring a motion to seek an order of the Court appointing a Claims Officer in respect of any and all disputed Post-Filing Claims. The Applicant shall pay the reasonable professional fees and disbursements of each Claims Officer on presentation and acceptance of invoices from time to time. Each Claims Officer shall be entitled to a reasonable retainer against his or her fees and disbursements which shall be paid by the Monitor upon request by such Claims Officer.

35. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the amount of each Post-Filing Claim in respect of which a dispute has been referred to such Claims Officer and, in doing so, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Post-Filing Claim.

36. **THIS COURT ORDERS** that the Monitor or the Post-Filing Claimant may appeal the Claims Officer's determination to this Court by serving upon the other (with a copy to the Applicant) and filing with this Court, within ten (10) Business Days of notification of the Claims Officer's determination of such Post-Filing Claimant's Post-Filing Claim, a notice of motion returnable on a

date to be fixed by this Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding and shall be such Post-Filing Claimant's Proven Post-Filing Claim.

NOTICE OF TRANSFEREES

37. **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 Post-Filing Claim 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 "Post-Filing Claimant" in respect of such Post-Filing Claim. Any such transferee or assignee of a Post-Filing Claim shall be bound by all notices given or steps taken in respect of such Post-Filing Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

38. **THIS COURT ORDERS** that the transferee or assignee of any Post-Filing Claim (i) shall take the Post-Filing Claim subject to the rights and obligations of the transferor/assignor of the Post-Filing 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 Post-Filing 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.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the forms of notice to be provided in accordance with this Order shall constitute good and sufficient service and delivery of notice of this Order, the Post-Filing Claims Bar Date and Post-Filing D&O Indemnity Claims Bar Date on all Persons who may be entitled to receive notice and who may assert a Post-Filing Claim and no other notice or service need be given or made and no other documents or material need be sent to or served upon any Person in respect of this Order.

40. **THIS COURT ORDERS** that the Monitor may, unless otherwise specified by this Order, serve and deliver the Post-Filing Claims Package, the Proof of Post-Filing D&O Indemnity Claim, the Post-Filing Notice of Revision or Disallowance, and any letters, notices or other documents to Post-Filing Claimants, Directors, Officers, or other interested Persons, by forwarding true copies thereof by email, prepaid ordinary mail or courier to such Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the physical or electronic address, as applicable, last shown on the records of the Applicant or the Monitor or set out in such Person's Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim. Any such service or notice shall be deemed to have been received: (i) if delivered by email by 5:00 p.m. (Eastern Time) on a Business Day, on such Business Day, and if delivered after 5:00 p.m. (Eastern Time) on a Business Day or on a day other than on a Business Day, on the following Business Day; (ii) if sent by prepaid ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; and (iii) if sent by courier, on the next Business Day following dispatch.

41. **THIS COURT ORDERS** that any notice or other communication (including Proofs of Post-Filing Claim, Proofs of Post-Filing D&O Indemnity Claim and Post-Filing Dispute Notices) 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 email, or if it cannot be given by email by prepaid registered mail or courier, 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 ON M5K 1G8

Email: growthworkscanadianfundltd@fticonsulting.com

Attention: Patrick Kennedy

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

delivered outside of normal business hours, the next Business Day.

42. **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 this 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 or digital transmission in accordance with this Order.

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

SEALING ORDER

44. **THIS COURT ORDERS** that **Confidential Exhibit "B"** to the affidavit of C. Ian Ross sworn on November 17, 2021, which contains a confidential summary of the Fund's significant remaining investments shall be kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the court file for these proceedings, in a sealed envelope attached to a notice that sets out the title of these proceedings and the statement that the contents are subject to this Motion and sealing Order, and remain under seal until further Order of this Court.

MISCELLANEOUS

45. **THIS COURT ORDERS** that the Monitor and the Applicant may, at any time, and with such notice as this Court may require, seek directions from this Court with respect to this Order and the Post-Filing Claims Process, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

46. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

47. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

48. **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.

49. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SCHEDULE "A"

NOTICE TO HOLDERS OF POST-FILING CLAIMS
AGAINST GROWTHWORKS CANADIAN FUND LTD.
(hereinafter referred to as the "**Applicant**") and/or its Directors and Officers

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On November 30, 2021, the Ontario Superior Court of Justice issued an order in the *Companies' Creditors Arrangement Act* proceeding of the Applicant setting out a supplementary claims process to identify, determine and resolve certain post-filing claims against the Applicant and its Directors and Officers (the "**Post-Filing Claims Procedure Order**"). Capitalized terms not defined in this Notice have the meanings given to them in the Post-Filing Claims Procedure Order, which all Persons are encouraged to review in its entirety.

PLEASE TAKE NOTICE that the Post-Filing Claims Procedure Order requires all Persons who assert a Post-Filing Fund Claim or a Post-Filing D&O Claim, whether unliquidated, contingent or otherwise, to deliver a completed Proof of Post-Filing Claim as set out in the Post-Filing Claims Procedure Order.

Completed Proofs of Post-Filing Claims, and all relevant supporting documentation, must be received by the Monitor by 5:00 p.m. (prevailing Eastern Time) on January 21, 2022 (the **"Post-Filing Claims Bar Date"), as set out in the Post-Filing Claims Procedure Order. Completed Proofs of Post-Filing Claims must be sent to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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**
Email:	**growthworkscanadianfundltd@fticonsulting.com**
Attention:	**Patrick Kennedy**

Post-Filing Fund Claims and Post-Filing D&O Claims each relate to the period after the Filing Date (October 1, 2013). The Post-Filing Claims Procedure does not revive or otherwise affect any Claim or D&O Claim that was barred or extinguished pursuant to the January 9, 2014 Claims Procedure Order.

Pursuant to the Post-Filing Claims Procedure Order, Post-Filing Claims Packages, including the form of Proof of Post-Filing Claim, will be sent to known potential Post-Filing Claimants as specified in the Post-Filing Claims Procedure Order. The Post-Filing Claims Procedure Order and Post-Filing Claims Package are also available on the website of the Monitor at http://cfcanada.fticonsulting.com/gcfl/default.htm, or can be requested from the Monitor in writing prior to the Post-Filing Claims Bar Date.

Only Proofs of Post-Filing Claims that are actually received by the Monitor on or before the Post-Filing Claims Bar Date will be considered filed by the Post-Filing Claims Bar Date. **It is**

your responsibility to ensure that the Monitor receives your Proof of Post-Filing Claim by the Post-Filing Claims Bar Date.

PROOFS OF POST-FILING CLAIMS WHICH ARE NOT RECEIVED BY THE POST-FILING CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED at Toronto this ● day of ●, 2021.

SCHEDULE "B"

PROOF OF POST-FILING CLAIM AGAINST
GROWTHWORKS CANADIAN FUND LTD.
(hereinafter referred to as the "**Applicant**") and/or its Directors and Officers

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This form is to be used by Post-Filing Claimants asserting a Post-Filing Fund Claim and/or a Post-Filing D&O Claim against the Applicant or its Director(s) and/or Officer(s). Capitalized terms not defined in this form have the meanings given to them in the Post-Filing Claims Procedure Order, which all Persons are encouraged to review in its entirety.

1. PARTICULARS OF POST-FILING CLAIMANT

(a) Full Legal Name of Post-Filing Claimant (the "**Post-Filing Claimant**"): _____

*(Full legal name should be the name of the Post-Filing Claimant of the Applicants or the Directors and/or Officers as of October 1, 2013 (the "**Filing Date**"), notwithstanding whether an assignment of a Post-Filing Fund Claim and/or Post-Filing D&O Claim, or a portion thereof, has occurred following the Filing Date)*

(b) Attention (Contact Person): _____

(c) Email Address: _____

(d) Telephone Number: _____

(e) Fax Number: _____

(f) Full Mailing Address of the Post-Filing Claimant: _____
(the Post-Filing Claimant as of the Filing Date) _____

2. PARTICULARS OF ASSIGNEE(S) (IF ANY)

(a) Has the Post-Filing Fund Claim or Post-Filing D&O Claim been sold or assigned by the Post-Filing Claimant to another party [check (√) one]?

Yes ☐ No ☐

(If Yes, you must include the details and documentation that support the assignment, including whether all or a portion of the Post-Filing Fund Claim or Post-Filing D&O Claim has been assigned. If there is more than one assignee, please attach a separate sheet with the required contact information for each)

(b) Full Legal Name of the original Post-Filing Claimant(s): _____

(c) Full Legal Name of Assignee(s): _____

(d) Attention (Contact Person): _____

(e) Email Address: _____

(f) Telephone Number: _____

(g) Fax Number: _____

(h) Full Mailing Address of the Assignee _____

_____

3. PARTY CLAIMING AGAINST

(a) The Post-Filing Claimant asserts this Post-Filing Fund Claim and/or Post-Filing D&O Claim against [check (√) one or both, as applicable]:

☐ The Applicant

☐ Director(s) and/or Officer(s) of the Applicant

4. AMOUNT AND NATURE OF POST-FILING CLAIM

(a) The Applicant / Director(s) and/or Officer(s) was/were and still is/are indebted to the Post-Filing Claimant as follows:

Director(s) and/or Officer(s) Name(s) *(If you are making a Post-Filing D&O Claim against the Directors and/or Officers, please list the Director(s) and/or Officer(s) against which you assert your Post-Filing D&O Claim. If your Post-Filing Claim is against the Applicant, this column can be left blank)*	Currency	Original Currency Amount	Unsecured Claim	Secured Claim
			☐	☐
			☐	☐
			☐	☐
			☐	☐
			☐	☐
			☐	☐

(b) Is a secured or priority claim being asserted? [check (√) one]

Yes ☐ No ☐

(If a secured claim is being asserted, please give full particulars of the security, including the date on which the security was given, the value at which you assess the security and a copy of the security documents. If a priority claim is being asserted, please provide details as to the priority claim being asserted, the basis for the priority claim and any relevant documents you have in support of your priority claim)

_____

_____

_____

_____

_____

_____

_____

5. PARTICULARS OF POST-FILING CLAIM AND DOCUMENTATION

(a) Please provide all particulars of the Post-Filing Claim and supporting documentation, including the amount, description of transaction(s) or agreement(s) giving rise to the Post-Filing Claim, name of any guarantor which has guaranteed the Post-Filing Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by any Applicant or any Director or Officer to the Post-Filing Claimant and estimated value of such security.

Particulars not already contained herein and relevant supporting documentation may be appended as a schedule to this Proof of Post-Filing Claim.

6. CERTIFICATION

I hereby certify that:

(a) I am the Post-Filing Claimant or authorized representative of the Post-Filing Claimant;

(b) I have knowledge of all the circumstances connected with the Post-Filing Fund Claim and/or Post-Filing D&O Claim referred to herein;

(c) The Post-Filing Claimant asserts this Post-Filing Fund Claim and/or Post-Filing D&O Claim against the Applicant or Director(s) and/or Officer(s) of the Applicant as set out herein; and

(d) Complete documentation in support of this Post-Filing Fund Claim and/or Post-Filing D&O Claim is attached;

_____ _____

(signature of the Post-Filing Claimant or authorized representative) (witness signature)

_____ _____

(print name) (print name)

_____

(title)

Dated at _____ this _____ day of _____ , 202_

7. FILING PROOF OF POST-FILING CLAIM

Completed Proofs of Post-Filing Claims, and all relevant supporting documentation, must be received by the Monitor by 5:00 p.m. (Eastern Time) on January 21, 2022 (the "**Post-Filing Claims Bar Date**"), as set out in the Post-Filing Claims Procedure Order. Completed Proofs of Post-Filing Claims must be sent to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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**
Email:	**growthworkscanadianfundltd@fticonsulting.com**
Attention:	**Patrick Kennedy**

Only Proofs of Post-Filing Claims that are actually received by the Monitor on or before the Post-Filing Claims Bar Date will be considered filed by the Post-Filing Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Post-Filing Claim by the Post-Filing Claims Bar Date.**

PROOFS OF POST-FILING CLAIMS WHICH ARE NOT RECEIVED BY THE POST-FILING CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

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"

PROOF OF POST-FILING D&O INDEMNITY CLAIM

This form is to be used only by Directors or Officers of GrowthWorks Canadian Fund Ltd. (the "**Applicant**") asserting a Post-Filing D&O Indemnity Claim against the Applicant. Capitalized terms not defined in this form have the meanings given to them in the Post-Filing Claims Procedure Order, which all Persons are encouraged to review in its entirety.

If you are not a Director or Officer asserting a Post-Filing D&O Indemnity Claim, but have a Post-Filing Fund Claim or a Post-Filing D&O Claim against the Applicant and/or its Director(s) and/or Officer(s), please use the form titled "Proof of Post-Filing Claim", which is available on the Monitor's website: http://cfcanada.fticonsulting.com/gcfl/default.htm.

1. PARTICULARS OF THE DIRECTOR OR OFFICER

(a) Full Legal Name of the Director or Officer _____

*Full legal name should be the name of Director or Officer as of October 1, 2013 (the "**Filing Date**"))*

(b) Attention (Contact Person): _____

(c) Email Address: _____

(d) Telephone Number: _____

(e) Fax Number: _____

(f) Full Mailing Address of the Director or Officer _____

_____

2. POST-FILING D&O INDEMNITY CLAIM

(a) Position(s) Held: _____

_____

_____

(b) Date Position(s) Held: From _____ to _____

(mm/dd/yyyy) From _____ to _____

From _____ to _____

(c) Reference No. of Proof of Post-Filing Claim:
(with respect to which this Post-Filing D&O Indemnity Claim is made)

(d) Particulars of and Basis for Post-Filing D&O Indemnity Claim:

_____

_____

_____

_____

_____

(Provide all particulars of the Post-Filing D&O Indemnity Claim, including all supporting documentation)

3. CERTIFICATION

I hereby certify that:

(a) I am a Director or Officer asserting a Post-Filing D&O Indemnity Claim, or an authorized representative thereof;

(b) I have knowledge of all the circumstances connected with this Post-Filing D&O Indemnity Claim;

(c) This Post-Filing D&O Indemnity Claim is asserted against the Applicant as set out above; and

(d) Complete documentation in support of this Post-Filing D&O Indemnity Claim is attached.

_____ _____
(signature of Director/Officer or authorized representative) (witness signature)

_____ _____
(print name) (print name)

_____
(title)

Dated at _____ this _____ day of _____ , 202_

4. FILING PROOF OF POST-FILING D&O INDEMNITY CLAIM

Completed Proofs of Post-Filing D&O Indemnity Claims, and all relevant supporting documentation, must be received by the Monitor by 5:00 p.m. (Eastern Time) on the day which is fifteen (15) Business Days after the date of deemed receipt of the Proof of Post-Filing D&O Indemnity Claim by the Director or Officer (the "**Post-Filing D&O Indemnity Claims Bar Date**"). Completed Proofs of Post-Filing D&O Indemnity Claims must be sent to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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**
Email:	**growthworkscanadianfundltd@fticonsulting.com**
Attention:	**Patrick Kennedy**

Only Proofs of Post-Filing D&O Indemnity Claims that are actually received by the Monitor on or before the Post-Filing D&O Indemnity Claims Bar Date will be considered filed by the Post-Filing D&O Indemnity Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Post-Filing D&O Indemnity Claim by the Post-Filing D&O Indemnity Claims Bar Date.**

PROOFS OF POST-FILING D&O INDEMNITY CLAIMS WHICH ARE NOT RECEIVED BY THE POST-FILING D&O INDEMNITY CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER AND YOU WILL BE PROHIBITED FROM MAKING OR ENFORCING SUCH POST-FILING D&O INDEMNITY CLAIM AGAINST THE APPLICANT.

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"

POST-FILING CLAIMANTS' GUIDE TO COMPLETING THE PROOF OF POST-FILING CLAIM

This Post-Filing Claimants' Guide to Completing the Proof of Post-Filing Claim (the "**Guide**") has been prepared to assist Post-Filing Claimants in filling out the Proof of Post-Filing Claim form against GrowthWorks Canadian Fund Ltd. (the "**Applicant**") and/or its Director(s) and Officer(s). Capitalized terms not defined in this Guide have the meanings given to them in the Post-Filing Claims Procedure Order, which all Persons are encouraged to review in its entirety.

The Post-Filing Claims Procedure Order and the Proof of Post-Filing Claim may be found at the Monitor's website: http://cfcanada.fticonsulting.com/gcfl/default.htm

Please note that this is a guide only. In the event of any inconsistency between the terms of this Guide and the terms of the Post-Filing Claims Procedure Order, the terms of the Post-Filing Claims Procedure Order will govern.

SECTION 1 – PARTICULARS OF POST-FILING CLAIMANT

(a) A separate Proof of Post-Filing Claim must be filed by each Person asserting a Post-Filing Fund Claim and/or Post-Filing D&O Claim against the Applicant and/or its Director(s) and/or Officer(s).

(b) The Post-Filing Claimant shall include any and all Post-Filing Fund Claims and/or Post-Filing D&O Claims it asserts against the Applicant and/or its Director(s) and/or Officer(s) in a single Proof of Post-Filing Claim.

(c) The full legal name of the Post-Filing Claimant must be provided.

(d) If the Post-Filing Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

(e) If the Post-Filing Fund Claim and/or Post-Filing D&O Claim has been assigned or transferred to another party, Section 2 must also be completed.

(f) Unless the Post-Filing Fund Claim and/or the Post-Filing D&O Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Post-Filing Fund Claim and/or Post-Filing D&O Claim will be directed to the address and contact indicated in this section.

SECTION 2 – ASSIGNEE

(a) If the Post-Filing Fund Claim and/or Post-Filing D&O Claim has been assigned or transferred to another party, this section must be completed.

(b) The full legal name of the Assignee must be provided.

(c) If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

(d) If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Post-Filing Fund Claim and/or Post-Filing D&O Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 – PARTY CLAIMING AGAINST

(a) Indicate whether the Post-Filing Fund Claim and/or Post-Filing D&O Claim is being asserted against the Applicant and/or its Director(s) and/or Officer(s).

(b) If a Post-Filing Fund Claim and/or Post-Filing D&O Claim is being asserted against both the Applicant and its Director(s) and/or Officer(s), this should be indicated by checking both boxes in this section.

SECTION 4 – AMOUNT OF POST-FILING CLAIM OF CLAIMANT AGAINST APPLICANT

(a) Indicate the amount the Applicant and/or its Director(s) and/or Officer(s) was/were and still is/are indebted to the Post-Filing Claimant.

Director(s) and/or Officer(s) Name(s)

(b) If you are making a Post-Filing D&O Claim against the Director(s) and/or Officer(s) of the Applicant, the names of these Director(s) and/or Officer(s) should be provided in this column.

(c) If the Post-Filing Claimant is claiming against the Applicant only (and not its Director(s) and/or Officer(s)), this column can be left blank, but the remaining portions of the chart (i.e., Currency, Original Currency Amount, Unsecured Claim, and Secured Claim) must be completed, as applicable.

Currency and Original Currency Amount

(d) The amount of the Post-Filing Fund Claim and/or the Post-Filing D&O Claim must be provided in the currency in which it arose.

(e) Indicate the appropriate currency in the Currency column.

(f) If the Post-Filing Fund Claim and/or Post-Filing D&O Claim is denominated in multiple currencies, use a separate line to indicate the Post-Filing Fund Claim and/or Post-Filing D&O 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

(g) Check this box ONLY if the Post-Filing Fund Claim and/or Post-Filing D&O Claim recorded on that line is an unsecured claim.

Secured Claim

(h) Check this box ONLY if the Post-Filing Fund Claim and/or Post-Filing D&O Claim recorded on that line is a secured claim.

(i) If a secured claim is being asserted, the Post-Filing Claimant must provide full particulars of the security, including the date on which the security was given, the value at which the security is assessed and copies of the security documents. If there are insufficient lines to provide these particulars, please attach a separate schedule indicating the required information.

(j) If a priority claim is being asserted, the Post-Filing Claimant must provide details as to the priority claim being asserted, the basis for the priority claim and any relevant documents in support of the priority claim. If there are insufficient lines to provide these particulars, please attach a separate schedule indicating the required information.

SECTION 5 – PARTICULARS OF POST-FILING CLAIM AND DOCUMENTATION

(a) Attach to the Proof of Post-Filing Claim form all particulars of the Post-Filing Fund Claim and/or Post-Filing D&O Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Post-Filing Fund Claim and/or Post-Filing D&O Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any and estimated value of such security.

(b) If the Post-Filing Claimant has additional particulars to provide that are not already contained in the Proof of Post-Filing Claim, a separate schedule should be attached to the Proof of Post-Filing Claim indicating the required information.

(c) Complete supporting documentation submitted with the Proof of Post-Filing Claim.

(d) Any schedules and/or supporting documentation appended to the Proof of Post-Filing Claim must be received by the Monitor by the Post-Filing Claims Bar Date (see Section 7 below).

SECTION 6 – CERTIFICATION

(a) The Person signing the Proof of Post-Filing Claim should:

(i) Certify that they are the Post-Filing Claimant or an authorized representative of the Post-Filing Claimant.

(ii) Certify that they have knowledge of all the circumstances connected with the Post-Filing Fund Claim and/or Post-Filing D&O Claim.

(iii) Certify that the Post-Filing Fund Claim and/or Post-Filing D&O Claim is asserted against the Applicant and/or its Director(s) and Officer(s) as set out in the Proof of Post-Filing Claim;

(iv) Certify that complete documentation in support of the Post-Filing Fund Claim and/or Post-Filing D&O Claim is attached; and

(v) Have a witness to the certification. A witness signature must be provided.

(b) By signing and submitting the Proof of Post-Filing Claim, the Post-Filing Claimant is asserting the Post-Filing Fund Claim and/or Post-Filing D&O Claim against the Applicant and/or its Director(s) and/or Officer(s).

SECTION 7 – FILING PROOF OF POST-FILING CLAIM

Completed Proofs of Post-Filing Claims, and all relevant supporting documentation, **must be received by the Monitor by 5:00 p.m. (Eastern time) on January 21, 2022 (the "Post-Filing Claims Bar Date"), as set out in the Post-Filing Claims Procedure Order. Completed Proofs of Post-Filing Claims must be sent to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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

Email: **growthworkscanadianfundltd@fticonsulting.com**
Attention: **Patrick Kennedy**

Only Proofs of Post-Filing Claims that are actually received by the Monitor on or before the Post-Filing Claims Bar Date will be considered filed by the Post-Filing Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Post-Filing Claim by the Post-Filing Claims Bar Date.**

PROOFS OF POST-FILING CLAIMS WHICH ARE NOT RECEIVED BY THE POST-FILING CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

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 "D"

POST-FILING NOTICE OF REVISION OR DISALLOWANCE

Regarding Post-Filing Claims against GrowthWorks Canadian Fund Ltd. (hereinafter referred to as the "Applicant") **and its Director(s) and/or Officer(s)**

To:

_____
(name of Post-Filing Claimant)

Post-Filing Claim
Reference No.: _____

Capitalized terms not defined in this Post-Filing Notice of Revision or Disallowance have the meaning ascribed in the Post-Filing Claims Procedure Order dated November 30, 2021 (the "**Post-Filing Claims Procedure Order**"). All dollar values contained herein are in Canadian Dollars unless otherwise noted.

Pursuant to the Post-Filing Claims Procedure Order, FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Applicant (the "**Monitor**"), hereby gives you notice that it has reviewed your Proof of Post-Filing Claim or Proof of Post-Filing D&O Indemnity Claim, as applicable, in conjunction with the Applicant, and has revised or disallowed your Post-Filing Claim. Subject to further dispute by you in accordance with the Post-Filing Claims Procedure Order, your Post-Filing Claim will be allowed as follows:

Amount Allowed by Monitor

Type of Post-Filing Claim	Amount as Submitted Original Currency		Total amount allowed by Monitor	Amount allowed as secured	Amount allowed as unsecured
A. Post-Filing Fund Claim		$	$	$	$
B. Post-Filing D&O Claim		$	$	$	$
C. Post-Filing D&O Indemnity Claim		$	$	$	$
D. TOTAL CLAIM		$	$	$	$

REASON(S) FOR THE REVISION OR DISALLOWANCE:

_____

_____

_____

_____

_____

_____

_____

Post-Filing Dispute Notice

If you intend to dispute this Post-Filing Notice of Revision or Disallowance, you must, by no later than 5:00 p.m. (Eastern Time) on the day that is **fifteen (15) Business Days** after this Post-Filing Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph **[40]** of the Post-Filing Claims Procedure Order), deliver a Post-Filing Dispute Notice. The Post-Filing Dispute Notice must be given to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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**
Email:	**growthworkscanadianfundltd@fticonsulting.com**
Attention:	**Patrick Kennedy**

Any Post-Filing Claimant who fails to deliver a Post-Filing Dispute Notice by the deadline set forth in paragraph 40 of the Post-Filing Claims Procedure Order shall be deemed to accept the classification and the amount of its Post-Filing Claim as set out in the Post-Filing Notice of Revision or Disallowance and such Post-Filing Claim as set out in the Notice of Revision or Disallowance shall be deemed such Post-Filing Claimant's Proven Post-Filing Claim with the balance of such claim, if any, forever extinguished, barred, discharged and released.

If you agree with this Post-Filing Notice of Revision or Disallowance, there is no need to file anything further with the Monitor.

The form of Post-Filing 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 POST-FILING DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS POST-FILING NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this _____ day of _____, 20__.

FTI Consulting Canada Inc.

SCHEDULE "E"

POST-FILING DISPUTE NOTICE

Regarding Post-Filing Claims against GrowthWorks Canadian Fund Ltd. (hereinafter referred to as the "Applicant") **and its Director(s) and/or Officer(s)**

Capitalized terms not defined in this Post-Filing Dispute Notice have the meanings ascribed to them in the Post-Filing Claims Procedure Order dated November 30, 2021 (the "**Post-Filing Claims Procedure Order**"). You can obtain a copy of the Post-Filing Claims Procedure Order on the Monitor's website at http://cfcanada.fticonsulting.com/gcfl/default.htm.

1. PARTICULARS OF POST-FILING CLAIMANT:

(a) Full Legal Name of Post-Filing Claimant (the "**Post-Filing Claimant**"): _____

*(Full legal name should be the name of the Post-Filing Claimant of the Applicants or the Directors and/or Officers as of October 1, 2013 (the "**Filing Date**"), notwithstanding whether an assignment of a Post-Filing Claim, or a portion thereof, has occurred following the Filing Date)*

(b) Attention (Contact Person): _____

(c) Email Address: _____

(d) Telephone Number: _____

(e) Fax Number: _____

(f) Full Mailing Address of the Post-Filing Claimant: _____
(the Post-Filing Claimant as of the Filing Date) _____

2. PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)

(a) Has the Post-Filing Fund Claim or Post-Filing D&O Claim been sold or assigned by the Post-Filing Claimant to another party [check (√) one]?

Yes ☐ No ☐

(If Yes, you must include the details and documentation that support the assignment, including whether all or a portion of the Post-Filing Claim has been assigned. If there is more than one assignee, please attach a separate sheet with the required contact information for each)

(b) Full Legal Name of the original _____

Post-Filing Claimant(s): _____

(c) Full Legal Name of Assignee(s): _____

(d) Attention (Contact Person): _____

(e) Email Address: _____

(f) Telephone Number: _____

(g) Fax Number: _____

(h) Full Mailing Address of the Assignee _____

_____

3. DISPUTE OF REVISION OR DISALLOWANCE OF POST-FILING CLAIM

The Post-Filing Claimant hereby disagrees with the value of its Post-Filing Claim set out in the Post-Filing Notice of Revision or Disallowance dated _____, and asserts a Post-Filing Claim as follows:

Type of Post-Filing Claim	**Amount allowed by Monitor as unsecured** (Post-Filing Notice of Revision or Disallowance)	**Amount allowed by Monitor as secured** (Post-Filing Notice of Revision or Disallowance)	**Amount claimed by Post-Filing Claimant as unsecured**	**Amount claimed by Post-Filing Claimant as secured**
A. Post-Filing Fund Claim	$	$	$	$
B. Post-Filing D&O Claim	$	$	$	$
C. Post-Filing D&O Indemnity Claim	$	$	$	$
D. TOTAL CLAIM	$	$	$	$

4. REASON(S) FOR DISPUTE

(Provide full particulars of why you dispute the Monitor's revision or disallowance of your Post-Filing Claim as set out in the Post-Filing Notice of Revision or Disallowance, and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Post-Filing Claim, and amount of Post-Filing Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Post-Filing Claim as stated by you in Section 3, above)

_____

_____

_____

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_____

_____

_____

DATED this _____ day of _____, 20__.

_____

(Signature of Post-Filing Claimant, or, if the Post-Filing Claimant is a corporation, the signature of the authorized signing officer of the corporation that is executing this Post-Filing Dispute Notice)

_____

(Print name of Post-Filing Claimant, or, if the Post-Filing Claimant is a corporation, the name of the Post-Filing Claimant and the name of the authorized signing officer of the corporation that is executing this Post-Filing Dispute Notice)

5. FILING POST-FILING DISPUTE NOTICE

This Post-Filing Dispute Notice must be delivered to the Monitor by no later than 5:00 p.m. (Eastern Time) on the day that is **fifteen (15) Business Days** after the Post-Filing Notice of Revision or Disallowance was deemed to have been received by you (in accordance with paragraph 40 of the Post-Filing Claims Procedure Order). This Post-Filing Dispute Notice must be delivered to the Monitor by email, or if it cannot be given by email, by prepaid registered mail or courier, 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**
Email:	**growthworkscanadianfundltd@fticonsulting.com**
Attention:	**Patrick Kennedy**

Any Post-Filing Claimant who fails to deliver this Post-Filing Dispute Notice by the deadline set forth in paragraph 30 of the Post-Filing Claims Procedure Order shall be deemed to accept the classification and the amount of its Post-Filing Claim as set out in the Post-Filing Notice of Revision or Disallowance and such Post-Filing Claim as set out in the Notice of Revision or Disallowance shall be deemed such Post-Filing Claimant's Proven Post-Filing Claim with the balance of such claim, if any, forever extinguished, barred, discharged and released.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

POST-FILING CLAIMS PROCEDURE ORDER

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
66 Wellington Street West
Toronto, ON M5K 1E6

Geoff R. Hall LSO#: 34710O
Tel: 416-601-7856
E-mail: ghall@mccarthy.ca

Heather Meredith LSO#: 48354R
Tel: 416-601-8342
Email: hmeredith@mccarthy.ca

Natasha Rambaran LSO#: 80200N
Tel: 416-601-8110
Email: nrambaran@mccarthy.ca

Lawyers for the Applicant,
GrowthWorks Canadian Fund Ltd.

TAB H

This is Exhibit "**H**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

CONFIDENTIAL

Submitted to Court subject to a request for a sealing order

TAB I

This is Exhibit "**I**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

Courtis, Trevor

From: Dunphy, Mr. Justice Sean (SCJ) <Sean.Dunphy@scj-csj.ca>
Sent: Tuesday, June 29, 2021 2:28 PM
To: Courtis, Trevor
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List; Caitlin Fell; paul.bishop@fticonsulting.com; Hall, Geoff R.; Ng, Daisy (JUD)
Subject: [EXT] RE: GrowthWorks Canadian Fund Ltd. (Court File No. CV-13-10279-00CL) [MT-MTDOCS.FID2642510]
Attachments: Draft Stay Extension Order - GrowthWorks - 29JUN21.pdf

#5 In the Matter of Growthworks Canadian Fund Ltd. 12:00 pm June 29, 2021

Style of Cause:
Court File No. CV-13-10279-00CL ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) BETWEEN: 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.

Appearances:
Geoff R. Hall Counsel for 416-601-7856 ghall@mccarthy.ca GrowthWorks Canadian Fund Ltd. Trevor Courtis Counsel for 416-601-7643 tcourtis@mccarthy.ca GrowthWorks Canadian Fund Ltd. Jonathan Grant Corporate Counsel for 416-601-7604 igrant@mccarthy.ca GrowthWorks Canadian Fund Ltd. C. lan Ross GrowthWorks Canadian N/A ianross@bell.net Fund Ltd.
Caitlin Fell Counsel for the 416-613-8282 cfell@wfklaw.ca Monitor, FTI Consulting Canada Inc. Paul Bishop FTI Consulting 416-649-8053 Paul.Bishop@fticonsulting.com Canada Inc.
Nancy Tourgis Counsel for 416-947-1093 ntourgis@srtslegal.com GrowthWorks WV ext. 342 Management Ltd.

Endorsement: I have approved the requested Stay Extension to March 31, 2022 as asked. Nevertheless, I think that it is important to register a growing level of impatience that this file – now seven years of age – is earning the dubious distinction of the longest CCAA proceeding on record. I understand that the portfolio of VC investments left in the fund is getting down to a relatively small number of investments that it is hoped will yield a material amount of money that can be distributed to the long-suffering investors. The portfolio has been successfully managed over the years to the point of repaying the secured creditors in full and resolving two large contingent claims. The Monitor expects to be coming to court to get approval to run and complete a pre-filing claims process and a post-filing claims process reasonably quickly. By March of next year I think it is reasonable to require that a concrete game plan for winding up the liquidation process and exiting from the court process be presented for approval. There will come a time – and it may well be now or next March – that the benefits of the patient work-out of the portfolio to maximize value will not justify the expense and delay of doing so and a more rapid sale of some or all of the remaining portfolio to new owners willing to take the time needed to realize that value will be the preferable course.

From: Courtis, Trevor <TCOURTIS@mccarthy.ca>
Sent: Tuesday, June 29, 2021 12:55 PM
To: Dunphy, Mr. Justice Sean (SCJ) <Sean.Dunphy@scj-csj.ca>
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; Caitlin Fell <cfell@wfklaw.ca>; paul.bishop@fticonsulting.com; Hall, Geoff R. <GHALL@MCCARTHY.CA>
Subject: GrowthWorks Canadian Fund Ltd. (Court File No. CV-13-10279-00CL) [MT-MTDOCS.FID2642510]

Your Honour,

Please find attached the draft order in Word format and the Participant Information sheet from the hearing this afternoon. Please let us know if we can provide anything further.

TC

Trevor Courtis
Associate | Sociétaire
Bankruptcy and Restructuring | Faillite et restructuration
T: 416-601-7643
C: 416-553-1133
F: 416-868-0673
E: tcourtis@mccarthy.ca

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

TAB J

This is Exhibit "**J**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

COUNSEL SLIP

COURT FILE NO.: CV-13-00010279-00CL

DATE: March 30th 2022

NO. ON LIST 3

TITLE OF PROCEEDING

GROWTHWORKS CANADA FUND LTD -v- L'ABBE

COUNSEL FOR:

☐ PLAINTIFF(S)

☒ APPLICANT(S) Saneea Tanvir

☐ PETITIONER(S)

Heather Meredith hmeredith@mccarthy.ca

Jonathan Grant jgrant@mccarthy.ca

PHONE

FAX

EMAIL stanvir@mccarthy.ca

COUNSEL FOR:

☐ DEFENDANT(S)

☒ RESPONDENT(S)Caitlin Fell

Paul Bishop paul.bishop@fticonsulting.com

Ian Ross ianross@bell.net

PHONE

FAX

EMAIL cfell@wfklaw.ca

JUDICIAL NOTES:

Endorsement of Penny J.

I am satisfied that the stay extension sought by the company is warranted. The Monitor supports the request. Significant progress has been made in realizations and there is a *prima facie* sensible plan for the completion of the necessary steps. The Board and the Monitor are cognizant of the fact that some of the assets may not be best handled by the debtor in this process, given the time and risk that may be required to realize significant value. The sealing order is necessary to preserve the ability of the company to maximize value. Order to issue in the form signed by me this day.

Penny J.

TAB K

This is Exhibit "**K**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	WEDNESDAY, THE 30TH
	)	
JUSTICE PENNY	)	DAY OF MARCH, 2022

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.

STAY EXTENSION ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") for an order extending the stay period defined in paragraph 14 of the initial order made October 1, 2013, as amended and restated on October 29, 2013 (the "**Stay Period**"), sealing a confidential exhibit and approving an extension to the Amended and Restated Investment Advisor Agreement between Crimson Capital Inc. ("**Crimson Capital**") and the Fund (the "**Second Amended and Restated IAA**") was heard this day by way of judicial video conference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Motion Record of the Fund, including the Notice of Motion (the "**Motion Record**") and the affidavit of C. Ian Ross sworn on March 22, 2022, the Twenty-Ninth 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 and the Monitor, and such other counsel that were present as listed on the Participant Slip, no one else appearing although properly served as appears from the affidavit of service, filed:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including December 31, 2022.

SEALING ORDER

3. **THIS COURT ORDERS** that Confidential Exhibit "C" to the affidavit of C. Ian Ross sworn on March 22, 2022, which contains a confidential summary of the Fund's significant remaining investments shall be kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the court file for these proceedings, in a sealed envelope attached to a notice that sets out the title of these proceedings and the statement that the contents are subject to this Motion and sealing Order, and remain under seal until further Order of this Court.

EXTENSION OF SECOND AMENDED AND RESTATED IAA

4. **THIS COURT ORDERS** that the Applicant is authorized to execute and deliver an Extension Notice extending the Term of the Second Amended and Restated IAA to December 31, 2022 (the "**Extended Term**") and that such extension is hereby approved (as each term is defined in the Second Amended and Restated IAA).

5. **THIS COURT ORDERS** that the Applicant is authorized to continue to perform its obligations under the Second Amended and Restated IAA during the Extended Term.

6. **THIS COURT ORDERS** that paragraphs 4 to 7 of the Stay Extension Order of the Honourable Mr. Justice Hainey made March 22, 2019 shall continue to apply during the Extended

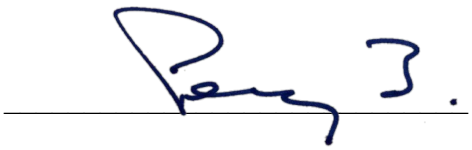
Term.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

8. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

9. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada) and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States of America, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



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

STAY EXTENSION ORDER

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Lawyers for the Applicant,
GrowthWorks Canadian Fund Ltd.

441848655

TAB L

This is Exhibit "**L**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

Industry Canada Industrie Canada

Certificate of Amendment

Certificat de modification

Canada Business Corporations Act

Loi canadienne sur les sociétés par actions

GrowthWorks WV Canadian Fund Inc.

Fonds Canadien WV GrowthWorks Inc.

230391-4

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of the above-named corporation were amended:

a) under section 13 of the *Canada Business Corporations Act* in accordance with the attached notice;

b) under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares;

c) under section 179 of the *Canada Business Corporations Act* as set out in the attached articles of amendment;

d) under section 191 of the *Canada Business Corporations Act* as set out in the attached articles of reorganization;

Je certifie que les statuts de la société susmentionnée ont été modifiés:

☐ a) en vertu de l'article 13 de la *Loi canadienne sur les sociétés par actions*, conformément à l'avis ci-joint;

☐ b) en vertu de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;

☑ c) en vertu de l'article 179 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes;

☐ d) en vertu de l'article 191 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de réorganisation ci-jointes;

Director - Directeur

November 27, 2003 / le 27 novembre 2003

Date of Amendment - Date de modification

Canada

Industry Canada

CANADA BUSINESS CORPORATIONS ACT

FORM 4

ARTICLES OF AMENDMENT (SECTIONS 27 or 177)

1 - Name of the Corporation	2 - Corporation No.
GrowthWorks WV Canadian Fund Inc.	230391-4

3 - The articles of the above-named corporation are amended as follows:

The Articles of GrowthWorks WV Canadian Fund Inc. (the "Corporation") be amended by:

(a) authorizing the unlimited number of Class A shares in the capital of the Corporation (the "Class A Shares") to be issuable in one or more series;

(b) designating the first series of Class A Shares as "WV Canadian, Commission I" ("WV Canadian I Shares");

(c) changing all of the issued and outstanding Class A Shares and each fraction thereof into the same number of WV Canadian I Shares;

(d) changing the rights, privileges, restrictions and conditions attached to the shares of the Corporation so that are as described in Schedule 1 attached hereto (which hereby replaces the current Schedule 1 to the Corporation's Articles in its entirety);

(e) adding provisions to the Articles (as described in Schedule 1 attached hereto) authorizing the directors of the Corporation to fix the number of shares in and determine the designation of and rights, privileges, restrictions and conditions attaching to additional series of Class A shares; and

(f) changing the restrictions on transfer applicable to the Corporation's shares so that are as described in Schedule 2 attached hereto (which hereby replaces the current Schedule 2 to the Corporation's Articles in its entirety).

Date	Signature	Capacity of
November 10, 2003		Corporate Secretary
For Departmental Use Only Filed DEC. 02 2003	Printed Name Alex Irwin	

SCHEDULE 1

SHARE CAPITAL PROVISIONS

PART 1 - INTERPRETATION

1.1 Definitions. In this Schedule 1:

"**Act**" means the *Canada Business Corporations Act*.

"**annuitant**" has the meaning assigned by subsection 146(1) of the Tax Act in respect of a registered retirement savings plan and the meaning assigned by subsection 146.3(1) of the Tax Act in respect of a registered retirement income fund.

"**Board**" means the board of directors of the Corporation.

"**Business Day**" means a day other than a Saturday, a Sunday or a day observed as a holiday under the laws of Canada or a province or territory of Canada.

"**Director**" has the meaning assigned by subsection 2(1) of the Act.

"**directors**" means directors of the Corporation.

"**Dissolution Event**" means the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs.

"**fiscal year**" means a fiscal year of the Corporation.

"**individual**" means a person other than a corporation.

"**Information Return**" means official documentation establishing the issuance of or the right to claim a tax credit, including the information return described in paragraph 204.81(6)(c) of the Tax Act and the tax credit certificate described in subsection 25(3) of the Ontario Act.

"**Ontario Act**" means the *Community Small Business Investment Funds Act* (Ontario).

"**Net Asset Value of the Corporation**" means the value of the Corporation's assets minus the Corporation's liabilities as determined by the Corporation (and in so determining the assets, the Corporation may, to the extent permitted by securities regulatory authorities, recognize deferred charges net of accumulated amortization that may not be recognized under generally accepted accounting principles).

"**Net Asset Value per Class A Share**" in respect of any date, means the amount obtained by dividing the aggregate of:

(a) the Net Asset Value of the Corporation as at that date,
minus

(b) the stated capital of the Class B shares as at that date,
minus

(c) the portion of the Net Asset Value of the Corporation attributable to the Class C shares as at that date,

by the number of outstanding Class A shares on that date.

"**Net Asset Value per Series Share**" in respect of a particular Series means (unless otherwise defined in the rights attached to such Series) the amount determined in accordance with the following formula:

$$\text{Net Asset Value per Series Share} = \frac{\text{Series Assets} - \text{Series Liabilities}}{\text{Total number of shares of that Series (including fractions thereof) issued and outstanding}}$$

provided that if from time to time any governmental or regulatory body having jurisdiction over the Corporation, the Corporation's auditor or the independent qualified valuator who reports on the value of certain Corporation assets requires

an adjustment or change in such calculation or valuation methods (including any method used for allocating assets or liabilities), the Net Asset Value per Series Share shall thereafter be calculated applying such required adjustment or change.

"**Net Redemption Amount**", in respect of a particular Series, means (unless otherwise defined in the rights attached to such Series) the amount determined as follows:

(a) the (i) Net Asset Value per Class A Share if there is only one series of Class A shares issued or (ii) otherwise the Net Asset Value per Series Share in effect, multiplied by the number of shares to be redeemed, plus

(b) any declared but unpaid dividends on the shares to be redeemed, less

(c) any applicable redemption fee, and less

(d) any amount required under the Tax Act, Ontario Act or other federal or provincial legislation having application to the redemption of shares to be remitted or paid to the applicable authority as a consequence of the redemption.

"**Original Issue Date**", in respect of particular shares of the Corporation, means:

(a) the date those shares were originally issued from treasury; or

(b) if some or all of those shares were issued as a result of one or more conversions of other shares of the Corporation in accordance with the provisions of the Corporation's Articles (as amended, restated or replaced from time to time), then the date those shares were originally issued from treasury prior to such conversion(s).

"**paid-up capital**" in respect of shares of the Corporation has the meaning assigned by paragraph 89(1)(c) of the Tax Act.

"**person**" has the meaning assigned by subsection 248(1) of the Tax Act.

"**registered retirement income fund**" has the meaning assigned by subsection 146.3(1) of the Tax Act.

"**registered retirement savings plan**" has the meaning assigned by subsection 146(1) of the Tax Act.

"**Series**" or "**Series Shares**" means a particular series of Class A shares.

"**Series Assets**", in respect of a particular Series, means (unless otherwise defined in the rights, privileges, restrictions and conditions attached to such Series), the aggregate value of that portion of the Corporation's assets which have been acquired, allocated or classified in the records of the Corporation as assets underlying that Series in accordance with the investment policy applicable thereto, together with a pro rata portion of the assets of the Corporation not otherwise allocated to any one or more series or classes of shares (and in so determining the assets, the Corporation may, to the extent permitted by securities regulatory authorities, recognize deferred charges net of accumulated amortization that may not be recognized under generally accepted accounting principles), all as determined under the authority of the directors.

"**Series Liabilities**", in respect of a particular Series, means (unless otherwise defined in the rights, privileges, restrictions and conditions attached to such Series), the aggregate value of that portion of the Corporation's liabilities which have been incurred, allocated or classified in the records of the Corporation as liabilities in respect of the Series Assets or that Series, together with a pro rata portion of the liabilities of the Corporation not otherwise allocated to any one or more series or classes of shares, all as determined under the authority of the directors.

"**specified individual**" in relation to a Class A share means an individual (other than a trust) whose labour-sponsored funds tax credit for purposes of the Tax Act for a taxation year would take into account the amount of consideration paid to acquire or subscribe for the share if an information return were filed as required by the Tax Act in respect of the acquisition of or subscription for the share.

"**Sponsor**" means the Canadian Federation of Labour.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**Tax Regulations**" means the regulations promulgated under the Tax Act.

"**trust**" has the meaning assigned by subsection 104(1) of the Tax Act.

"**Valuation Date**" means a date on which the Corporation calculates a net asset value per share for its Class A shares, or each series thereof if more than one series is issued, in accordance with the valuation policies and procedures adopted by the Board or its Audit and Valuation committee from time to time.

1.2 **Gender, Etc.** Words importing the singular include the plural and vice versa and words importing any gender include all genders.

1.3 **References.** Any reference to a statute or regulation hereunder shall be deemed to be a reference to such statute or regulation as amended, re-enacted or replaced from time to time and references to specific parts, paragraphs or sections thereof shall include all amendments, re-enactments or replacements.

1.4 **Currency.** Unless otherwise provided, all dollar amounts referred to are in lawful money of Canada.

PART 2 - CLASS A SHARES

2.1 Class Rights attached to the Class A Shares. The Class A shares shall, as a class, have attached thereto the following rights, privileges, restrictions and conditions:

(a) Authority to Issue in Series - The Class A shares may from time to time be issued in one or more series. Section 2.2 hereof fixes the number of shares in and sets out the designation of the first series of Class A shares and the rights, privileges, restrictions and conditions attached thereto as a series. The directors are authorized to fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to additional series of Class A shares. Before the issue of shares of any such additional series, the directors shall send to the Director articles of amendment setting out such designation, rights, privileges, restrictions and conditions.

(b) Pari Passu Participation Among Series - No rights, privileges, restrictions or conditions attached to a series of Class A shares shall confer upon a series a priority in respect of dividends or return of capital over any other series of Class A shares then outstanding. If any cumulative dividends or amounts payable on return of capital in respect of a series of Class A shares are not paid in full, the Class A shares of all series shall participate rateably in respect of such accumulated dividends and return of capital (based on the respective amounts payable in full).

(c) Election of Directors - The holders of the Class A shares shall be entitled, as a class, to elect that number of directors of the Corporation not entitled to be elected by the holders of the Class B shares pursuant to these Articles.

(d) Dissolution - On any Dissolution Event, the holders of the Class A shares shall be entitled to receive the remaining property and assets of the Corporation after the holders of shares of all other classes having priority have received all amounts to which they are entitled in accordance with the provisions attaching thereto. If any amounts payable upon a Dissolution Event in respect of a series of Class A shares cannot be paid in full, the Class A shares of all series shall participate rateably in the remaining property and assets of the Corporation (based on their respective fully payable amounts).

(e) Good Faith Determinations - Any determination made by the directors in good faith regarding any matters set out in this part 2 shall be final and binding on all shareholders and former shareholders of the Corporation and all other interested parties. The directors shall not be liable to the Corporation or to any shareholder or former shareholder of the Corporation or any other interested party for, or with respect to, any matter arising directly or indirectly from any such determination made or action taken by them in good faith pursuant to this part 2.

(f) Paid-up Capital - The Corporation shall not reduce its paid-up capital in respect of the Class A shares except

(i) by way of a redemption of Class A shares; or

(ii) in such other manner as may be permitted under the Tax Act and approved by the directors.

(g) Fractional Shares - A holder of a fractional Class A share shall be entitled to exercise voting rights and to receive dividends and all other rights in respect of such fractional Class A share to the extent of such fraction.

(h) Restriction of Redemption - In any fiscal year, the Corporation shall not be required to redeem Class A shares having a redemption right if the aggregate amount to be paid on redemption of all such Class A shares exceeds 20% of the Net Asset Value of the Corporation as at the last day of the preceding fiscal year. The foregoing limitation shall not apply to Class A shares that the Corporation is requested to redeem for which an Information Return has not been issued. If, in any fiscal year, as a result of the foregoing limitation, the Corporation is not

required to redeem Class A shares that it has been requested to redeem, then, subject to the foregoing limitation, the Corporation shall redeem such shares in the following fiscal year before it redeems any other Class A shares that it has been requested to redeem and, for such purposes, the requests to redeem such shares shall be deemed to have been received by the Corporation on the first day of the following fiscal year in the order that they were originally received by the Corporation. Even though a redemption request may be declined under this paragraph, it shall remain in effect until withdrawn or fulfilled.

2.2 **Series Rights - WV Canadian, Commission I Shares.** The first series of Class A shares shall be designated as "WV Canadian, Commission I" ("WV Canadian I Shares"). The Corporation is authorized to issue an unlimited number of WV Canadian I Shares which shall, as a series, have attached thereto the following rights, privileges, restrictions and conditions:

(a) Issue - The Corporation shall issue WV Canadian I Shares only to individuals (other than trusts), to trusts governed by a registered retirement savings plan as required under the Tax Act, and to such other persons as may be permitted under applicable legislation from time to time;

(b) Voting Rights - The holders of WV Canadian I Shares shall be entitled to receive notice of and attend all meetings of shareholders of the Corporation and, except for meetings at which only holders of shares of a different class or series are entitled to vote separately as a class or series, shall have one vote at any such meeting for each WV Canadian I Share held.

(c) Dividends - The holders of the WV Canadian I Shares shall be entitled to receive dividends and the Corporation shall pay dividends thereon, as and when declared by the directors, in their discretion, in such amount and in such form as the directors may from time to time determine. To the extent that the Board declares a dividend on the series of Class C shares issued pursuant to a stock option plan of the Corporation, it will declare and pay a dividend in the same amount on the WV Canadian I Shares (and vice-versa).

(d) Dissolution - Upon a Dissolution Event, the holders of WV Canadian I Shares shall, subject to Section 2.1, be entitled to receive the remaining property and assets of the Corporation the amount they would be entitled to receive upon a full redemption of their shares at that time.

(e) Net Asset Value per Share - The net asset value per share for the WV Canadian I Shares shall be calculated as follows:

(i) While there is only one series of Class A shares issued, the net asset value per share shall be the Net Asset Value per Class A Share; and

(ii) After more than one series of Class A shares are issued, the net asset value per share shall be the Net Asset Value per Series Share.

(f) Redemption Right - Subject to Section 2.1(h) and to the terms and conditions set forth in this Section 2.2, any holder of WV Canadian I Shares shall be entitled to require the Corporation to redeem all or any part of the holder's WV Canadian I Shares at any time in respect of WV Canadian I Shares for which an Information Return has not been issued and, in the case of WV Canadian I Shares in respect of which an Information Return has been issued, as follows:

(i) where there is no specified individual in respect of the share;

(ii) where the Corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of:

A. a holder of the share, or

B. an annuitant under a trust governed by a registered retirement savings plan or registered retirement income fund that was a holder of the share,

(iii) for WV Canadian I Shares issued on or before March 5, 1996:

A. after the fifth anniversary of the date on which the share was issued;

B. where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant and the Corporation is notified in writing that the specified individual in respect of the share

1. has retired from the workforce, provided that the request to redeem is received by the Corporation after the second anniversary of the date on which the share was issued,

2. has become, after the share was issued, disabled and permanently unfit for work,

3. has become, after the share was issued, terminally ill, or

4. has ceased to be a resident of Canada, provided that the request to redeem is received by the Corporation after the second anniversary of the date on which the share was issued;

C. where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant and the Corporation receives a written request to redeem the share from the holder within 60 days after the date on which the share was issued and the Information Return issued in respect of the share is returned to the Corporation;

D. where the redemption date is on or after the day on which the specified individual in respect of the share attained, or would, but for death, have attained the age of 65 years provided that, in the case of the specified individual attaining the age of 65 years, the request to redeem is received by the Corporation after the second anniversary of the date on which the share was issued;

E. on or prior to the fifth anniversary of the date on which the share was issued where the holder has satisfied such conditions as have been prescribed for the purposes of the Tax Act and, where applicable, all requirements in connection with the redemption imposed by the Ontario Act and any other provincial legislation having application to the holder or the Corporation;

(iv) for WV Canadian I Shares issued after March 5, 1996

A. after the eighth anniversary of the date on which the share was issued;

B. where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant and the Corporation is notified in writing that the specified individual in respect of the share

1. has become, after the share was issued, disabled and permanently unfit for work, or

2. has become, after the share was issued, terminally ill;

C. where the share is held by the specified individual in respect of the share, a spouse or former spouse of that individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which that individual or spouse is the annuitant and the Corporation receives a written request to redeem the share from the holder and the Information Return issued in respect of the share is returned to the Corporation;

D. on or prior to the eighth anniversary of the date on which the share was issued where the holder has satisfied such conditions as have been prescribed for the purposes of the Tax Act and, where applicable, all requirements in connection with the redemption imposed by the Ontario Act and any other provincial legislation having application to the holder or the Corporation; and

(v) in any other circumstances where the redemption is permitted for the purposes of the Tax Act and is not prohibited by any federal or provincial legislation having application to the holder or the Corporation and is approved by the directors.

(g) Redemption Procedure - Subject to Section 2.1(h), a holder of WV Canadian I Shares who is entitled to do so in accordance with this Section 2.2, may require the Corporation to redeem all or any of the WV Canadian I Shares registered in the name of the holder in the securities register of the Corporation by delivering to the Corporation at its registered office the certificate(s), if any, representing the WV Canadian I Shares that the holder wishes to have the Corporation redeem together with a request in writing signed or electronically transmitted by the holder or the holder's authorized attorney, investment dealer or broker, specifying the number of shares which the holder desires to have redeemed, all in form satisfactory to the Corporation (a "**Redemption Request**"). If the shares to be redeemed are held within a dealer or broker account and the Redemption Request has not been submitted by the dealer or broker which maintains that account, the consent of such dealer or broker in form satisfactory to the Corporation.

Upon receipt by it of the certificate(s), if any, and the Redemption Request, the Corporation shall on the next Valuation Date redeem the WV Canadian I Shares that the holder wishes the Corporation to redeem by paying or

causing to be paid the Net Redemption Amount therefor to the holder or the holder's authorized attorney, investment dealer or broker.

Subject to Section 2.1(h), duly submitted Redemption Requests shall be dealt with in the order in which they are received by the Corporation. Where a holder holds WV Canadian I Shares purchased on more than one date, the shares shall be redeemed on a first-in first-out basis.

The Corporation shall have the right to instead fulfill any Redemption Request by arranging for a third party to purchase the shares described in the Redemption Request for an amount equal to the Net Redemption Amount and otherwise on the same terms that the Corporation would have redeemed the shares; provided that this paragraph shall not be operative unless the directors by resolution decide that it shall become operative either generally or for a specific transaction. If the Corporation makes such an arrangement, it will do so at its own expense, act as intermediary or agent in the exchange of payment, certificates and/or instruments of transfer. The purchase of such shares by the third party shall constitute full and complete satisfaction of the Corporation's obligation to redeem the shares purchased by the third party.

Notwithstanding the foregoing, the procedure and manner of payment for redemption of any WV Canadian I Shares may be modified by agreement between the Corporation and the holder of the WV Canadian I Shares or the holder's authorized agent, investment dealer or broker.

(h) Conversion Right - Upon the date the Board approves for commencement of the following conversion right, the holders of WV Canadian I Shares shall have the right (the "**Conversion Right**") to convert all or from time to time any part of such holder's WV Canadian I Shares into other Series Shares ("Other Series Shares") designated Commission I shares upon and subject to the following terms and conditions:

(i) *Conversion Dates* - The Conversion Right shall be exercisable on the day or days each year approved by the directors from time to time (each such day being a "**Conversion Date**").

(ii) *Conversion Request* - A holder of WV Canadian I Shares may exercise his Conversion Right by delivering to the Corporation at its head office or such other office(s) as may be designated by the Corporation for such purpose from time to time in writing:

A. a request for conversion (a "**Conversion Request**") in a form satisfactory to the Corporation, signed or electronically transmitted by the holder or his authorized attorney, investment dealer or broker, specifying the number of shares which the holder desires to have converted into specified Other Series Shares on the next Conversion Date; and

B. if a share certificate has been issued for the shares to be so converted, the certificate representing such shares duly endorsed and guaranteed or accompanied by a proper instrument of conversion duly endorsed and guaranteed.

A Conversion Request shall be deemed to have been given when actually received by the Corporation at its designated office(s) and when so received shall be irrevocable (unless its revocation is consented to by the Corporation).

(iii) *Conversion Procedure* - On the Valuation Date on or immediately following the next Conversion Date after receipt by the Corporation of the holder's Conversion Request (and accompanying share certificate if applicable), the Corporation shall issue to the holder the number (including a fraction) of fully paid and non-assessable Other Series Shares determined by the following formula, using the Net Asset Value Per Series Share for the relevant Series in effect at the time of conversion:

$$\frac{\text{No. of WV Canadian I Shares specified for conversion} \times \text{Net Asset Value per WV Canadian I Share}}{\text{Net Asset Value per Other Series Share}}$$

Thereafter, the Corporation shall issue new evidence of the holder's ownership of the Other Series Shares issued at the conversion rate calculated above. If less than all the holder's WV Canadian I Shares are to be converted, the holder shall be entitled to receive new evidence of ownership of the balance of the WV Canadian I Shares not converted. If only part of the shares represented by a certificate delivered to the Corporation are converted, a new certificate for the unconverted balance shall be issued at the expense of the Corporation.

PART 3 - CLASS B SHARES

The Class B shares shall have attached thereto the following rights, privileges, restrictions and conditions:

3.1 **Issue.** The Corporation shall issue the Class B shares only to the Sponsor.

3.2 **Voting Rights.** The holder of the Class B shares shall be entitled to receive notice of and attend all meetings of shareholders of the Corporation and, except for meetings at which only holders of shares of a different class or series are entitled to vote separately as a class or series, shall have one vote at any such meeting for each Class B share held.

3.3 **Election of Directors.** The holder of Class B shares shall be entitled as a class to elect that number of directors of the Corporation determined in accordance with the following formula:

(a) if the Corporation has an even number of directors:

$\frac{1}{2} A + 2$

(b) if the Corporation has an odd number of directors:

$B + 1$

where,

A is the total number of directors of the Corporation,

B is a simple majority of directors of the Corporation.

3.4 **Dividends.** The holder of the Class B shares shall not be entitled to receive dividends.

3.5 **Dissolution.** On any Dissolution Event, the holder of the Class B shares shall be entitled to receive an amount equal to the amount received by the Corporation as consideration for the issue of Class B shares before any assets are distributed to the holders of the Class A shares but after the holders of shares of any other class having priority have received all amounts to which they are entitled in accordance with the provisions attaching thereto.

PART 4 - CLASS C SHARES

4.1 Class Rights, Privileges, Restrictions and Conditions attached to the Class C Shares. The Class C shares shall, as a class, have attached thereto the following rights, privileges, restrictions and conditions:

(a) Authority to Issue in One or More Series - Subject to subsection (b) below, the directors may issue Class C shares at any time and from time to time in one or more series. Before any Class C shares of a particular series are issued, the directors shall fix the number of shares that will form such series and shall determine, subject to the limitations set out in this part 4 and in the Act, the designation, rights, privileges, restrictions and conditions attaching to the Class C shares of such series and shall send to the Director articles of amendment setting out such designation, rights, privileges, restrictions and conditions.

(b) Approvals - The directors shall not issue Class C shares of a particular series unless the rights, privileges, restrictions and conditions attaching to such series have been approved by the Minister of Finance (Canada) and the Minister of Finance (Ontario).

(c) Voting Rights - The holders of Class C shares shall be entitled to receive notice of and attend all meetings of shareholders of the Corporation but, except as provided by law, shall not be entitled as such to vote at any such meeting.

(d) Dissolution - The Class C shares shall rank equally with the Class A shares on any Dissolution Event. On any Dissolution Event, the holders of the Class C shares shall be entitled to receive from the remaining property and assets of the Corporation, after the holders of shares of any other class having priority have received all amounts to which they are entitled in accordance with the provisions attaching thereto, the amount provided for in the rights, privileges, restrictions and conditions attached to Class C shares as series.

SCHEDULE 2

5. Restrictions on Share Transfers:

(a) **Interpretation.**

"**annuitant**" has the meaning assigned by subsection 146 (1) of the Tax Act in respect of a registered retirement savings plan and the meaning assigned by subsection 146.3(1) of the Tax Act in respect of a registered retirement income fund.

"**directors**" means directors of the Corporation.

"**individual**" means a person other than a corporation.

"**Information Return**" means the information return described in paragraph 204.81(6)(c) of the Tax Act or the tax credit certificate described in subsection 25(3) of the Ontario Act.

"**Ontario Act**" means the *Community Small Business Investment Fund Act* (Ontario).

"**Original Issue Date**", in respect of particular shares of the Corporation, means:

(a) the date those shares were originally issued from treasury; or

(b) if some or all of those shares were issued as a result of one or more conversions of other shares of the Corporation in accordance with the provisions of the Corporation's Articles, as amended, restated or replaced from time to time, then the date the particular share or shares were issued from treasury prior to such conversion(s);

"**registered retirement income fund**" has the meaning assigned by subsection 146.3(1) of the Tax Act.

"**registered retirement savings plan**" has the meaning assigned by subsection 146(1) of the Tax Act.

"**Series**" or "**Series Shares**" means a particular series of Class A shares.

"**specified individual**" in relation to a Class A share means an individual (other than a trust) whose labour-sponsored funds tax credit for the purposes of the Tax Act for a taxation year would take into account the amount of consideration paid to acquire or subscribe for the share if an information return were filed as required by the Tax Act in respect of the acquisition of or subscription for the share.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**trust**" has the meaning assigned by subsection 104(1) of the Tax Act.

Words importing the singular include the plural and vice versa and words importing any gender include all genders. Any reference to a statute or regulation hereunder shall be deemed to be a reference to such statute or regulation as amended, re-enacted or replaced from time to time and references to specific parts, paragraphs or sections thereof shall include all amendments, re-enactments or replacements.

(b) **Class A Shares Issued On Or Before March 5, 1996.** The Corporation shall not register in the securities registers of the Corporation or otherwise recognize a transfer of a Class A share issued on or before March 5, 1996 in respect of which an Information Return has been issued by the specified individual in respect of the share or spouse of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or spouse is the annuitant except where:

(1) the transfer occurs more than five years after the Original Issue Date;

(2) the Corporation is notified in writing that the specified individual has retired from the workforce or has attained the age of 65 years, provided that the transfer occurs after the second anniversary of the Original Issue Date;

(3) the Corporation is notified in writing that the specified individual has, after acquiring the share, become disabled and permanently unfit for work or terminally ill;

(4) the transfer is to the specified individual, a spouse or former spouse of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or the spouse or former spouse of the specified individual is the annuitant,

(5) the Corporation is notified in writing that the transfer is occurring as a consequence of the death of the specified individual or a spouse of the specified individual,

(6) the Corporation is notified in writing that the specified individual has died; or

(7) in accordance with such other conditions as may be prescribed for purposes of the Tax Act, the Ontario Act or any other federal or provincial legislation having application to the transfer of Class A shares and approved by the directors;

provided that if the rights, privileges, restrictions and conditions attached to a particular Series place additional restrictions on the transfer of such Series Shares, such additional restrictions shall apply to the transfer of those Series Shares.

(c) **Class A Shares Issued After March 5, 1996.** The Corporation shall not register in the securities registers of the Corporation or otherwise recognize a transfer of a Class A share issued after March 5, 1996 in respect of which an Information Return has been issued by the specified individual in respect of the share or spouse of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or spouse is the annuitant except where:

(1) the Corporation is notified in writing that the specified individual has, after acquiring the share, become disabled and permanently unfit for work or terminally ill;

(2) the transfer is to the specified individual, a spouse or former spouse of the specified individual or a trust governed by a registered retirement savings plan or registered retirement income fund under which the specified individual or the spouse or former spouse of the specified individual is the annuitant;

(3) the Corporation is notified in writing that the transfer is occurring as a consequence of the death of the specified individual or a spouse of the specified individual;

(4) the Corporation is notified in writing that the specified individual has died; or

(5) in accordance with such other conditions as may be prescribed for purposes of the Tax Act, the Ontario Act or any other federal or provincial legislation having application to the transfer of Class A shares and approved by the directors;

provided that if the rights, privileges, restrictions and conditions attached to a particular Series place additional restrictions on the transfer of such Series Shares, such additional restrictions shall apply to the transfer of those Series Shares.

TAB M

This is Exhibit "**M**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

Industry Canada | Industrie Canada

Certificate of Amendment

Certificat de modification

Canada Business Corporations Act

Loi canadienne sur les sociétés par actions

GrowthWorks Canadian Fund Ltd./

Fonds Canadien GrowthWorks Ltée.

230391-4

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of the above-named corporation were amended:

a) under section 13 of the *Canada Business Corporations Act* in accordance with the attached notice;

b) under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares;

c) under section 179 of the *Canada Business Corporations Act* as set out in the attached articles of amendment;

d) under section 191 of the *Canada Business Corporations Act* as set out in the attached articles of reorganization;

Je certifie que les statuts de la société susmentionnée ont été modifiés:

☐ a) en vertu de l'article 13 de la *Loi canadienne sur les sociétés par actions*, conformément à l'avis ci-joint;

☐ b) en vertu de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;

☑ c) en vertu de l'article 179 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes;

☐ d) en vertu de l'article 191 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de réorganisation ci-jointes;

Richard G. Shaw
Director - Directeur

February 12, 2010 / le 12 février 2010
Date of Amendment - Date de modification

Canada

Industry Canada CANADA BUSINESS CORPORATIONS ACT	FORM 4 ARTICLES OF AMENDMENT (SECTIONS 27 or 177)

1 - Name of the Corporation	2 - Corporation No.
GrowthWorks Canadian Fund Ltd./Fonds Canadien GrowthWorks Ltée	230391-4

3 - The articles of the above-named corporation are amended by replacing section 4.2 of Part 4 of Schedule 1 to the Articles with Section 4.2 as set out in the attached pages.

Date	Signature	Capacity of
February 12, 2010		Director
For Departmental Use Only Filed	Printed Name David Levi	

R 12 FEB '10 14:36

4.2 Series Rights – IPA Shares. A series of Class C shares shall be designated as "IPA Shares". The Corporation is authorized to issue an unlimited number of IPA Shares which shall, as a series, have attached thereto the following rights, privileges, restrictions and conditions:

(a) Definitions, etc. - In these series rights, privileges, restrictions and conditions, the following terms shall have the following meanings:

"CMDF Venture Investments" means only those New Venture Investments acquired by the Corporation effective May 22, 2009 through the merger of Canadian Medical Discoveries Fund Inc. ("**CMDF**") into the Corporation, and for greater certainly shall not include any New Venture Investments in the same person acquired by the Corporation subsequent to such merger

"ENSIS IPA Reduction" means an amount by which a dividend payable in respect of the Class C shares is reduced in accordance with subparagraph (d)(vii) below.

"ENSIS Merger Series" means the series of Class A shares of the Corporation created and distributed to former shareholders of ENSIS Growth Fund Inc. ("**ENSIS**") in connection with the merger of ENSIS into the Corporation.

"ENSIS Venture Investments" means only those New Venture Investments acquired by the Corporation effective October 24, 2008 through the merger of ENSIS into the Corporation, and for greater certainly shall not include any New Venture Investments in the same person acquired by the Corporation subsequent to such merger.

"Existing Venture Investment" means any securities (including the provision of guarantees) of a person held by the Corporation other than Reserves on the IPA Start Date and shall include any securities subsequently acquired, held by or issued to the Corporation therefor on a reorganization, re-classification, amalgamation, arrangement, disposition or otherwise.

"IPA Start Date" means November 26, 2002.

"Merger Venture Investments" means only those New Venture Investments acquired by the Corporation through merger transactions, and for greater certainty shall not include any New Venture Investments in the same person acquired by the Corporation other than through a merger transaction.

"New Venture Investment" means any securities (including the provision of guarantees) acquired by the Corporation in a person other than Reserves (and other than Existing Venture Investments) after the IPA Start Date and shall include any securities subsequently acquired, held by or issued to the Corporation therefor on a reorganization, re-classification, amalgamation, arrangement, disposition or otherwise.

"Realized Gains and Income", in respect of a particular Venture Investment, means the amount by which total cash received from dispositions of the Venture Investment and all fees, royalties, interest, dividends and other distributions received in respect of the Venture Investment exceeds the total cost of the Venture Investment and all extraordinary expenses incurred in connection with the Venture Investment, all since the Corporation's initial investment in the Venture Investment.

"Realized and Unrealized Gains and Income" means, in respect of a particular Venture Investment, the amount by which the total unrealized and realized gains from the Venture Investment, plus all fees, royalties, interest, dividends and other distributions received or receivable in respect of the Venture Investment exceeds the total unrealized and realized losses from the Venture Investment;

"Reserve" has the meaning ascribed by subsection 204.8(1) of the *Income Tax Act* (Canada) and includes money in cash or on deposit with qualified financial institutions, debt obligations of or guaranteed by the Canadian federal government, debt obligations of provincial and municipal governments, Crown corporations, corporations listed on prescribed Canadian stock exchanges, or authorized foreign banks (if the debt obligations are payable at a branch in Canada of such banks), guaranteed investment certificates issued by Canadian trust companies, qualified investment contracts and any other prescribed investments

"**Venture Investment**" means an Existing Venture Investment or a New Venture Investment as the context may require (but does not include the investment by the Corporation in GrowthWorks Opportunity Fund Ltd).

If the Corporation has both an Existing Venture Investment and a New Venture Investment in the same person or acquires an additional New Venture Investment in a person after acquiring a New Venture Investment in the same person through the merger with CMDF or ENSIS, such investments shall be treated separately for the purposes of calculating dividends payable under paragraph (d) below and, in the event of the disposition of part but not all of the securities of the person, the securities shall be deemed to be disposed of in the order they were acquired, unless the offer or sale opportunity is limited to particular securities.

If any portion of the cash received from a disposition of a Venture Investment is not identified as being allocated to specific securities, it shall be allocated on a reasonable basis among the securities disposed of

(b) Issue - The Corporation shall issue IPA Shares only to a person acting as a manager or investment manager to the Corporation. At any given time, only one person shall hold IPA Shares.

(c) Non-Transferable - IPA Shares are not transferable.

(d) Dividends - The holder of the IPA Shares shall be entitled to receive, the directors shall declare where permitted by the Act and the Corporation shall pay, cumulative dividends on the IPA Shares payable as of the end of each fiscal quarter, on the following terms and conditions

(i) the dividends shall be equal to:

A. 20% of the Realized Gains and Income on each New Venture Investment; and

B. 15% of the Realized Gains and Income on each Existing Venture Investment;

(ii) despite (i), the holder of the IPA Shares shall be entitled to a dividend attributable to a particular Venture Investment only if at the end of the fiscal quarter:

A. *Portfolio Test* - the total Realized and Unrealized Gains and Income from all of the Corporation's Venture Investments have generated an annualized rate of return greater than a cumulative annualized threshold rate of return equal to the average annual rate of return on a five year guaranteed investment certificate offered by the Royal Bank of Canada plus 2%;

A.1 *CMDF Portfolio Test* – if and to the extent that the particular Venture Investment is a CMDF Venture Investment, the total Realized and Unrealized Gains and Income from all of the CMDF Venture Investments have generated since May 22, 2009 an annualized rate of return greater than a cumulative annualized threshold rate of return equal to the average annual rate of return on a five year guaranteed investment certificate offered by the Royal Bank of Canada plus 2%;

B. *Venture Investment Test* - the compounded annual internal rate of return (including Realized and Unrealized Gains and Income from prior partial dispositions of that Venture Investment or otherwise) from the Venture Investment since the date of the initial investment in the Venture Investment must equal or exceed 12% per annum; and

C. *Principal Test* - the Corporation must have fully recovered a cash amount equal to the principal invested in the Venture Investment since the date of the initial investment.

When determining whether the above conditions have been met with respect to an Existing Venture Investment and Merger Venture Investments:

"date of the initial investment" referred to in clauses B. and C. above shall be deemed to be the IPA Start Date for Existing Venture Investments and shall be deemed to be the effective date of the relevant merger for Merger Venture Investments; and

"principal" referred to in clause C. above shall be deemed to be the estimated fair value of such Venture Investment as carried on the books of the Corporation as at the IPA Start Date for Existing Venture Investments and as recorded on the books of the Corporation as at date of the relevant merger for Merger Venture Investments.

In determining if the above conditions are met with respect to the Existing Venture Investments in Bitflash Inc., 1389195 Ontario Inc./CFN Precision Inc., WV-CMDF-Queen's Scientific Breakthrough Fund Inc., SiRiFic Wireless Corporation and Cogency Semiconductor Inc. held by the Corporation on the IPA Start Date, the following special rules will apply: the value of such Venture Investments as at the IPA Start Date shall be as carried on the books of the Corporation at the IPA Start Date, but if a new value for the Venture Investment is established by a new transaction in which an arm's length third party establishes value, that new value will instead, for purposes hereof, be deemed to be the value of such Venture Investment as at the IPA Start Date.

All Venture Investments disposed of after the IPA Start Date that satisfied the above conditions as at the end of the fiscal quarter of the Corporation after such sale, shall entitle the holder of the Class C shares to receive a dividend hereunder despite having occurred in an earlier quarter, as the interest contemplated hereby was intended to apply as and from the IPA Start Date.

(iii) the dividend amount in respect of any particular Venture Investment shall be reduced by the aggregate amount, if any, of dividends that have previously been paid to the holder of the Class C shares in respect of that Venture Investment;

(iv) if a dividend payable is not paid for any reason, the dividend shall be cumulative and continue to accrue until actually paid;

(v) the payment of any dividends hereunder shall be in preference and priority to the payment of dividends on any Class A or Class B shares of the Corporation;

(vi) if any dividend calculated and paid as a dividend hereunder during a fiscal year of the Corporation differs from the amount therefore subsequently confirmed at the time of the Corporation's audit for that year, such dividend amount(s) shall be adjusted, retroactively nunc pro tunc, to be equal to the amount so confirmed upon audit, and the party that owes an amount as a result of such difference and adjustment shall promptly pay the difference. If there is a dispute as to the "amount so confirmed on audit", the dispute shall be resolved by reference to an outside independent expert selected by the Corporation and the holder's auditors, and the amount confirmed by such expert shall be deemed to be the "amount so confirmed on audit"; and

(vii) if and only for so long as the total of all ENSIS IPA Reductions is less than $1,750,000, the dividend amount in respect of any ENSIS Venture Investment shall be reduced by multiplying the dividend amount otherwise payable by the following fraction:

$$\frac{\text{Net Asset Value of the Corporation} - \text{Net Asset Value of the Corporation attributable to the ENSIS Merger Series}}{\text{Net Asset Value of the Corporation}}$$

and the amount of the reduction shall be applied entirely towards reducing the portion of the liability associated with any such dividend that would have otherwise been allocated to the ENSIS Merger Series.

(e) Dissolution Amount - Upon a Dissolution Event, the holder of IPA Shares shall be entitled to receive an amount equal to the sum of:

(i) all declared but unpaid dividends on the IPA Shares; and

(ii) an amount equal to the cumulative dividends to which the holder of the IPA Shares would have been entitled pursuant to paragraph (d) above, whether or not dividends were actually declared by the directors, assuming that all Venture Investments had been disposed of as of the date of the

Dissolution Event at the estimated fair value of such investments calculated in accordance with the Corporation's usual valuation policies.

(f) Manager Termination - Upon termination of the holder of the IPA Shares as a manager of the Corporation, the holder of the IPA Shares shall be entitled to receive an amount equal to the sum of:

(i) all declared but unpaid dividends on the IPA Shares, and

(ii) dividends in an amount equal to the cumulative dividends to which the holder of the IPA Shares would have been entitled pursuant to paragraph (d) above, whether or not dividends were actually declared by the directors, assuming that all Venture Investments had been disposed of as of the effective date of such termination at the estimated fair value of such investments calculated in accordance with the Corporation's usual valuation policies.

Any amount in (i) above shall be paid promptly. With respect to the amount in (ii) above, the holder of the IPA Shares shall be entitled to receive as dividends the applicable portion of that amount so calculated in respect of any particular Venture Investment existing on the date of termination as and when the particular Venture Investment is disposed of.

(g) Redemption - If the holder of the IPA Shares:

(i) ceases to be a manager of the Corporation and all amounts payable (or capable in future of becoming payable) to the holder of the IPA Shares hereunder have been paid in full by the Corporation to such holder, or

(ii) agrees in writing to redemption by the Corporation hereunder,

the Corporation shall be entitled to redeem from the holder all of the IPA Shares then outstanding for an amount (the "**Redemption Amount**") equal to the consideration paid to the Corporation therefor upon the issue of such IPA Shares. Upon satisfaction of the foregoing redemption conditions and payment by the Corporation to the holder of the IPA Shares of the Redemption Amount, the IPA Shares shall be redeemed and all certificate(s) representing such shares shall be cancelled.

(h) Paid-up Capital - The Corporation shall not reduce its paid-up capital in respect of the IPA Shares except:

(i) by way of a redemption of IPA Shares; or

(ii) in such other manner as may be permitted under the Tax Act and approved by the directors.

TAB N

This is Exhibit "**N**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

GROWTHWORKS
Canadian Fund

GrowthWorks Canadian Fund Ltd.

WV Canadian & Merger Series:
WV Canadian – Commission I
CAVI Series
CSTGF Series
FOF Traditional Series
ENSIS Series
CMDF Series
GIC Series:
Venture / GIC – Commission I
Venture / GIC – Commission II
Growth Series:
Venture / Growth – Commission I
Venture / Growth – Commission II
FOF Growth Series
Financial Services Series:
Venture / Financial Services – Commission I
Venture / Financial Services – Commission II
Balanced and CMDF Reinvestment Series:
Venture / Balanced – Commission I
Venture / Balanced – Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

2013 Annual Financial Statements

For the year ended August 31, 2013

KPMG LLP
PO Box 10426 777 Dunsmuir Street
Vancouver BC V7Y 1K3
Canada

Telephone (604) 691-3000
Fax (604) 691-3031
Internet www.kpmg.ca

INDEPENDENT AUDITORS' REPORT

To the Shareholders of GrowthWorks Canadian Fund Ltd., comprising the following series:

WV Canadian & Merger Series
GIC Series
Growth Series
Financial Services Series
Balanced and CMDF Reinvestment Series

We have audited the accompanying financial statements of GrowthWorks Canadian Fund Ltd., which comprise the statement of investment portfolio as at August 31, 2013, the statements of net assets as at August 31, 2013 and 2012 and the statements of operations, changes in net assets and cash flows for the years then ended, and notes, comprising a summary of significant accounting policies and other explanatory information.

The Manager's Responsibility for the Financial Statements

The Manager is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the investment portfolio of the GrowthWorks Canadian Fund Ltd. as at August 31, 2013, its net assets as at August 31, 2013 and 2012 and its results of operations, changes in its net assets and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

Emphasis of matter

Without modifying our opinion, we draw attention to Note 1 in the financial statements which indicates that the GrowthWorks Canadian Fund Ltd.'s continuing operations are dependent on its ability to divest of mature investments in a timely manner and successfully restructure and repay its obligations. These conditions, along with other matters as set forth in Note 1 in the Fund's financial statements, indicate the existence of a material uncertainty that casts significant doubt about the Fund's ability to continue as a going concern.

KPMG LLP

Chartered Accountants

September 26, 2014
Vancouver, Canada

GROWTHWORKS CANADIAN FUND LTD.

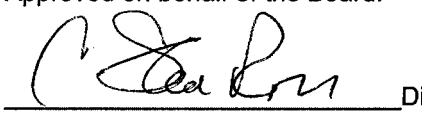
WV Canadian –
Commission I, CAVI Series, ENSIS Series, CMDF Series, CSTGF Series, and FOF Traditional Series

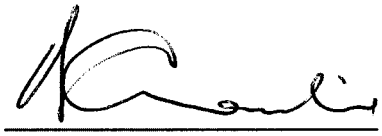
Statements of Net Assets
For the years ended August 31 (In thousands except per share amounts)

		2013		2012
Assets				
Cash	$	7,740	$	160
Short-term investments and bonds		-		-
Guaranteed investment certificates		-		-
Venture investments		77,370		154,424
Divestment proceeds receivable		5,471		4,611
Accrued interest receivable		617		4,504
Related party receivable [Note 8]		808		-
Other assets		336		754
	$	92,342	$	164,453
Liabilities				
Accounts payable and accrued liabilities [Note 11]	$	895	$	3,363
Redemptions payable		114		125
Incentive participation amount payable [Note 5]		1,206		1,184
Contingent IPA [Note 5]		-		1,238
Participation liability [Note 7]		21,775		20,938
Financing facility [Note 8]		-		11,570
Inter-series payable [Note 8]		2,155		829
	$	26,145	$	39,247
Net assets				
WV Canadian – Commission I	$	23,640	$	41,443
CAVI Series		2,823		5,395
ENSIS Series		11,853		25,004
CMDF Series		22,527		43,099
CSTGF Series		2,387		4,763
FOF Traditional Series		2,967		5,502
	$	66,197	$	125,206
Shares outstanding [Note 5]				
WV Canadian – Commission I		7,022		7,022
CAVI Series		1,011		1,011
ENSIS Series		5,177		5,177
CMDF Series		8,100		8,100
CSTGF Series		938		938
FOF Traditional Series		990		990
Net assets per share				
WV Canadian – Commission I	$	3.37	$	5.90
CAVI Series		2.79		5.34
ENSIS Series [Note 9]		2.29		4.83
CMDF Series		2.78		5.32
CSTGF Series		2.54		5.08
FOF Traditional Series		3.00		5.56

Corporate Status, Going Concern and Share Structure [Note 1]
Contingencies [Note 10]
Subsequent events [Note 14]
See accompanying notes to financial statements.

Approved on behalf of the Board:


Director


Director

GROWTHWORKS CANADIAN FUND LTD.

WV Canadian –
Commission I, CAVI Series, ENSIS Series, CMDF Series, CSTGF Series, and FOF Traditional Series
Statements of Operations (In thousands except per share amounts)
For the years ended August 31

	2013	2012
Investment income:		
Interest – short-term investments and bonds	$ -	$ 7
Interest – venture investments	373	1,616
Interest – other income	17	416
	390	2,039
Expenses:		
Management fees [Note 8]	1,951	2,904
Administration fees [Note 8]	1,864	2,773
Capital retention administration fees [Note 8]	78	195
Directors' fees	539	490
Legal fees	1,174	688
Service fees [Note 5]	423	637
Financing expense [Note 7]	5,245	4,187
Financing facility interest [Note 8]	1,245	1,259
Other	1,427	1,026
Total expenses before fee waiver	13,946	14,159
Expenses waived or absorbed by Manager	(131)	(103)
Net expenses	13,815	14,056
Net investment income (loss)	(13,425)	(12,017)
Realized gain (loss) from:		
Venture investments	(56,712)	(14,375)
Short-term investments and bonds	-	-
Total realized gain (loss)	(56,712)	(14,375)
Incentive participation amount [Note 5]	(22)	(330)
Net realized gain (loss)	(56,734)	(14,705)
Change in unrealized appreciation (depreciation) of:		
Venture investments	6,329	2,433
Venture interest	(1,323)	(27)
Short-term investments and bonds	-	(1)
Change in unrealized appreciation (depreciation)	5,006	2,405
Contingent incentive participation amount [Note 5]	1,238	2,410
Participation liability [Note 7]	4,906	492
Net change in unrealized appreciation (depreciation)	11,150	5,307
Increase (decrease) in net assets from operations before income taxes	(59,009)	(21,415)
Provision for income taxes (expense) recovery	-	-
Increase (decrease) in net assets from operations	(59,009)	(21,415)
Increase (decrease) in net assets from operations:		
WV Canadian – Commission I	$ (17,803)	$ (6,575)
CAVI Series	(2,572)	(934)
ENSIS Series	(13,151)	(4,952)
CMDF Series	(20,572)	(7,535)
CSTGF Series	(2,376)	(855)
FOF Traditional Series	(2,535)	(564)
Increase (decrease) in net assets from operations	$ (59,009)	$ (21,415)
Increase (decrease) in net assets from operations per share:		
WV Canadian – Commission I	$ (2.54)	$ (0.93)
CAVI Series	(2.54)	(0.92)
ENSIS Series	(2.54)	(0.95)
CMDF Series	(2.54)	(0.93)
CSTGF Series	(2.53)	(0.91)
FOF Traditional Series	(2.56)	(0.57)

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

WV Canadian –
Commission I, CAVI Series, ENSIS Series, CMDF Series, CSTGF Series, and FOF Traditional Series

Statements of Changes in Net Assets
(In thousands except per share amounts)
For the years ended August 31

	WV Canadian – Commission I		CAVI Series		ENSIS Series	
	2013	2012	2013	2012	2013	2012
Net assets, beginning of year	$ 41,443	$ 49,764	$ 5,395	$ 6,572	$ 25,004	$ 30,500
Changes during the year:						
Net increase (decrease) in net assets from operations	(17,803)	(6,575)	(2,572)	(934)	(13,151)	(4,952)
Capital transactions:						
Proceeds from issuance of Class A shares	-	-	-	-	-	-
Payment on redemption of Class A shares	-	(1,746)	-	(243)	-	(544)
	-	(1,746)	-	(243)	-	(544)
Net assets, end of year	$ 23,640	$ 41,443	$ 2,823	$ 5,395	$ 11,853	$ 25,004

	CMDF Series		CSTGF Series		FOF Traditional Series	
	2013	2012	2013	2012	2013	2012
Net assets, beginning of year	$ 43,099	$ 51,238	$ 4,763	5,811	$ 5,502	$ 6,207
Changes during the year:						
Net increase (decrease) in net assets from operations	(20,572)	(7,535)	(2,376)	(855)	(2,535)	(564)
Capital transactions:						
Proceeds from issuance of Class A shares	-	-	-	-	-	-
Payment on redemption of Class A shares	-	(604)	-	(193)	-	(141)
	-	(604)	-	(193)	-	(141)
Net assets, end of year	$ 22,527	$ 43,099	$ 2,387	$ 4,763	$ 2,967	$ 5,502

	Total	
	2013	2012
Net assets, beginning of year	$ 125,206	$ 150,092
Changes during the year:		
Net increase (decrease) in net assets from operations	(59,009)	(21,415)
Capital transactions:		
Proceeds from issuance of Class A shares	-	-
Payment on redemption of Class A shares	-	(3,471)
	-	(3,471)
Net assets, end of year	$ 66,197	$ 125,206

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

WV Canadian –
Commission I, CAVI Series, ENSIS Series, CMDF Series, CSTGF Series, and FOF Traditional Series

Statements of Cash Flows
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Cash flows provided by (used for):		
Cash flow from operating activities:		
Net investment loss	$ (13,425)	$ (12,017)
Changes in non-cash operating accounts:		
Accrued interest receivable	3,887	(414)
Related party receivable	(808)	
Other assets	418	(600)
Accounts payable and accrued liabilities	(2,468)	(667)
Incentive participation amount payable	22	(673)
Contingent IPA payable	(1,238)	(2,429)
Inter-series payable (receivable)	4,763	2,192
	(8,849)	(14,608)
Cash flows from (used in) investing activities:		
Proceeds of disposition of portfolio assets:		
Disposition of venture investments	35,438	9,270
Disposition of short-term investments and bonds	-	1,090
Disposition of guaranteed investment certificates	-	293
Purchase of portfolio assets:		
Purchase of venture investments	(7,404)	(5,575)
Purchase of short-term investments and bonds	-	(730)
Restricted cash	-	-
Incentive participation amount payable	-	-
Divestment proceeds receivable	(860)	3,270
	27,174	7,618
Cash flows from (used in) financing activities:		
Payment on redemption of Class A shares	-	(3,471)
Financing facility	(11,570)	9,634
Participation liability	837	(872)
Redemptions payable	(12)	(7)
	(10,745)	5,284
Increase (decrease) in cash position	7,580	(1,706)
Cash position, beginning of year	160	1,866
Cash position, end of year	$ 7,740	$ 160
Supplemental Cash Flow information:		
Interest expense	$ 1,909	$ 4,321

See accompanying notes to financial statements.

WV Canadian - Commission I, CAVI Series, CSTGF Series, Ensis Series, CMDF Series, and FOF Traditional Series (Tabular amounts expressed in thousands of dollars)

Discussion of Financial Risk Management (Note 4)

Liquidity Risk

At the year end, all the Fund's financial liabilities are due within one year. Total financial liabilities of the Series as at August 31, 2013 were approximately $26.1 million (2012: $39.2 million). In addition, as of August 31, 2013, the net asset value of Class A Shares that are eligible for redemption without penalty totaled $59.6 million (2012: $113.1 million). The fund is not required to redeem all eligible Class A Shares upon request. Refer to Note 5 (Share Capital) for details regarding limitations and restrictions.

Credit Risk

The maximum exposure to credit risk at August 31, 2013 is $14.9 million (2012: $33.8 million) which represents approximately 22.5% (2012: 27.0%) of the Series' net assets. This is comprised of $7.9 million (2012: $24.0 million) of venture investments, and $7.2 million (2012: $9.9 million) in receivables.

- Venture Investments:
An analysis of venture debt instruments owned by the Fund, that are past due and/or impaired as at August 31, 2013 and August 31, 2012 is as follows:

Venture Investments Debt	Impaired only		Past Due only		Past Due and Impaired		Total Past Due and/or Impaired	
	2013	2012	2013	2012	2013	2012	2013	2012
Current	$ 536	$ 3,910	$ -	$ -	$ -	$ -	$ 536	$ 3,910
< than 1 year	-	-	1,040	599	1,227	33	2,267	632
1 - 2 years	-	-	599	4,281	-	592	599	4,873
2 - 3 years	-	-	1,435	180	-	1,189	1,435	1,369
3 - 4 years	-	-	1,769	2,153	-	6,925	1,769	9,078
> than 4 years	-	-	53	-	-	-	53	-
Total	$ 536	$ 3,910	$ 4,896	$ 7,213	$ 1,227	$ 8,739	$ 6,659	$ 19,862

The Fund holds no collateral on these investments as security. Cumulative unrealized loss recorded in the valuation of the Fund's' net assets for all venture debt investments is $14.5 million (2012: $21.9 million). No other investments are past due or impaired at August 31, 2013.

Currency Risk

As at August 31, 2013, 48.6% (2012: 33.4%) of the venture portfolio and 0.0% (2012: 13.4%) in divestment proceeds receivable are denominated in US Dollars. A change of 1% in the Canadian Dollar relative to the US Dollar would result in a change in net assets of approximately 0.6% (2012: 0.4%). In practice actual results may differ from this sensitivity analysis, and the difference could be material. There was no other exposure to foreign currencies at the year end.

Interest Rate Risk

At August 31, 2013 and 2012 the Fund is not exposed to significant interest rate risk.

Other Price Risk

As at August 31, 2013 the Series is exposed to other price risk from public venture investments. Public venture investments represent $12.3 million (2012: $175,522) or 18.6% (2012: 0.1%) of the Series' net assets. At August 31, 2013, a 1% increase or decrease in the related portfolio benchmark would have the following increase or decrease, respectively, on the fair value of the various portfolios:

Portfolio	Benchmark	Effect on Net Assets		% effect on Net Assets	
		2013	2012	2013	2012
Venture (Public only)	S&P/TSX Composite Index	$ 1,435	$ 13	2.2%	-

Therefore, if each of the portfolio benchmark components increased or decreased by 1% simultaneously, the fair value of the portfolio would increase or decrease, respectively, by approximately $1.4 million (2012: $12,848) or 2.2% (2012: 0.0%) of net assets. This sensitivity analysis is based on the risk and return characteristics of the respective portfolio benchmarks compared to the actual Series portfolio holding calculated using regression analysis based on monthly observations and holding all other factors constant. In practice, actual results may differ from this sensitivity analysis and the difference could be material. In the current year, the regression analysis does not show a statistically significant correlation between the Venture public portfolio and the benchmark for 2013 since these public venture investments are thinly traded and their share prices are impacted by firm specific events throughout the year which contributed to their deviation from the benchmark index. In practice, actual results may differ from the sensitivity analysis, and the difference could be material.

GROWTHWORKS CANADIAN FUND LTD.

Venture / GIC Commission I
Venture / GIC Commission II

Statements of Net Assets
(In thousands except per share amounts)
For the years ended August 31

		2013		2012
Assets				
Cash	$	-	$	-
Guaranteed investment certificates		960		960
Venture investments		117		261
Divestment proceeds receivable		8		8
Accrued interest receivable		1		8
Related party receivable [Note 8]		2		-
Other Assets		1		4
Inter-series receivable [Note 8]		14		115
	$	1,103	$	1,356
Liabilities				
Accounts payable and accrued liabilities [Note 11]	$	5	$	22
Incentive participation amount payable [Note 5]		2		2
Contingent IPA [Note 5]		-		2
Participation liability [Note 7]		33		34
Financing facility [Note 8]		-		20
	$	40	$	80
Net assets				
Venture / GIC Commission I	$	360	$	430
Venture / GIC Commission II		703		846
	$	1,063	$	1,276
Shares outstanding [Note 5]				
Venture / GIC Commission I		63		63
Venture / GIC Commission II		125		125
Net assets per share				
Venture / GIC Commission	$	5.71	$	6.83
Venture / GIC Commission II		5.62		6.77

Corporate Status, Going Concern and Share Structure [Note 1]
Contingencies [Note 10]
Subsequent events [Note 14]
See accompanying notes to financial statements.

Approved on behalf of the Board:

Director

Director

GROWTHWORKS CANADIAN FUND LTD.

Venture / GIC Commission I
Venture / GIC Commission II

Statements of Operations
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Investment income:		
Interest – venture investments	$ 1	$ 4
Interest – other income	-	4
	1	8
Expenses:		
Management fees [Note 8]	23	28
Administration fees [Note 8]	23	26
Capital retention administration fees [Note 8]	18	18
Directors' fees	4	4
Legal fees	9	6
Service fees [Note 5]	2	2
Financing expense [Note 7]	20	10
Financing facility interest [Note 8]	10	8
Other	12	16
Total expenses before fee waiver	121	118
Expenses waived or absorbed by Manager	(2)	(1)
Net expenses	119	117
Net investment income (loss)	(118)	(109)
Realized gain (loss) from:		
Venture investments	(113)	(20)
Total realized gain (loss)	(113)	(20)
Incentive participation amount [Note 5]	-	(1)
Net realized gain (loss)	(113)	(21)
Change in unrealized appreciation (depreciation) of:		
Venture investments	9	(7)
Venture interest	(2)	-
Change in unrealized appreciation (depreciation)	7	(7)
Contingent incentive participation amount [Note 5]	2	5
Participation Liability [Note 7]	9	2
Net change in unrealized appreciation (depreciation)	18	-
Increase (decrease) in net assets from operations before income taxes	(213)	(130)
Provision for income taxes (expense) recovery	-	-
Increase (decrease) in net assets from operations	(213)	(130)
Net increase (decrease) in net assets from operations:		
Venture / GIC – Commissions I	$ (70)	$ (43)
Venture / GIC – Commissions II	(143)	(87)
Net increase (decrease) in net assets from operations	$ (213)	$ (130)
Net increase (decrease) in net assets from operations per share:		
Venture / GIC – Commissions I	$ (1.11)	$ (0.68)
Venture / GIC – Commissions II	(1.14)	(0.70)

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / GIC Commission I
Venture / GIC Commission II

Statements of Changes in Net Assets
(In thousands except per share amounts)
For the years ended August 31

	Commission I		Commission II		Total	
	2013	2012	2013	2012	2013	2012
Net assets, beginning of year	$ 430	$ 475	$ 846	$ 932	$ 1,276	$ 1,407
Changes during the year:						
Net increase (decrease) in net assets from operations	(70)	(43)	(143)	(87)	(213)	(130)
Capital transactions:						
Proceeds from issuance of Class A shares	-	-	-	1	-	1
Payment on redemption of Class A shares	-	(2)	-	-	-	(2)
	-	(2)	-	1	-	(1)
Net assets, end of year	$ 360	$ 430	$ 703	$ 846	$ 1,063	$ 1,276

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / GIC Commission I
Venture / GIC Commission II

Statements of Cash Flows
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Cash flows provided by (used for):		
Cash flows from (used in) operating activities:		
Net investment income (loss)	$ (118)	$ (109)
Changes in non-cash operating accounts:		
Accrued interest receivable	7	1
Related party receivable	(2)	-
Other assets	3	(4)
Accounts payable and accrued liabilities	(17)	(9)
Incentive participation amount payable	-	(2)
Contingent IPA Payable	(2)	(6)
Inter-series payable (receivable)	96	(178)
	(33)	(307)
Cash flows from (used in) investing activities:		
Proceeds of disposition of portfolio assets:		
Disposition of venture investments	67	23
Purchase of portfolio assets:		
Purchase of venture investments	(13)	(13)
Incentive participation amount payable	-	-
Divestment proceeds receivable	-	9
	54	19
Cash flows from (used in) financing activities:		
Proceeds from issuance of shares	-	1
Payment on redemption of Class A Shares	-	(2)
Financing facility	(20)	15
Subscriptions receivable	-	-
Participation liability	(1)	(15)
	(21)	(1)
Increase (decrease) in cash position	-	(289)
Cash position, beginning of year	-	289
Cash position, end of year	$ -	$ -
Supplemental Cash Flow information:		
Interest expense	$ 15	$ 35

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.
Venture / GIC Commission I
Venture / GIC Commission II (Tabular amounts expressed in thousands of dollars)

Discussion of Financial Risk Management (Note 4)

Liquidity Risk

At the year end, all the Fund's financial liabilities are due within one year. Total financial liabilities of the Series as at August 31, 2013 were approximately $39,977 (2012: $79,803). In addition, as of August 31, 2013, the net asset value of Class A Shares that are eligible for redemption without penalty totaled $8,133 (2012: $3,310). The fund is not required to redeem all eligible Class A Shares upon request. Refer to Note 5 (Share Capital) for details regarding limitations and restrictions.

Credit Risk

The maximum exposure to credit risk at August 31, 2013 is $997,977 (2012: $1.1 million) which represents approximately 93.8% (2012: 89.0%) of the Series' net assets. This is comprised of $11,903 (2012: $40,553) of venture investments, $960,000 (2012: $960,000) of GIC's, and $26,074 (2012: $134,888) in receivables.

- Venture Investments:
An analysis of venture debt instruments owned by the Fund, that are past due and/or impaired as at August 31, 2013 and August 31, 2012 is as follows:

Venture Investments Debt	Impaired only		Past Due only		Past Due and Impaired		Total Past Due and/or Impaired	
	2013	2012	2013	2012	2013	2012	2013	2012
Current	$ 536	$ 3,910	$ -	$ -	$ -	$ -	$ 536	$ 3,910
< than 1 year	-	-	1,040	599	1,227	33	2,267	632
1 - 2 years	-	-	599	4,281	-	592	599	4,873
2 - 3 years	-	-	1,435	180	-	1,189	1,435	1,369
3 - 4 years	-	-	1,769	2,153	-	6,925	1,769	9,078
> than 4 years	-	-	53	-	-	-	53	-
Total	$ 536	$ 3,910	$ 4,896	$ 7,213	$ 1,227	$ 8,739	$ 6,659	$ 19,862

The Fund holds no collateral on these investments as security. Cumulative unrealized loss recorded in the valuation of the Fund's' net assets for all venture debt investments is $14.5 million (2012: $21.9 million). No other investments are past due or impaired at August 31, 2013.

- Guaranteed Investment Certificates ("GICs"):
An analysis of the credit ratings of the Series' GICs as at August 31, 2013 and August 31, 2012 is as follows:

GIC's by Credit Rating	Fair Value		Percentage of Portfolio		Percentage of Net Assets	
	2013	2012	2013	2012	2013	2012
Not Available	$ 960	$ 960	100.0%	100.0%	90.5%	75.2%
Total	$ 960	$ 960	100.0%	100.0%	90.5%	75.2%

These credit ratings were obtained from credit rating services. Where more than one rating exists for a short-term investment or bond, the lower rating has been used.

Currency Risk
As at August 31, 2013, 48.6% (2012: 33.4%) of the venture portfolio and 0.0% (2012: 13.4%) in divestment proceeds receivable are denominated in US Dollars. A change of 1% in the Canadian Dollar relative to the US Dollar would result in a change in net assets of approximately 0.1% (2012: 0.1%). In practice actual results may differ from this sensitivity analysis, and the difference could be material. There was no other exposure to foreign currencies at the year end.

Interest Rate Risk

At August 31, 2013 the GIC comprising approximately 90.5% (2012: 75.2%) of the Series' net assets, are exposed to interest rate risk. The Former Manager considers the exposure to interest rate risk insignificant for GIC's. Furthermore, the Former Manager does not consider the Series' venture debt investments to be exposed to interest rate risk as discussed in note 4(b)(iii). Given the nature of the holdings, a sensitivity analysis has not been provided as it would not be considered meaningful.

Other Price Risk

As at August 31, 2013 the Series is exposed to other price risk from public venture investments. Public venture investments represent $18,687 (2012: $297) or 1.8% (2012: 0.0%) of the Series' net assets. At August 31, 2013, a 1% increase or decrease in the related portfolio benchmark would have the following increase or decrease, respectively, on the fair value of the various portfolios:

Portfolio	Benchmark	Effect on Net Assets		% effect on Net Assets	
		2013	2012	2013	2012
Venture (Public only)	S&P/TSX Composite Index	$ 2	$ 0	0.2%	-

Therefore, if each portfolio benchmark increased or decreased by 1% simultaneously, the fair value of the portfolio would increase or decrease, respectively, by approximately $2,185 (2012: $22) or 0.2% (2012: 0.0%) of net assets. This sensitivity analysis is based on the risk and return characteristics of the respective portfolio benchmarks compared to the actual Series portfolio holding calculated using regression analysis based on monthly observations and holding all other factors constant. In practice, actual results may differ from this sensitivity analysis and the difference could be material. In the current year, the regression analysis does not show a statistically significant correlation between the Venture public portfolio and the benchmark for 2013 since these public venture investments are thinly traded and their share prices are impacted by firm specific events throughout the year which contributed to their deviation from the benchmark index. In practice, actual results may differ from the sensitivity analysis, and the difference could be material.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Growth Commission I
Venture / Growth Commission II
FOF Growth Series

Statements of Net Assets
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Assets		
Short-term investments and bonds	$ -	$ -
Guaranteed investment certificates	-	-
Venture investments	7,508	14,976
Divestment proceeds receivable	531	447
Accrued interest receivable	60	437
Related party receivable [Note 8]	78	-
Other Assets	12	55
Inter-series receivable [Note 8]	954	500
	$ 9,143	$ 16,415
Liabilities		
Accounts payable and accrued liabilities [Note 11]	$ 58	$ 270
Redemptions payable	1	3
Incentive participation amount payable [Note 5]	117	115
Contingent IPA [Note 5]	-	120
Participation liability [Note 7]	2,132	2,030
Financing facility [Note 8]	-	1,122
	$ 2,308	$ 3,660
Net assets		
Venture / Growth Commission I	$ 3,698	$ 6,989
Venture / Growth Commission II	1,757	3,336
FOF Growth Series	1,380	2,430
	$ 6,835	$ 12,755
Shares outstanding [Note 5]		
Venture / Growth Commission I	1,249	1,249
Venture / Growth Commission II	597	597
FOF Growth Series	407	407
Net assets per share		
Venture / Growth Commission I	$ 2.96	$ 5.60
Venture / Growth Commission II	2.94	5.59
FOF Growth Series	3.39	5.97

Corporate Status, Going Concern and Share Structure [Note 1]
Contingencies [Note 10]
Subsequent event [Note 14]
See accompanying notes to financial statements.

Approved on behalf of the Board:

Director

Director

GROWTHWORKS CANADIAN FUND LTD.

Venture / Growth Commission I
Venture / Growth Commission II
FOF Growth Series

Statements of Operations
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Investment income:		
Interest – short-term investments and bonds	$ -	$ 1
Interest – venture investments	36	156
Interest – other income	-	48
	36	205
Expenses:		
Management fees [Note 8]	199	294
Administration fees [Note 8]	190	281
Capital retention administration fees [Note 8]	130	162
Directors' fees	49	49
Legal fees	111	67
Service fees [Note 5]	39	54
Financing expense [Note 7]	509	405
Financing facility interest [Note 8]	121	122
Other	168	144
Total expenses before fee waiver	1,516	1,578
Expenses waived or absorbed by Manager	(13)	(11)
Net expenses	1,503	1,567
Net investment income (loss)	(1,467)	(1,362)
Realized gain (loss) from:		
Venture investments	(5,503)	(1,282)
Short-term investments and bonds	-	-
Total realized gain (loss)	(5,503)	(1,282)
Incentive participation amount [Note 5]	(2)	(32)
Net realized gain (loss)	(5,505)	(1,314)
Change in unrealized appreciation (depreciation) of:		
Venture investments	612	260
Venture interest	(128)	(3)
Short-term investments and bonds	-	-
Change in unrealized appreciation (depreciation)	484	257
Contingent incentive participation amount [Note 5]	120	234
Paticipation liability [Note 7]	448	38
Net change in unrealized appreciation (depreciation)	1,052	529
Increase (decrease) in net assets from operations before income taxes	(5,920)	(2,147)
Provision for income taxes (expense) recovery	-	-
Increase (decrease) in net assets from operations	(5,920)	(2,147)
Net increase (decrease) in net assets from operations		
Venture / Growth Commission I	$ (3,291)	$ (1,283)
Venture / Growth Commission II	(1,579)	(618)
FOF Growth	(1,050)	(246)
Net increase (decrease) in net assets from operations	$ (5,920)	$ (2,147)
Net increase (decrease) in net assets from operations per share:		
Venture / Growth Commission I	$ (2.63)	$ (1.03)
Venture / Growth Commission II	(2.64)	(1.03)
FOF Growth	(2.58)	(0.60)

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Growth Commission I
Venture / Growth Commission II
FOF Growth Series

Statements of Changes in Net Assets
(In thousands except per share amounts)
For the years ended August 31

	Commission I		Commission II		FOF Growth Series	
	2013	2012	2013	2012	2013	2012
Net assets, beginning of year	$ 6,989	$ 8,349	$ 3,336	$ 3,967	$ 2,430	$ 2,733
Changes during the year:						
Net increase (decrease) in net assets from operations	(3,291)	(1,283)	(1,579)	(618)	(1,050)	(246)
Capital transactions:						
Proceeds from issuance of Class A shares	-	-	-	-	-	-
Payment on redemption of Class A shares	-	(77)	-	(13)	-	(57)
	-	(77)	-	(13)	-	(57)
Net assets, end of year	$ 3,698	$ 6,989	$ 1,757	$ 3,336	$ 1,380	$ 2,430

	Total	
	2013	2012
Net assets, beginning of year	$ 12,755	$ 15,049
Changes during the year:		
Net increase (decrease) in net assets from operations	(5,920)	(2,147)
Capital transactions:		
Proceeds from issuance of Class A shares	-	-
Payment on redemption of Class A shares	-	(147)
	-	(147)
Net assets, end of year	$ 6,835	$ 12,755

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Growth Commission I
Venture / Growth Commission II
FOF Growth Series

Statements of Cash Flows
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Cash flows provided by (used for):		
Cash flows from (used in) operating activities:		
Net investment income (loss)	$ (1,467)	$ (1,362)
Changes in non-cash operating accounts:		
Accrued interest receivable	377	(46)
Related party receivable	(78)	-
Other assets	43	(55)
Accounts payable and accrued liabilities	(212)	(111)
Incentive participation amount payable	2	(63)
Contingent IPA payable	(120)	(231)
Inter-series payable (receivable)	(159)	403
	(1,614)	(1,465)
Cash flows from (used in) investing activities:		
Proceeds of disposition of portfolio assets:		
Disposition of venture investments	3,438	894
Disposition of short-term investments and bonds	-	106
Disposition of guaranteed investment certificates	-	30
Purchase of portfolio assets:		
Purchase of venture investments	(718)	(538)
Purchase of short-term investments and bonds	-	(71)
Incentive participation amount payable	-	-
Divestment proceeds receivable	(84)	308
	2,636	729
Cash flows from (used in) financing activities:		
Proceeds from issuance of Class A shares	-	-
Payment on redemption of Class A shares	-	(147)
Financing facility	(1,122)	937
Subscription receivable	-	-
Participation liability	102	(57)
Redemption payable	(2)	3
	(1,022)	736
Increase (decrease) in cash position	-	-
Cash position, beginning of year	-	-
Cash position, end of year	$ -	$ -
Supplemental Cash Flow information:		
Interest expense	$ 185	$ 419

See accompanying notes to financial statements.

Venture / Growth Commission II (Tabular amounts expressed in thousands of dollars)

Discussion of Financial Risk Management (Note 4)

Liquidity Risk

At the year end, all the Fund's financial liabilities are due within one year. Total financial liabilities of the Series as at August 31, 2013 were approximately $2.3 million (2012: $3.7 million). In addition, as of August 31, 2013, the net asset value of Class A Shares that are eligible for redemption without penalty totaled $2.8 million (2012: $3.5 million). The fund is not required to redeem all eligible Class A Shares upon request. Refer to Note 5 (Share Capital) for details regarding limitations and restrictions.

Credit Risk

The maximum exposure to credit risk at August 31, 2013 is $2.4 million (2012: $3.7 million) which represents approximately 34.8% (2012: 29.5%) of the Series' net assets. This is comprised of $758,726 (2012: $2.3 million) of venture investments, and $1.6 million (2012: $1.4 million) in receivables.

- Venture Investments:

An analysis of venture debt instruments owned by the Fund, that are past due and/or impaired as at August 31, 2013 and August 31, 2012 is as follows:

Venture Investments Debt	Impaired only		Past Due only		Past Due and Impaired		Total Past Due and/or Impaired	
	2013	2012	2013	2012	2013	2012	2013	2012
Current	$ 536	$ 3,910	$ -	$ -	$ -	$ -	$ 536	$ 3,910
< than 1 year	-	-	1,040	599	1,227	33	2,267	632
1 - 2 years	-	-	599	4,281	-	592	599	4,873
2 - 3 years	-	-	1,435	180	-	1,189	1,435	1,369
3 - 4 years	-	-	1,769	2,153	-	6,925	1,769	9,078
> than 4 years	-	-	53	-	-	-	53	-
Total	$ 536	$ 3,910	$ 4,896	$ 7,213	$ 1,227	$ 8,739	$ 6,659	$ 19,862

The Fund holds no collateral on these investments as security. Cumulative unrealized loss recorded in the valuation of the Fund's' net assets for all venture debt investments is $14.5 million (2012: $21.9 million). No other investments are past due or impaired at August 31, 2013.

Currency Risk

As at August 31, 2013, 48.6% (2012: 33.4%) of the venture portfolio and 0.0% (2012: 13.4%) in divestment proceeds are denominated in US Dollars. A change of 1% in the Canadian Dollar relative to the US Dollar would result in a change in net assets of approximately 0.5% (2012: 0.4%). In practice actual results may differ from this sensitivity analysis, and the different could be material. There was no other exposure to foreign currencies at the year end.

Interest Rate Risk

At August 31, 2013 and 2012 the Fund is not exposed to significant interest rate risk.

Other Price Risk

As at August 31, 2013 the Series is exposed to other price risk from public venture investments. Public venture investments represent $1.2 million (2012: $17,022) or 17.5% (2012: 0.1%) of the Series' net assets. At August 31, 2013, a 1% increase or decrease in the related portfolio benchmark would have the following increase or decrease, respectively, on the fair value of the various portfolios:

Portfolio	Benchmark	Effect on Net Assets		% effect on Net Assets	
		2013	2012	2013	2012
Venture (Public only)	S&P/TSX Composite Index	$ 139	$ 1	2.0%	-

Therefore, if each portfolio benchmark increased or decreased by 1% simultaneously, the fair value of the portfolio would increase or decrease, respectively, by approximately $139,249 (2012: $1,246) or 2.0% (2012: 0.0%) of net assets. This sensitivity analysis is based on the risk and return characteristics of the respective portfolio benchmarks compared to the actual Series portfolio holding calculated using regression analysis based on monthly observations and holding all other factors constant. In practice, actual results may differ from this sensitivity analysis and the difference could be material. In the current year, the regression analysis does not show a statistically significant correlation between the Venture public portfolio and the benchmark for 2013 since these public venture investments are thinly traded and their share prices are impacted by firm specific events throughout the year which contributed to their deviation from the benchmark index. In practice, actual results may differ from the sensitivity analysis, and the difference could be material.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Financial Services Commission I
Venture / Financial Services Commission II

Statements of Net Assets
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Assets		
Short-term investments and bonds	$ -	$ -
Guaranteed investment certificates	-	-
Venture investments	1,855	3,699
Divestment proceeds receivable	131	110
Accrued interest receivable	15	108
Related party receivable [Note 8]	19	-
Other assets	3	13
Inter-series receivable [Note 8]	139	34
	$ 2,162	$ 3,964
Liabilities		
Accounts payable and accrued liabilities [Note 11]	$ 13	$ 65
Incentive participation amount payable [Note 5]	29	28
Contingent IPA [Note 5]	-	30
Participation liability [Note 7]	527	502
Financing facility [Note 8]	-	277
Redemptions payable	1	-
	$ 570	$ 902
Net assets		
Venture / Financial Services Commission I	$ 609	$ 1,162
Venture / Financial Services Commission II	983	1,900
	$ 1,592	$ 3,062
Shares outstanding [Note 5]		
Venture / Financial Services Commission I	211	211
Venture / Financial Services Commission II	346	346
Net assets per share		
Venture / Financial Services Commission I	$ 2.89	$ 5.51
Venture / Financial Services Commission II	2.84	5.49

Corporate Status, Going Concern and Share Structure [Note 1]
Contingencies [Note 10]
Subsequent events [Note 14]
See accompanying notes to financial statements.

Approved on behalf of the Board:

Director

Director

GROWTHWORKS CANADIAN FUND LTD.

Venture / Financial Services Commission I
Venture / Financial Services Commission II

Statements of Operations
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Investment income:		
Interest - venture investments	$ 9	$ 39
Interest - other income	-	12
	9	51
Expenses:		
Management fees [Note 8]	47	71
Administration fees [Note 8]	45	68
Capital retention administration fees [Note 8]	43	54
Directors' fees	12	12
Legal fees	27	16
Service fees [Note 5]	7	7
Financing expense [Note 7]	126	100
Financing facility interest [Note 8]	29	30
Other	46	40
Total expenses before fee waiver	382	398
Expenses waived or absorbed by Manager	(3)	(3)
Net expenses	379	395
Net investment income (loss)	(370)	(344)
Realized gain (loss) from:		
Venture investments	(1,359)	(353)
Short-term investments and bonds	-	-
Total realized gain (loss)	(1,359)	(353)
Incentive participation amount [Note 5]	(1)	(8)
Net realized gain (loss)	(1,360)	(361)
Change in unrealized appreciation (depreciation) of:		
Venture investments	151	58
Venture interest	(32)	(1)
Short-term investments and bonds	-	-
Change in unrealized appreciation (depreciation)	119	57
Contingent Incentive participation amount [Note 5]	30	58
Participation liability [Note 7]	111	9
Net change in unrealized appreciation (depreciation)	260	124
Increase (decrease) in net assets from operations before income taxes	(1,470)	(581)
Provision for income taxes (expense) recovery	-	-
Increase (decrease) in net assets from operations	(1,470)	(581)
Increase (decrease) in net assets from operations:		
Venture / Financial Services Commission I	$ (553)	$ (219)
Venture / Financial Services Commission II	(917)	(362)
Increase (decrease) in net assets from operations	$ (1,470)	$ (581)
Increase (decrease) in net assets from operations per share:		
Venture / Financial Services Commission I	$ (2.62)	$ (1.04)
Venture / Financial Services Commission II	(2.65)	(1.05)

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Financial Services Commission I
Venture / Financial Services Commission II

Statements of Changes in Net Assets
(In thousands except per share amounts)
For the years ended August 31

	Commission I		Commission II		Total	
	2013	2012	2013	2012	2013	2012
Net assets, beginning of year	$ 1,162	$ 1,395	$ 1,900	$ 2,263	$ 3,062	$ 3,658
Changes during the year:						
Net increase (decrease) in net assets from operations	(553)	(219)	(917)	(362)	(1,470)	(581)
Capital transactions:						
Proceeds from issuance of Class A shares	-	-	-	-	-	-
Payment on redemption of Class A shares	-	(14)	-	(1)	-	(15)
	-	(14)	-	(1)	-	(15)
Net assets, end of year	$ 609	$ 1,162	$ 983	$ 1,900	$ 1,592	$ 3,062

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Financial Services Commission I
Venture / Financial Services Commission II

Statements of Cash Flows
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Cash flows provided by (used for):		
Cash flows from (used in) operating activities:		
Net investment income (loss)	$ (370)	$ (344)
Changes in non-cash operating accounts:		
Accrued interest receivable	93	(12)
Related party receivable	(19)	-
Other assets	10	(13)
Accounts payable and accrued liabilities	(52)	(30)
Incentive participation amount payable	1	(16)
Contingent IPA payable	(30)	(56)
Inter-series payable (receivable)	(33)	88
	(400)	(383)
Cash flows from (used in) investing activities:		
Proceeds of disposition of portfolio assets:		
Disposition of venture investments	849	220
Disposition of short-term investments and bonds	-	26
Disposition of guaranteed investment certificates	-	7
Purchase of portfolio assets:		
Purchase of venture investments	(177)	(133)
Purchase of short-term investments and bonds	-	(17)
Incentive participation amount payable	-	-
Divestment proceeds receivable	(21)	75
	651	178
Cash flows from (used in) financing activities:		
Proceeds from issuance of Class A shares	-	-
Payment on redemption of Class A shares	-	(15)
Financing facility	(277)	231
Subscriptions receivable	-	-
Participation liability	25	(11)
Redemptions payable	1	-
	(251)	205
Increase (decrease) in cash position	-	-
Cash position, beginning of year	-	-
Cash position, end of year	$ -	$ -
Supplemental Cash Flow information:		
Interest expense	$ 45	$ 103

See accompanying notes to financial statements.

Venture / Financial Services Commission II (Tabular amounts expressed in thousands of dollars)

Discussion of Financial Risk Management (Note 4)

Liquidity Risk

At the year end, all the Fund's financial liabilities are due within one year. Total financial liabilities of the Series as at August 31, 2013 were approximately $569,327 (2012: $901,855). In addition, as of August 31, 2013, the net asset value of Class A Shares that are eligible for redemption without penalty totaled $536,833 (2012: $457,028). The fund is not required to redeem all eligible Class A Shares upon request. Refer to Note 5 (Share Capital) for details regarding limitations and restrictions.

Credit Risk

The maximum exposure to credit risk at August 31, 2013 is $489,933 (2012: $839,537) which represents approximately 30.8% (2012: 27.4%) of the Series' net assets. This is comprised of $187,429 (2012: $573,871) of venture investments, and $307,025 (2012: $265,666) in receivables.

- Venture Investments:
An analysis of venture debt instruments owned by the Fund, that are past due and/or impaired as at August 31, 2013 and August 31, 2012 is as follows:

Venture Investments Debt	Impaired only		Past Due only		Past Due and Impaired		Total Past Due and/or Impaired	
	2013	2012	2013	2012	2013	2012	2013	2012
Current	$ 536	$ 3,910	$ -	$ -	$ -	$ -	$ 536	$ 3,910
< than 1 year	-	-	1,040	599	1,227	33	2,267	632
1 - 2 years	-	-	599	4,281	-	592	599	4,873
2 - 3 years	-	-	1,435	180	-	1,189	1,435	1,369
3 - 4 years	-	-	1,769	2,153	-	6,925	1,769	9,078
> than 4 years	-	-	53	-	-	-	53	-
Total	$ 536	$ 3,910	$ 4,896	$ 7,213	$ 1,227	$ 8,739	$ 6,659	$ 19,862

The Fund holds no collateral on these investments as security. Cumulative unrealized loss recorded in the valuation of the Fund's' net assets for all venture debt investments is $14.5 million (2012: $21.9 million). No other investments are past due or impaired at August 31, 2013.

Currency Risk

As at August 31, 2013, 48.6% (2012: 33.4%) of the venture portfolio and 0.0% (2012: 13.4%) in divestment proceeds receivable are denominated in US Dollars. A change of 1% in the Canadian Dollar relative to the US Dollar would result in a change in net assets of approximately 0.6% (2012: 0.4%). In practice actual results may differ from this sensitivity analysis, and the different could be material. There was no other exposure to foreign currencies at the year end.

Interest Rate Risk

At August 31, 2013 and 2012 the Fund is not exposed to significant interest rate risk.

Other Price Risk

As at August 31, 2013 the Series is exposed to other price risk from public venture investments. Public venture investments represent $294,239 (2012: $4,204) or 18.5% (2012: 0.1%) of the Series' net assets. At August 31, 2013, a 1% increase or decrease in the related portfolio benchmark would have the following increase or decrease, respectively, on the fair value of the various portfolios:

Portfolio	Benchmark	Effect on Net Assets		% effect on Net Assets	
		2013	2012	2013	2012
Venture (Public only)	S&P/TSX Composite Index	$ 34	$ 0	2.2%	-

Therefore, if each portfolio benchmark increased or decreased by 1% simultaneously, the fair value of the portfolio would increase or decrease, respectively, by approximately $34,400 (2012: $308) or 2.2% (2012: 0.0%) of net assets. This sensitivity analysis is based on the risk and return characteristics of the respective portfolio benchmarks compared to the actual Series portfolio holding calculated using regression analysis based on monthly observations and holding all other factors constant. In practice, actual results may differ from this sensitivity analysis and the difference could be material. In the current year, the regression analysis does not show a statistically significant correlation between the Venture public portfolio and the benchmark for 2013 since these public venture investments are thinly traded and their share prices are impacted by firm specific events throughout the year which contributed to their deviation from the benchmark index. In practice, actual results may differ from the sensitivity analysis, and the difference could be material.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

Statements of Net Assets
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Assets		
Short-term investments and bonds	$ -	$ -
Guaranteed investment certificates	-	-
Venture investments	14,702	29,350
Divestment proceeds receivable	1,040	876
Accrued interest receivable	118	856
Related party receivable [Note 8]	154	-
Other assets	22	107
Inter-series receivable [Note 8]	1,048	180
	$ 17,084	$ 31,369
Liabilities		
Accounts payable and accrued liabilities [Note 11]	$ 111	$ 521
Redemptions payable	2	2
Incentive participation amount payable [Note 5]	229	225
Contingent IPA [Note 5]	-	235
Participation liability [Note 7]	4,175	3,980
Financing facility [Note 8]	-	2,199
	$ 4,517	$ 7,162
Net assets		
Venture / Balanced Commission I	5,505	10,539
Venture / Balanced Commission II	7,004	13,569
Venture / CMDF Reinvestment Commission I	35	59
Venture / CMDF Reinvestment Commission II	23	40
	$ 12,567	$ 24,207
Shares outstanding [Note 5]		
Venture / Balanced Commission I	1,921	1,923
Venture / Balanced Commission II	2,475	2,479
Venture / CMDF Reinvestment Commission I	9	9
Venture / CMDF Reinvestment Commission II	6	6
Net assets per share		
Venture / Balanced Commission I	$ 2.87	$ 5.48
Venture / Balanced Commission II	2.83	5.47
Venture / CMDF Reinvestment Commission I	3.89	6.56
Venture / CMDF Reinvestment Commission II	3.83	6.67

Corporate Status, Going Concern and Share Structure [Note 1]
Contingencies [Note 10]
Subsequent events [Note 14]
See accompanying notes to financial statements.

Approved on behalf of the Board:

Director

Director

GROWTHWORKS CANADIAN FUND LTD.

Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

Statements of Operations
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Investment income:		
Interest – short term investments and bonds	$ -	$ 1
Interest – venture investments	71	295
Interest – other income	-	93
	71	389
Expenses:		
Management fees [Note 8]	374	543
Administration fees [Note 8]	357	519
Capital retention administration fees [Note 8]	324	389
Directors' fees	96	94
Legal fees	218	131
Service fees [Note 5]	52	61
Financing expense [Note 7]	997	729
Financing facility interest [Note 8]	237	235
Other	366	285
Total expenses before fee waiver	3,021	2,986
Expenses waived or absorbed by Manager	(25)	(19)
Net expenses	2,996	2,967
Net investment income (loss)	(2,925)	(2,578)
Realized gain (loss) from:		
Venture investments	(10,774)	(2,797)
Short-term investments and bonds	-	-
Total realized gain (loss)	(10,774)	(2,797)
Incentive participation amount [Note 5]	(4)	(63)
Net realized gain (loss)	(10,778)	(2,860)
Change in Unrealized appreciation (depreciation) of:		
Venture investments	1,202	(4)
Venture interest	(251)	(5)
Short-term investments and bonds	-	-
Change in unrealized appreciation (depreciation)	951	(9)
Contingent Incentive participation amount [Note 5]	235	469
Participation liability [Note 7]	877	37
Net change in unrealized appreciation (depreciation)	2,063	497
Increase (decrease) in net assets from operations before income taxes	(11,640)	(4,941)
Provision for income taxes (expense) recovery	-	-
Increase (decrease) in net assets from operations	(11,640)	(4,941)
Net increase (decrease) in net assets from operations:		
Venture / Balanced Commission I	$ (5,034)	$ (2,183)
Venture / Balanced Commission II	(6,565)	(2,741)
Venture / CMDF Reinvestment Commission I	(24)	(10)
Venture / CMDF Reinvestment Commission II	(17)	(7)
Net increase (decrease) in net assets from operations	$ (11,640)	$ (4,941)
Net increase (decrease) in net assets from operations per share:		
Venture / Balanced Commission I	$ (2.62)	$ (1.14)
Venture / Balanced Commission II	(2.65)	(1.11)
Venture / CMDF Reinvestment Commission I	(2.67)	(1.11)
Venture / CMDF Reinvestment Commission II	(2.83)	(1.17)

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.

Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

Statements of Changes in Net Assets
For the years ended August 31

	Balanced Commission I		Balanced Commission II	
	2013	2012	2013	2012
Net assets, beginning of year	$ 10,539	$ 10,052	$ 13,569	$ 14,204
Changes during the year:				
Net increase (decrease) in net assets from operations	(5,034)	(2,183)	(6,565)	(2,741)
Net increase (decrease) in net assets from operations from converted Income shares	-	(951)	-	(824)
Capital transactions:				
Proceeds from issuance of Class A shares	-	-	-	1
Payment on redemption of Class A shares	-	(45)	-	(83)
Share conversion	-	3,666	-	3,012
	-	3,621	-	2,930
Net assets, end of year	$ 5,505	$ 10,539	$ 7,004	$ 13,569

	CMDF Reinvestment Commission I		CMDF Reinvestment Commission II	
	2013	2012	2013	2012
Net assets, beginning of year	$ 59	$ 69	$ 40	$ 46
Changes during the year:				
Net increase (decrease) in net assets from operations	(24)	(10)	(17)	(7)
Net increase (decrease) in net assets from operations from converted Income shares	-	-	-	-
Capital transactions:				
Proceeds from issuance of Class A shares	-	-	-	1
Payment on redemption of Class A shares	-	-	-	-
Share conversion	-	-	-	-
	-	-	-	1
Net assets, end of year	$ 35	$ 59	$ 23	$ 40

GROWTHWORKS CANADIAN FUND LTD.

Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

Statements of Changes in Net Assets
For the years ended August 31

	Total	
	2013	2012
Net assets, beginning of year	$ 24,207	$ 24,371
Changes during the year:		
Net increase (decrease) in net assets from operations	(11,640)	(4,941)
Net increase (decrease) in net assets from operations from converted Income shares	-	(1,775)
Capital transactions:		
Proceeds from issuance of Class A shares	-	2
Payment on redemption of Class A shares	-	(128)
Share conversion	-	6,678
	-	6,552
Net assets, end of year	$ 12,567	$ 24,207

See accompanying notes to financial statements

GROWTHWORKS CANADIAN FUND LTD.

Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II

Statements of Cash Flows
(In thousands except per share amounts)
For the years ended August 31

	2013	2012
Cash flows provided by (used for):		
Cash flows from (used in) operating activities:		
Net investment income (loss)	$ (2,925)	$ (2,578)
Net investment income (loss) from converted shares	-	(1,775)
Changes in non-cash operating accounts:		
Accrued interest receivable	738	(212)
Related party receivable	(154)	-
Other assets	86	(107)
Accounts payable and accrued liabilities	(410)	(100)
Incentive participation amount payable	4	(67)
Contingent IPA payable	(235)	(342)
Inter-series payable (receivable)	(261)	1,654
	(3,157)	(3,527)
Cash flows from (used in) investing activities:		
Proceeds of disposition of portfolio assets:		
Disposition of venture investments	6,732	1,699
Disposition of short-term investments and bonds	-	207
Disposition of guaranteed investment certificates	-	57
Purchase of portfolio assets:		
Purchase of venture investments	(1,407)	(981)
Purchase of short-term investments and bonds	-	(139)
Incentive participation amount payable	-	-
Divestment proceeds available	(164)	365
	5,161	1,208
Cash flows from (used in) financing activities:		
Proceeds from issuance of Class A shares	-	2
Payment on redemption of Class A shares	-	(128)
Financing facility	(2,199)	1,894
Subscriptions receivable	-	-
Participation liability	195	549
Redemptions payable	-	2
	(2,004)	2,319
Increase (decrease) in cash position	-	-
Cash position, beginning of year	-	-
Cash position, end of year	$ -	$ -
Supplemental Cash Flow information:		
Interest expense	$ 363	$ 821

See accompanying notes to financial statements.

GROWTHWORKS CANADIAN FUND LTD.
Venture / Balanced Commission I
Venture / Balanced Commission II
Venture / CMDF Reinvestment Commission I
Venture / CMDF Reinvestment Commission II (Tabular amounts expressed in thousands of dollars)

Discussion of Financial Risk Management (Note 4)

Liquidity Risk

At the year end, all the Fund's financial liabilities are due within one year. Total financial liabilities of the Series as at August 31, 2013 were approximately $4.5 million (2012: $7.2 million). In addition, as of August 31, 2013, the net asset value of Class A Shares that are eligible for redemption without penalty totaled $4.5 million (2012: $3.8 million). The fund is not required to redeem all eligible Class A Shares upon request. Refer to Note 5 (Share Capital) for details regarding limitations and restrictions.

Credit Risk

The maximum exposure to credit risk at August 31, 2013 is $3.8 million (2012: $6.6 million) which represents approximately 30.5% (2012: 27.2%) of the Series' net assets. This is comprised of $1.5 million (2012: $4.6 million) of venture investments, and $2.4 million (2012: $2.0 million) in receivables.

- Venture Investments:
An analysis of venture debt instruments owned by the Fund, that are past due and/or impaired as at August 31, 2013 and August 31, 2012 is as follows:

Venture Investments Debt	Impaired only		Past Due only		Past Due and Impaired		Total Past Due and/or Impaired	
	2013	2012	2013	2012	2013	2012	2013	2012
Current	$ 536	$ 3,910	$ -	$ -	$ -	$ -	$ 536	$ 3,910
< than 1 year	-	-	1,040	599	1,227	33	2,267	632
1 - 2 years	-	-	599	4,281	-	592	599	4,873
2 - 3 years	-	-	1,435	180	-	1,189	1,435	1,369
3 - 4 years	-	-	1,769	2,153	-	6,925	1,769	9,078
> than 4 years	-	-	53	-	-	-	53	-
Total	$ 536	$ 3,910	$ 4,896	$ 7,213	$ 1,227	$ 8,739	$ 6,659	$ 19,862

The Fund holds no collateral on these investments as security. Cumulative unrealized loss recorded in the valuation of the Fund's' net assets for all venture debt investments is $14.5 million (2012: $21.9 million). No other investments are past due or impaired at August 31, 2013.

Currency Risk
As at August 31, 2013, 48.6% (2012: 33.4%) of the venture portfolio and 0.0% (2012: 13.4%) in divestment proceeds receivable are denominated in US Dollars. A change of 1% in the Canadian Dollar relative to the US Dollar would result in a change in net assets of approximately 0.6% (2012: 0.4%). In practice actual results may differ from this sensitivity analysis, and the different could be material. There was no other exposure to foreign currencies at the year end.

Interest Rate Risk

At August 31, 2013 and 2012 the Fund is not exposed to significant interest rate risk.

Other Price Risk

As at August 31, 2013 the Series is exposed to other price risk from public venture investments. Public venture investments represent $2.3 million (2012: $33,360) or 18.6% (2012: 0.1%) of the Series' net assets. At August 31, 2013, a 1% increase or decrease in the related portfolio benchmark would have the following increase or decrease, respectively, on the fair value of the various portfolios:

Portfolio	Benchmark	Effect on Net Assets		% effect on Net Assets	
		2013	2012	2013	2012
Venture (Public only)	S&P/TSX Composite Index	$ 273	$ 2	2.2%	-

Therefore, if each portfolio benchmark increased or decreased by 1% simultaneously, the fair value of the portfolio would increase or decrease, respectively, by approximately $272,670 (2012: $2,442) or 2.2% (2012: 0.0%) of net assets. This sensitivity analysis is based on the risk and return characteristics of the respective portfolio benchmarks compared to the actual Series portfolio holding calculated using regression analysis based on monthly observations and holding all other factors constant. In practice, actual results may differ from this sensitivity analysis and the difference could be material. In the current year, the regression analysis does not show a statistically significant correlation between the Venture public portfolio and the benchmark for 2013 since these public venture investments are thinly traded and their share prices are impacted by firm specific events throughout the year which contributed to their deviation from the benchmark index. In practice, actual results may differ from the sensitivity analysis, and the difference could be material.

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Biotechnology:					
Ambit Biosciences Corp., Common Shares	1,067	-	8,872	8,872	
Ambit Biosciences Corp, warrants	65	-	-	-	
Chitogenics Pharmaceuticals Ltd., Conv. Class A preferred shares	13	-	1,500	1,500	
Empex Inc., debenture 12%, due on demand	4,494	4,494	-	4,494	
Gemin X Biotechnologies Inc	3,387	-	-	-	
Medinnova Partners Inc., Cl A preferred shares	37,558	-	3,397	3,397	
Medinnova Partners Inc., common shares	200	-	-(1)	-(1)	
MetaMorphix Inc., common shares	406	-	700	700	
Molecular Templates Inc., common shares	33	-	-	-	
Molecular Templates Inc., debenture 12%, due on demand	150	150	-	150	
Monteris Medical Inc., Class A common shares	675	-	2,522	2,522	
Natrix Separations Inc., common shares	513	-	6,436	6,436	
Natrix Separations Inc., Series D preferred shares	478	-	2,694	2,694	
NPS Pharmaceuticals Inc., Options	9	$ -	$ -(1)	$ -(1)	
Orthopaedic Synergy Inc. (formerly Praxim Inc.), convertible debenture12.5%, due on demand	2,047	2,047	-	2,047	
Orthopaedic Synergy Inc. (formerly Praxim Inc.), deferred consideration	302	-	-	-	
Receptor Therapeutics Inc., debenture 25%, due on demand	90	90	-	90	
Receptor Therapeutics Inc., common shares	581	-	-(1)	-(1)	
Receptor Therapeutics Inc., convertible debenture 25%, due on demand	1,189	1,189	-	1,189	
Targeted Growth Canada Inc., Class A special voting shares	-(1)	-	-(1)	-(1)	
Targeted Growth Canada Inc., Class Cl D special voting shares	533	-	-(1)	-(1)	
Targeted Growth Canada Inc., Class Cl D2 special voting shares	540	-	-(1)	-(1)	
Targeted Growth Canada Inc., convertible debenture, 10%, Aug. 16, 2016	784	784	-	784	
Targeted Growth Canada Inc., Class Cl C preferred exchangeable shares	1,885	-	2,592	2,592	
Targeted Growth Canada Inc., Class D preferred exchangeable shares	533	-	2,319	2,319	
Targeted Growth Canada Inc., Class Cl D2 preferred exchangeable shares	540	-	2,925	2,925	
Targeted Growth Inc., Class Cl C special voting shares	1,885	-	-(1)	-(1)	
Twinstrand Therapeutics Inc., Class C preferred shares	710	-	390	390	
Twinstrand Therapeutics Inc., Class D preferred shares	71	-	-(2)	-(2)	
Twinstrand Therapeutics Inc., warrants	237	-	-(2)	-(2)	

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Biotechnology (continued):					
ViOptix Canada Inc., Cl Jr. preferred shares	766	-	1,877	1,877	
ViOptix Canada Inc., D preferred shares	14,035	-	6,720	6,720	
ViOptix Canada Inc., convertible debenture 6%, due on demand	631	631	-	631	
ViOptix Canada Inc., convertible debenture 6%, due on demand	1,265	1,265	-	1,265	
ViOptix Canada Inc., warrants	1,057	-	-(1)	-(1)	
Viron Therapeutics Inc., demand note 15%, due on demand	1,040	1,040	-	1,040	
Viron Therapeutics Inc., Class A, preferred shares	5,856	-	7,045	7,045	
Viron Therapeutics Inc., Class B, preferred shares	3,621	-	3,000	3,000	
Websar Innovations Inc., Class A common shares	20	-	-(1)	-(1)	
Websar Innovations Inc., preferred shares	3	-	275	275	
Western Life Sciences Venture Fund LP., Class A common shares	3	-	3,182	3,182	
		$ 11,690	$ 56,446	$ 68,136	77.2 %
Communications:					
Aizan Technologies Inc., convertible debt 10%, due March 31, 2013	675	$ 675	$ -	$ 675	
Aizan Technologies Inc., debenture 10%, due March 31, 2013	75	75	-	75	
Aizan Technologies Inc., Class A, preferred shares	3,601	-	3,000	3,000	
Aizan Technologies Inc., Class B, preferred shares	900	-	-(1)	-(1)	
BTI Photonic Systems Inc., Class B preferred shares,	2,603	-	746	746	
BTI Photonic Systems Inc., Class C preferred shares	547	-	178	178	
BTI Photonic Systems Inc., warrants	234	-	-	-	
Spotwave Wireless Inc., special voting shares	3,958	-	-	-	
Spotwave Wireless Inc., Class A, preferred shares	5,142	-	1,523	1,523	
		$ 750	$ 5,447	$ 6,197	7.0%
Computer software:					
Bid Freight Global Inc., common shares	-(1)	-	-(2)	-(2)	
Bid Freight Global Inc., convertible debenture, 5%, due on demand	1,090	1,090	-	1,090	
Blueprint Software Solutions Inc., common shares	36,337	-	4,498	4,498	
Blueprint Software Solutions Inc., preferred shares, Class A	189,028	-	1,943	1,943	
Blueprint Software Solutions Inc., warrants	8,626	-	-	-	
Ember ec3 Inc., Class A convertible preferred shares	250	-	250	250	
Ember ec3 Inc., Class B convertible preferred shares	1,500	-	726	726	
Inocom Inc., Class A convertible preferred shares	2,964	-	2,000	2,000	
Inocom Inc., Class A preferred shares	437	-	450	450	
Inocom Inc., Series A preferred shares	777	-	800	800	
Inocom Inc., debenture 12%, due on demand	152	152	-	152	

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Computer software (continued) :					
Lexicon Value Management Inc., common shares	-(1)	-	-	-(2)	
Lexicon Value Management Inc., debenture 0%, due on demand	438	438	-	438	
Lexicon Value Management Inc., debenture15%, due on demand	1,362	1,362	-	1,362	
Lexicon Value Management Inc., warrants	-(1)	-	-	-(2)	
Multicorpora R&D Inc., common shares	2,885	-	2	2	
Multicorpora R&D Inc., Series 2, Class B preferred shares	5,769	-	1,500	1,500	
Panorama Software (formerly Company DNA Inc.), common shares	330	-	-	-	
Panorama Software (formerly Company DNA Inc.), convertible preferred shares	27	-	3,904	3,904	
Panorama Software (formerly Company DNA Inc.), warrants	16	-	-	-	
		$ 3,042	$ 16,073	$ 19,115	21.7%
Computer hardware:					
Cogency Semiconductor Inc., common shares	60	$ -	$ 8,600	$ 8,600	
Tarquin Group Inc., convertible debenture 24%, due on demand	358	358	-	358	
Tarquin Group Inc., common shares	249	-	-(1)	-(1)	
Tarquin Group Inc., warrants	62	-	-(1)	-(1)	
		$ 358	$ 8,600	$ 8,958	10.2%
Computer services:					
3483690 Canada Inc., debenture18%, due on demand	47	$ 47	$ -	$ 47	
3483690 Canada Inc., debenture 36%, due on demand	416	416	-	416	
3483690 Canada Inc., common shares	10,101	-	-(1)	-(1)	
7842317 Canada Inc., debenture 20%, due on demand	62	62	-	62	
7842317 Canada Inc., convertible debenture 12%, due May 1, 2015	67	67	-	67	
7842317 Canada Inc., common shares	83	-	-(1)	-(1)	
8191808 Canada Inc. (formerly Kibboko Inc.) common shares	208	-	-	-	
8191808 Canada Inc. (formerly Kibboko Inc.) convertible debenture, due on demand	665	665	-	665	

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Computer services (continued):					
Ascentify Learning Media Inc. (Formerly neuroLanguage Inc.), Series A preferred shares	3,715	-	5,740	5,740	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), common shares	-(1)	-	-	-	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), demand note 18%, due on demand	250	250	-	250	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), convertible demand note 9%, due on demand	195	195	-	195	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), demand note 12%, due on demand	218	218	-	218	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), demand note 8%, due on demand	100	100	-	100	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), demand note 12%, due on demand	90	90	-	90	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), debenture 18%, due on demand	111	111	-	111	
Ascentify Learning Media Inc., (Formerly neuroLanguage Inc.), debenture 18%, due on demand	125	125	-	125	
iStopOver (formerly PlanetEye Company ULC), common shares	2,482	-	3,564	3,564	
iW Technologies Inc, promissory notes 10%, due on demand	83	83	-	83	
Morega Systems Inc., Series A preferred shares	12,000	-	5,545	5,545	
Morega Systems Inc., Series B preferred shares	4,235	-	3,095	3,095	
Morega Systems Inc., Series C preferred shares	1,412	-	1,045	1,045	
NetShelter Inc., class A preferred shares	45	-	388	388	
Peerset Inc., debenture 10%, due on demand	119	119	-	119	
Peerset Inc., convertible debenture 12%, due on demand	870	870	-	870	
Perspecsys Inc., Class A convertible preferred shares	9,097	-	1,781	1,781	
Perspecsys Inc., Class B convertible preferred shares	1,547	-	200	200	
Thinkpath Inc., common shares	-(1)	-	31	31	
		$ 3,418	$ 21,389	$ 24,807	28.1%

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Energy/Environmental:					
AR Plus Sites Equipment Rentals (Canada) Inc., common shares	4	$ -	$ 500	$ 500	
AR Plus Sites Equipment Rentals (Canada) Inc., debenture 10%, due on demand	2,200	2,200	-	2,200	
Insignia Energy Inc., warrants	53	-	-	-(2)	
SaskAlta Base Oil Inc., Class C preferred shares	5,714	-	2,000	2,000	
		$ 2,200	$ 2,500	$ 4,700	5.3%
Industrial automation:					
Advanced Glazing Technology Ltd., Class B preferred shares	4,386	$ -	$ 2,500	$ 2,500	
Mathis Instruments Ltd., debenture 12%, due on demand	246	246	-	246	
Mathis Instruments Ltd., debenture 15%, due on demand	450	450	-	450	
Mathis Instruments Ltd., Class A preferred shares	75	-	-	-(2)	
Mathis Instruments Ltd., Class B preferred shares	91	-	1,500	1,500	
NextPhase T&D Corp., Class A preferred shares	16	-	96	96	
NextPhase T&D Corp., common shares	97	-	542	542	
		$ 696	$ 4,638	$ 5,334	6.0%
Medical health:					
IS2 Medical Systems Inc., Class A preferred shares shares	833	$ -	$ -	$ -(2)	
IS2 Medical Systems Inc., Class B preferred shares shares	1,708	-	1,400	1,400	
IS2 Medical Systems Inc., common shares	1,486	-	-	-(2)	
		$ -	$ 1,400	$ 1,400	1.6%
Consumer products and services:					
1281216 Ontario Inc., common shares	5	$ -	$ -(1)	$ -(1)	
Fidus International Corp., debenture 10%, due on demand	1,136	1,136	-	1,136	
Fidus International Corp., common shares	16,071	-	-(1)	-(1)	
Fidus International Corp., options	-(1)	-	-(1)	-(1)	
Fidus International Corp., preferred shares	9,801	-	-(1)	-(1)	
SimEx Inc., preferred shares	67	-	123	123	
		$ 1,136	$ 123	$ 1,259	1.4%

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Manufacturing:					
Canpro Ingredients Ltd., convertible debenture 14%, due on demand	599	$ 599	$ -	$ 599	
Canpro Ingredients Ltd., convertible debenture 20%, due on demand	234	234	-	234	
Canpro Ingredients Ltd., convertible debenture 20%, due Jun 26, 2014	134	134	-	134	
Canpro Ingredients Ltd., convertible debenture 20%, due May 28, 2015	53	53	-	53	
Canpro Ingredients Ltd., convertible debenture 20%, due Jul 28, 2015	23	23	-	23	
Canpro Ingredients Ltd., convertible debenture 20%, due Aug 1, 2015	53	53	-	53	
Canpro Ingredients Ltd., debenture 20%, due on demand	31	31	-	31	
Canpro Ingredients Ltd., debenture 20%, due July 29, 2014	117	117	-	117	
Canpro Ingredients Ltd., common shares	1,225	-	1,225	1,225	
Canpro Ingredients Ltd., preferred shares	560	-	560	560	
Canpro Ingredients Ltd., Cl C preferred shares	2,917	-	-	-	
Digital Payment Tech Inc., common shares	13,460	-	1,723	1,723	
Digital Payment Tech Inc., debenture 18%, due Dec 31, 2013	250	250	-	250	
Digital Payment Tech Inc., preferred shares	6,400	-	1,600	1,600	
Digital Payment Tech Inc., warrants	1,253	-	-	-	
LibreStream Technologies Inc., preferred shares	545	-	-	-	
LibreStream Technologies Inc., common shares	2,395	-	3,588	3,588	
		$ 1,494	$ 8,696	$ 10,190	11.5%

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

VENTURE INVESTMENTS Investee Companies	Number of shares or par value ($)	Debt at cost	Equity at cost	Total	Percentage of total net assets
Miscellaneous:					
Acorn Income Corp., common shares	9	$ -	$ 787	$ 787	
		$ -	$ 787	$ 787	0.9%
Community Small Business Investment Funds:					
Niagara Growth Fund Inc., common shares	2,600	$ -	$ 368	$ 368	
		$ -	$ 368	$ 368	0.4%
Value-Added Agriculture:					
Man Agra Capital Inc., preferred shares	20	$ -	$ 201	$ 201	
Puratone Corp., common shares	93	-	671	671	
		$ -	$ 872	$ 872	1.0%
Total venture investments, at cost		$ 24,784	$ 127,339	$ 152,123	172.4%
Unrealized depreciation of venture investments				(50,571)	(57.3%)
Venture investments, at estimated fair value				$101,552	115.1%

(1) Amount less than one thousand
(2) Investments acquired at zero cost

GROWTHWORKS CANADIAN FUND LTD.

Statement of Investment Portfolios - continued
Venture Investments, (In thousands)

As at August 31, 2013

Venture Investments, per Series [Note 3]:	Fair Value
WV Canadian & Merger Series	$ 77,370
GIC Series	117
Growth Series	7,508
Financial Services Series	1,855
Balanced and CMDF Reivestment Series	14,702
	$ 101,552

Stage of Development	Number of Holdings	Cost	Percentage of Venture Investments at cost	Fair value	Percentage of Venture Investment as fair value
Early Stage	28	$ 74,685	49.1%	$ 31,999	31.5%
Expansion Stage	28	73,158	48.1%	69,553	68.5%
Mature Stage	4	4,280	2.8%	-	0.0%
	60	$ 152,123	100.0%	$101,552	100.0%

Sector	Number of Holdings	Cost	Percentage of Venture Investments at cost	Fair value	Percentage of Venture Investment as fair value
Biotechnology	20	$ 68,136	44.8%	$ 59,299	58.4%
Communications	3	6,197	4.1%	5,745	5.6%
Community small business investment funds	1	368	0.2%	370	0.4%
Computer hardware	2	8,958	5.9%	-	0.0%
Computer services	11	24,807	16.3%	22,699	22.4%
Computer software	7	19,115	12.6%	5,351	5.3%
Consumer products and services	3	1,259	0.8%	525	0.5%
Energy/Environmental	3	4,700	3.1%	-	0.0%
Industrial Automation	3	5,334	3.5%	420	0.4%
Manufacturing	3	10,190	6.7%	7,143	7.0%
Medical health	1	1,400	0.9%	-	0.0%
Miscellaneous	1	787	0.5%	-	0.0%
Value-Added Agriculture	2	872	0.6%	-	0.0%
	60	$ 152,123	100.0%	$101,552	100.0%

Sector	Number of Holdings	Cost	Percentage of Venture Investments at cost	Fair value	Percentage of Venture Investment as fair value
Private	55	$ 142,429	93.6%	$ 85,441	84.1%
Public	5	9,694	6.4%	16,111	15.9%
	60	$ 152,123	100.0%	$ 101,552	100.0%

GROWTHWORKS CANADIAN FUND LTD.

Notes to Financial Statements
For the years ended August 31, 2013 and 2012
Tabular amounts expressed in thousands

1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE

Corporate Status

GrowthWorks Canadian Fund Ltd. (the "Fund") is incorporated under the *Canada Business Corporations Act* (Canada) and is registered as a labour-sponsored venture capital corporation under the *Income Tax Act* (Canada) and *The Labour-Sponsored Venture Capital Corporations Act* (Manitoba) (the "Manitoba Act") and as a labour-sponsored investment fund corporation under the *Community Small Business Investment Funds Act* (Ontario) (the "Ontario Act"). The Fund is an approved fund under the *Labour-sponsored Venture Capital Corporations Act* (Saskatchewan) (the "Saskatchewan Act").

The Fund makes investments ("venture investments") in small and medium-sized Canadian businesses with the objective of achieving long-term capital appreciation. Currently, the Fund has a mature venture capital portfolio. As such, the Fund's activities are focused on pursuing divestments and, to a lesser extent, making selected follow-on investments in existing portfolio companies. A significant portion of the Fund's existing venture investments are minority equity holdings in private companies. Venture capital investments in private companies are generally illiquid and it often takes several years for investments to mature and present a divestment opportunity.

Going Concern

The Fund is not currently offering its Class A shares for sale and, as a result, the Fund's only source of liquidity is the net proceeds from the disposition of portfolio investments, a significant portion of which are illiquid. As a result, the Fund's ability to dispose of its portfolio investments is often dependent on the willingness of its co-investors to effect a disposition of their respective holdings and is largely dependent on the state of the mergers and acquisitions and initial public offering markets.

On May 28, 2010 the Fund entered into a participation agreement (the "Participation Agreement") with Roseway Capital L.P. pursuant to which Roseway Capital L.P. advanced $20 million to the Fund (the "Roseway Proceeds") in exchange for a participating interest in selected venture investment holdings of the Fund. The participating interest was subsequently assigned to Roseway Capital S.à.r.l. ("Roseway").

At the time of the advance, Roseway's participating interest extended to 15 investments in the Fund's venture investment portfolio (the "Participation Holdings"), with a total carrying value of approximately $100 million. The participating interest entitles Roseway to receive 20% of the proceeds ("Participation Payments") earned on or generated from the sale or divestment of the Participation Holdings. Roseway did not acquire shares of the Fund or any securities of the Participation Holdings. The Fund executed a security agreement in favour of Roseway pursuant to which the Fund's payment obligations under the Participation Agreement are secured by a charge over the Fund's non-venture assets, certain of the Fund's venture investment holdings and proceeds from the sale or divestment of other venture investment holdings. The Participation Agreement provided for minimum annual Participation Payments of $5.7 million until May 28, 2013, at which time the full amount of the Roseway advance of $20 million would become due and the final minimum annual Participation Payment would become due five business days later. The advance of $20 million and the final minimum annual Participation Payment of $5.7 million (collectively, the "Roseway Participation Liability"), together with accrued and unpaid interest since May 28, 2013 and June 4, 2013, respectively, at the rate of 18% per annum, became due and payable on September 30, 2013 and October 7, 2013, respectively. Subsequent to those dates, interest on the Roseway Participation Liability is calculated at the rate of 20% per annum.

During the year, the Fund did not have sufficient liquidity to pay the Roseway Participation Liability. As a result, the Fund entered into six amendments to the Participation Agreement dated May 28, 2013, June 14, 2013, June 27, 2013, July 15, 2013, August 16, 2013 and August 30, 2013, respectively, which, among other things, extended the respective payment dates for the Roseway Participation Liability.

Due to a lack of sufficient liquidity, the Fund did not pay any of those amounts as they became due and, on October 1, 2013, Roseway declared the Fund in default of its obligations under the Participation Agreement.

GROWTHWORKS CANADIAN FUND LTD.

Notes to Financial Statements
For the years ended August 31, 2013 and 2012
Tabular amounts expressed in thousands

1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE (continued)

As at August 31, 2013, GrowthWorks WV Management Ltd. (the "Former Manager") was the manager of the Fund. Subsequent to year end, on September 30, 2013, the Fund terminated the Management Agreement between the Fund and the Former Manager in accordance with its terms.

The Fund is subject to contingencies relating to its obligations under the Participation Agreement and the termination of the Management Agreement, as described in note 10 to these financial statements.

Subsequent to year end, on October 1, 2013, the Fund obtained Court protection from its creditors and certain other relief pursuant to an initial order (as such order may be amended and restated, the "initial Order") made by the Ontario Superior Court of Justice (the "Court") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA"). The Fund sought court protection for the ongoing management of the Fund, including the disposition of the Fund's portfolio investments, the refinancing of the Fund's secured payment obligations to Roseway under the Participation Agreement and other strategic alternatives. To enable the Fund to maintain normal business operations as the strategic process is implemented, the initial order of the Court provides a stay of certain creditor claims and the exercise of contractual rights arising out of the CCAA process. Pursuant to subsequent orders of the Court, the stay of proceedings was extended to November 30, 2014 (the Fund's proceedings under CCAA, the "CCAA Proceedings"). FTI Consulting Canada Inc. (the "Monitor") is acting as the court-appointed monitor in the CCAA Proceedings.

On November 18, 2013, the Fund obtained an order made by the Court approving, among other things, a sale and investor solicitation process (the "SISP"), the purpose of which was to seek sale proposals and investment proposals from qualified bidders and to consummate, subject to Court approval, one or a combination of such proposals in respect of the venture assets of the Fund. During Phase I of the SISP, the Fund's financial advisor solicited and received non-binding letters of intent ("LOIs") from several interested parties to acquire or to invest in the Fund. In consultation with the Fund and the Fund's financial advisor, the Monitor determined that multiple LOIs were qualified for inclusion in Phase II. As a result, the Fund's financial advisor recommended, and the Monitor consented to the Special Committee authorizing, the commencement of Phase II of the SISP. On December 20, 2013, the Fund announced that a special committee of the board of directors of the Fund had authorized commencement of Phase II of the SISP. During Phase II, the Fund, with the assistance of its financial advisor, made additional information available to parties invited to Phase II and sought submission of binding proposals regarding a transaction with the Fund. Phase II of the SISP is expected to require a period of several weeks to complete and there can be no assurance that any transaction may occur.

On March 6, 2014, the Fund announced that it had completed the SISP and that six interested parties had qualified to participate in Phase 2 of the SISP. Two proposals were submitted by the Phase 2 bid deadline, neither of which constituted a "Qualifying Bid" (as defined in the SISP) since, among other reasons, neither included a purchase price or funds to be invested in an amount sufficient to satisfy in full in cash the Fund's payment obligations to Roseway under the Participation Agreement. No offer to complete a merger transaction was received. Following discussions between the Fund, its advisors, the Monitor and Roseway and its advisors, neither proposal was accepted.

GROWTHWORKS CANADIAN FUND LTD.

Notes to Financial Statements
For the years ended August 31, 2013 and 2012
Tabular amounts expressed in thousands

1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE (continued)

On May 14, 2014, the Fund entered into an investment advisor agreement (the "Investment Advisor Agreement") with Roseway in connection with the management of the Fund's venture portfolio, subject to the Fund obtaining Court approval of the agreement. On May 14, 2014, the Fund obtained an order of the Court approving the Investment Advisor Agreement. Under the terms of the Investment Advisor Agreement, Roseway will serve as investment advisor to the Fund and make investment and divestment decisions in respect of the Fund's venture portfolio on behalf of the Fund and provide related services to the Fund for a term of four years. As compensation for providing those services to the Fund, Roseway will be entitled to receive an annual base fee of $350,000 plus reimbursement of certain expenses. Following the payment in full of all amounts owing by the Fund to Roseway (including certain amounts currently in dispute) under the Participation Agreement and related agreements between the parties (the "Roseway Obligations"), Roseway will also be entitled to receive an incentive fee equal to 15% of the aggregate proceeds of disposition of the remaining assets of the Fund at such time. The Investment Advisor Agreement also contains provisions regarding the review and resolution of conflicts of interest involving Roseway and the Fund. In particular, investment and divestment opportunities, including follow-on investment opportunities ("Follow-on Financings") in the Fund's portfolio companies, will require the review and approval of the monitor appointed by the Court in the CCAA Proceedings. The Fund will be entitled to receive an amount equal to 5% of any net divestment proceeds or distributions received by Roseway in respect of securities acquired by Roseway in connection with any Follow-on Financing funded and completed by Roseway while any Roseway Obligations remain outstanding. Subject to the Fund's right to retain a specified amount of cash and cash equivalents for the purpose of satisfying certain ordinary course expenses of the Fund, including the fees and certain expenses of Roseway (in its capacity as investment advisor to the Fund), proceeds of disposition from the sale of the Fund's investments will be used primarily to satisfy the Roseway Obligations for so long as any of those obligations remains outstanding. The Investment Advisor Agreement may, in certain circumstances, be terminated by the Fund or Roseway prior to the end of the term of the agreement, including by either party in the event of a material breach of the agreement which remains uncured and by the Fund upon full repayment of the Roseway Obligations.

The Fund intends to enter into separate arrangements with third party service providers with respect to the administrative functions of the Fund that are not related to the management of the Fund's venture portfolio.

On January 9, 2014, the Fund obtained an order of the Court setting out a process (the "Claims Process") for creditors of the Fund to prove any creditor claims that they may have against the Fund or against officers and/or directors of the Fund. Pursuant to the Claims Process, creditors of the Fund are entitled to file claims against the Fund and/or its directors and officers until 5:00 p.m. (Toronto time) on March 6, 2014 (the "Claims Bar Date").

The Monitor reported that, on or about the Claims Bar Date, the Monitor received approximately 255 claims totalling in excess of $725 million. The total claims submitted to the Monitor include duplicative claims filed against the Fund and its directors and officers, various marker and/or contingent claims and claims filed by shareholders of the Fund. The claims filed against the Fund and/or its directors and officers include the following types of claims: a claim filed by the Former Manager of the Fund for an amount in excess of $18 million; a claim filed by Allen-Vanguard Corporation for $650 million; a claim filed by the other defendants in the Allen-Vanguard Corporation litigation for an unspecified amount; and a claim filed by plaintiffs in the litigation against the Fund as a shareholder of Advanced Glazing Technologies for an amount in excess of $28 million. The Monitor has indicated that, except in certain circumstances, there is no deadline by which the Monitor must review and adjudicate claims and that the Monitor does not anticipate responding to or adjudicating disputed claims until such time as Roseway is paid in full and there are, or are likely to be, remaining funds for distribution to unsecured creditors of the Fund. The order of the Court establishing the claims process and subsequent orders of the Court specifically carve out claims of Allen-Vanguard Corporation such that the procedure for determining any claims of Allen-Vanguard Corporation will proceed independently of the claims process.

GROWTHWORKS CANADIAN FUND LTD.

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1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE (continued)

Litigation or defence proceedings involving claims by the Former Manager, Roseway or other third parties against the Fund or by the Fund against third parties may involve substantial expense and, if successful or settled by the Fund, could require the Fund to pay substantial damages or amounts by way of settlement. In those circumstances, the Fund may not have sufficient assets to satisfy any such damages award after payment of the Roseway Participation Liability or the payment of any such award or settlement amount may require the disposition of all or substantially all of the Fund's assets, which would have a material adverse effect on the net asset value of the Fund and the Fund's ability to redeem, or make any other payment in respect of, any of its outstanding shares.

The Fund is not currently processing requests for redemptions of its Class A shares. Under applicable law, the Fund may not make any payment to redeem any of its Class A shares if there are reasonable grounds for believing that the Fund is, or would after the payment be, unable to pay its liabilities as they become due. At present, the Board of Directors of the Fund cannot conclude that the Fund would meet this statutory test if the Fund were to process anticipated redemption requests as received. As a result, the Fund will not redeem any of its Class A shares until such time as the Board of Directors of the Fund determines that the Fund would meet this test. There can be no assurance as to if or when the Fund will have sufficient liquidity available to redeem any of its Class A shares.

The Fund's financial statements are prepared on a going concern basis, which assumes that the Fund will continue its operations and will be able to realize its assets and discharge its obligations in the normal course of business. Continuing the operations of the Fund is dependent on its ability to divest of mature venture investments in a timely manner and successfully restructure and repay its obligations. Whether the Fund can meet both of these requirements is uncertain. These material uncertainties cast significant doubt upon the Fund's ability to continue as a going concern.

The Fund's investments are presented at their estimated fair value as at August 31, 2013, based on the presumption that the Fund will have the ability to dispose of its investments on an orderly basis, and not a forced transaction or series of forced transactions. No adjustments have been applied to the valuation of the Fund's investments as a result of the uncertainties about the continuing operations of the Fund. Disposition proceeds as determined by actual events could differ from the valuations ascribed as at August 31, 2013 reflected in these financial statements, and the difference could be material.

Share Structure

The Fund consists of different series of Class A shares. Each group of series that is referable to a separate portfolio of assets constitutes a separate investment fund under applicable securities laws. The Fund currently reports on the following series of Class A shares:

WV Canadian and Merger Series
- WV Canadian – Commission I
- CAVI Series
- CSTGF Series
- FOF Traditional Series
- ENSIS Series
- CMDF Series

GIC Series
- Venture / GIC – Commission I
- Venture / GIC – Commission II

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1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE (continued)

Growth Series
- Venture / Growth – Commission I
- Venture / Growth – Commission II
- FOF Growth Series

Financial Services Series
- Venture / Financial Services – Commission I
- Venture / Financial Services – Commission II

Balanced and CMDF Reinvestment Series
- Venture / Balanced – Commission I (formerly Diversified-Commission I)
- Venture / Balanced – Commission II (formerly Diversified-Commission II)
- Venture CMDF Reinvestment Series – Commission I
- Venture CMDF Reinvestment Series – Commission II

Each of these series of Class A shares of the Fund previously offered is referred to in these financial statements as a "Series" and, collectively, all Series are referred to as "Class A Shares". Subject to compliance with applicable securities laws, Fund may offer or otherwise issue other series of Class A shares in the future. However, effective September 30, 2011, the Fund announced that it had ceased offering Class A Shares to the public.

In order to facilitate redemption transactions, the Fund has two fund codes for the ENSIS and CMDF Series, however these Series are all referable to the same portfolio of assets.

The Fund previously offered the Venture / Balanced – Commission I and Venture / Balanced – Commission II series (the "Balanced Series") and the Venture / Resource – Commission I and Venture / Resource – Commission II series (the "Resource Series") Class A shares. Effective February 20, 2009, the Balanced Series were consolidated into the Venture / Diversified – Commission I and II series and the Resource Series were consolidated into the Venture / Growth – Commission I and II series. Effective November 25, 2011, the Income Series were consolidated into the Venture / Diversified – Commission I and II series and the Venture / Diversified – Commission I and II series were redesignated the Venture / Balanced – Commission I and II series and the investment focus of the Directed Funds (see Note 2(c)) in respect of these shares (and the CMDF Reinvestment Series shares) was refined to consist of: high quality debt instruments, high yield investments and bank securities.

Effective November 10, 2009, the CMDF Reinvestment Series was introduced at a price of $10 per share. The CMDF Reinvestment Series were only available for purchase by holders of CMDF Series shares distributed in connection with the CMDF Merger who redeemed eligible CMDF Series shares and invested the redemption proceeds in the CMDF Reinvestment Series. The CMDF Reinvestment Series shares are referable to the same portfolio of assets as the Diversified Series. It is expected that outstanding CMDF Reinvestment Series shares will be converted into Balanced Series shares as soon as practicable.

There can be no assurance that the Fund will implement these consolidations on the basis proposed, or at all.

These financial statements should be read in conjunction with the Management Reports of Fund Performance of the respective Series of the Fund for the year ended August 31, 2013, which may be found at www.sedar.com.

The sponsor of the Fund is the Canadian Federation of Labour (the "Sponsor"). The Sponsor holds 100% of the Class B shares of the Fund.

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1. CORPORATE STATUS, GOING CONCERN AND SHARE STRUCTURE (continued)

The Income Tax Act (Canada) allows an individual to claim a federal tax credit in connection with an investment in Class A Shares. On March 21, 2013, the Federal Government announced its decision to phase out the 15% federal Labour-Sponsored Venture Capital Corporation, or RVC, tax credit. The federal tax credit will be reduced to 10% in 2015 and 5% in 2016 before being eliminated in 2017. The Manitoba Act, the Ontario Act and the Saskatchewan Act also allow an individual to claim a provincial tax credit in connection with an investment in Class A Shares. The Fund must satisfy minimum investment requirements, often referred to as "investment pacing requirements" in eligible investments, under these statutes. Also, the Fund remains subject to certain investment pacing requirements for capital previously raised in Nova Scotia and New Brunswick. The Ontario Government adopted legislation which phased out the Ontario provincial tax credit at the end of the 2011 tax year. In 2013, there was no Ontario tax credit available.

2. SIGNIFICANT ACCOUNTING POLICIES

a) Basis of presentation

These financial statements are prepared in accordance with Canadian generally accepted accounting principles, including Accounting Guideline 18, Investment Companies ("Canadian GAAP").

b) Venture investments

Venture investments are recorded at estimated fair value. Fair value is the value that would be agreed upon between knowledgeable and willing parties dealing at arm's length. Investment transactions are accounted for on a trade date basis. Changes in unrealized appreciation or depreciation of venture investments, being the differences between fair value and cost of these investments, are recorded in results of operations.

i) Publicly-traded

Venture investments having quoted market values that are publicly traded on a recognized stock exchange are recorded at values based on the closing bid quotations.

ii) Privately-owned

New venture investments in securities not having quoted market values are initially recorded at cost, which approximates fair value generally for one year, and thereafter at estimated fair value. Estimated fair value is determined on the basis of generally accepted valuation methods that best and most objectively reflect the expected realizable value that would be agreed upon in an open and unrestricted market between fully informed, knowledgeable and willing parties dealing at arm's length and without constraints. If there is a recent significant arm's length, bona fide, enforceable offer or transaction with respect to an investment, values used in such an offer or transaction are used in the valuation of the investment.

The process of valuing venture investments for which no public market exists is based on inherent uncertainties, and the resulting values may differ from values that would have been used had a ready market existed for the venture investments. These differences could be material to the fair value of the Fund's venture investments.

The Fund's continuous disclosure documents at www.sedar.com set out the policies, procedures and methodologies that have been adopted and approved by the Audit and Valuation Committee of the Board of Directors for determining fair value.

GROWTHWORKS CANADIAN FUND LTD.

Notes to Financial Statements
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2. SIGNIFICANT ACCOUNTING POLICIES (continued)

c) Short-term investments and bonds, bank instruments, income notes, index notes and guaranteed investment certificates ("GIC")

New purchases and sales of short-term investments and bonds, bank instruments, income notes, index notes and GICs are recorded on a trade-date basis and are valued on the basis of closing bid quotations.

The difference between the fair value and cost is recorded as an unrealized appreciation (depreciation) of short-term investments and bonds, bank instruments, income notes, index notes or guaranteed investment certificates ("GICs") as applicable. Each Series may hold investments in short-term investments or one or more other investment categories based on the "Directed Funds" investment strategy of that Series, as follows:

WV Canadian and the Merger Series - Short-term investments and bonds, income notes, index notes, GICs and bank instruments

GIC Series – Guaranteed Investment Certificates ("GICs")

Growth Series – Short-term investments and bonds, index notes and GICs

Financial Services Series – Short-term investments and bonds, index notes and GICs

Balanced and CMDF Reinvestment Series-high quality debt instruments, high yield investments, and bank securities

d) IPA Dividends and contingent incentive participation amounts

Incentive participation dividends ("IPA Dividends") and contingent incentive participation dividends on the IPA series of the Class C shares of the Fund are recorded and expensed in the statement of operations on an accrual basis. IPA Dividends are accrued weekly, but will only be declared and paid quarterly if and when certain conditions are met (see Note 5). Provision for contingent incentive participation dividends, if any, is recognized based on the assumption that all of the venture investments are liquidated at their estimated fair value as at the date of the financial statements. To the extent that unrealized gains are not ultimately realized, the amount of any related contingent incentive participation dividend will be adjusted accordingly.

e) Participation liability

The participation liability is calculated as the expected future cash flows of the Roseway Proceeds, the Participation Payments and interest on the outstanding balance as well as other investments owed to Roseway.

f) Income recognition

Interest from investments is recorded on an accrual basis. Interest income includes accretion of discounts and amortization of premiums on debt securities. Realized gains and losses arising from the sale of investments are determined using the weighted average cost basis and are recorded on the respective Series' statement of operations.

g) Income taxes

Income taxes are recorded using the asset and liability method of accounting for income taxes. Under the asset and liability method, future income tax assets and liabilities are recognized for the future consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Future income tax assets and liabilities are measured using enacted or substantively enacted tax rates expected to apply when the asset is realized or the liability is settled. A valuation allowance is recorded against any future income tax asset if it is more likely than not that the asset will not be realized. The effect on future income tax assets and liabilities of a change in tax rates is recognized in operations in the period that enactment or substantive enactment occurs.

GROWTHWORKS CANADIAN FUND LTD.

Notes to Financial Statements
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2. SIGNIFICANT ACCOUNTING POLICIES (continued)

g) Income taxes (continued)

The Fund files an income tax return that encompasses all Series. Income taxes recorded within each Series' financial statements are determined on an individual Series basis as if each Series were filing a separate income tax return. Where a Series utilizes tax deductions of another Series, the transfer of these tax deductions may be reflected in the respective Series' statement of operations within income tax expense or recovery, as appropriate, and in the respective Series' statement of net assets as an inter-series receivable or payable.

h) Foreign exchange

Foreign currency amounts are expressed in Canadian dollars on the following basis:

i) Fair value of investments is translated at the rate of exchange at the end of the period.

ii) Purchases and sales of investments, income and expenses are translated at the rate of exchange prevailing on the respective dates of such transactions.

Realized and unrealized foreign currency gains or losses on investments are recorded in the statement of operations.

i) Per share values

Net assets per share is calculated based on the number of shares outstanding at the period end. Increase (decrease) in net assets from operations per Series share is calculated based on the weighted-average number of shares of the respective Series outstanding during the period. Net assets for financial reporting purposes may be different from net asset value ("NAV") used to transact share sales and redemptions for certain Series (see Note 9).

j) Use of estimates

The preparation of financial statements in accordance with Canadian GAAP requires estimates and assumptions that affect the reported amount of certain assets and liabilities at the date of these financial statements and the reported amounts of certain revenue and expenses during the period.

Areas requiring the use of significant management estimates include estimations of the fair value of venture investments and participation liability, including assessments of the financial condition of investees that might indicate a change in value of a particular investment and corresponding participation liability. Assumptions underlying investment valuations are limited by the availability of reliable data and the uncertainty of predictions concerning future events.

Accordingly, venture investment valuations include a subjective element. Financial results as determined by actual events could differ from those estimates and assumptions, and the difference could be material.

k) Future accounting changes

On February 13, 2008, the Accounting Standards Board ("AcSB") confirmed that publicly accountable enterprises would be required to adopt International Financial Reporting Standards ("IFRS"), as published by the International Accounting Standards Board ("IASB"), on January 1, 2011. However, the AcSB deferred the mandatory IFRS changeover date for Canadian investment funds to January 1, 2014. As a result, the Fund will commence applying IFRS effective September 1, 2014 for its annual and interim financial statements, including comparative figures for the preceding year.

A third party engaged to administer the Fund will also complete an assessment of the impact of IFRS, and the impact of new standards issued by the IASB prior to the Fund's adoption of IFRS (see commentary below). IFRS is expected to affect the overall presentation of financial statements, such as an overall enhanced disclosure.

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Notes to Financial Statements
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2. SIGNIFICANT ACCOUNTING POLICIES (continued)

k) Future accounting changes (continued)

In May 2011, the IASB issued IFRS 13 Fair Value Measurement. IFRS 13 specifies prospective application for annual periods beginning on or after January 1, 2013. Earlier adoption is permitted. If a Fund applies IFRS 13 for an earlier period, disclosure of this fact is required. IFRS 13 defines fair value, sets out a single IFRS framework for measuring fair value and requires disclosure about fair value measurements. It applies when other IFRSs require or permit fair value measurement. If an asset or a liability measured at fair value has a bid price and an ask price, it requires valuation to be based on a price within the bid-ask spread that is most representative of fair value. It permits the use of mid-market pricing or other pricing conventions that are used by market participants as a practical expedient for fair value measurements within a bid-ask spread.

In October 2012, the IASB published Investment Entities (Amendments to IFRS 10, IFRS 12 and IAS 27), which provides an exemption from consolidation of subsidiaries under IFRS 10 Consolidated Financial Statements for entities which meet the definition of an 'investment entity'. A qualifying investment entity is required to account for investments in controlled entities and investments in associates and joint ventures at fair value through profit or loss; except in the case of subsidiaries that are considered an extension of the investment entity's investing activities. The consolidation exception is mandatory and is not optional.

3. ALLOCATION OF INVESTMENT PORTFOLIO

The Fund maintains a single portfolio of venture investments. Each Series is allocated its share of the venture portfolio on a pro rata basis unless otherwise provided for in the respective Series' investment strategy.

WV Canadian Series and the Merger Series may hold short-term investments, GICs and bonds, bank instruments, income notes, and index notes as part of their non-venture portfolio. Growth Series may hold short-term investments, GICs and bonds, and index notes as part of their non-venture portfolio. Financial Services Series may hold short-term investments, GICs and bonds, index notes as part of their non-venture portfolio. Balanced Series and CMDF Reinvestment Series may hold high quality debt instruments, high yield investments and bank securities as part of their non-venture portfolio. GIC Series only hold non-venture investments in GICs.

Realized and unrealized gains/losses and interest income arising from the Series' venture portfolio are allocated to each Series based on the respective Series' proportionate share in the venture portfolio.

4. FINANCIAL RISK MANAGEMENT

a) Risks and Risk Management

Financial instruments of the Fund may be exposed to liquidity risk, credit risk, currency risk, interest rate risk and other price risk, each of which is described below. The Discussion of Financial Risk Management following each Series' financial statements provides information and analysis of the risks specific to the applicable Series' financial instruments. The following discussion is of risks applicable to the financial instruments of all Series. See the Fund's management reports of fund performance and Statement of Investment Portfolio for other information, including the risks associated with investing in the Fund.

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4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

The Fund has historically made venture investments in early to mid-stage private companies. These investments take several years to mature and losses on unsuccessful investments are often realized before gains on successful investments. The Fund's investment portfolio is mature and new investment activity consists of selective follow-on investments in existing portfolio companies and is subject to the provisions of the Investment Advisor Agreement as of May 14, 2014. As a principal venture investment strategy, the Fund has sought to diversify the Fund's venture portfolio by business sector and by stage of development. The Fund manages the risks associated with investing in developing companies through careful selection of investment opportunities, and ongoing monitoring of portfolio companies' operations (including, in certain circumstances, through participation on the boards of directors of portfolio companies) and managing divestment opportunities.

The Fund may have holdings in short-term investments, bonds, bank debt instruments and GICs that can be exposed to interest rate risk and credit risk. There is minimal fair value sensitivity to interest rate fluctuations on cash and short-term cash equivalents invested at market interest rates. The fair value of a debt investment represents the maximum exposure to credit risk.

A Series' financial instruments may consist of cash, receivables, short-term investments, GICs, income notes, bonds, bank instruments, index notes, venture investments, participation liability, accounts payable and accrued liabilities and other payables.

The estimated fair value of cash, receivables, accounts payables, accrued liabilities and other payables approximates carrying value due to the relatively short-term nature of the instruments. Short-term investments, GICs, income notes, bonds, bank instruments, index notes, venture investments and the participation liability are carried at estimated fair value using the valuation methodologies set out above (see Notes 2(b), (c) and (e)).

The Fund uses a three-tier hierarchy as a framework for disclosing fair value of instruments based on inputs used to value the Fund's instruments. The fair value measurements are classified into three levels as follows:

(1) quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1)

(2) inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly (i.e. as prices) or indirectly (i.e. derived from prices) (Level 2); and

(3) inputs for the asset or liability that are not based on observable market data (unobservable inputs) (Level 3).

A change in the applicable valuation methodology under Canadian GAAP may result in the reclassification into or out of an instrument's assigned level.

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4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

The following is a summary of the inputs used as of August 31, 2013 and 2012 in valuing the Fund's investments and the related participation liability carried at fair values:

As at August 31, 2013

Quoted prices in active markets for identical assets (Level 1):	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	$ -	$ -	$ -	$ -	$ -	$ -
GICs	-	960	-	-	-	960
Venture investments	13,254	20	1,286	318	2,518	17,396
Total Instruments (Level 1)	$ 13,254	$ 980	$ 1,286	$ 318	$ 2,518	$ 18,356

Significant other observable inputs (Level 2):	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	-	-	-	-	-	-
GICs	-	-	-	-	-	-
Venture investments	-	-	-	-	-	-
Total Instruments (Level 2)	$ -	$ -	$ -	$ -	$ -	$ -

Significant unobservable inputs (Level 3):	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	$ -	$ -	$ -	$ -	$ -	$ -
GICs	-	-	-	-	-	-
Venture investments	64,116	97	6,222	1,537	12,184	84,156
Financing Facility	-	-	-	-	-	-
Participation liability	(21,775)	(33)	(2,132)	(527)	(4,175)	(28,642)
Total Instruments (Level 3)	$ 42,341	$ 64	$ 4,090	$ 1,010	$ 8,009	$ 55,514

(1) The Income Series was consolidated into the Balanced Series (formerly Diversified Series) on November 25, 2011.
(2) On November 25, 2011, the Fund's previously named Diversified Series were re-designated Balanced Series.

Total unrealized loss on Level 3 investments held in the Fund as at August 31, 2013 is $56,988 (2012 - $57,750).

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4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

As at August 31, 2012

Quoted prices in active markets for identical assets (Level 1):	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -
GICs	-	960	-	-	-	-	960
Venture investments	175	0	17	-	4	33	230
Total Instruments (Level 1)	$ 175	$ 960	$ 17	$ -	$ 4	$ 33	$ 1,190

Significant other observable inputs (Level 2):	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -
GICs	-	-	-	-	-	-	-
Venture investments	-	-	-	-	-	-	-
Total Instruments (Level 2)	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Significant unobservable inputs (Level 3):	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Short-term investments & bonds	$ -	$ -	$ -	$ -	$ -	$ -	$ -
GICs	-	-	-	-	-	-	-
Venture investments	154,249	261	14,959	-	3,695	29,317	202,480
Financing Facility	(11,570)	(20)	(1,122)	-	(277)	(2,199)	(15,188)
Participation liability	(20,938)	(34)	(2,030)	-	(502)	(3,980)	(27,484)
Total Instruments (Level 3)	$ 121,741	$ 207	$ 11,807	$ -	$ 2,916	$ 23,138	$ 159,808

During the years ended August 31, 2013 and August 31, 2012, there were no transfers between level one and level two. The reconciliation of investments measured at fair value using unobservable inputs (Level 3) is as follows:

As at August 31, 2013

Venture Investments	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2012	$ 154,249	$ 261	$ 14,959	$ 3,695	$ 29,316	$ 202,480
Purchases	5,958	9	578	143	1,132	7,820
Sales	(28,640)	(43)	(2,779)	(687)	(5,443)	(37,592)
Inter Series Portfolio Reallocation	38	(46)	(6)	(2)	16	-
Net transfers into and/or out of Level 3	(12,837)	(19)	(1,246)	(308)	(2,439)	(16,849)
Realized Gains/(losses)	(50,769)	(63)	(4,927)	(1,217)	(9,647)	(66,623)
Change in unrealized depreciation	(3,883)	(2)	(357)	(87)	(751)	(5,080)
Ending balance, August 31, 2013	$ 64,116	$ 97	$ 6,222	$ 1,537	$ 12,184	$ 84,156

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4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

Financing Facility	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2012	$ (11,570)	$ (20)	$ (1,122)	$ (277)	$ (2,199)	$ (15,188)
Loan Facility Additions	-	-	-	-	-	-
Promissory Note Additions	-	-	-	-	-	-
Inter Series Portfolio Reallocation	-	-	-	-	-	-
Interest Expense	(1,245)	(10)	(121)	(29)	(237)	(1,642)
Payments	12,815	30	1,243	306	2,436	16,830
Ending balance, August 31, 2013	$ -	$ -	$ -	$ -	$ -	$ -

[1] The Income Series was consolidated into the Balanced Series (formerly Diversified Series) on November 25, 2011.
[2] On November 25, 2011, The Fund's previously named Diversified Series were re-designated Balanced Series.

Participation Liability	WV Canadian and Merger Series	GIC Series	Growth Series	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2012	$ (20,938)	$ (34)	$ (2,030)	$ (502)	$ (3,979)	$ (27,483)
Financing Expense	(5,245)	(8)	(509)	(126)	(997)	(6,885)
Change in unrealized appreciation	4,832	3	464	116	921	6,336
Inter Series Portfolio Reallocation	(1)	3	(1)	(2)	1	-
Accrued Interest Amount	(2,866)	(4)	(278)	(69)	(545)	(3,762)
Fair value adjustments	2,443	7	222	56	424	3,152
Participation Liability Payments	-	-	-	-	-	-
Ending balance, August 31, 2013	$ (21,775)	$ (33)	$ (2,132)	$ (527)	$ (4,175)	$ (28,642)

GROWTHWORKS CANADIAN FUND LTD.

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For the years ended August 31, 2013 and 2012
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4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

As at August 31, 2012

Venture Investments	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2011	$ 170,544	$ 384	$ 16,321	$ 4,773	$ 4,008	$ 26,831	$ 222,861
Purchases	5,568	9	541	-	133	1,058	7,310
Sales	(8,982)	(15)	(871)	-	(215)	(1,706)	(11,790)
Inter Series Portfolio Reallocation	(768)	(98)	145	(4,773)	57	5,438	-
Net transfers into and/or out of Level 3	-	-	-	-	-	-	-
Realized Gains/(losses)	(9,537)	(16)	(925)	-	(228)	(1,813)	(12,519)
Change in unrealized depreciation	(2,575)	(3)	(252)	-	(61)	(490)	(3,382)
Ending balance, August 31, 2012	$ 154,249	$ 261	$ 14,959	$ -	$ 3,695	$ 29,317	$ 202,480

Participation Liability	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2011	$ (21,810)	$ (49)	$ (2,087)	$ (610)	$ (513)	$ (3,431)	$ (28,500)
Financing Expense	(4,187)	(10)	(405)	(60)	(100)	(729)	(5,491)
Change in unrealized appreciation	492	2	38	33	9	37	611
Inter Series Portfolio Reallocation	98	12	(18)	610	(8)	(694)	-
Accrued Interest Amount	(941)	(2)	(91)	-	(22)	(179)	(1,235)
Fair value adjustments	1,067	5	112	27	28	192	1,431
Participation Liability Payments	4,342	7	421	-	104	825	5,700
Ending balance, August 31, 2012	$ (20,938)	$ (34)	$ (2,030)	$ -	$ (502)	$ (3,980)	$ (27,484)

Financing Facility	WV Canadian and Merger Series	GIC Series	Growth Series	Income Series [1]	Financial Services Series	Balanced [2] & CMDF Reinvestment Series	Total
Beginning balance, September 1, 2011	$ (1,936)	$ (4)	$ (185)	$ (54)	$ (46)	$ (305)	$ (2,530)
Loan Facility Additions	(5,333)	(9)	(517)	-	(128)	(1,014)	(7,000)
Promissory Note Additions	(3,047)	(5)	(296)	-	(73)	(579)	(4,000)
Inter Series Portfolio Reallocation	5	7	(2)	54	(1)	(63)	-
Interest Expense	(1,259)	(8)	(122)	-	(30)	(239)	(1,658)
Payments	-	-	-	-	-	-	-
Ending balance, August 31, 2012	$ (11,570)	$ (20)	$ (1,122)	$ -	$ (277)	$ (2,199)	$ (15,188)

Liquidity Risk

Liquidity risk is the risk that the Fund will have difficulty meeting obligations associated with financial liabilities. Over the past several years, the Fund has experienced a steep decline in the sales of Class A shares prompted principally by the phase out and elimination of the Ontario labour-sponsored fund tax credit. Given the elimination of the already reduced Ontario tax credit, the Former Manager expected the Fund to achieve only minimal sales of Class A Shares during the 2012 RSP sales season. In light of these factors, on September 30, 2011 the Fund announced that the Fund's Class A share offering would close to new purchases. As the Fund is no longer offering its Class A shares for sale, the Fund's only source of liquidity is the net proceeds realized upon the disposition of the Fund's venture investments, a significant portion of which are minority equity holdings in private companies and are illiquid (see Note 1).

4. FINANCIAL RISK MANAGEMENT (continued)

a) Risks and Risk Management (continued)

Liquidity Risk (continued)

With respect to the Fund, liquidity risk arises primarily from the Fund's obligation to pay the Roseway Participation Liability, including interest on overdue amounts of the Roseway Participation Liability. The Fund lacked sufficient liquidity to pay the Roseway Participation Liability when it became due subsequent to year end and, as a result, on October 1, 2013, the Fund sought protection from its creditors pursuant to the CCAA Proceedings. The Fund continues to lack sufficient liquidity to pay those liabilities and there can be no assurance that a disposition of the Fund's portfolio investments will yield sufficient liquidity to enable the Fund to satisfy in full the Roseway Participation Liability and the Fund's other payment obligations to Roseway. Legal, accounting and financial advisory fees and expenses, the fees and expenses of the Monitor and its legal counsel in the CCAA Proceedings, transitional services fees and expenses paid to the Former Manager, and other operational commitments all draw on the Fund's liquidity. Liquidity risk may also arise as a result of litigation claims made against or by the Fund and the related costs and expenses incurred by the Fund in defending those claims, any of which may be material (see Note 10).

The Fund's activities are focused on pursuing divestments. If under the terms of the Investment Advisor Agreement, Roseway does not elect to fund follow-on investments or any consent of the Monitor required to permit such participation is not obtained and assuming that the Fund will not, in those circumstances, have sufficient liquidity to fund the applicable follow-on investment, it may incur dilution and/or a loss of value on the investment and such dilution and/or loss of value may be material. Further, if the Fund is forced to sell a venture investment before it matures, it may incur a loss, which could be material, or realize a smaller gain.

Class A Shares must generally be held for eight years from the date of purchase in order for the holder to retain the benefit of tax credits claimed in respect of the shares. Accordingly, for liquidity management purposes the Fund considers Class A Shares to be redeemable only after expiry of this eight-year period. All references to "redeemable" shares should be read accordingly. Due to its lack of liquidity, the Board of Directors of the Fund has determined that the Fund is not currently permitted under applicable law to redeem any of the outstanding Class A shares.

Shareholders with switch rights may no longer switch one series of Class A shares for another.

The Fund monitors liquidity risk through the use of a liquidity model that forecasts the Fund's short and long term liquidity needs, based on projected levels of divestment activity and its payment obligations described above, including payment of the Roseway Participation Liability.

b) Venture investment portfolio

i) Credit Risk

Credit risk is the risk that the counterparty to a financial instrument will fail to discharge a payment obligation owed to the Fund under the instrument, causing a financial loss. While the Fund's venture investments include debt instruments, which expose the Fund to credit risk, most debt instruments held are convertible into equity securities and are expected to be converted well before a divestment opportunity arises. Upon conversion, the credit risk associated with the debt instrument may be replaced by other price risk associated with the equity securities, as discussed below. If not converted or redeemed upon the maturity, the instruments generally become due on demand. Classification of debt instruments after maturity as due on demand does not represent a renegotiation of the original debt agreement. Given the expectation that debt instruments will be converted to equity securities, and thereby subject to other price risk, the credit risk associated with the Fund's venture portfolio is not considered to be significant.

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4. FINANCIAL RISK MANAGEMENT (continued)

b) Venture investment portfolio (continued)

ii) *Currency Risk*

Currency risk is the risk that financial instruments denominated in a currency other than Canadian dollars, which is the Fund's reporting currency, will fluctuate due to changes in the exchange rate between the Canadian dollar and the currency in which the investment is denominated. The Fund manages currency risk associated with its venture portfolio by seeking to minimize the number of venture investments denominated in currencies other than Canadian dollars.

iii) *Interest Rate Risk*

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The Fund's venture portfolio contains debt instruments, most of which are generally convertible into equity and are expected to be converted before or in connection with a follow-on investment or subsequent divestment. Accordingly, the Former Manager does not consider there to be significant interest rate risk on the investments as valuation is generally based on the underlying equity securities of the entity into which the debt is convertible. The values of the underlying equity securities generally do not change with changes in market interest rates, and the interest rates of these instruments are fixed; hence, changes in market interest rates will not impact cash flows of the Fund.

iv) *Other Price Risk*

Other price risk is the risk that the value of financial instruments will fluctuate as a result of changes in market prices (other than changes caused by interest rate or currency risk), whether caused by factors specific to an individual investment, factors affecting the sector in which the investee operates or all sectors.

The Fund generally makes investments in private companies. The Fund holds publicly traded investments in its venture investment portfolio as a result of initial public offerings by such companies or through divestitures of companies in exchange for publicly traded securities. While all venture investments held by the Fund present a risk of loss of capital due to business failures, the values of publicly traded investments are linked to movements in the stock market. In some circumstances, it may prove difficult for the Fund to quickly liquidate investments in less readily traded securities without unduly affecting the market price of the securities. Private company holdings are also linked to general market trends to the extent that poor market conditions may place downward pressure on valuations of the Fund's holdings due to reduced levels of activity in the initial public offering and merger and acquisition markets. The Fund seeks to manage other price risk by managing the level of public company holdings, including through market and private sales of these investments.

Public venture investments are grouped by Series. Once grouped, a regression analysis can be undertaken for each group of holdings to identify the correlation between the value of investments in the grouping and benchmark indices. The results and sensitivity analysis are reported in the Discussion of Financial Risk Management statement following each Series' financial statements.

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4. FINANCIAL RISK MANAGEMENT (continued)

b) Venture investment portfolio (continued)

iv) *Other Price Risk (continued)*

Private venture investments are generally in early and expansion-stage companies and, accordingly, there is a limited history of operations and revenues from which to determine the fair value of these investments. Further, the fair value of these companies will primarily fluctuate in response to specific company developments rather than in response to general market conditions. Therefore, while indices such as the NASDAQ Composite Index, which is the Fund's chosen broad-based index for benchmarking purposes, may be an indicator of the merger and acquisition ("M&A") and initial public offering ("IPO") activity within the business sectors in which the Fund invests, it is difficult to identify a direct correlation between published indices or sector metrics and actual performance of private venture investments. Changes in the value of this index and other sub-sector indices may therefore differ materially from changes in the value of the Fund's private venture investments. Accordingly, a sensitivity analysis that would measure the impact on the Fund's net assets relative to changes in an index has not been provided as it is not considered meaningful.

c) Short-term investments and bonds

During the year, all of the Series had fully divested from short-term investments and bonds to fund operational commitments. The Fund's short-term investments may include investments in bankers' acceptances, treasury bills, and GICs. The Fund invests in Canadian dollar denominated short-term investments and bonds, and as such is not exposed to currency risk on these investments. Further, such investments are not subject to significant other price risk.

i) *Credit Risk*

Credit rating agencies rate issuers based on how much credit risk they represent; the higher the credit rating, the lower the credit risk. The Fund manages this risk by generally investing in short-term investments, bonds and GICs issued by governments, financial institutions and issuers with credit ratings at the higher end of the range.

Other than in exceptional circumstances, transactions in listed securities are generally settled/paid for upon delivery using approved brokers. The risk of default is considered minimal, as delivery of securities sold is only made once the broker has received payment. Payment is made on a purchase once the securities have been received by the broker. The trade will fail if either party fails to meet its obligation.

ii) *Interest Rate Risk*

Short-term investments and bonds may be subject to interest rate risk which would affect the value of traded instruments and the Fund's interest income. When market interest rates rise, the value of traded interest-bearing instruments held by the Fund generally falls due to a decline in demand for lower yielding instruments. While higher interest rates may increase the Fund's income through higher yields on newly acquired instruments, the increase may be more than offset by a decrease in the overall value of traded instruments held by the Fund. The Fund's strategy for managing this risk is to monitor and adjust its interest-bearing portfolio holdings in light of prevailing and expected movements in short, medium and long-term interest rates and bond prices. This may include incurring early redemption penalties so as to allow re-investment of capital at higher rates.

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4. FINANCIAL RISK MANAGEMENT (continued)

d) Directed Funds investments

The Fund's Directed Funds investments may include investments in GICs, index notes, income notes and bank instruments. As was the case at the end of the prior year, the only Directed Funds investments held by the Fund were GICs. The Fund invests in Canadian dollar denominated Directed Funds investments, and as such is not exposed to currency risk on these investments. The GIC Series held GICs at the end of the year.

i) *Credit Risk*

Directed Funds investments in debt instruments such as GICs, index notes, income notes, and bank instruments may give rise to credit risk, which is managed in the same manner as credit risk associated with short-term investments and bonds (see Note 4(c)(i)).

ii) *Interest Rate Risk*

Directed Funds investments are also subject to interest rate risk: however, the extent of exposure for GICs and income notes is considered to be low due to the fact that these investments have fixed interest rates, are redeemable, and the maximum penalty for early redemption is loss of accrued interest. The interest rate risk management strategy is the same as that discussed for the short term investments and bonds (see Note 4 (c)(ii)).

iii) *Other Price Risk*

Other price risk arises in respect of Directed Funds investments due to movements in the quoted prices of the securities underlying index notes and income notes. The Fund manages other price risk by limiting investments in, monitoring the composition of, and adjusting the concentration of these investments. As at August 31, 2013, the Fund did not hold any Directed Funds investments in either index notes or income notes.

e) Roseway Participation liability

i) *Currency Risk*

The Roseway Participation Liability is denominated in Canadian dollars. However, a small number of the underlying investments in the Participation Holdings defined portfolio on which the Participation Payments are based are denominated in US dollars and will fluctuate in value due to changes in the exchange rate between the Canadian dollar and the US dollar. The Fund manages currency risk associated with the Participation Holdings by seeking to minimize the number of venture investments denominated in currencies other than Canadian dollars. As at August 31, 2013 the investments are denominated in non-Canadian currency are minimum.

ii) *Other Price Risk*

As the financing expense on the Roseway Participation Liability is related to the divestment proceeds of the Participation Holdings, which consist of a defined portfolio of venture investments, movements in the values of the Participation Holdings will affect the amount of interest payable under the liability. The effect of other price risk on the Fund's venture investment portfolio is discussed in Note 4(b)(iv).

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5. SHARE CAPITAL

Authorized

- The authorized capital of the Fund consists of an unlimited number of Class A Shares issuable in series, an unlimited number of Class B shares (the "Class B Shares"), and an unlimited number of Class C shares (the "Class C Shares") issuable in series.

Class A Shares

Except as noted otherwise, all Series of Class A Shares have substantially the same rights and restrictions, as summarized below. For each Series, an unlimited number of shares may be issued.

- *Redemption Rights* – Each Series of Class A Shares is redeemable, subject to applicable law and the restrictions described below, at the option of the holder, in whole or in part. In any fiscal year, the Fund will not be required to redeem Class A Shares having a redemption right if the aggregate amount to be paid on redemption of all such Class A Shares exceeds 25% of the NAV of the Fund as at the last day of the preceding fiscal year, unless an information return or similar documentation for tax purposes has not been issued in the Class A Shares to be redeemed. Redemption proceeds may be subject to certain conditions including fees and repayment of amounts in respect of tax credits. The Board of Directors of the Fund has determined that the Fund is not currently permitted under applicable law to redeem any of the outstanding Class A Shares (see Note 1).

- *Transfer* – The transfer of Class A Shares is subject to certain restrictions.

- *Dividends* – Holders of Class A Shares are entitled to receive dividends at the discretion of the Board and subject to applicable law, provided that no dividends will be declared or paid unless a dividend in the same amount is declared and paid on the series of Class C Shares issued pursuant to stock option plans of the Fund.

- *Voting Rights* – Holders of Class A Shares are entitled to receive notice of an attend all meetings of shareholders of the Fund and are entitled to one vote for each Class A Share held except for meetings at which only holders of shares of a different class or series are entitled to vote separately as a class or series. Holders of Class A Shares are entitled to elect the number of directors not elected by the Sponsor, which is currently four directors. Further, in order to comply with the Manitoba Act, holders of Class A Shares are asked to approve up to three nominees elected to the Board by the Sponsor.

- *Dissolution* – On the liquidation, dissolution or winding-up of the Fund or other distribution of the assets of the Fund assets among its shareholders for the purpose of winding up its affairs (a "dissolution"), the holders of Class A Shares will be entitled to share rateably the remaining property and assets of the Fund after the holders of shares of any other class having priority have received all amounts to which they are entitled. The holders of the Class A Shares will rank equally with holders of Class C Shares on dissolution.

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5. SHARE CAPITAL (continued)

Class B Shares

The Fund's Class B Shares have the following rights and restrictions:

- *Issue* – Class B Shares may be issued only to the Sponsor.
- Transfer – The Fund cannot register or otherwise recognize a transfer of Class B Shares unless the transferee is an eligible labour body and the transfer is approved by the Board of Directors of the Fund.
- *Dividends* – The holder of the Class B Shares is not entitled to receive dividends.
- *Voting Rights* – The holder of the Class B Shares is entitled to elect (i) a simple majority of the directors of the Fund plus one of the Fund's directors if the number of directors of the Fund is an odd number, and (ii) one-half plus two of the Fund's directors if the number of directors is an even number. The holder of the Class B Shares is entitled to receive notice of and attend all meetings of shareholders of the Fund. The holder of the Class B Share is entitled to one vote for each Class B Share hold at all such meetings except meetings at which only holders of shares of a different class or series are entitled to vote separately as a class or series. In order to comply with the Manitoba Act, holders of Class A Shares are also asked to approve up to three nominees elected to the Board of Directors of the Fund by the Sponsor.
- *Dissolution* – On a dissolution, the holder of the Class B Shares is only entitled to receive an amount equal to the purchase price paid for such shares before any assets are distributed to the holders of the Class A Shares and Class C Shares, but after the holders of shares of any other class having priority have received all amounts to which they are entitled.

Class C Shares

The Class C Shares are issuable in series, each series consisting of such number of shares as may be determined by the Board of Directors of the Fund. The holders of Class C Shares are entitled to receive notice of and attend all meetings of shareholders of the Fund but, except as provided by law, are not entitled as such to vote at any such meeting.

The Fund has created a series of Class C Shares designated as "IPA Shares". The IPA Shares have the following rights and privileges:

- *Issue* – The IPA Shares are issuable only to a person acting as a manager or investment manager to the Fund. At any given time, only one person may hold IPA Shares.
- *Transfer* – The IPA Shares are not transferable.
- *Redemption Rights* – The IPA Shares are redeemable by the Corporation for an amount equal to the consideration paid to the Fund thereof upon the issue of such IPA Shares if the holder of the IPA Shares ceases to be a manager of the Fund and all amounts payable (or capable in the future of becoming payable) to such holder under the provisions of the IPA Shares have been paid in full by the Fund to such holder or the holder agrees to the redemption of the IPA Shares.
- *Dividends* – Subject to applicable law, the holder of IPA Shares will be entitled to receive IPA Dividends based on realized gains and income on venture investments. For venture investments made after November 26, 2002 (the "IPA Start Date"), any IPA Dividends will be equal to 20% of the realized gains and income from each such venture investment.

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5. SHARE CAPITAL (continued)

Class C Shares (continued)

Before any IPA Dividends can be paid in respect of any investment, the following conditions must be met:

Portfolio Test - the total net realized and unrealized gains and income of the Fund from its portfolio of venture investments since the IPA Start Date must have generated an annualized rate of return greater than a cumulative annualized threshold rate of return equal to the average annual rate of return on a five year guaranteed investment certificate offered by a major Canadian chartered bank plus 2%;

Venture Investment Test - the compounded annual internal rate of return (including realized and unrealized gains and income from prior partial dispositions of that venture investment or otherwise) from the venture investment since its acquisition by the Fund must equal or exceed 12% per year; and

Principal Test - the Fund must have fully recovered a cash amount equal to at least the principal invested in the venture investment.

As a result of those conditions, the Fund will only pay IPA Dividends in respect of any partial disposition of such a venture investment if the Fund receives, from all dispositions of that venture investment on a cumulative basis, an amount equal to at least the full amount of the principal invested in the venture investment.

IPA Dividends in respect of venture investments made prior to the IPA Start Date will be equal to 15% of the realized gains and income from each such venture investment. Such amount will be calculated on the same basis as for venture investments made after the IPA Start Date with two adjustments. First, the compounded annual internal rate of return (including realized and unrealized gains and income) from the venture investments since the IPA Start Date must equal or exceed 12% per year. Second, the Fund must have fully recovered the estimated fair value of the investment carried on the books of the Fund as at the IPA Start Date. IPA Dividends can only be declared and paid if, under corporate laws, in doing so, the Fund would remain in a position to pay its liabilities as they become due.

IPA Dividends are calculated and payable quarterly. To the extent they are not declared by the Board and paid when payable, IPA Dividends are cumulative. At August 31, 2013, the Fund has accrued $1.58 million (2012: $1.55 million) of IPA Dividends and IPA liability on escrow proceeds receivable.

The contingent IPA Dividend is an estimate of IPA Dividends that would have been payable to the holder of the IPA Shares had the Fund's entire venture portfolio been disposed of at the estimated fair market value as of the date of the financial statements. However, the total IPA Dividends that will actually be paid over the life of the Fund is currently not determinable, as it will depend on the value ultimately realized from the venture portfolio.

IPA Dividends may only be declared and paid to the extent permitted by applicable law.

- *Dissolution* – On a dissolution, the Class C Shares rank equally with the Class A Shares.

GROWTHWORKS CANADIAN FUND LTD.

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5. SHARE CAPITAL (continued)

Class A Shares

Redemption and subscription information includes switching of shares of one series for shares of another series. The following shares were redeemed during the period ended August 31 2013:

Class A Shares	Outstanding Shares at Beginning of Period	Issue of shares	Redemption of Shares	Outstanding Shares at End of Period
WV Canadian - Commission I	7,022	-	-	7,022
CAVI Series	1,011	-	-	1,011
ENSIS Series	5,177	-	-	5,177
CMDF Series	8,100	-	-	8,100
CSTGF Series	938	-	-	938
FOF Traditional	990	-	-	990
Venture / GIC, Commission I	63	-	-	63
Venture / GIC, Commission II	125	-	-	125
Venture / Growth, Commission I	1,249	-	-	1,249
Venture / Growth, Commission II	597	-	-	597
FOF Growth	407	-	-	407
Venture / Financial Services, Commission I	211	-	-	211
Venture / Financial Services, Commission II	346	-	-	346
Venture / Balanced, Commission I	1,923	-	-	1,923
Venture / Balanced, Commission II	2,479	-	-	2,479
Venture / CMDF Reinvestment Series Commission I	9	-	-	9
Venture / CMDF Reinvestment Series Commission II	6	-	-	6

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5. SHARE CAPITAL (continued)

The following shares were issued and redeemed during the year ended August 31, 2012:

Class A Shares	Outstanding Shares at Beginning of Period	Issue of shares	Redemption of Shares	Conversion of Shares-Income Series to Balanced Series	Outstanding Shares at End of Period
WV Canadian - Commission I	7,283	-	(261)	-	7,022
CAVI Series	1,049	-	(38)	-	1,011
ENSIS Series	5,268	-	(91)	-	5,177
CMDF Series	8,196	-	(96)	-	8,100
CSTGF Series	970	-	(32)	-	938
FOF Traditional	1,012	-	(22)	-	990
Venture / GIC, Commission I	63	-	-	-	63
Venture / GIC, Commission II	125	-	-	-	125
Venture / Growth, Commission I	1,261	-	(12)	-	1,249
Venture / Growth, Commission II	599	-	(2)	-	597
FOF Growth	415	-	(8)	-	407
Venture / Income, Commission I [1]	369	-	-	(369)	-
Venture / Income, Commission II [1]	297	-	-	(297)	-
Venture / Financial Services, Commission I	213	-	(2)	-	211
Venture / Financial Services, Commission II	346	-	-	-	346
Venture / Balanced, Commission I [2]	1,544	-	(7)	386	1,923
Venture / Balanced, Commission II [2]	2,182	-	(13)	310	2,479
Venture / CMDF Reinvestment Series Commission I	9	-	-	-	9
Venture / CMDF Reinvestment Series Commission II	6	-	-	-	6

(1) The Income Series was consolidated into the Balanced Series (formerly Diversified Series) on November 25, 2011.
(2) On November 25, 2011, the Fund's previously named Diversified Series were re-designated Balanced Series.

Service Fees of Class A Shares

During the year a total of approximately $523,000 (2012: $764,000) was incurred by the Fund as service fees or distribution costs for Class A shares. The Series allocation was as follows:

	2013	2012
WV Canadian – Commission I	114	163
CAVI Series	20	30
ENSIS Series	91	148
CMDF Series	160	240
CSTGF Series	17	27
FOF Traditional	21	30
Venture / GIC – Commission I & II	2	2
Venture / Growth – Commission I & II	29	40
FOF Growth	10	13
Venture / Income – Commission I & II [1]	-	3
Venture / Financial Services – Commission I & II	7	7
Venture / Balanced – Commission I & II [2]	52	61
CMDF Reinvestment Series – Commission I & II	-	-
	523	764

(1) The Income Series was consolidated into the Balanced Series (formerly Diversified Series) on November 25, 2011.
(2) On November 25, 2011, the Fund's previously named Diversified Series were re-designated Balanced Series.

GROWTHWORKS CANADIAN FUND LTD.

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5. SHARE CAPITAL (continued)

Class B Shares
1 Class B share was outstanding during the year ended August 31, 2013 and 2012.

Class C Shares
0.1 Class C share was outstanding during the year ended August 31, 2013 and 2012.

Redemption of Class A Shares

Generally, a shareholder may redeem all or part of a series of Class A Shares held at the net asset value per series share, subject to certain restrictions and fees. In any fiscal year, the Fund is not required to redeem issued Class A Shares having an aggregate redemption price greater than an amount equal to 20% of the net asset value of the Fund as at the last day of the immediately preceding financial year. If the Fund does not redeem Class A Shares upon request, it will redeem those shares in the following financial year, at the net asset value at that time, subject to certain restrictions and fees, including the above limit, before it redeems any other Class A Shares that it has been requested to redeem. The Fund may also suspend the right to redeem shares if it has received the necessary consents of applicable securities regulatory authorities.

The Fund initially obtained regulatory approval to cease Class A share redemptions until April 16, 2012, which regulatory approval was subsequently extended to July 31, 2012 and then November 30, 2012 (the "Order"). The Order expired on November 30, 2012.

At present, the Board of Directors of the Fund has determined that the Fund is not permitted under applicable law to redeem any of the outstanding Class A shares (see Note 1).

There can be no assurance as to if and when the Fund will have sufficient cash available to redeem any Class A Share redemptions.

6. INCOME TAXES

Current Income taxes
Under the *Income Tax Act* (Canada), income taxes payable by the Fund on net realized capital gains will be fully refundable on a formula basis when shares are redeemed or capital gains dividends are paid or deemed to be paid by the Fund to its shareholders. Taxes payable on net investment income, other than capital gains, and certain dividends received from Canadian corporations, will be partially refundable upon the payment or deemed payment of taxable dividends, other than capital gains dividends.

The Fund records the refundable portion of its income taxes as an asset to the extent that such amounts will be recovered through the distribution of a Class A share dividend from net investment income and/or realized capital gains on investments. If and to the extent the Fund distributes, or is deemed to have distributed, a dividend, the holder of the shares will be deemed to have received a Canadian taxable dividend and/or a realized capital gain, and the adjusted cost base of the shareholder's shares will be increased by the amount of any deemed dividend. For the year end of August 31, 2013 and 2012, the Fund did not distribute any deemed dividends.

GROWTHWORKS CANADIAN FUND LTD.

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6. INCOME TAXES (continued)

Future income taxes
Temporary differences between the carrying amounts of assets and liabilities for accounting and income tax purposes may result in future tax assets and liabilities. When the fair value of a security exceeds the cost base, a future tax liability arises. This future tax liability may be eliminated by refundable taxes generated by payment of capital gains dividends. When the cost base of a security exceeds the fair value, a future tax asset arises. Due to the uncertainty of such future tax assets ultimately being realized, a full valuation allowance has been applied.

The components of future income tax balances as at August 31, 2013 and August 31, 2012 are as follows:

For the years ending August 31, 2013 and 2012

	WV Canadian and Merger Series		GIC Series		Growth Series and FOF Growth Series	
	2013	2012	2013	2012	2013	2012
Future income tax assets:						
Tax loss carryforwards	$67,093	$60,856	$101	$98	$6,511	$2,464
Deferred finance fees	622	684	1	5	60	74
Unrealized losses on portfolio assets	8,964	8,873	14	15	870	860
Future income tax liabilities:						
Unrealized (gains) on portfolio assets	-	-	-	-	-	-
Valuation allowance	(76,679)	(70,413)	(116)	(118)	(7,441)	(3,398)
Net future income tax asset (liability)	$ -	$ -	$ -	$ -	$ -	$ -

	Financial Services Series		Balanced Series and CMDF Reinvestment Series	
	2013	2012	2013	2012
Future income tax assets:				
Tax loss carryforwards	$1,608	$603	$12,749	$5,154
Deferred finance fees	15	14	118	116
Unrealized losses on portfolio assets	215	213	1,703	1,686
Future income tax liabilities:				
Unrealized (gains) on portfolio assets	-	-	-	-
Valuation allowance	(1,838)	(830)	(14,570)	(6,956)
Net future income tax asset (liability)	$ -	$ -	$ -	$ -

GROWTHWORKS CANADIAN FUND LTD.

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6. INCOME TAXES (continued)

Investment requirements

The *Income Tax Act* (Canada), the Manitoba Act, the Ontario Act and the principles governing the Fund's approved status under the Saskatchewan Act set minimum levels of qualifying venture investments required to be made by the Fund. If the required minimum level of qualifying venture investments is not met under each statute, the Fund will be subject to defined taxes and penalties. Also, the Fund remains subject to minimum levels of qualifying venture investments in Nova Scotia and New Brunswick that if not met will result in the Fund being subject to defined taxes and penalties. The Fund agreed to place 15% of the capital it raised in Saskatchewan with a provincial tax credit (20% of capital referable to tax years after 2009) into a special trust account, which is released as the Fund invests in eligible businesses.

Income tax-loss carryforwards

The Fund has $216.06 million (2012: $156.12 million) in capital losses that do not expire and can be carried forward to offset future capital gains. The Fund has available non-capital losses of approximately $98.25 million (2012: $82.99 million) that expire at various times up to the year 2033, and that may be carried forward and used to offset future income for tax purposes. The following table summarizes the amount of the carryforward attributable to each Series as at August 31, 2013:

	Non-capital loss carryforwards	Capital loss carryforwards
WV Canadian and Merger Series	$ 74,852	$ 164,613
GIC Series	113	249
Growth Series	7,264	15,974
Financial Services Series	1,794	3,945
Balanced and CMDF Reinvestment Series	14,224	31,280
	$ 98,247	$ 216,061

The provision for income taxes shown in the Fund's statement of operations is different than that obtained by applying the statutory tax rates to the income (loss) from operations before income taxes for the following reasons:

	2013	2012
Combined federal and provincial statutory income tax rate	46.20%	46.20%
Net loss before tax calculated at statutory income tax rates	$(36,082,397)	$(13,324,627)
Adjustments resulting from:		
Non Taxable Portion of Unrealized Losses/(Gains)	(1,600,269)	(734,123)
Non Taxable Portion of Realized Losses/(Gains)	17,200,671	4,350,426
Non Taxable Dividends	(2,382,213)	-
Rate Differential on Investment Income	2,236,566	(328,319)
Change in Valuation Allowance	18,929,241	17,965,067
Other	1,698,401	(7,928,424)
Income tax expense (recovery)	$ -	$ -

GROWTHWORKS CANADIAN FUND LTD.

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7. PARTICIPATION LIABILITY

The Fund entered into a Participation Agreement with Roseway in 2010, receiving $20 million in exchange for a participating interest of 20% of the divestment proceeds of the Participation Holdings (Note 1). In addition, Roseway agreed to provide up to $3 million in follow-on funding for these companies. The Fund is required to distribute to Roseway 20% of the divestment proceeds from investments in the Participation Holdings when received, with minimum payments of $5.7 million on each of May 28, 2011, 2012 and 2013, and a $20 million payment on May 28, 2013. As the amount of divestment proceeds expected to be received from investments can change, the distribution could be higher than the minimum payments.

On August 30, 2013, the Fund entered into a sixth amendment to the Participation Agreement with Roseway, whereby a payment of $20 million that was payable to Roseway on September 3, 2013 became payable to Roseway on September 30, 2013 and the final annual minimum Participation Payment of $5.7 million became payable to Roseway by October 7, 2013. Interest on those amounts accrued at the rate of 18% per annum from the date on which they were originally payable by the Fund until September 30 and October 7, 2013, respectively, and thereafter at the rate of 20% per annum.

The Fund did not make any of those payments when due. On October 1, 2013, the Fund obtained creditor protection pursuant to the CCAA Proceedings. As a result of the Fund having failed to satisfy the Roseway Participation Liability when due, those amounts currently bear interest at the rate of 20% per annum.

As at August 31, 2013, the amount due is:

Original investment	$20,000
Minimum payment	5,700
Interest payment	1,184
Investments	1,758
	$28,642

As at August 31, 2013 the Roseway Participation Liability on a per Series basis is as follows:

WV Canadian and Merger Series	$21,775
GIC Series	33
Growth Series	2,132
Financial Services Series	527
Balanced and CMDF Reinvestment Series	4,175
	$28,642

The liability is secured by a charge over all non-venture assets held by the Fund, certain venture investments holdings and all exit proceeds, in the form of cash or shares, derived from the sale of the Fund's venture investments.

GROWTHWORKS CANADIAN FUND LTD.

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8. RELATED PARTY TRANSACTIONS

a) Management fees and administration fees

The Fund and the Former Manager entered into an amended and restated Management Agreement (the "Management Agreement") dated July 15, 2006. On September 30, 2013, the Management Agreement was terminated by the Fund in accordance with its terms. Under the terms of the Management Agreement, the Former Manager provided or arranged for the provision of day-to-day management, investment management and administration services to the Fund. The Former Manager advised the Fund that the Former Manager had engaged its affiliate, GrowthWorks Capital Ltd., to perform investment fund management services and act as the Fund's principal distributor. The Former Manager has advised the Fund that the Manager obtained relief from the requirement to be registered as an investment fund manager on the basis that its affiliate, GrowthWorks Capital Ltd., a registered investment fund manager, directly or through its officers or personnel provided or arranged for the provision of substantially all of the management services to the Fund.

Under the Management Agreement, the Former Manager was paid an annual management fee and an administration fee based on the average net asset value of the Fund, payable monthly. Included in the Management Agreement was an adjustment provision which was designed to shift the risk of federal goods and services tax changes from the Fund to the Former Manager. As a result of the change to GST/HST effective January 1, 2008, the Former Manager was paid an annual management fee of 2.04% and an annual administration fee between 1.77% and 1.95% based on the average net asset value of the Fund. The total amount paid by the Fund, including both fees and HST, remained unchanged.

The Former Manager was also paid an annual capital retention administration fee, up to eight years from the commencement of the related fee, of 0.75% or 1.1625% of the original purchase price of currently offered Class A Shares issued by the Fund, that were still outstanding at the date of calculation of the fees. The Fund also paid the Former Manager a similar administration fee on the Merger Series (namely, CAVI Series, ENSIS Series, CMDF Series, CSTGF Series, FOF Traditional Series, and FOF Growth Series) shares equal to 0.75% of the net asset value of those shares which had been outstanding for less than eight years from the original date of issue (which for these purposes is deemed to be the date of issue of the shares for which the Merger Series shares were exchanged under the applicable merger). All management and administration fee percentages noted have been rounded for ease of presentation and exclude federal goods and services tax or HST as applicable.

The Former Manager was responsible for substantially all operating expenses of the Fund, with the exception of service fees, directors' compensation, federal income tax, federal HST tax and any unusual or extraordinary expenses incurred by the Fund outside the normal scope of services which the Former Manager agreed to provide under the Management Agreement. The Fund also agreed to reimburse the Former Manager for certain pre-approved interest costs incurred in connection with borrowings made in fulfilling its obligations under the Management Agreement.

The Former Manager has made a claim against the Fund for damages on the basis the Management Agreement was terminated without cause (see Note 10).

b) IPA Dividends

As the holder of the IPA Shares, the Former Manager is entitled to receive IPA Dividends, subject to applicable law and certain other conditions (see Note 5).

GROWTHWORKS CANADIAN FUND LTD.

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8. RELATED PARTY TRANSACTIONS (continued)

c) Inter-Series receivables and payables

The Fund, and in some cases individual Series, may be stated as the owner of certain investments and other assets, including cash, that are allocated among multiple Series in the records of the Fund in accordance with the Fund's valuation policies and procedures through the use of inter-Series receivable and payable accounts. The Series also incur inter-Series receivables and payables on the reallocation of the Funds' venture portfolio. All inter-Series allocations occur at fair value based on the fair value of the venture portfolio. All inter-Series balances are non-interest bearing, unsecured and have no specified repayment terms.

d) Financing Loan & Financing Promissory Note ("Financing Facility")

i) Financing Loan

In a prior year, as part of an existing loan, the Fund entered into a note indenture and credit facility agreement with a related party, an investment fund with which the Fund then shared a common manager, and issued a secured promissory note for up to $11 million. Advances under that promissory note were used for working capital, including general corporate requirements and the acquisition of additional assets. Advances of up to $2.5 million were revolving and the balance was non-revolving. Until March 28, 2012, the secured promissory note accrued simple interest at the rate of 12% per annum on amounts advanced. In connection with an extension of the term of the secured promissory note, the rate of interest was increased to 22% per annum on amounts advanced and an aggregate extension fee of $225,000 was paid. On December 31, 2012, the Fund repaid $9.5 million in principal and $2.18 million of accrued interest. The loan has been fully repaid and is no longer outstanding.

ii) Financing Promissory Note

On May 18, 2012, the Former Manager, on behalf of the Fund, obtained a $4 million term loan provided by a third party lender. In accordance with the Management Agreement, all costs incurred by the Manager in connection with the term loan were reimbursed by the Fund. Structurally, the reimbursement was effected through interest payments on a promissory note (the "Note") in the principal amount of $4 million issued to Matrix Asset Management Inc. ("Matrix"), the parent company of the Former Manager. The terms of the Note matched the terms of the third party loan and were formulated to ensure that Matrix did not earn interest on the Note in excess of the costs incurred by the Former Manager in respect of the term loan.

In July 2013, the Fund repaid $4 million in principal and $943,870 of interest and make whole-payments. The loan has been fully repaid and is no longer outstanding.

e) Related party receivable

As at August 31, 2013, the Fund held 88,343 shares of common stock of OPKO Health Inc. which were registered in the name of a fund subject to common control by the Former Manager, the GrowthWorks Commercialization Fund Ltd., but held for the beneficial interest of the Fund. As at August 31, 2013, the fair value of this investment of $846,022 and the accrued fair value of expected future milestone payments of $215,909 was included in related party receivables.

GROWTHWORKS CANADIAN FUND LTD.

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9. RECONCILIATION OF NET ASSET VALUE (continued)

As a result of the implementation of CICA Handbook Section 1100, "Generally Accepted Accounting Principles", the labour-sponsored fund industry practice of deferring and amortizing commissions paid on the sale of Class A shares on a straight line basis over eight years is no longer considered acceptable under Canadian GAAP. Accordingly, the Fund adopted prospectively, effective September 1, 2004, a change in accounting policy for commissions paid on WV Canadian – Commission I Class A Shares, whereby the unamortized balance of deferred charges at September 1, 2004 was charged against the net assets of the WV Canadian – Commission I Class A Shares.

In conjunction with this change in policy, the Ontario Securities Commission ("OSC") provided exemptive relief, which was extended under National Instrument 81-106 *Investment Fund Continuous Disclosure*, allowing for the transition from the deferral and amortization method to the direct charge method as it relates to the unamortized balance of deferred charges at December 1, 2003 and the net asset value per share used for share transactions. The Fund has relied on the exemptive relief provisions for purposes of calculating the net asset value per share of the Fund's WV Canadian – Commission I Class A Shares for share transaction and the Fund continues to amortize against net asset value the deferred commissions existing at December 1, 2003 over their remaining useful life. The Fund no longer offers WV Canadian – Commission I Class A Shares, and all commissions arising on the sale of new series of Class A Shares are paid by the Manager.

Certain shares issued pursuant to previous mergers, as noted in the table below, have an unamortized balance of deferred charges carried over from the merged funds. The Fund continues to amortize these deferred charges for purposes of calculating the net asset value of those shares used for share transactions. As a result, for these shares the calculation of the net assets and net assets per Class A share determined in accordance with Canadian GAAP ("net assets" and "net assets per share", respectively) differs from net asset value and net asset value per Class A share ("NAV" and "NAV per share" respectively) used for share transactions.

	ENSIS Series
Net Assets – August 31, 2013	$11,853
Adjustments:	
Beginning unamortized deferred charges	518
Amortization of deferred charges for the year	(253)
NAV - August 31, 2013	$12,118
Class A shares outstanding at year	5,170
Net Assets per Class A share	$2.29
NAV per Class A share	$2.34

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9. RECONCILIATION OF NET ASSET VALUE (continued)

	ENSIS Series
Net Assets –August 31, 2012	$25,004
Adjustments:	
Beginning unamortized deferred charges	910
Amortization of deferred charges for the year	(392)
NAV - August 31, 2012	$25,522
Class A shares outstanding at year	5,177
Net Assets per Class A share	$4.83
NAV per Class A share	$4.93

10. CONTINGENCIES

In the normal course of operations, various claims and legal proceedings are initiated against the Fund. Legal proceedings are often subject to numerous uncertainties and it is not possible to predict the outcome of individual cases.

Allen-Vanguard Corporation purchased the Fund's interest in Med-Eng Systems Inc. along with the interest in Med-Eng Systems Inc. held by the other former majority shareholders of that Company pursuant to a share purchase agreement dated August 3, 2007 (the "Share Purchase Agreement"). As part of the Share Purchase Agreement, an Escrow Agreement was also entered into requiring that $40,000,000 of the purchase price paid by Allen-Vanguard Corporation be held in escrow to indemnify Allen Vanguard Corporation for claims resulting from breaches of representations and warranties made in favour of Allen-Vanguard Corporation under the Share Purchase Agreement. Pursuant to a recent Amended Statement of Claim, Allen-Vanguard Corporation is seeking damages of approximately $650,000,000 alleging that the Fund and other defendants are liable for the fraudulent misrepresentation allegedly committed by Med-Eng Systems Inc. and its former management in relation to the sale of Med-Eng Systems Inc. The Fund believes that this claim is without merit and intends to vigorously defend the claim. The Fund believes that the outcome of the claim is currently not determinable.

A former officer of Advanced Glazing Technologies Limited along with others ("AGTL plaintiffs") have filed a claim in excess of $28,000,000 alleging the actions of the Fund and other parties were oppressive or unfairly disregarded the interest of the AGTL plaintiffs. The Fund believes the outcome of the claim is currently not determinable.

The Former Manager has made a claim against the Fund for damages in the amount of $18,000,000 on the basis that the Management Agreement was terminated without cause. The Fund believes that this claim is without merit and intends to vigorously defend the claim. The Fund believes the outcome of the claim are currently not determinable.

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10. CONTINGENCIES (continued)

On October 15, 2013, the Fund and the Former Manager entered into a critical transition services agreement (the "CTSA"), which provides for the provision of certain transition services by the Former Manager to the Fund. The Fund disputes certain of the amounts claimed by the Former Manager as owing by the Fund for services delivered under the CTSA. In addition, the Former Manager has sought reimbursement from the Fund of certain amounts which the Former Manager claims were incurred by the Fund, and, the Former Manager claims, in respect of which the Fund benefited, following the commencement of the CCAA Proceedings. The total amount claimed by the Former Manager in respect of the foregoing matters is approximately $458,000. The Fund disputes all such claims by the Former Manager. To the knowledge of the Fund, the Former Manager has not commenced formal legal proceedings against the Fund in respect of these claims. The outcome of this dispute and any related damages against the Fund are not determinable at this time.

Roseway has verbally advised the Fund that Roseway believes that, in addition to the Roseway Participation Liability, it is owed $1,978,328 by the Fund pursuant to the Participation Agreement between the Fund and Roseway. Roseway's claim arises out of the participation by Roseway in a previous follow-on financing by a former investee company of the Fund. The Fund believes that this claim is without merit and intends to vigorously defend the claim should Roseway elect to formally pursue the claim. Under the terms of the Investment Advisor Agreement, the Fund and Roseway have each agreed that it will not seek a resolution of this claim until such time as the Monitor has advised the Fund and Roseway that the Monitor is of the view that the Fund will have sufficient cash resources to merit the parties pursuing a resolution.

A claim has been filed in the courts of Ontario by Cadsoft Corporation against the Fund and other defendants. Cadsoft Corporation is claiming indemnification for damages incurred in connection with a claim against it for damages by a former employee for approximately $600,000. Cadsoft Corporation's action is based upon the provisions of a share purchase agreement with the Fund dated September 14, 1998. A Statement of Defence has been filed on behalf of the Fund and there has been no activity taken by the former employee since 2006. The Fund believes the outcome of claim is currently not determinable.

On January 9, 2014, the Fund obtained an order of the Court setting out a process for creditors of the Fund to prove any claims they may have against the Fund or officers and/or directors of the Fund. As part of this process, the Monitor reported that it received approximately 255 claims totaling in excess of $725 million, which include the claims by Allen-Vanguard Corporation and the Former Manager, respectively, described above. The Monitor has indicated that, except in certain circumstances, there is no deadline by which the Monitor must review and adjudicate claims and that the Monitor does not anticipate responding to, or adjudicating, disputed claims until such time as Roseway is paid in full and there are, or are likely to be, remaining funds for distribution to unsecured creditors of the Fund. The order of the Court establishing the claims process and subsequent orders of the Court specifically carve out claims of Allen-Vanguard Corporation such that the procedure for determining any claims of Allen-Vanguard Corporation will proceed independently of the claims process.

Litigation or defence proceedings involving claims by the Former Manager, Roseway or other third parties against the Fund or by the Fund against third parties may involve substantial expense and, if successful or settled by the Fund, could require the Fund to pay substantial damages or amounts by way of settlement. In those circumstances, the Fund may not have sufficient assets to satisfy any such damages award after payment of the Roseway Participation Liability or the payment of any such award or settlement amount may require the disposition of all or substantially all of the Fund's assets, which would have a material adverse effect on the net asset value of the Fund and the Fund's ability to redeem, or make any other payment in respect of, any of its outstanding shares. In addition, there can be no assurance that the Fund will be successful in collecting any damage awards obtained by the Fund in respect of claims made by it against third parties.

GROWTHWORKS CANADIAN FUND LTD.

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11. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities are comprised of short-term obligations arising primarily from related party transactions (see Note 8) and accrued incentives relating to service fees the Fund pays quarterly to registered dealers at an annual rate of 0.5% of the average net asset value of the Class A shares held by the dealers' clients. The following table provides details of accounts payable and accrued liabilities by significant category for the period ended August 31, 2013 and year ended August 31, 2012:

	Merger Series		GIC Series		Growth Series	
	2013	2012	2013	2012	2013	2012
Accrued management fees	$ 324	$ 1,835	$ 3	$ 15	$ 31	$ 178
Accrued incentives	56	108	-	-	5	9
Other payables/liabilities	515	1,420	2	7	22	83
Accounts payable and accrued liabilities	$ 895	$ 3,363	$ 5	$ 22	$ 58	$ 270

	Financial Services Series		Balanced Series [1] and CMDF Reinvestment Series	
	2013	2012	2013	2012
Accrued management fees	$8	$44	$62	$349
Accrued incentives	-	1	5	10
Other payables/liabilities	5	20	44	162
Accounts payable and accrued liabilities	$ 13	$ 65	$ 111	$ 521

[1] On November 25, 2011, The Fund's previously named Diversified Series were re-designated Balanced Series

12. INDEPENDENT VALUATOR

Pursuant to the independent valuation requirements of National Instrument 81-106, the Fund requires an independent review to assess whether or not the fair value of the Fund's venture portfolio is, in all material respects, reasonable. Qualified chartered business valuators within the Valuations Practice of KPMG LLP, the Fund's independent auditor, performed this review at the Fund's most recent year end (August 31, 2013) and concluded that the fair value was, in all material respects, reasonable.

13. INDEPENDENT REVIEW COMMITTEE ("IRC") FEES

For the year ended August 31, 2013, the Fund paid a total of $22,200 (2012: $25,250) to the members of the IRC, excluding fees paid to IRC members in their capacity as directors or members of other board committees.

14. SUBSEQUENT EVENTS

On September 30, 2013, the Fund terminated the Management Agreement in accordance with its terms (see Note 1).

On October 1, 2013, the Fund obtained protection from its creditors pursuant to the CCAA Proceedings (see Note 1).

On May 14, 2014, the Fund entered into the Investment Advisor Agreement with Roseway (See Note 1).

TAB O

This is Exhibit "**O**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

SECOND AMENDED AND RESTATED INVESTMENT ADVISOR AGREEMENT

THIS AGREEMENT is made as of March 18, 2019 between **CRIMSON CAPITAL INC.** (the "**Investment Advisor**"), a corporation incorporated under the laws of the Province of Ontario, and **GROWTHWORKS CANADIAN FUND LTD.** ("**GW CDN**"), a corporation incorporated under the laws of Canada.

RECITALS:

WHEREAS GW CDN is the owner of a portfolio of securities;

AND WHEREAS GW CDN wishes to retain the Investment Advisor to provide investment management and other services as described hereunder;

AND WHEREAS the Investment Advisor is willing to provide such investment management and other services as described hereunder;

AND WHEREAS the Parties (as defined herein) entered into an amended and restated investment advisor agreement made as of December 11, 2017 (the "**2017 Investment Advisor Agreement**");

AND WHEREAS the Parties wish to amend and restate the 2017 Investment Advisor Agreement in its entirety effective as of the Effective Date;

NOW THEREFORE in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Additional Fee**" shall have the meaning set out in Section 6.3;

"**Additional Term**" shall have the meaning set out in Section 8.1;

"**Affiliate**" means with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with, such specified Person;

"**Agreement**" means this Amended and Restated Investment Advisor Agreement between the Investment Advisor and GW CDN, as amended, supplemented or restated from time to time;

"**Applicable Law**" means any applicable domestic or foreign law, including any statute, subordinate legislation or treaty, including the CCAA and the *Securities Act* (Ontario), and any applicable guideline, directive, rule, standard, requirement, policy, order

(including an order of the Court in connection with the CCAA Proceedings or otherwise) judgment, injunction, award or decree of a Governmental Authority having the force of law;

"**Approval Order**" means an Order *inter alia* approving this Agreement on terms satisfactory to the Investment Advisor, GW CDN and the Monitor;

"**Board of Directors**" means the board of directors of GW CDN;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory or civic holiday, on which banks are open for business in Toronto, Ontario;

"**CCAA**" means *Companies' Creditors Arrangement Act* (Canada);

"**CCAA Proceedings**" means the proceedings under the CCAA relating to the restructuring of GW CDN;

"**Confidential Information**" means all data and information of a confidential nature, in any form (written, oral, electronic or any other form or media) and of any nature whatsoever, relating to the Portfolio, any Portfolio Company or GW CDN, investment strategies and techniques, financial or accounting data or activities provided or disclosed by or on behalf of GW CDN, the Monitor or any of their respective Representatives to the Investment Advisor or any of its Representatives, but does not include information that has otherwise been made available to the public other than by a breach of this Agreement by the Investment Advisor or any of its Representatives;

"**Contract Period**" means the 9 month period commencing on April 1, 2019 and includes the three month period of any Additional Term;

"**Control**" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means;

"**Court**" means the Ontario Superior Court of Justice, Commercial List (Toronto), presiding over the CCAA Proceedings;

"**Dispute**" shall have the meaning set out in Section 10.1.1;

"**Dispute Notice**" shall have the meaning set out in Section 10.1.1;

"**D&O Insurance Premiums**" means any directors and officers insurance premiums incurred with respect to any Representative of the Investment Advisor in connection with the provision by the Investment Advisor of the services hereunder (other than Excluded D&O Insurance Premiums);

"**Effective Date**" means the later of (i) the date this Agreement is approved by the Court; and (ii) April 1, 2019;

"**Escrowed Proceeds Arrangements**" shall have the meaning set out in the definition of Excluded Proceeds in Section 1.1;

"**Excluded D&O Insurance Premiums**" means D&O Insurance Premiums incurred with respect to any Representative of the Investment Advisor (other than Donna Parr) who has not been approved in writing by GW CDN, for purposes of reimbursement of D&O Insurance Premiums hereunder, prior to such premiums being incurred;

"**Excluded Proceeds**" means any proceeds received by GW CDN or the Monitor (on behalf of GW CDN) from (i) the collection of escrowed proceeds, including milestone payments, deferred purchase price consideration and earn-out payments, but only to the extent such escrowed proceeds relate to dispositions of assets made by GW CDN prior to December 8, 2015, unless GW CDN collects such escrowed proceeds prior to the date on which it is otherwise contractually entitled directly as a result of arrangements ("**Escrowed Proceeds Arrangements**") made by the Investment Advisor which are approved by GW CDN pursuant to Section 4.1.1 during the Term or an Additional Term, if applicable, in which case such collected escrowed proceeds (hereinafter referred to as "**IA Advanced Proceeds**") shall not constitute Excluded Proceeds for the purposes hereof; or (ii) any cash held on December 8, 2015 by MedInnova Partners Inc.;

"**Extension Notice**" shall have the meaning set out in Section 8.1;

"**Follow-on Financing**" shall have the meaning set out in Section 4.1.5;

"**Follow-on Financing Notice**" shall have the meaning set out in Section 4.1.5;

"**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances and includes, without limitation, the Court;

"**GW CDN**" shall have the meaning set out in the preamble;

"**IA Advanced Proceeds**" shall have the meaning set out in the definition of Excluded Proceeds in Section 1.1;

"**Investment Advisor**" shall have the meaning set out in the preamble;

"**Investor Agreements**" means all shareholders' agreements, investor agreements, investor rights agreements, registration rights agreements and similar agreements affecting the interest of GW CDN in the Portfolio Securities;

"**Knowledge**" means, with respect to GW CDN, the actual knowledge of C. Ian Ross;

"**Legal Expenses**" shall have the meaning set out in Section 6.2.2;

"**Losses**" shall have the meaning set out in Section 7.1;

"**Monitor**" means FTI Consulting Canada Inc. or its successors in its capacity as Court-appointed monitor to GW CDN in the CCAA Proceedings;

"**Monthly Fee**" shall have the meaning set out in Section 6.1;

"**Net Proceeds**" means, in respect of any period, (i) the aggregate proceeds of disposition received by GW CDN or the Monitor (on behalf of GW CDN) during such period from the disposition of Portfolio Securities completed during such period, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such disposition; (ii) any IA Advanced Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during such period, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such IA Advanced Proceeds; and (iii) the aggregate proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during such period from the disposition of all of the outstanding Class A shares of GW CDN to an arm's length third party during such period directly as a result of arrangements made by the Investment Advisor which are approved in writing and in advance by GW CDN, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such disposition; excluding in each case any Excluded Proceeds;

"**Order**" means an order of the Court;

"**Other Clients**" shall mean clients other than GW CDN to which the Investment Advisor provides investment management or advisory services;

"**Parties**" shall mean the Investment Advisor and GW CDN, collectively, and "**Party**" shall mean either one of them;

"**Person**" includes any individual, partnership, joint venture, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, body corporate, corporation or unincorporated association or organization, whether or not having legal status;

"**Portfolio**" shall mean the portfolio of Portfolio Securities;

"**Portfolio Companies**" means each of the companies listed on Schedule A, other than those companies the securities of which GW CDN sold, or otherwise disposed of, after December 8, 2015;

"**Portfolio Securities**" means the securities of the Portfolio Companies held by or on behalf of GW CDN from time to time, including securities acquired by GW CDN pursuant to Follow-on Financings and securities acquired or received pursuant to stock divisions, stock dividends, stock consolidations or other reorganisations of Portfolio Companies;

"**Receivable**" means, in respect of any Net Proceeds, those Net Proceeds which (i) arise from a disposition of Portfolio Securities or Class A shares of GW CDN or the collection of IA Advanced Proceeds, as applicable, in each case arranged by the Investment Advisor during the Term or an Additional Term, (ii) are, by the terms of such arrangements, not to be (and are not) received by GW CDN or the Monitor (on behalf of GW CDN) until after the end of the Term or an Additional Term, as applicable, and (iii) would have been included in the calculation of an Additional Fee if the transaction resulting from such arrangements had occurred during the Term or an Additional Term, as applicable;

"**Representatives**" means, in respect of either Party, the directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party and the directors, officers and employees of any agent or advisor of that Party and (i) in the case of GW CDN, includes the Monitor and its officers, directors, limited partners, employees, agents and advisors, and (ii) in the case of the Investment Advisor, excludes Roseway Capital S.a.r.l. and its respective Affiliates, general and limited partners and any officer, director, employee, agent or advisor (financial, accounting, legal or otherwise) of Roseway Capital S.a.r.l. or such Affiliate, general or limited partner, agent or advisor;

"**Roseway Investment Advisor Agreement**" means the investment advisor agreement dated as of May 9, 2014 between Roseway Capital S.a.r.l. and GW CDN, as amended, restated, modified or supplemented from time to time;

"**Tail Period**" means the period commencing on and including the date of termination of this Agreement and ending on and including the six month anniversary of such date of termination;

"**Term**" shall have the meaning set out in Section 8.1; and

"**Transaction Expenses**" shall have the meaning set out in Section 6.2.1.

1.2 Headings

In this Agreement, headings are for convenience of reference only, do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

1.3 Interpretation

In this Agreement,

1.3.1 Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa, wherever the context requires;

1.3.2 All references to designated Articles, Sections, other subdivisions and Schedules are to the designated Articles, Sections, other subdivisions and Schedules of this Agreement;

1.3.3 All accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada from time to time consistently applied;

1.3.4 Any reference to a law or statute will include and will be deemed to include a reference to the rules and regulations made pursuant to it, and any reference to a law or statute or regulation shall be deemed to include all amendments made to the law, statute or regulations in force from time to time, and to any law, statute or regulation that may be passed which has the effect of supplementing or superseding the law or statute referred to or the relevant regulation;

1.3.5 Any reference to a Person will include and will be deemed to be a reference to any Person that is a successor to that Person;

1.3.6 "hereof, 'hereto'', "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision. The term "including" means "including without limiting the generality of the foregoing"; and

1.3.7 References in this Agreement to the Monitor will be applicable only to the extent that GW CDN remains, at the relevant time, subject to the CCAA Proceedings. From and after the date, if any, on which GW CDN ceases to be subject to the CCAA Proceedings, all references herein to the Monitor will be deemed to be a reference to GW CDN.

1.4 Currency

All references to currency herein are references to lawful money of Canada.

2. APPOINTMENT OF INVESTMENT ADVISOR

2.1 Appointment

Upon and subject to the terms and conditions hereof and subject to obtaining the Approval Order, GW CDN hereby appoints, effective as of the Effective Date, the Investment Advisor as investment advisor to GW CDN with full authority and responsibility to provide or cause to be provided to GW CDN the investment management and administrative services hereinafter set forth in respect of the Portfolio and the Investment Advisor hereby accepts such appointment and agrees to act in such capacity and to provide or cause to be provided such investment management and administrative services.

3. REPRESENTATIONS AND WARRANTIES OF GW CDN AND THE INVESTMENT ADVISOR

3.1 Representations and Warranties of GW CDN

3.1.1 GW CDN represents and warrants that:

3.1.1.1 it is a corporation incorporated under the laws of Canada and is validly subsisting under such laws;

3.1.1.2 subject to the Orders granted in the CCAA Proceedings, it has the corporate capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreements by which it is bound or any laws to which it is subject;

3.1.1.3 subject to the Orders granted in the CCAA Proceedings, it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of it;

3.1.1.4 to the Knowledge of GW CDN, it is the registered and beneficial owner of all of the Portfolio Securities, with good and valid title therto; and

3.1.1.5 to the Knowledge of GW CDN, the Portfolio Securities listed in Schedule A include all of the Portfolio Securities owned as of the date hereof by GW CDN.

3.2 Representations and Warranties of the Investment Advisor

3.2.1 The Investment Advisor represents and warrants that:

3.2.1.1 it has the capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any agreement by which it is bound or any laws to which it is subject;

3.2.1.2 it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of the Investment Advisor;

3.2.1.3 it holds all necessary licenses, registrations and permits to fulfil its obligations under this Agreement and covenants to maintain all necessary licenses, registrations and permits to fulfil such obligations throughout the term of this Agreement; and

3.2.1.4 nothing has come to the attention of the Investment Advisor that would result in the representations and warranties of GW CDN in Sections 3.1.1.4 and 3.1.1.5, respectively, (disregarding for the purposes of this Section 3.2.1.4 any reference to the Knowledge of GW CDN in those Sections) being untrue or incorrect.

4. DUTIES AND RESPONSIBILITIES OF THE INVESTMENT ADVISOR

4.1 Duties Related to Portfolio

The Investment Advisor shall serve as investment advisor to GW CDN and make recommendations to the Board of Directors with respect to investment and divestment decisions in respect of the Portfolio, in each case in accordance with, and subject to the terms of this Agreement, the Investor Agreements and Applicable Law. Except for reports the form of which is already specified in this Agreement, any reports required to be prepared by the Investment Advisor hereunder may be prepared in excel spreadsheet format, which must be in a printable form, and if GW CDN requires any written report from the Investment Advisor in any other format than an excel spreadsheet, GW CDN shall be required to provide 30 days prior written notice thereof to the Investment Advisor together with a copy of a sample of such other format. Without limiting the generality of the foregoing, the Investment Advisor shall:

4.1.1 subject to having obtained the prior approval of the Board of Directors to dispose of, or invest in, Portfolio Securities or make any Escrowed Proceeds Arrangements (which determination by the Board of Directors as to whether to approve or refuse to approve any disposition of, or investment in, Portfolio Securities or Escrowed Proceeds Arrangements shall be made in the sole discretion of the Board of Directors and shall be provided within fifteen (15) Business Days (or the period referred to in the last sentence of Section 4.1.5, whichever is the lesser number of days) of receipt by GW CDN of a request for such approval), make all appropriate arrangements to implement such disposition of, or investment in, Portfolio Securities or Escrowed Proceeds Arrangements in the ordinary course and otherwise in accordance with the CCAA, including Sections 11.3, 32 and 36 thereof;

4.1.2 issue appropriate instructions to the custodian (or the sub-custodian) of the Portfolio Securities to facilitate delivery and settlement of Portfolio transactions;

4.1.3 monitor and use commercially reasonable efforts to enforce all of the rights of GW CDN under the Investor Agreements;

4.1.4 prepare and deliver to GW CDN and the Monitor quarterly written reports, in the form used by Crimson Capital Inc., in its capacity as sub-contractor to Roseway Capital S.a.r.l. under the Roseway Investment Advisor Agreement, during the 12 month period immediately preceding the effective date of termination of the Roseway Investment Advisor Agreement, with respect to any disposition transactions and the status of the Portfolio, including an assessment of the liquidity of each Portfolio Company, significant corporate developments involving the Portfolio Companies of which the Investment Advisor has been made aware, the Investment Advisor's estimation of when a divestment opportunity is likely to proceed and anticipated conditions to a divestment occurring (without any obligation to prepare a formal valuation of any Portfolio Security);

4.1.5 prepare and deliver to GW CDN and the Monitor a written notice (a "**Follow-on Financing Notice**') of any follow-on investment opportunity in a Portfolio Company in which GW CDN is entitled, or has been invited, to participate (each, a "**Follow-on Financing**"), promptly following the receipt by the Investment Advisor of information relating to such Follow-on Financing and analysis by the Investment Advisor of such Follow-on Financing. The Follow-on Financing Notice will include: (a) a copy of any notice and related term sheet or similar document received by the Investment Advisor from the applicable Portfolio Company in respect of such Follow-on Financing; (b) to the extent known by the Investment Advisor, the names of any other parties that plan on participating in such Follow-on Financing and the extent of their participation; (c) any other material terms and conditions of the proposed Follow-on Financing known to the Investment Advisor that would be considered necessary by a reasonable investor to make an investment decision; and (d) the date by which the Portfolio Company requires the Fund to exercise its right to participate in the Follow-on Financing. The Investment Advisor shall update the Follow-on Financing Notice if the Investment Advisor becomes aware of any change of the terms of the Follow-on Financing or any additional information that would have been included in the Follow-on Financing Notice becomes known to the Investment Advisor. GW CDN shall provide notice of its intention to participate in the Follow-on Financing not later than the day immediately preceding the date set out in clause (d) of this Section 4.1.5;

4.1.6 maintain or cause to be maintained at all times reasonably complete and accurate records, including in electronic form, relating to Portfolio transactions occurring during the Term, which records will be accessible for inspection by one or more Representatives of GW CDN and the Monitor at any time during ordinary business hours, upon reasonable notice;

4.1.7 deliver to GW CDN on an annual basis, an external hard drive or USB flash drive containing an electronic copy of all documents received by the Investment Advisor in relation to the Portfolio Companies during the most recently completed year, including the documentation delivered pursuant to Section 4.1.4;

4.1.8 permit one or more designated Representatives of GW CDN and the Monitor, respectively, access to view any records kept by the Investment Advisor and used for the preparation of the reports referenced in Section 4.1.4 during ordinary business hours, upon reasonable notice;

4.1.9 be responsible for monitoring and ensuring compliance by the Investment Advisor and its Representatives with all Applicable Laws directly relating to the management, investment or divestment of Portfolio Securities, provided that the Investment Advisor shall not be responsible for any compliance by GW CDN with Applicable Laws directly relating to GW CDN's status as a reporting issuer under applicable securities laws; and

4.1.10 carry out such other actions ancillary to the services to be provided under this Agreement as agreed to between the Parties, including providing GW CDN and the Monitor with such information which is related to the services provided under this Agreement as may be reasonably requested from time to time.

4.2 Delegation by the Investment Advisor

4.2.1 In carrying out its obligations hereunder, the Investment Advisor may not delegate any of its services or functions hereunder to any agents, advisors, sub-contractors or other Persons without the prior written consent of GW CDN and, where such consent is provided, any costs of such agents, advisors, sub-contractors or other Persons shall be for the account of the Investment Advisor.

4.2.2 In carrying out its obligations hereunder, the Investment Advisor may engage consultants with particular expertise in certain technology, sales or management with the prior written consent of GW CDN in which case the costs of such experts shall be for the account of and invoices shall be sent directly to GW CDN; provided that the Investment Advisor shall seek reimbursement for such consultants from the applicable Portfolio Company.

4.3 Standard of Care

4.3.1 The Investment Advisor covenants that it shall exercise its powers and discharge its duties and responsibilities hereunder, diligently, honestly and in good faith, and in the best interests of GW CDN and in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a specialty and experience as an investment advisor would exercise in the same circumstances; provided that the Investment Advisor is required to follow the direction of GW CDN related to investment and disposition decisions in accordance with Section 4.3.3.

4.3.2 The Investment Advisor agrees to comply with all Applicable Laws insofar as such relate to the Investment Advisor's position as the investment advisor to GW CDN or its obligations hereunder.

4.3.3 Notwithstanding any other provision of this Agreement, the Investment Advisor agrees to comply with any directions given to it by GW CDN with respect to an investment in, or disposition of, Portfolio Securities; provided that:

4.3.3.1 GW CDN shall consult with the Investment Advisor with respect to any such proposed directions;

4.3.3.2 any such direction complies with Applicable Laws; and

4.3.3.3 any such direction does not conflict with an express provision of this Agreement, unless mutually agreed upon by the Investment Advisor and GW CDN.

4.3.4 Notwithstanding any other provisions of this Section 4.3, GW CDN acknowledges and agrees that to the extent Donna Parr, or other person approved by GW CDN in writing, is acting solely in her or his capacity as a director of a Portfolio Company, Donna Parr or such other person, will be subject to a director's fiduciary duties to act in the best interests of such Portfolio Company.

4.4 Other Activities

Nothing in this Agreement, subject to the confidentiality obligations set out in Article 9, shall prevent or restrict the Investment Advisor or any of its Affiliates from providing similar services to other Persons, including to Other Clients, or from engaging in any other activities, nor shall it require any such Person to account to the Investment Advisor or to GW CDN or to the Monitor for any profit or benefit arising from any such activity.

5. DUTIES RELATED TO GW CDN

5.1.1 GW CDN shall maintain or cause to be maintained at all times reasonably complete and accurate books of account and records relating to the Portfolio, which books of account and records shall be accessible for inspection by a designated representative of the Investment Advisor at any time, upon reasonable notice, during ordinary business hours.

5.1.2 GW CDN shall make available or cause to be made available on a timely basis all personnel familiar with the Portfolio, the Portfolio Companies and the Portfolio Securities as reasonably required from time to time in order to allow the Investment Advisor to provide the services and to perform its duties and obligations pursuant to this Agreement.

5.1.3 GW CDN shall make available to the Investment Advisor, on a timely basis, all notices sent by GW CDN to, or received by GW CDN from Portfolio Companies or with respect to the Portfolio Securities.

5.1.4 Except as set forth in Section 4.1.9, GW CDN shall be responsible for all corporate, accounting and auditing, administration, shareholder, and regulatory matters with respect to the Portfolio, the Portfolio Companies and the Portfolio Securities.

6. COMPENSATION AND DISPOSITION OF PROCEEDS

6.1 Monthly Fee

As compensation for its services under this Agreement, the Investment Advisor will be paid by GW CDN, a monthly fee of $10,417 (the "**Monthly Fee**") for the Contract Period. The Monthly Fee is payable in arrears on the last Business Day of each month of the Contract Period. During any Additional Term, the Investment Advisor will be paid the Monthly Fee payable in arrears on the last Business Day of each month of the Additional Term.

6.2 Transaction Fees

6.2.1 In addition to the Annual Fee, GW CDN will reimburse the Investment Advisor for all lawful, proper, reasonable and necessary out-of-pocket expenses (other than Excluded D&O Insurance Premiums), including travel expenses to meet with Portfolio Companies and D&O Insurance Premiums (collectively the "**Transaction Expenses**"), incurred by the Investment Advisor in the course of making investment and divestment and portfolio management decisions in respect of the Portfolio Securities up to a maximum aggregate amount of $25,000 per annum for travel expenses (pro rated to cover any partial Contract Year) plus up to a maximum of $10,000 per annum for D&O Insurance Premiums (pro rated to cover any partial Contract Year to the extent permitted by the insurer). The Transaction Expenses will be reimbursed by GW CDN within three (3) Business Days of submission of proper receipts; provided however that the Investment Advisor will seek reimbursement for any Transaction Expenses from the applicable Portfolio Company and the Investment Advisor shall not be reimbursed for any Transaction Expenses that have otherwise been paid by or on behalf of a Portfolio Company to the Investment Advisor. With respect to any Transaction Expenses which are payable by a Portfolio Company to the Investment Advisor but reimbursed by GW CDN to the Investment Advisor, GW CDN will pay such Transaction Expenses as agent on behalf of the applicable Portfolio Company and, the Investment Advisor will direct each such Portfolio Company to pay directly to GW CDN any such Transaction Expenses that have been reimbursed by GW CDN, as agent on behalf of the Portfolio Company.

6.2.2 In carrying out its obligations hereunder, the Investment Advisor may retain legal counsel to perform services related to the liquidation of the Portfolio Securities and Follow-on Financings provided that such legal counsel (i) shall extend the benefit of its advice to GW CDN; (ii) shall take instructions from the Investment Advisor; and (iii) must be approved in advance and in writing by GW CDN, acting reasonably, if such legal counsel has acted adverse to the Fund in any litigation matter. The reasonable costs of any such legal counsel (the "**Legal Expenses**") shall be paid directly by GW CDN to such legal counsel, upon submission of such proper invoices and other documentation reasonably satisfactory to GW CDN and the Monitor; provided however that the Investment Advisor will seek reimbursement on behalf of GW CDN for any Legal Expenses from the applicable Portfolio Company. The Investment Advisor will not accept payment of any Legal Expenses from or on behalf of a Portfolio Company.

6.3 Additional Fees

6.3.1 In addition to the other fees described in this Article 6 and subject to Section 6.3.7, the Investment Advisor shall, except in respect of any period occurring after the termination of this Agreement pursuant to Section 8.1(ii), Section 8.2, Section 8.3(i), Section 8.3(ii), Section 8.3(iii) or Section 8.4, be entitled to a fee (the "**Additional Fee**") equal to

6.3.1.1 in the case of any Net Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during the Contract Period, 7% of such Net Proceeds; and

6.3.1.2 in the case of any Receivables received by GW CDN or the Monitor (on behalf of GW CDN) and which are attributable to a completed transaction that occurred during the Contract Period, 7% of such Receivables.

6.3.2 Any Additional Fee shall be paid within three (3) Business Days of the later of (i) the date of receipt of the Net Proceeds or the receipt of the Receivable by GW CDN or the Monitor (on behalf of GW CDN), and (ii) the date of receipt by GW CDN of an excel spreadsheet from the Investment Advisor setting out in reasonable detail the calculation of the applicable Additional Fee (which spreadsheet may be delivered by the Investment Advisor to the Fund before or after the completion of the applicable transaction giving rise to Net Proceeds), unless the Parties are not in agreement as to the amount of Net Proceeds or the Receivable and either Party has delivered to the other Party a Dispute Notice pursuant to Section 10.1.1, in which case the Additional Fee shall be paid within three (3) Business Days following a decision in accordance with Section 10.

6.3.3 In addition to the other fees described in this Article 6 and subject to Section 6.3.7, in the event of a termination of this Agreement by the Investment Advisor pursuant to Section 8.2 or by GW CDN pursuant to Section 8.3(i), the Investment Advisor shall be entitled to (i) a fee equal to 7% of any Net Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) in respect of dispositions of Portfolio Securities completed by GW CDN during the Tail Period, and (ii) a fee equal to 7% of any Receivables received by GW CDN or the Monitor (on behalf of GW CDN) and which are attributable to a completed transaction that occurred during the Tail Period.

6.3.4 Any fee payable pursuant to Section 6.3.4 shall be paid within three (3) Business Days of the last day of the Tail Period or receipt of the Receivables, as applicable, unless the Parties are not in agreement as to the amount of the applicable fee and either Party has delivered a Dispute Notice pursuant to Section 10.1.1, in which case such fee shall be paid within 10 Business Days following a decision in accordance with Section 10.

6.3.5 To the extent a fee that may be payable under this Section 6.3 is the subject of a Dispute Notice, the amount of such fee claimed by the Investment Advisor (to the maximum amount the applicable fee provided for hereunder) will be held in a separate account in trust with the Monitor until the applicable Dispute is resolved by the Court.

6.3.6 Fees, securities and other compensation paid or issued by, or on behalf of, any Portfolio Company to a member of the board of directors of such Portfolio Company who is a nominee of the Investment Advisor may not be retained by the

Investment Advisor or nominee board member and shall be for the benefit of, and paid and assigned to, GW CDN, except that any such compensation may be retained by a nominee board member who has been approved by GW CDN in writing for the purposes of this Section (with Bryan Boyd being hereby confirmed as being so approved, but only in his capacity as nominee board member of Aizan Technologies Inc.). The Investment Advisor shall include in each quarterly report delivered pursuant to Section 4.1.4 a summary of all such cash, options and other investments paid to or received by the Investment Advisor or any such nominee board member during the period covered by such report.

6.3.7 For purposes of calculating any fee payable by the Fund to the Investment Advisor under this Section 6.3 in respect of a disposition of Portfolio Securities or Class A shares of GW CDN or collection of IA Advanced Proceeds, as applicable, any Receivable in respect of such transaction shall be included in the calculation of such fee for the applicable period and, in each case, without duplication, but the portion, if any, of such fee attributable to such Receivable shall only be payable by GW CDN if and when such Receivable is actually received by GW CDN.

6.4 Taxes

All amounts payable to the Investment Advisor are exclusive of any applicable harmonized sales taxes payable by GW CDN, which will be payable by GW CDN, in addition to the fees payable hereunder, where applicable.

6.5 Expenses Borne by GW CDN

GW CDN shall pay all expenses relating to the performance of GW CDN's obligations pursuant to Article 5.

6.6 Proceeds of Disposition

The Investment Advisor will ensure that all cash proceeds from the disposition of any Portfolio Securities or GW CDN's entitlement to escrowed proceeds, including milestone payments, deferred purchase price consideration and earn-out payments, or the sale of the shares of GW CDN are directed to an account in the name of the Monitor in immediately available funds.

7. INDEMNITY

7.1 Liability of the Investment Advisor

Neither the Investment Advisor nor any of its Representatives shall be liable for any error of judgment or for any losses, claims, damages or liabilities ("**Losses**") suffered by the Portfolio in connection with the matters to which this Agreement relates, except to the extent that any such Losses result from (i) the fraud, bad faith, wilful misconduct or gross negligence of the Investment Advisor or any of its Representatives; (ii) the breach by the Investment Advisor or any of its Representatives of the standard of care set out in Section 4.3; or (iii) the material

breach by the Investment Advisor of any of the Investment Advisor's obligations and duties hereunder.

7.2 Indemnity of GW CDN

GW CDN shall indemnify and hold harmless the Investment Advisor and its Representatives from and against all Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor directly related to the performance of its obligations hereunder other than those performed or omitted fraudulently, in bad faith or attributable to the gross negligence, dishonesty or wilful misconduct of the Investment Advisor or any of its Representatives; or (ii) acts or omissions of GW CDN directly related to the performance of its obligations hereunder which are omitted fraudulently, in bad faith or attributable to the gross negligence or wilful misconduct of GW CDN. Nothing herein shall be deemed to protect the Investment Advisor against any liability to GW CDN, its directors, officers, employees and shareholders where the Investment Advisor has materially breached its obligations as set forth in this Agreement.

7.3 Indemnity of the Investment Advisor

The Investment Advisor shall indemnify and hold harmless GW CDN and its directors, officers, agents, employees and advisors and their respective directors, officers and employees from and against any Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor performed or omitted fraudulently, in bad faith or attributable to the gross negligence or wilful misconduct of the Investment Advisor; or (ii) a material breach by the Investment Advisor of an obligation or duty hereunder. The Investment Advisor and its Representatives shall not be liable to, and shall not be required to, indemnify GW CDN for any Losses as a result of any default, failure or defect in any of the securities and financial instruments comprising the Portfolio.

8. TERM AND TERMINATION

8.1 Term

This Agreement shall continue in full force and effect during the period (the "**Term**") commencing on the Effective Date and terminating on the earliest of: (i) December 31, 2019; (ii) the effective date of termination of this Agreement pursuant to Section 8.2, 8.3 or 8.4, as applicable; and (iii) the date on which GW CDN completes the disposition of all or substantially all of the remaining Portfolio Securities. Upon mutual agreement of GW CDN and the Investment Advisor, GW CDN may extend the date set out in clause (i) of this Section for an additional three months (the "**Additional Term**") by notice (an "**Extension Notice**") provided not later than ten (10) Business Days prior to the expiry of the Term, in which case the date set out in Section 8.1 (i) shall be deemed to be March 31, 2020 for all purposes of this Agreement.

8.2 Termination by Investment Advisor

The Investment Advisor may terminate this Agreement upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by GW CDN (and, without limitation, the failure to comply with Section 10 would constitute a material breach

of this Agreement) and such breach has not been waived or cured within 30 days following the date on which the Investment Advisor notifies GW CDN and the Monitor in writing of such breach and the effective date of such termination shall be the end of such 30 day period.

8.3 Termination by GW CDN

GW CDN may terminate this Agreement (i) at any time, upon 180 days' prior written notice and the effective date of such termination shall be the end of such 180 day period; (ii) upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by the Investment Advisor (and, without limitation, the failure to comply with Section 10 would constitute a material breach of this Agreement) and such breach has not been waived or cured within 30 days following the date on which GW CDN notifies the Investment Advisor in writing of such breach and the effective date of such termination shall be the end of such 30 day period; or (iii) in the event that Donna Parr ceases, for any reason, to provide on behalf of the Investment Advisor, any of the services to be provided by the Investment Advisor hereunder unless the Investment Advisor has delegated such obligations in accordance with the terms of Section 4.2, and the effective date of such termination shall be the date of receipt by the Investment Advisor of a notice of termination given by GW CDN pursuant to this Section 8.3(iii).

8.4 Termination by Either Party

Either Party may terminate this Agreement upon written notice to the other Party if this Agreement has not been approved by the Court on or before December 31, 2017.

8.5 Action upon Termination

8.5.1 From and after the effective date of termination of this Agreement, the Investment Advisor shall be entitled to the following payments:

(i) Annual Fees and Additional Fees, if applicable, which have been earned to the effective date of termination and remain unpaid as at such date; and

(ii) unpaid Transaction Expenses incurred on or prior to the effective date of termination.

8.5.2 The Investment Advisor and its Affiliates, as applicable, shall forthwith, upon termination of this Agreement deliver to GW CDN all property and documents of, or relating to, the Portfolio, including financial and accounting records which are in the possession or control of the Investment Advisor or any of its Affiliates, other than a copy retained for its own records, which copy shall remain subject to the provisions of Article 9.

8.5.3 In the event that a new investment advisor is retained by GW CDN in connection with the termination of this Agreement, the Investment Advisor will do all things and take all steps necessary or advisable to promptly and effectively transfer the management of the Portfolio and the Portfolio Securities as well as the books, records and accounts to the new portfolio investment advisor or as instructed by

GW CDN in writing. The Investment Advisor shall execute and deliver all documents and instruments necessary or advisable to effect and facilitate such transfer.

8.6 Survival

The provisions of Section 6.4, Article 7, Section 8.5, Article 9, Article 10 and Article 11 shall survive the termination of this Agreement and the Tail Period, if any. For greater certainty, with respect to Net Proceeds which are Receivable, all provisions of this Agreement related to the calculation and payment of fees owing to the Investment Advisor hereunder shall survive the termination of this Agreement as required to ensure that such fees, if any, are paid to the Investment Advisor after the Term or after the Tail Period, if any, in accordance with the terms hereof.

9. CONFIDENTIALITY

9.1.1 The Investment Advisor shall refrain, for any reason whatsoever, from using and disclosing any Confidential Information without the prior written consent of GW CDN.

9.1.2 Notwithstanding the foregoing and within the limits established by this Agreement, the Investment Advisor may disclose the Confidential Information to its Representatives involved in the performance of this Agreement for whom knowledge of the Confidential Information is necessary for the performance of the Investment Advisor's obligations under this Agreement, provided that the Investment Advisor advises such third party of the confidentiality obligations set forth in this Article 9. The Investment Advisor will be responsible for any breach of the provisions of this Article 10 by any Representative of the Investment Advisor.

9.1.3 The Investment Advisor undertakes to protect the Confidential Information of GW CDN by using the same precautions implemented for the protection of the Investment Advisor's own confidential information and exercising the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a specialty and experience as an investment advisor would exercise in the same circumstances to protect the Confidential Information.

9.1.4 Upon termination of this Agreement, the Investment Advisor immediately will stop using the Confidential Information in its custody, possession or control and, at the option of GW CDN, shall promptly return or destroy all Confidential Information in its custody, possession or control, other than a copy retained for its own records which copy shall remain subject to the provisions of this Article 9. The Investment Advisor will promptly deliver to GW CDN a certificate executed by an authorized officer of the Investment Advisor certifying as to such return or destruction.

9.1.5 If the Investment Advisor is requested pursuant to, or required by, Applicable Law or legal process to disclose any Confidential Information, the Investment

Advisor may make such disclosure but must first provide GW CDN with prompt notice of such request or requirement, unless notice is prohibited by Applicable Law, in order to enable GW CDN to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Investment Advisor will not oppose any action by GW CDN to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by GW CDN, such disclosure is required, the Investment Advisor will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

10. DISPUTES

10.1.1 If any written notice (**"Dispute Notice"**) is provided by either Party of a dispute, claim or demand arising out of this Agreement (a "**Dispute**"), the Parties shall attempt to settle the Dispute by discussion between the Investment Advisor, a Representative of GW CDN and the Monitor.

10.1.2 If the Dispute has not been resolved, for any reason, within 30 Business Days following receipt by the receiving Party of the applicable Dispute Notice, the Dispute will be resolved by the Court; provided that any Dispute with respect to the mathematical calculation of a fee payable hereunder (**"Disputed Amounts"**) that is not resolved within such 30 day period shall be submitted for resolution by the Monitor or, if the Monitor is unable to serve, the Monitor will appoint the office of an impartial nationally recognized firm of independent accountants other than GW CDN's or the Investment Advisor's accountants (the **"Independent Accountants"**) who, acting as experts and not arbitrators, will resolve the Disputed Amounts. Each of GW CDN and the Investment Advisor shall have full access to the books and records and work papers of the other Party to the extent that they relate to any such calculation.

10.1.3 The Monitor or Independent Accountants, as applicable, will make a determination as soon as practicable within 30 days (or such other time as the Parties will agree in writing) after the Disputed Amount has been submitted to the Monitor or Independent Accountants, as applicable, for resolution, and the resolution of the Disputed Amounts by the Monitor, or Independent Accountants, as applicable, will be conclusive and binding upon the Parties. The costs of the Monitor or Independent Accountants, as applicable, will be borne by the Party losing the majority of the Disputed Amount.

11. MONITOR'S CAPACITY

Each of GW CDN and the Investment Advisor acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of GW CDN in the CCAA Proceedings and not in its personal or corporate capacity, will have no liability whatsoever in connection with this Agreement or the obligations of the Monitor provided herein in its capacity as Monitor, in its personal or corporate capacity or otherwise.

12. GENERAL

12.1 Notice

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows;

12.1.1 To the Investment Advisor:

Crimson Capital Inc.
379 Sunnyside Ave.
Toronto, Ontario
M6R 2R9

Attention: Donna Parr
E-Mail: parrdonna@gmail.com

12.1.2 To GW CDN:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300
Toronto-Dominion Bank Tower
Toronto, Ontario M5K 1E6

Attention: C. Ian Ross, Chairman
Fax: (416) 699-9250
Email: ianross@bell.net

with a copy to:

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Suite 5300, Box 48
Toronto, Ontario M5K 1E6

Attention:	Jonathan Grant
Fax:	(416) 868-0673
E-Mail:	jgrant@mccarthy.ca

or to such other Person's attention or at such other address as the Party to whom such notice is to be given shall have last notified the other Party hereto in the manner provided in this Section 12.1. Any notice delivered to the Party to whom it is addressed as hereinbefore provided shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing provided no postal strike is then in effect or comes into effect within two Business Days after such mailing. Any notice transmitted by telecopier or other form of electronic communication shall be deemed given and received on the day of its transmission if such day is a Business Day and the notice is transmitted during business hours and if not on the next following Business Day.

In the event of any disruption, strike or interruption in the postal service after mailing and before receipt or deemed receipt of a document, it will be deemed to have been received on the sixth Business Day following full resumption of the postal service.

12.2 Entire Agreement

This Agreement and the agreements contemplated herein constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations, conditions or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.3 Severability

If any of the provisions of this Agreement shall be held or made invalid, in whole or in part, the other provisions hereof shall remain in full force and effect. Invalid provisions shall, in accordance with the intent and purpose of this Agreement, be replaced by such valid provisions which in their economic effect come as close as legally possible to such invalid provisions.

12.4 Assignment

This Agreement may not be assigned by any Party without the prior written consent of the other Party.

12.5 Amendment

Any amendment to this Agreement shall be in writing and shall be executed by both Parties.

12.6 Time of the Essence

Time is of the essence of this Agreement.

12.7 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

12.8 No Third Party Beneficiaries

Except as provided in Sections 7.2 and 7.3, this Agreement is solely for the benefit of :

(a) the Investment Advisor, and its successors and permitted assigns, with respect to the obligations of GW CDN under this Agreement, and

(b) GW CDN, and its successors and permitted assigns, with respect to the obligations of the Investment Advisor under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other Person any claim or other right or remedy. The Investment Advisor appoints GW CDN as the trustee for the directors, officers and employees of GW CDN of the covenants of indemnification of the Investment Advisor of the specified in Section 7.3 and GW CDN accepts such appointment. GW CDN appoints the Investment Advisor as the trustee for the directors, officers and employees of the Investment Advisor of the covenants of indemnification of GW CDN specified in Section 7.2 and the Investment Advisor accepts such appointment.

12.9 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

12.10 Attornment

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario in the Court and the Court will have jurisdiction to entertain any action arising under this Agreement. The Parties hereby attorn to the jurisdiction of the Court.

12.11 Counterparts

This Agreement may be executed in one or more counterparts, all of which, irrespective of the time of execution, shall be considered as one and the same agreement.

12.12 Original Investment Advisor Agreement

Until the Effective Date, the Original Investment Advisor Agreement shall remain in full force and effect unless terminated in accordance with its terms prior to the Effective Date.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties have executed this Agreement.

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name:

Title:

CRIMSON CAPITAL INC.

By: _____

Name:

Title:

IN WITNESS WHEREOF the Parties have executed this Agreement.

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name:

Title:

CRIMSON CAPITAL INC.

By: _____

Name: Donna Parr

Title: President

Schedule A

Portfolio Companies

8191808 Canada Inc. (Formerly Kibboko Inc.) – 207,775 Common shares; $664,546.30 aggregate principal amount of convertible debenture

Acorn Income Corp.

Aegera Therapeutics Inc. \ Aegera Oncology Inc. - 309,407 common shares

Aizan Technologies Inc. – 3,601,440 Class A shares; 900,360 Class B shares

Ambit Biosciences – contingent value rights

Ascentify Learning Media Inc. – 400 Common shares; 3,269,200 Class A Preferred shares; 176,000 Class B Preferred shares; $195,000 aggregate principal amount of convertible debentures; $308,103 aggregate principal amount of promissory notes; $485,807 aggregate principal amount of secured debentures; $100,000 aggregate principal amount of demands notes; $100,000 aggregate principal amount of secured demand promissory notes

Blueprint Software Solutions – 363,36,5 Common shares; 1,890,276 Class A Convertible Preferred shares; 57,507 Institutional warrants expiring July 18, 2015; 7,588,934 Bridge warrants (effectively 5,059,289 Common shares at $0.015 per Common share) expiring July 18, 2015

C-Therm Technologies Ltd. (formerly Mathis Instruments Ltd.) – 75,000 Class A Shares; 90,909 Class B Shares; 10,260 Class C Warrants; $250,000 aggregate principal amount of debenture; 11,362.50 Common Shares; $500,000 aggregate principal amount of Secured Debenture

CanPro Ingredients Ltd. - 1,225,000 Class A common shares; $598,500 aggregate principal amount of subordinated debenture; 665,000 Series C Preferred shares; 2,916,675 Series C Preferred shares; $494,200 aggregate principal amount of convertible debenture; $116,667 aggregate principal amount of secured note

Chitogenics Pharmaceuticals Ltd. –13,000 Convertible Class A preferred shares

Ember Ec3 Inc. – 250,000 Class A convertible preferred shares; 1,500,000 Class B convertible preferred shares

Empex –$4,494,000 aggregate principal amount of 12% Debenture

Fidus International Inc. – $1,136,000 aggregate principal amount of 10% Debenture; 16,071,000 common shares; 1000 options; 9,801,000 preferred shares

GWC III Holdings ULC - 1 Class A voting share without par value

GWC IV Holdings ULC - 1 Class A voting share without par value

GWC GP Inc. - 1 common share

inPowered, Inc. (formerly NetShelter Inc.) – 44,550 Series A Preferred Shares

IS2 Medical Systems Inc. (CAVI) – 833,000 Class A preferred shares; 1,708,000 Class B preferred shares; 1,486,000 common shares

iStopOver (formerly PlanetEye Company ULC) – 2,482,000 common shares

iW Technologies Inc. –$83,000 aggregate principal amount of promissory notes (10%)

Lexicon Value Management Inc. – 1,000 Common Shares; $438,000 aggregate principal amount of 0% Debenture; $1,362,000 aggregate principal amount of 15% Debenture; 1,000 Warrants

LibreStream Technologies Inc. –545,000 preferred shares; 2,395 common shares; 1,000 options

Man Agra Capital Inc.

MedInnova Partners Inc. – 27,100,000 Class A Preference Shares, 9,185,143 Class A Preference Shares, 1,272,857 Class A Preference Shares, 200,000 Common Shares

Molecular Templates Inc.

Monteris Medical Inc. – $100,000 aggregate principal amount of Convertible Promissory Note; $200,000 aggregate principal amount of Convertible Promissory Note; $150,000 aggregate principal amount of Convertible Promissory Note; $142,858 aggregate principal amount of Promissory Note; 178,571 Class A Preferred Shares; 89,286 Class A Preferred Shares; 238,190 Exchangeable Common Shares; 201,580 Class A Exchangeable Preference Shares; 16,667 Class B Exchangeable Preferred Shares; 16,667 Class B Exchangeable Preferred Shares; 456,437 Special Voting Stock Shares; 33,333 Class B Exchangeable Preference Shares; 33,333 Class B Exchangeable Preference Shares; 238,190 Common Shares; 87,619 Class B Preferred Shares; 96,723 Common Shares; 97,619 Class B Preferred Shares

Morega Systems Inc. – 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Pref C Shares; 3,599,999 Class A Convertible Preferred Shares; Warrants for 4,799,999 Class A Convertible Preferred Shares; 3,599,999 Class A Convertible Preferred Shares; 4,799,999 Class A Convertible Preferred Shares

Natrix Separations Inc. – 477,741 Class D Preferred Shares; 67,338 Class C Preferred Shares; $1,030,993.24 aggregate principal amount of Convertible Secured Debenture

Niagara Growth Fund Inc. – 2,600,000 Class A Voting Shares

NxtPhase T&D Corporation (formerly Carmanah Engineering Ltd.) - $791,000 aggregate principal amount of Senior Secured Convertible Notes; $338,817.50 aggregate principal amount of Notes; 3,389 Class D Preferred Stock; Warrants for New Preferred Stock; $338,817.50 aggregate principal amount of Notes; 3,389 Class D Preferred Stock; Warrants for New Preferred Stock

OTYC Holdings Inc. – 232,500 common shares; 700,000 Class A shares; 4,986,300 Class B shares; 2,252,309 Class C shares; 8,221,955 Class D shares

Orthopaedic Synergy Inc. (formerly Praxim SA) - 3,987,772 Series B Preferred Stock

Panorama Software (formerly CompanyDNA Inc.) – 26,863 Series B Preferred Redeemable Shares; 334,444 Common Shares; Warrants for 16,117 Common Shares; 230,309 Common Shares; 18,722 Series B Share; Warrants for 11,233 Common Shares

Targeted Growth Inc. – $474,564 aggregate amount of 2013 Notes New Investment; 539,957 Series D2 Preferred Shares; 533,333 Series D Pfd; 1,884,836 Series C Preferred Shares

Twinstrand Therapeutics Inc.

ViOptix Canada Inc. – $1,500,000 aggregate amount of Oct 2004 Convertible Debentures convertible into 311,372 Jr. Pref shares; 600,089 shares Conversion to Jr Prefs (cost 2,500,000 USD); 17,693,002 Class D Shares, FMV 5,976,000 USD (as at June 5, 2013); 1,056,834 Warrants; Sep 2009 Convertible Debentures, FMV 756,217 USD; Jan 2010 Convertible Debentures, FMV = 749,672 USD; Jun 2010 Convertible Debentures, FMV = 1,330,300 USD

TAB P

This is Exhibit "**P**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	~~MONDAY,~~ FRIDAY THE 22ND
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2019

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.

STAY EXTENSION ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") for an order extending the stay period defined in paragraph 14 of the initial order of the Honourable Mr. Justice Newbould made October 1, 2013, as amended and restated on October 29, 2013 (the "**Stay Period**"), and for an order approving an amended and restated investment advisor agreement between Crimson Capital Inc. ("**Crimson Capital**") and the Fund (the "**Second Amended and Restated IAA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, including the Notice of Motion and the affidavit of C. Ian Ross sworn on March 19, 2019 (the "**Motion Record**"), the Twenty-Fourth 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 and the Monitor, no one appearing for any other party although duly served.

SERVICE

1. THIS COURT ORDERS that the time for service of the Motion Record and the Twenty-

Fourth 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 December 31, 2019.

APPROVAL OF SECOND AMENDED AND RESTATED IAA

3. THIS COURT ORDERS that the form of Second Amended and Restated IAA attached as Exhibit "C" to the affidavit of C. Ian Ross sworn on March 19, 2019, filed, and appended hereto as Schedule "**A**", is hereby approved, and the Fund is authorized to execute the Second Amended and Restated IAA in substantially the same form and content as attached hereto, and is authorized to perform its obligations thereunder.

4. THIS COURT ORDERS that the Second Amended and Restated IAA cannot be disclaimed by the Fund or by any representative of the Fund or person having control of the Fund's business or property, including any interim receiver, receiver, or trustee that may be appointed in respect to the Fund's business or property, and the Second Amended and Restated IAA shall not be affected by any plan of arrangement or compromise filed in these proceedings or by any step taken in any other proceeding, including any receivership or bankruptcy in respect of the Fund's business or property.

5. THIS COURT ORDERS that Crimson Capital shall be entitled to receive all payments and reimbursements as set out in the Second Amended and Restated IAA, including all fees and expenses provided for therein, and that such payments and reimbursements shall not be compromised, reduced or affected by any plan of arrangement or compromise filed in these proceedings or by any step taken in any other proceeding, including any receivership or bankruptcy in respect of the Fund's business or property.

6. THIS COURT ORDERS that effective immediately, the Monitor is hereby fully and exclusively authorized and empowered to take any and all actions and steps with respect to the

obligations of the Monitor under the Second Amended and Restated IAA including, without limitation:

a. taking any and all steps, including, without limitation, steps in the name of or on behalf of the Applicant, as are in the reasonable discretion of the Monitor necessary or appropriate to carry out the Monitor's obligations under the Second IAA; and

b. in the event of a Dispute (as defined in the Second Amended and Restated IAA), other than with respect to a Disputed Amount (as defined in the Second Amended and Restated IAA), the Monitor shall assist the parties in engaging in settlement discussions with respect to such Dispute in accordance with section 10 of the Second Amended and Restated IAA and, if such Dispute is not resolved, the Monitor shall report to the Court with the Monitor's views and recommendations in respect of such Dispute.

7. Notwithstanding anything to the contrary contained in this or any other order in these proceedings or in the Second Amended and Restated IAA, the Monitor shall not incur any liability or obligation as a result of the Monitor's powers and duties hereunder, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except as may result from gross negligence or wilful misconduct of the Monitor.

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

MAR 2 2 2019

PER / PAR:

SCHEDULE "A"

SECOND AMENDED AND RESTATED INVESTMENT ADVISOR AGREEMENT

THIS AGREEMENT is made as of March 18, 2019 between **CRIMSON CAPITAL INC.** (the "**Investment Advisor**"), a corporation incorporated under the laws of the Province of Ontario, and **GROWTHWORKS CANADIAN FUND LTD.** ("**GW CDN**"), a corporation incorporated under the laws of Canada.

RECITALS:

WHEREAS GW CDN is the owner of a portfolio of securities;

AND WHEREAS GW CDN wishes to retain the Investment Advisor to provide investment management and other services as described hereunder;

AND WHEREAS the Investment Advisor is willing to provide such investment management and other services as described hereunder;

AND WHEREAS the Parties (as defined herein) entered into an amended and restated investment advisor agreement made as of December 11, 2017 (the "**2017 Investment Advisor Agreement**");

AND WHEREAS the Parties wish to amend and restate the 2017 Investment Advisor Agreement in its entirety effective as of the Effective Date;

NOW THEREFORE in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Additional Fee**" shall have the meaning set out in Section 6.3;

"**Additional Term**" shall have the meaning set out in Section 8.1;

"**Affiliate**" means with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with, such specified Person;

"**Agreement**" means this Amended and Restated Investment Advisor Agreement between the Investment Advisor and GW CDN, as amended, supplemented or restated from time to time;

"**Applicable Law**" means any applicable domestic or foreign law, including any statute, subordinate legislation or treaty, including the CCAA and the *Securities Act* (Ontario), and any applicable guideline, directive, rule, standard, requirement, policy, order (including an order of the Court in connection with the CCAA Proceedings or otherwise) judgment, injunction, award or decree of a Governmental Authority having the force of law;

"**Approval Order**" means an Order *inter alia* approving this Agreement on terms satisfactory to the Investment Advisor, GW CDN and the Monitor;

"**Board of Directors**" means the board of directors of GW CDN;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory or civic holiday, on which banks are open for business in Toronto, Ontario;

"**CCAA**" means *Companies' Creditors Arrangement Act* (Canada);

"**CCAA Proceedings**" means the proceedings under the CCAA relating to the restructuring of GW CDN;

"**Confidential Information**" means all data and information of a confidential nature, in any form (written, oral, electronic or any other form or media) and of any nature whatsoever, relating to the Portfolio, any Portfolio Company or GW CDN, investment strategies and techniques, financial or accounting data or activities provided or disclosed by or on behalf of GW CDN, the Monitor or any of their respective Representatives to the Investment Advisor or any of its Representatives, but does not include information that has otherwise been made available to the public other than by a breach of this Agreement by the Investment Advisor or any of its Representatives;

"**Contract Period**" means the 9 month period commencing on April 1, 2019 and includes the three month period of any Additional Term;

"**Control**" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means;

"**Court**" means the Ontario Superior Court of Justice, Commercial List (Toronto), presiding over the CCAA Proceedings;

"**Dispute**" shall have the meaning set out in Section 10.1.1;

"**Dispute Notice**" shall have the meaning set out in Section 10.1.1;

"**D&O Insurance Premiums**" means any directors and officers insurance premiums incurred with respect to any Representative of the Investment Advisor in connection with the provision by the Investment Advisor of the services hereunder (other than Excluded D&O Insurance Premiums);

"**Effective Date**" means the later of (i) the date this Agreement is approved by the Court; and (ii) April 1, 2019;

"**Escrowed Proceeds Arrangements**" shall have the meaning set out in the definition of Excluded Proceeds in Section 1.1;

"**Excluded D&O Insurance Premiums**" means D&O Insurance Premiums incurred with respect to any Representative of the Investment Advisor (other than Donna Parr) who has not been approved in writing by GW CDN, for purposes of reimbursement of D&O Insurance Premiums hereunder, prior to such premiums being incurred;

"**Excluded Proceeds**" means any proceeds received by GW CDN or the Monitor (on behalf of GW CDN) from (i) the collection of escrowed proceeds, including milestone payments, deferred purchase price consideration and earn-out payments, but only to the extent such escrowed proceeds relate to dispositions of assets made by GW CDN prior to December 8, 2015, unless GW CDN collects such escrowed proceeds prior to the date on which it is otherwise contractually entitled directly as a result of arrangements ("**Escrowed Proceeds Arrangements**") made by the Investment Advisor which are approved by GW CDN pursuant to Section 4.1.1 during the Term or an Additional Term, if applicable, in which case such collected escrowed proceeds (hereinafter referred to as "**IA Advanced Proceeds**") shall not constitute Excluded Proceeds for the purposes hereof; or (ii) any cash held on December 8, 2015 by MedInnova Partners Inc.;

"**Extension Notice**" shall have the meaning set out in Section 8.1;

"**Follow-on Financing**" shall have the meaning set out in Section 4.1.5;

"**Follow-on Financing Notice**" shall have the meaning set out in Section 4.1.5;

"**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances and includes, without limitation, the Court;

"**GW CDN**" shall have the meaning set out in the preamble;

"**IA Advanced Proceeds**" shall have the meaning set out in the definition of Excluded Proceeds in Section 1.1;

"**Investment Advisor**" shall have the meaning set out in the preamble;

"**Investor Agreements**" means all shareholders' agreements, investor agreements, investor rights agreements, registration rights agreements and similar agreements affecting the interest of GW CDN in the Portfolio Securities;

"**Knowledge**" means, with respect to GW CDN, the actual knowledge of C. Ian Ross;

"**Legal Expenses**" shall have the meaning set out in Section 6.2.2;

"**Losses**" shall have the meaning set out in Section 7.1;

"**Monitor**" means FTI Consulting Canada Inc. or its successors in its capacity as Court-appointed monitor to GW CDN in the CCAA Proceedings;

"**Monthly Fee**" shall have the meaning set out in Section 6.1;

"**Net Proceeds**" means, in respect of any period, (i) the aggregate proceeds of disposition received by GW CDN or the Monitor (on behalf of GW CDN) during such period from the disposition of Portfolio Securities completed during such period, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such disposition; (ii) any IA Advanced Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during such period, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such IA Advanced Proceeds; and (iii) the aggregate proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during such period from the disposition of all of the outstanding Class A shares of GW CDN to an arm's length third party during such period directly as a result of arrangements made by the Investment Advisor which are approved in writing and in advance by GW CDN, less reasonable third party costs and expenses (other than costs and expenses incurred by GW CDN and not at the direction of the Investment Advisor) attributable to such disposition; excluding in each case any Excluded Proceeds;

"**Order**" means an order of the Court;

"**Other Clients**" shall mean clients other than GW CDN to which the Investment Advisor provides investment management or advisory services;

"**Parties**" shall mean the Investment Advisor and GW CDN, collectively, and "**Party**" shall mean either one of them;

"**Person**" includes any individual, partnership, joint venture, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, body corporate, corporation or unincorporated association or organization, whether or not having legal status;

"**Portfolio**" shall mean the portfolio of Portfolio Securities;

"**Portfolio Companies**" means each of the companies listed on Schedule A, other than those companies the securities of which GW CDN sold, or otherwise disposed of, after December 8, 2015;

"**Portfolio Securities**" means the securities of the Portfolio Companies held by or on behalf of GW CDN from time to time, including securities acquired by GW CDN pursuant to Follow-on Financings and securities acquired or received pursuant to stock divisions, stock dividends, stock consolidations or other reorganisations of Portfolio Companies;

"**Receivable**" means, in respect of any Net Proceeds, those Net Proceeds which (i) arise from a disposition of Portfolio Securities or Class A shares of GW CDN or the collection of IA Advanced Proceeds, as applicable, in each case arranged by the Investment Advisor during the Term or an Additional Term, (ii) are, by the terms of such arrangements, not to be (and are not) received by GW CDN or the Monitor (on behalf of GW CDN) until after the end of the Term or an Additional Term, as applicable, and (iii) would have been included in the calculation of an Additional Fee if the transaction resulting from such arrangements had occurred during the Term or an Additional Term, as applicable;

"**Representatives**" means, in respect of either Party, the directors, officers, employees, agents and advisors (including financial advisors and legal counsel) of that Party and the directors, officers and employees of any agent or advisor of that Party and (i) in the case of GW CDN, includes the Monitor and its officers, directors, limited partners, employees, agents and advisors, and (ii) in the case of the Investment Advisor, excludes Roseway Capital S.a.r.l. and its respective Affiliates, general and limited partners and any officer, director, employee, agent or advisor (financial, accounting, legal or otherwise) of Roseway Capital S.a.r.l. or such Affiliate, general or limited partner, agent or advisor;

"**Roseway Investment Advisor Agreement**" means the investment advisor agreement dated as of May 9, 2014 between Roseway Capital S.a.r.l. and GW CDN, as amended, restated, modified or supplemented from time to time;

"**Tail Period**" means the period commencing on and including the date of termination of this Agreement and ending on and including the six month anniversary of such date of termination;

"**Term**" shall have the meaning set out in Section 8.1; and

"**Transaction Expenses**" shall have the meaning set out in Section 6.2.1.

1.2 Headings

In this Agreement, headings are for convenience of reference only, do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

1.3 Interpretation

In this Agreement,

1.3.1 Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa, wherever the context requires;

1.3.2 All references to designated Articles, Sections, other subdivisions and Schedules are to the designated Articles, Sections, other subdivisions and Schedules of this Agreement;

1.3.3 All accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada from time to time consistently applied;

1.3.4 Any reference to a law or statute will include and will be deemed to include a reference to the rules and regulations made pursuant to it, and any reference to a law or statute or regulation shall be deemed to include all amendments made to the law, statute or regulations in force from time to time, and to any law, statute or regulation that may be passed which has the effect of supplementing or superseding the law or statute referred to or the relevant regulation;

1.3.5 Any reference to a Person will include and will be deemed to be a reference to any Person that is a successor to that Person;

1.3.6 "hereof, 'hereto'', "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision. The term "including" means "including without limiting the generality of the foregoing"; and

1.3.7 References in this Agreement to the Monitor will be applicable only to the extent that GW CDN remains, at the relevant time, subject to the CCAA Proceedings. From and after the date, if any, on which GW CDN ceases to be subject to the CCAA Proceedings, all references herein to the Monitor will be deemed to be a reference to GW CDN.

1.4 Currency

All references to currency herein are references to lawful money of Canada.

2. APPOINTMENT OF INVESTMENT ADVISOR

2.1 Appointment

Upon and subject to the terms and conditions hereof and subject to obtaining the Approval Order, GW CDN hereby appoints, effective as of the Effective Date, the Investment Advisor as investment advisor to GW CDN with full authority and responsibility to provide or cause to be provided to GW CDN the investment management and administrative services hereinafter set forth in respect of the Portfolio and the Investment Advisor hereby accepts such appointment and agrees to act in such capacity and to provide or cause to be provided such investment management and administrative services.

3. REPRESENTATIONS AND WARRANTIES OF GW CDN AND THE INVESTMENT ADVISOR

3.1 Representations and Warranties of GW CDN

3.1.1 GW CDN represents and warrants that:

3.1.1.1 it is a corporation incorporated under the laws of Canada and is validly subsisting under such laws;

3.1.1.2 subject to the Orders granted in the CCAA Proceedings, it has the corporate capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreements by which it is bound or any laws to which it is subject;

3.1.1.3 subject to the Orders granted in the CCAA Proceedings, it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of it;

3.1.1.4 to the Knowledge of GW CDN, it is the registered and beneficial owner of all of the Portfolio Securities, with good and valid title therto; and

3.1.1.5 to the Knowledge of GW CDN, the Portfolio Securities listed in Schedule A include all of the Portfolio Securities owned as of the date hereof by GW CDN.

3.2 Representations and Warranties of the Investment Advisor

3.2.1 The Investment Advisor represents and warrants that:

3.2.1.1 it has the capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any agreement by which it is bound or any laws to which it is subject;

3.2.1.2 it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of the Investment Advisor;

3.2.1.3 it holds all necessary licenses, registrations and permits to fulfil its obligations under this Agreement and covenants to maintain all necessary licenses, registrations and permits to fulfil such obligations throughout the term of this Agreement; and

3.2.1.4 nothing has come to the attention of the Investment Advisor that would result in the representations and warranties of GW CDN in Sections 3.1.1.4 and 3.1.1.5, respectively, (disregarding for the purposes of this Section 3.2.1.4 any reference to the Knowledge of GW CDN in those Sections) being untrue or incorrect.

4. DUTIES AND RESPONSIBILITIES OF THE INVESTMENT ADVISOR

4.1 Duties Related to Portfolio

The Investment Advisor shall serve as investment advisor to GW CDN and make recommendations to the Board of Directors with respect to investment and divestment decisions in respect of the Portfolio, in each case in accordance with, and subject to the terms of this Agreement, the Investor Agreements and Applicable Law. Except for reports the form of which is already specified in this Agreement, any reports required to be prepared by the Investment Advisor hereunder may be prepared in excel spreadsheet format, which must be in a printable form, and if GW CDN requires any written report from the Investment Advisor in any other format than an excel spreadsheet, GW CDN shall be required to provide 30 days prior written notice thereof to the Investment Advisor together with a copy of a sample of such other format. Without limiting the generality of the foregoing, the Investment Advisor shall:

4.1.1 subject to having obtained the prior approval of the Board of Directors to dispose of, or invest in, Portfolio Securities or make any Escrowed Proceeds Arrangements (which determination by the Board of Directors as to whether to approve or refuse to approve any disposition of, or investment in, Portfolio Securities or Escrowed Proceeds Arrangements shall be made in the sole discretion of the Board of Directors and shall be provided within fifteen (15) Business Days (or the period referred to in the last sentence of Section 4.1.5, whichever is the lesser number of days) of receipt by GW CDN of a request for such approval), make all appropriate arrangements to implement such disposition of, or investment in, Portfolio Securities or Escrowed Proceeds Arrangements in the ordinary course and otherwise in accordance with the CCAA, including Sections 11.3, 32 and 36 thereof;

4.1.2 issue appropriate instructions to the custodian (or the sub-custodian) of the Portfolio Securities to facilitate delivery and settlement of Portfolio transactions;

4.1.3 monitor and use commercially reasonable efforts to enforce all of the rights of GW CDN under the Investor Agreements;

4.1.4 prepare and deliver to GW CDN and the Monitor quarterly written reports, in the form used by Crimson Capital Inc., in its capacity as sub-contractor to Roseway Capital S.a.r.l. under the Roseway Investment Advisor Agreement, during the 12 month period immediately preceding the effective date of termination of the Roseway Investment Advisor Agreement, with respect to any disposition transactions and the status of the Portfolio, including an assessment of the liquidity of each Portfolio Company, significant corporate developments involving the Portfolio Companies of which the Investment Advisor has been made aware, the Investment Advisor's estimation of when a divestment opportunity is likely to proceed and anticipated conditions to a divestment occurring (without any obligation to prepare a formal valuation of any Portfolio Security);

4.1.5 prepare and deliver to GW CDN and the Monitor a written notice (a "**Follow-on Financing Notice**') of any follow-on investment opportunity in a Portfolio Company in which GW CDN is entitled, or has been invited, to participate (each, a "**Follow-on Financing**"), promptly following the receipt by the Investment Advisor of information relating to such Follow-on Financing and analysis by the Investment Advisor of such Follow-on Financing. The Follow-on Financing Notice will include: (a) a copy of any notice and related term sheet or similar document received by the Investment Advisor from the applicable Portfolio Company in respect of such Follow-on Financing; (b) to the extent known by the Investment Advisor, the names of any other parties that plan on participating in such Follow-on Financing and the extent of their participation; (c) any other material terms and conditions of the proposed Follow-on Financing known to the Investment Advisor that would be considered necessary by a reasonable investor to make an investment decision; and (d) the date by which the Portfolio Company requires the Fund to exercise its right to participate in the Follow-on Financing. The Investment Advisor shall update the Follow-on Financing Notice if the Investment Advisor becomes aware of any change of the terms of the Follow-on Financing or any additional information that would have been included in the Follow-on Financing Notice becomes known to the Investment Advisor. GW CDN shall provide notice of its intention to participate in the Follow-on Financing not later than the day immediately preceding the date set out in clause (d) of this Section 4.1.5;

4.1.6 maintain or cause to be maintained at all times reasonably complete and accurate records, including in electronic form, relating to Portfolio transactions occurring during the Term, which records will be accessible for inspection by one or more Representatives of GW CDN and the Monitor at any time during ordinary business hours, upon reasonable notice;

4.1.7 deliver to GW CDN on an annual basis, an external hard drive or USB flash drive containing an electronic copy of all documents received by the Investment Advisor in relation to the Portfolio Companies during the most recently completed year, including the documentation delivered pursuant to Section 4.1.4;

4.1.8 permit one or more designated Representatives of GW CDN and the Monitor, respectively, access to view any records kept by the Investment Advisor and used for the preparation of the reports referenced in Section 4.1.4 during ordinary business hours, upon reasonable notice;

4.1.9 be responsible for monitoring and ensuring compliance by the Investment Advisor and its Representatives with all Applicable Laws directly relating to the management, investment or divestment of Portfolio Securities, provided that the Investment Advisor shall not be responsible for any compliance by GW CDN with Applicable Laws directly relating to GW CDN's status as a reporting issuer under applicable securities laws; and

4.1.10 carry out such other actions ancillary to the services to be provided under this Agreement as agreed to between the Parties, including providing GW CDN and the Monitor with such information which is related to the services provided under this Agreement as may be reasonably requested from time to time.

4.2 Delegation by the Investment Advisor

4.2.1 In carrying out its obligations hereunder, the Investment Advisor may not delegate any of its services or functions hereunder to any agents, advisors, sub-contractors or other Persons without the prior written consent of GW CDN and, where such consent is provided, any costs of such agents, advisors, sub-contractors or other Persons shall be for the account of the Investment Advisor.

4.2.2 In carrying out its obligations hereunder, the Investment Advisor may engage consultants with particular expertise in certain technology, sales or management with the prior written consent of GW CDN in which case the costs of such experts shall be for the account of and invoices shall be sent directly to GW CDN; provided that the Investment Advisor shall seek reimbursement for such consultants from the applicable Portfolio Company.

4.3 Standard of Care

4.3.1 The Investment Advisor covenants that it shall exercise its powers and discharge its duties and responsibilities hereunder, diligently, honestly and in good faith, and in the best interests of GW CDN and in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a specialty and experience as an investment advisor would exercise in the same circumstances; provided that the Investment Advisor is required to follow the direction of GW CDN related to investment and disposition decisions in accordance with Section 4.3.3.

4.3.2 The Investment Advisor agrees to comply with all Applicable Laws insofar as such relate to the Investment Advisor's position as the investment advisor to GW CDN or its obligations hereunder.

4.3.3 Notwithstanding any other provision of this Agreement, the Investment Advisor agrees to comply with any directions given to it by GW CDN with respect to an investment in, or disposition of, Portfolio Securities; provided that:

4.3.3.1 GW CDN shall consult with the Investment Advisor with respect to any such proposed directions;

4.3.3.2 any such direction complies with Applicable Laws; and

4.3.3.3 any such direction does not conflict with an express provision of this Agreement, unless mutually agreed upon by the Investment Advisor and GW CDN.

4.3.4 Notwithstanding any other provisions of this Section 4.3, GW CDN acknowledges and agrees that to the extent Donna Parr, or other person approved by GW CDN in writing, is acting solely in her or his capacity as a director of a Portfolio Company, Donna Parr or such other person, will be subject to a director's fiduciary duties to act in the best interests of such Portfolio Company.

4.4 Other Activities

Nothing in this Agreement, subject to the confidentiality obligations set out in Article 9, shall prevent or restrict the Investment Advisor or any of its Affiliates from providing similar services to other Persons, including to Other Clients, or from engaging in any other activities, nor shall it require any such Person to account to the Investment Advisor or to GW CDN or to the Monitor for any profit or benefit arising from any such activity.

5. DUTIES RELATED TO GW CDN

5.1.1 GW CDN shall maintain or cause to be maintained at all times reasonably complete and accurate books of account and records relating to the Portfolio, which books of account and records shall be accessible for inspection by a designated representative of the Investment Advisor at any time, upon reasonable notice, during ordinary business hours.

5.1.2 GW CDN shall make available or cause to be made available on a timely basis all personnel familiar with the Portfolio, the Portfolio Companies and the Portfolio Securities as reasonably required from time to time in order to allow the Investment Advisor to provide the services and to perform its duties and obligations pursuant to this Agreement.

5.1.3 GW CDN shall make available to the Investment Advisor, on a timely basis, all notices sent by GW CDN to, or received by GW CDN from Portfolio Companies or with respect to the Portfolio Securities.

5.1.4 Except as set forth in Section 4.1.9, GW CDN shall be responsible for all corporate, accounting and auditing, administration, shareholder, and regulatory matters with respect to the Portfolio, the Portfolio Companies and the Portfolio Securities.

6. COMPENSATION AND DISPOSITION OF PROCEEDS

6.1 Monthly Fee

As compensation for its services under this Agreement, the Investment Advisor will be paid by GW CDN, a monthly fee of $10,417 (the "**Monthly Fee**") for the Contract Period. The Monthly Fee is payable in arrears on the last Business Day of each month of the Contract Period. During any Additional Term, the Investment Advisor will be paid the Monthly Fee payable in arrears on the last Business Day of each month of the Additional Term.

6.2 Transaction Fees

6.2.1 In addition to the Annual Fee, GW CDN will reimburse the Investment Advisor for all lawful, proper, reasonable and necessary out-of-pocket expenses (other than Excluded D&O Insurance Premiums), including travel expenses to meet with Portfolio Companies and D&O Insurance Premiums (collectively the "**Transaction Expenses**"), incurred by the Investment Advisor in the course of making investment and divestment and portfolio management decisions in respect of the Portfolio Securities up to a maximum aggregate amount of $25,000 per annum for travel expenses (pro rated to cover any partial Contract Year) plus up to a maximum of $10,000 per annum for D&O Insurance Premiums (pro rated to cover any partial Contract Year to the extent permitted by the insurer). The Transaction Expenses will be reimbursed by GW CDN within three (3) Business Days of submission of proper receipts; provided however that the Investment Advisor will seek reimbursement for any Transaction Expenses from the applicable Portfolio Company and the Investment Advisor shall not be reimbursed for any Transaction Expenses that have otherwise been paid by or on behalf of a Portfolio Company to the Investment Advisor. With respect to any Transaction Expenses which are payable by a Portfolio Company to the Investment Advisor but reimbursed by GW CDN to the Investment Advisor, GW CDN will pay such Transaction Expenses as agent on behalf of the applicable Portfolio Company and, the Investment Advisor will direct each such Portfolio Company to pay directly to GW CDN any such Transaction Expenses that have been reimbursed by GW CDN, as agent on behalf of the Portfolio Company.

6.2.2 In carrying out its obligations hereunder, the Investment Advisor may retain legal counsel to perform services related to the liquidation of the Portfolio Securities and Follow-on Financings provided that such legal counsel (i) shall extend the benefit of its advice to GW CDN; (ii) shall take instructions from the Investment Advisor; and (iii) must be approved in advance and in writing by GW CDN, acting reasonably, if such legal counsel has acted adverse to the Fund in any litigation matter. The reasonable costs of any such legal counsel (the "**Legal Expenses**") shall be paid directly by GW CDN to such legal counsel, upon submission of such proper invoices and other documentation reasonably satisfactory to GW CDN and the Monitor; provided however that the Investment Advisor will seek reimbursement on behalf of GW CDN for any Legal Expenses from the applicable Portfolio Company. The Investment Advisor will not accept payment of any Legal Expenses from or on behalf of a Portfolio Company.

6.3 Additional Fees

6.3.1 In addition to the other fees described in this Article 6 and subject to Section 6.3.7, the Investment Advisor shall, except in respect of any period occurring after the termination of this Agreement pursuant to Section 8.1(ii), Section 8.2, Section 8.3(i), Section 8.3(ii), Section 8.3(iii) or Section 8.4, be entitled to a fee (the "**Additional Fee**") equal to

6.3.1.1 in the case of any Net Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) during the Contract Period, 7% of such Net Proceeds; and

6.3.1.2 in the case of any Receivables received by GW CDN or the Monitor (on behalf of GW CDN) and which are attributable to a completed transaction that occurred during the Contract Period, 7% of such Receivables.

6.3.2 Any Additional Fee shall be paid within three (3) Business Days of the later of (i) the date of receipt of the Net Proceeds or the receipt of the Receivable by GW CDN or the Monitor (on behalf of GW CDN), and (ii) the date of receipt by GW CDN of an excel spreadsheet from the Investment Advisor setting out in reasonable detail the calculation of the applicable Additional Fee (which spreadsheet may be delivered by the Investment Advisor to the Fund before or after the completion of the applicable transaction giving rise to Net Proceeds), unless the Parties are not in agreement as to the amount of Net Proceeds or the Receivable and either Party has delivered to the other Party a Dispute Notice pursuant to Section 10.1.1, in which case the Additional Fee shall be paid within three (3) Business Days following a decision in accordance with Section 10.

6.3.3 In addition to the other fees described in this Article 6 and subject to Section 6.3.7, in the event of a termination of this Agreement by the Investment Advisor pursuant to Section 8.2 or by GW CDN pursuant to Section 8.3(i), the Investment Advisor shall be entitled to (i) a fee equal to 7% of any Net Proceeds received by GW CDN or the Monitor (on behalf of GW CDN) in respect of dispositions of Portfolio Securities completed by GW CDN during the Tail Period, and (ii) a fee equal to 7% of any Receivables received by GW CDN or the Monitor (on behalf of GW CDN) and which are attributable to a completed transaction that occurred during the Tail Period.

6.3.4 Any fee payable pursuant to Section 6.3.4 shall be paid within three (3) Business Days of the last day of the Tail Period or receipt of the Receivables, as applicable, unless the Parties are not in agreement as to the amount of the applicable fee and either Party has delivered a Dispute Notice pursuant to Section 10.1.1, in which case such fee shall be paid within 10 Business Days following a decision in accordance with Section 10.

6.3.5 To the extent a fee that may be payable under this Section 6.3 is the subject of a Dispute Notice, the amount of such fee claimed by the Investment Advisor (to the maximum amount the applicable fee provided for hereunder) will be held in a separate account in trust with the Monitor until the applicable Dispute is resolved by the Court.

6.3.6 Fees, securities and other compensation paid or issued by, or on behalf of, any Portfolio Company to a member of the board of directors of such Portfolio Company who is a nominee of the Investment Advisor may not be retained by the

Investment Advisor or nominee board member and shall be for the benefit of, and paid and assigned to, GW CDN, except that any such compensation may be retained by a nominee board member who has been approved by GW CDN in writing for the purposes of this Section (with Bryan Boyd being hereby confirmed as being so approved, but only in his capacity as nominee board member of Aizan Technologies Inc.). The Investment Advisor shall include in each quarterly report delivered pursuant to Section 4.1.4 a summary of all such cash, options and other investments paid to or received by the Investment Advisor or any such nominee board member during the period covered by such report.

6.3.7 For purposes of calculating any fee payable by the Fund to the Investment Advisor under this Section 6.3 in respect of a disposition of Portfolio Securities or Class A shares of GW CDN or collection of IA Advanced Proceeds, as applicable, any Receivable in respect of such transaction shall be included in the calculation of such fee for the applicable period and, in each case, without duplication, but the portion, if any, of such fee attributable to such Receivable shall only be payable by GW CDN if and when such Receivable is actually received by GW CDN.

6.4 Taxes

All amounts payable to the Investment Advisor are exclusive of any applicable harmonized sales taxes payable by GW CDN, which will be payable by GW CDN, in addition to the fees payable hereunder, where applicable.

6.5 Expenses Borne by GW CDN

GW CDN shall pay all expenses relating to the performance of GW CDN's obligations pursuant to Article 5.

6.6 Proceeds of Disposition

The Investment Advisor will ensure that all cash proceeds from the disposition of any Portfolio Securities or GW CDN's entitlement to escrowed proceeds, including milestone payments, deferred purchase price consideration and earn-out payments, or the sale of the shares of GW CDN are directed to an account in the name of the Monitor in immediately available funds.

7. INDEMNITY

7.1 Liability of the Investment Advisor

Neither the Investment Advisor nor any of its Representatives shall be liable for any error of judgment or for any losses, claims, damages or liabilities ("**Losses**") suffered by the Portfolio in connection with the matters to which this Agreement relates, except to the extent that any such Losses result from (i) the fraud, bad faith, wilful misconduct or gross negligence of the Investment Advisor or any of its Representatives; (ii) the breach by the Investment Advisor or any of its Representatives of the standard of care set out in Section 4.3; or (iii) the material

breach by the Investment Advisor of any of the Investment Advisor's obligations and duties hereunder.

7.2 Indemnity of GW CDN

GW CDN shall indemnify and hold harmless the Investment Advisor and its Representatives from and against all Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor directly related to the performance of its obligations hereunder other than those performed or omitted fraudulently, in bad faith or attributable to the gross negligence, dishonesty or wilful misconduct of the Investment Advisor or any of its Representatives; or (ii) acts or omissions of GW CDN directly related to the performance of its obligations hereunder which are omitted fraudulently, in bad faith or attributable to the gross negligence or wilful misconduct of GW CDN. Nothing herein shall be deemed to protect the Investment Advisor against any liability to GW CDN, its directors, officers, employees and shareholders where the Investment Advisor has materially breached its obligations as set forth in this Agreement.

7.3 Indemnity of the Investment Advisor

The Investment Advisor shall indemnify and hold harmless GW CDN and its directors, officers, agents, employees and advisors and their respective directors, officers and employees from and against any Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor performed or omitted fraudulently, in bad faith or attributable to the gross negligence or wilful misconduct of the Investment Advisor; or (ii) a material breach by the Investment Advisor of an obligation or duty hereunder. The Investment Advisor and its Representatives shall not be liable to, and shall not be required to, indemnify GW CDN for any Losses as a result of any default, failure or defect in any of the securities and financial instruments comprising the Portfolio.

8. TERM AND TERMINATION

8.1 Term

This Agreement shall continue in full force and effect during the period (the "**Term**") commencing on the Effective Date and terminating on the earliest of: (i) December 31, 2019; (ii) the effective date of termination of this Agreement pursuant to Section 8.2, 8.3 or 8.4, as applicable; and (iii) the date on which GW CDN completes the disposition of all or substantially all of the remaining Portfolio Securities. Upon mutual agreement of GW CDN and the Investment Advisor, GW CDN may extend the date set out in clause (i) of this Section for an additional three months (the "**Additional Term**") by notice (an "**Extension Notice**") provided not later than ten (10) Business Days prior to the expiry of the Term, in which case the date set out in Section 8.1 (i) shall be deemed to be March 31, 2020 for all purposes of this Agreement.

8.2 Termination by Investment Advisor

The Investment Advisor may terminate this Agreement upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by GW CDN (and, without limitation, the failure to comply with Section 10 would constitute a material breach

of this Agreement) and such breach has not been waived or cured within 30 days following the date on which the Investment Advisor notifies GW CDN and the Monitor in writing of such breach and the effective date of such termination shall be the end of such 30 day period.

8.3 Termination by GW CDN

GW CDN may terminate this Agreement (i) at any time, upon 180 days' prior written notice and the effective date of such termination shall be the end of such 180 day period; (ii) upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by the Investment Advisor (and, without limitation, the failure to comply with Section 10 would constitute a material breach of this Agreement) and such breach has not been waived or cured within 30 days following the date on which GW CDN notifies the Investment Advisor in writing of such breach and the effective date of such termination shall be the end of such 30 day period; or (iii) in the event that Donna Parr ceases, for any reason, to provide on behalf of the Investment Advisor, any of the services to be provided by the Investment Advisor hereunder unless the Investment Advisor has delegated such obligations in accordance with the terms of Section 4.2, and the effective date of such termination shall be the date of receipt by the Investment Advisor of a notice of termination given by GW CDN pursuant to this Section 8.3(iii).

8.4 Termination by Either Party

Either Party may terminate this Agreement upon written notice to the other Party if this Agreement has not been approved by the Court on or before December 31, 2017.

8.5 Action upon Termination

8.5.1 From and after the effective date of termination of this Agreement, the Investment Advisor shall be entitled to the following payments:

(i) Annual Fees and Additional Fees, if applicable, which have been earned to the effective date of termination and remain unpaid as at such date; and

(ii) unpaid Transaction Expenses incurred on or prior to the effective date of termination.

8.5.2 The Investment Advisor and its Affiliates, as applicable, shall forthwith, upon termination of this Agreement deliver to GW CDN all property and documents of, or relating to, the Portfolio, including financial and accounting records which are in the possession or control of the Investment Advisor or any of its Affiliates, other than a copy retained for its own records, which copy shall remain subject to the provisions of Article 9.

8.5.3 In the event that a new investment advisor is retained by GW CDN in connection with the termination of this Agreement, the Investment Advisor will do all things and take all steps necessary or advisable to promptly and effectively transfer the management of the Portfolio and the Portfolio Securities as well as the books, records and accounts to the new portfolio investment advisor or as instructed by

GW CDN in writing. The Investment Advisor shall execute and deliver all documents and instruments necessary or advisable to effect and facilitate such transfer.

8.6 Survival

The provisions of Section 6.4, Article 7, Section 8.5, Article 9, Article 10 and Article 11 shall survive the termination of this Agreement and the Tail Period, if any. For greater certainty, with respect to Net Proceeds which are Receivable, all provisions of this Agreement related to the calculation and payment of fees owing to the Investment Advisor hereunder shall survive the termination of this Agreement as required to ensure that such fees, if any, are paid to the Investment Advisor after the Term or after the Tail Period, if any, in accordance with the terms hereof.

9. CONFIDENTIALITY

9.1.1 The Investment Advisor shall refrain, for any reason whatsoever, from using and disclosing any Confidential Information without the prior written consent of GW CDN.

9.1.2 Notwithstanding the foregoing and within the limits established by this Agreement, the Investment Advisor may disclose the Confidential Information to its Representatives involved in the performance of this Agreement for whom knowledge of the Confidential Information is necessary for the performance of the Investment Advisor's obligations under this Agreement, provided that the Investment Advisor advises such third party of the confidentiality obligations set forth in this Article 9. The Investment Advisor will be responsible for any breach of the provisions of this Article 10 by any Representative of the Investment Advisor.

9.1.3 The Investment Advisor undertakes to protect the Confidential Information of GW CDN by using the same precautions implemented for the protection of the Investment Advisor's own confidential information and exercising the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a specialty and experience as an investment advisor would exercise in the same circumstances to protect the Confidential Information.

9.1.4 Upon termination of this Agreement, the Investment Advisor immediately will stop using the Confidential Information in its custody, possession or control and, at the option of GW CDN, shall promptly return or destroy all Confidential Information in its custody, possession or control, other than a copy retained for its own records which copy shall remain subject to the provisions of this Article 9. The Investment Advisor will promptly deliver to GW CDN a certificate executed by an authorized officer of the Investment Advisor certifying as to such return or destruction.

9.1.5 If the Investment Advisor is requested pursuant to, or required by, Applicable Law or legal process to disclose any Confidential Information, the Investment

Advisor may make such disclosure but must first provide GW CDN with prompt notice of such request or requirement, unless notice is prohibited by Applicable Law, in order to enable GW CDN to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Investment Advisor will not oppose any action by GW CDN to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by GW CDN, such disclosure is required, the Investment Advisor will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

10. DISPUTES

10.1.1 If any written notice (**"Dispute Notice"**) is provided by either Party of a dispute, claim or demand arising out of this Agreement (a "**Dispute**"), the Parties shall attempt to settle the Dispute by discussion between the Investment Advisor, a Representative of GW CDN and the Monitor.

10.1.2 If the Dispute has not been resolved, for any reason, within 30 Business Days following receipt by the receiving Party of the applicable Dispute Notice, the Dispute will be resolved by the Court; provided that any Dispute with respect to the mathematical calculation of a fee payable hereunder ("**Disputed Amounts**") that is not resolved within such 30 day period shall be submitted for resolution by the Monitor or, if the Monitor is unable to serve, the Monitor will appoint the office of an impartial nationally recognized firm of independent accountants other than GW CDN's or the Investment Advisor's accountants (the **"Independent Accountants"**) who, acting as experts and not arbitrators, will resolve the Disputed Amounts. Each of GW CDN and the Investment Advisor shall have full access to the books and records and work papers of the other Party to the extent that they relate to any such calculation.

10.1.3 The Monitor or Independent Accountants, as applicable, will make a determination as soon as practicable within 30 days (or such other time as the Parties will agree in writing) after the Disputed Amount has been submitted to the Monitor or Independent Accountants, as applicable, for resolution, and the resolution of the Disputed Amounts by the Monitor, or Independent Accountants, as applicable, will be conclusive and binding upon the Parties. The costs of the Monitor or Independent Accountants, as applicable, will be borne by the Party losing the majority of the Disputed Amount.

11. MONITOR'S CAPACITY

Each of GW CDN and the Investment Advisor acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of GW CDN in the CCAA Proceedings and not in its personal or corporate capacity, will have no liability whatsoever in connection with this Agreement or the obligations of the Monitor provided herein in its capacity as Monitor, in its personal or corporate capacity or otherwise.

12. GENERAL

12.1 Notice

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows;

12.1.1 To the Investment Advisor:

Crimson Capital Inc.
379 Sunnyside Ave.
Toronto, Ontario
M6R 2R9

Attention: Donna Parr
E-Mail: parrdonna@gmail.com

12.1.2 To GW CDN:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300
Toronto-Dominion Bank Tower
Toronto, Ontario M5K 1E6

Attention: C. Ian Ross, Chairman
Fax: (416) 699-9250
Email: ianross@bell.net

with a copy to:

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Suite 5300, Box 48
Toronto, Ontario M5K 1E6

Attention:	Jonathan Grant
Fax:	(416) 868-0673
E-Mail:	jgrant@mccarthy.ca

or to such other Person's attention or at such other address as the Party to whom such notice is to be given shall have last notified the other Party hereto in the manner provided in this Section 12.1. Any notice delivered to the Party to whom it is addressed as hereinbefore provided shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing provided no postal strike is then in effect or comes into effect within two Business Days after such mailing. Any notice transmitted by telecopier or other form of electronic communication shall be deemed given and received on the day of its transmission if such day is a Business Day and the notice is transmitted during business hours and if not on the next following Business Day.

In the event of any disruption, strike or interruption in the postal service after mailing and before receipt or deemed receipt of a document, it will be deemed to have been received on the sixth Business Day following full resumption of the postal service.

12.2 Entire Agreement

This Agreement and the agreements contemplated herein constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations, conditions or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.3 Severability

If any of the provisions of this Agreement shall be held or made invalid, in whole or in part, the other provisions hereof shall remain in full force and effect. Invalid provisions shall, in accordance with the intent and purpose of this Agreement, be replaced by such valid provisions which in their economic effect come as close as legally possible to such invalid provisions.

12.4 Assignment

This Agreement may not be assigned by any Party without the prior written consent of the other Party.

12.5 Amendment

Any amendment to this Agreement shall be in writing and shall be executed by both Parties.

12.6 Time of the Essence

Time is of the essence of this Agreement.

12.7 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

12.8 No Third Party Beneficiaries

Except as provided in Sections 7.2 and 7.3, this Agreement is solely for the benefit of :

(a) the Investment Advisor, and its successors and permitted assigns, with respect to the obligations of GW CDN under this Agreement, and

(b) GW CDN, and its successors and permitted assigns, with respect to the obligations of the Investment Advisor under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other Person any claim or other right or remedy. The Investment Advisor appoints GW CDN as the trustee for the directors, officers and employees of GW CDN of the covenants of indemnification of the Investment Advisor of the specified in Section 7.3 and GW CDN accepts such appointment. GW CDN appoints the Investment Advisor as the trustee for the directors, officers and employees of the Investment Advisor of the covenants of indemnification of GW CDN specified in Section 7.2 and the Investment Advisor accepts such appointment.

12.9 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

12.10 Attornment

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario in the Court and the Court will have jurisdiction to entertain any action arising under this Agreement. The Parties hereby attorn to the jurisdiction of the Court.

12.11 Counterparts

This Agreement may be executed in one or more counterparts, all of which, irrespective of the time of execution, shall be considered as one and the same agreement.

12.12 Original Investment Advisor Agreement

Until the Effective Date, the Original Investment Advisor Agreement shall remain in full force and effect unless terminated in accordance with its terms prior to the Effective Date.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties have executed this Agreement.

GROWTHWORKS CANADIAN FUND LTD.

By: _____

Name:

Title:

CRIMSON CAPITAL INC.

By: _____

Name:

Title:

Schedule A

Portfolio Companies

8191808 Canada Inc. (Formerly Kibboko Inc.) – 207,775 Common shares; $664,546.30 aggregate principal amount of convertible debenture

Acorn Income Corp.

Aegera Therapeutics Inc. \ Aegera Oncology Inc. - 309,407 common shares

Aizan Technologies Inc. – 3,601,440 Class A shares; 900,360 Class B shares

Ambit Biosciences – contingent value rights

Ascentify Learning Media Inc. – 400 Common shares; 3,269,200 Class A Preferred shares; 176,000 Class B Preferred shares; $195,000 aggregate principal amount of convertible debentures; $308,103 aggregate principal amount of promissory notes; $485,807 aggregate principal amount of secured debentures; $100,000 aggregate principal amount of demands notes; $100,000 aggregate principal amount of secured demand promissory notes

Blueprint Software Solutions – 363,36,5 Common shares; 1,890,276 Class A Convertible Preferred shares; 57,507 Institutional warrants expiring July 18, 2015; 7,588,934 Bridge warrants (effectively 5,059,289 Common shares at $0.015 per Common share) expiring July 18, 2015

C-Therm Technologies Ltd. (formerly Mathis Instruments Ltd.) – 75,000 Class A Shares; 90,909 Class B Shares; 10,260 Class C Warrants; $250,000 aggregate principal amount of debenture; 11,362.50 Common Shares; $500,000 aggregate principal amount of Secured Debenture

CanPro Ingredients Ltd. - 1,225,000 Class A common shares; $598,500 aggregate principal amount of subordinated debenture; 665,000 Series C Preferred shares; 2,916,675 Series C Preferred shares; $494,200 aggregate principal amount of convertible debenture; $116,667 aggregate principal amount of secured note

Chitogenics Pharmaceuticals Ltd. –13,000 Convertible Class A preferred shares

Ember Ec3 Inc. – 250,000 Class A convertible preferred shares; 1,500,000 Class B convertible preferred shares

Empex –$4,494,000 aggregate principal amount of 12% Debenture

Fidus International Inc. – $1,136,000 aggregate principal amount of 10% Debenture; 16,071,000 common shares; 1000 options; 9,801,000 preferred shares

GWC III Holdings ULC - 1 Class A voting share without par value

GWC IV Holdings ULC - 1 Class A voting share without par value

GWC GP Inc. - 1 common share

inPowered, Inc. (formerly NetShelter Inc.) – 44,550 Series A Preferred Shares

IS2 Medical Systems Inc. (CAVI) – 833,000 Class A preferred shares; 1,708,000 Class B preferred shares; 1,486,000 common shares

iStopOver (formerly PlanetEye Company ULC) – 2,482,000 common shares

iW Technologies Inc. –$83,000 aggregate principal amount of promissory notes (10%)

Lexicon Value Management Inc. – 1,000 Common Shares; $438,000 aggregate principal amount of 0% Debenture; $1,362,000 aggregate principal amount of 15% Debenture; 1,000 Warrants

LibreStream Technologies Inc. –545,000 preferred shares; 2,395 common shares; 1,000 options

Man Agra Capital Inc.

MedInnova Partners Inc. – 27,100,000 Class A Preference Shares, 9,185,143 Class A Preference Shares, 1,272,857 Class A Preference Shares, 200,000 Common Shares

Molecular Templates Inc.

Monteris Medical Inc. – $100,000 aggregate principal amount of Convertible Promissory Note; $200,000 aggregate principal amount of Convertible Promissory Note; $150,000 aggregate principal amount of Convertible Promissory Note; $142,858 aggregate principal amount of Promissory Note; 178,571 Class A Preferred Shares; 89,286 Class A Preferred Shares; 238,190 Exchangeable Common Shares; 201,580 Class A Exchangeable Preference Shares; 16,667 Class B Exchangeable Preferred Shares; 16,667 Class B Exchangeable Preferred Shares; 456,437 Special Voting Stock Shares; 33,333 Class B Exchangeable Preference Shares; 33,333 Class B Exchangeable Preference Shares; 238,190 Common Shares; 87,619 Class B Preferred Shares; 96,723 Common Shares; 97,619 Class B Preferred Shares

Morega Systems Inc. – 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Class B Series 1 Convertible Preferred Shares; 1,411,764 Pref C Shares; 3,599,999 Class A Convertible Preferred Shares; Warrants for 4,799,999 Class A Convertible Preferred Shares; 3,599,999 Class A Convertible Preferred Shares; 4,799,999 Class A Convertible Preferred Shares

Natrix Separations Inc. – 477,741 Class D Preferred Shares; 67,338 Class C Preferred Shares; $1,030,993.24 aggregate principal amount of Convertible Secured Debenture

Niagara Growth Fund Inc. – 2,600,000 Class A Voting Shares

NxtPhase T&D Corporation (formerly Carmanah Engineering Ltd.) - $791,000 aggregate principal amount of Senior Secured Convertible Notes; $338,817.50 aggregate principal amount of Notes; 3,389 Class D Preferred Stock; Warrants for New Preferred Stock; $338,817.50 aggregate principal amount of Notes; 3,389 Class D Preferred Stock; Warrants for New Preferred Stock

OTYC Holdings Inc. – 232,500 common shares; 700,000 Class A shares; 4,986,300 Class B shares; 2,252,309 Class C shares; 8,221,955 Class D shares

Orthopaedic Synergy Inc. (formerly Praxim SA) - 3,987,772 Series B Preferred Stock

Panorama Software (formerly CompanyDNA Inc.) – 26,863 Series B Preferred Redeemable Shares; 334,444 Common Shares; Warrants for 16,117 Common Shares; 230,309 Common Shares; 18,722 Series B Share; Warrants for 11,233 Common Shares

Targeted Growth Inc. – $474,564 aggregate amount of 2013 Notes New Investment; 539,957 Series D2 Preferred Shares; 533,333 Series D Pfd; 1,884,836 Series C Preferred Shares

Twinstrand Therapeutics Inc.

ViOptix Canada Inc. – $1,500,000 aggregate amount of Oct 2004 Convertible Debentures convertible into 311,372 Jr. Pref shares; 600,089 shares Conversion to Jr Prefs (cost 2,500,000 USD); 17,693,002 Class D Shares, FMV 5,976,000 USD (as at June 5, 2013); 1,056,834 Warrants; Sep 2009 Convertible Debentures, FMV 756,217 USD; Jan 2010 Convertible Debentures, FMV = 749,672 USD; Jun 2010 Convertible Debentures, FMV = 1,330,300 USD

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

STAY EXTENSION ORDER

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Fax: (416) 868-0673

Geoff R. Hall LSUC#: 34710O
Tel: (416) 601-7856
E-mail: ghall@mccarthy.ca

Sharon Kour LSUC#: 58328D
Tel: (416) 601-8305
E-mail: skour@mccarthy.ca

Lawyers for the Applicant

DOCS 18967014

TAB Q

This is Exhibit "**Q**" referred to in the
Affidavit of **Ian Ross**,
sworn before me on December 2, 2022

William Joseph Kee Dandie,
a Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires July 14, 2025.

A Commissioner for taking Affidavits (or as may be)
William Joseph Kee Dandie

GrowthWorks Canadian Fund Ltd. Provides Update on CCAA Proceedings

- Fund to seek Court approval to wind-up the Fund and make shareholder distributions within the next 24 months
- Court hearing to be held virtually at 10:00 a.m. (Eastern Time) on December 13, 2022
- Fund to continue its orderly liquidation of portfolio investments

Toronto, Ontario – December **[2]**, 2022. GrowthWorks Canadian Fund Ltd. (the "**Fund**"), today announced that, on December 13, 2022, it intends to seek an order of the Ontario Superior Court of Justice (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") authorizing, among other things, the Fund to wind up its affairs within the next 24 months and make certain cash distributions to the Fund's shareholders after satisfying the Fund's debts and liabilities.

Background

The Fund's assets currently consist of a portfolio of equity and debt venture investments in several, largely private enterprises and cash or cash equivalents of approximately $5.4 million. The Fund currently has no indebtedness other than ordinary course payables.

In October 2013, the Fund sought protection from its creditors pursuant to proceedings (the "**CCAA Proceedings**") commenced under the CCAA and obtained an order (the "**Initial Order**") of the Court granting a stay of proceedings (the "**Stay of Proceedings**") against the Fund. The Fund initiated the CCAA Proceedings after defaulting on its then-outstanding secured indebtedness. The Fund has subsequently obtained consecutive extensions of the Stay of Proceedings, which will expire on December 31, 2022 unless further extended by the Court.

Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Ltd. (the "**Monitor**") as monitor for purposes of the CCAA Proceedings. Since the date of the Initial Order, the Fund has, with the assistance of its financial and legal advisors and under the oversight of the Monitor, been engaged in an orderly disposition of its investment portfolio with a view to satisfying its creditors and making one or more distributions to the Fund's shareholders. During that period, the Fund also conducted two formal solicitation processes in an effort to surface offers for all or a portion of the Fund's investment portfolio as an alternative to continuing an orderly disposition process. However, the Fund's board of directors (the "**Board**") determined that none of the proposals received in connection with those processes properly valued the Fund's assets. Since the date of the Initial Order, the Fund has received proceeds from investment portfolio dispositions of approximately $45.5 million plus cash balances on hand or recovered from third parties of approximately $12 million for a total of $57.5 million. The Fund used those proceeds to fully re-pay all its secured debt of approximately $33.6 million (including accrued interest), make select follow-on investments and fund its operating expenses, including the cost of defending legal proceedings commenced against the Fund by the former manager of the Fund.

The Board has considered the advice of the Fund's investment and legal advisors and other factors deemed relevant by the Board, including, among others, the Fund's previous efforts to dispose of its investment portfolio, the relatively small number of remaining investments in the portfolio, the estimated value and period required to dispose of those investments in an orderly manner, current market conditions, and the estimated operating expenses of the Fund. Taking that advice and those factors into account, the Board has determined to seek an order of the

Court (the "**Distribution, Termination and Discharge Order**") authorizing the Fund to commence a dissolution process that will allow the Fund a reasonable period of time to pursue further divestitures while minimizing ongoing operating costs and providing a clear end-time of December 31, 2024 for the realization process and any related distributions. The terms of the proposed Distribution, Termination and Discharge Order and related Court hearing are summarized in greater detail below.

The Distribution, Termination and Discharge Order

The Fund has filed a motion with the Court for the Distribution, Termination and Discharge Order. The Court will consider the Fund's application at a hearing to be held virtually at 10:00 a.m. (Eastern Time) on December 13, 2022. Persons wishing to attend the Court hearing should contact the Monitor by telephone at 416-649-8087 / 1-855-431-3185 or by e-mail at growthworkscanadianfundltd@fticonsulting.com. If granted, the Distribution, Termination and Discharge Order would provide the following relief, among other things:

- The Stay of Proceedings would be extended until and including the earlier of (i) December 31, 2024, and (ii) the CCAA Termination Time (defined below) (the "**Stay Extension Period**").

- The Fund would be authorized to continue to take such steps as it, in consultation with its investment advisor and the Monitor as appropriate, determines is appropriate to effect an orderly liquidation of its investment portfolio. If the Fund determines that it would be appropriate to cease those efforts at any time before December 31, 2024, considering the estimated cost of such efforts and such other factors as the Fund determines relevant in the circumstances, the Fund would be authorized to cease those efforts and donate any security that it continues to hold to one or more charities or otherwise deal with it in the manner determined by the Fund, in consultation with the Monitor.

- The Fund would be authorized to make one or more distributions to its Class "A" shareholders and Class "B" shareholders in accordance with the respective terms of those shares.

- Upon the Fund concluding the liquidation of its investment portfolio, paying all creditor claims, making distributions to shareholders and otherwise completing all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the Monitor will file with the Court the Monitor's CCAA Completion Certificate, which will designate the "**CCAA Termination Time**". As of the CCAA Termination Time:

    - The CCAA Proceedings will be terminated;

    - The Fund will be dissolved without any further act or formality;

    - the Monitor will be discharged and released from its duties, obligations and responsibilities; and

    - the current and former directors, officers and other Representatives (as defined in the Distribution, Termination and Discharge Order) of the Fund, the Monitor and the Monitor's Representatives (as defined in the Distribution, Termination and Discharge Order), will be released from all claims arising in connection with

Fund or the CCAA Proceedings (except claims that cannot be compromised pursuant to the provisions of the CCAA).

- The extension of the Second Amended and Restated Investment Advisor Agreement between the Fund and its investment advisor, Crimson Capital Inc., to and including the last day of the Stay Extension Period would be approved.

Copies of the court material filed by the Fund and the Monitor, together with details relating to the CCAA Proceeding, are available on the Monitor's website at http://cfcanada.fticonsulting.com/gcfl/.

Forward-Looking Information

This press release contains forward looking statements, including statements with respect to the Fund's proceedings under the CCAA. These forward-looking statements reflect the Fund's current views and are based on certain assumptions, including, but not limited to, assumptions as to future operating conditions and courses of action, general economic and market conditions and other factors the Fund believes are appropriate. Such forward looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those contained in these statements, including, but not limited to, the risk that the Fund will not be successful in obtaining the Distribution, Termination and Discharge Order on the terms sought by the Fund or al all; the risk that dispositions of the Fund's remaining portfolio investments, together with the Fund's cash resources, will not yield proceeds sufficient to satisfy in full claims of the Fund's creditors or any distribution to the Fund's shareholders; the risk that claims by third parties against the Fund may adversely affect the Fund's ability to wind up its affairs and make distributions to its stakeholders and may involve substantial expense and, in either case, could require the Fund to pay substantial amounts if those claims are successful, thereby reducing or depleting entirely the Fund's liquidity and amounts available for distribution to its creditors or shareholders or both; and those risks and uncertainties disclosed in the Fund's regulatory filings posted on SEDAR at www.sedar.com. These risks and uncertainties may cause actual results, events or developments to be materially different from those expressed or implied by such forward-looking statements. Unless required by law, the Fund does not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or results or other factors.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AFFIDAVIT

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Lawyers for the Applicant,
GrowthWorks Canadian Fund Ltd.

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	TUESDAY, THE 13TH
	)	
JUSTICE PENNY	)	DAY OF DECEMBER, 2022

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.

DISTRIBUTION, TERMINATION AND DISCHARGE ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") pursuant to the *Companies' Creditors Arrangement* Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order:

(i) extending the stay period defined in paragraph 14 of the Initial Order (defined below) (the "**Stay Period**");

(ii) granting certain relief related to the liquidation of the Applicant's portfolio;

(iii) authorizing the making of distributions to Class "A" shareholders and Class "B" shareholders of the Applicant;

(iv) providing releases and discharges in favour of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as monitor of the Applicant (the "**Monitor**"), the Representatives (defined below) of the Monitor, and the Representatives (defined below) of the Applicant;

(v) at the CCAA Termination Time (defined below), dissolving the Applicant, discharging the Monitor, terminating the CCAA Proceedings (defined below) and discharging the Administration Charge and Directors' Charge (as each is defined in the Initial Order (defined below));

(vi) sealing a confidential exhibit; and

(vii) approving an extension to the Amended and Restated Investment Advisor Agreement between Crimson Capital Inc. ("**Crimson Capital**") and the Fund (the "**Second Amended and Restated IAA**"),

was heard this day by way of judicial video conference via Zoom in Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Notice of Motion (the "**Motion Record**") and the affidavit of C. Ian Ross sworn on December 2, 2022 (the "**Ross Affidavit**"), the Thirtieth Report of the Monitor, and on hearing the submissions of counsel for the Applicant and the Monitor, and such other counsel that were present as listed on the Participant Slip, no one else appearing although properly served as appears from the affidavit of service, filed:

INTERPRETATION

1. **THIS COURT ORDERS** that, in addition to terms defined elsewhere herein, (i) capitalized terms used, but not defined, herein shall have the meanings given to them in the Initial Order, and (ii) the following terms shall have the following meanings:

a. "**Applicable Law**" means:

i. any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and

ii. any applicable and enforceable rule, regulation, requirement, order, judgment, injunction, award or decree of a Governmental Authority.

b. "**Available Cash**" means the available cash and cash equivalents of the Applicant;

c. "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

d. "**CCAA Proceedings**" means the within proceedings in respect of the Applicant under the CCAA;

e. "**CCAA Termination Date**" means the date on which that the Monitor delivers the Monitor's CCAA Completion Certificate (defined below);

f. "**CCAA Termination Time**" means such time on the CCAA Termination Date as the Monitor may determine and designate in the Monitor's CCAA Completion Certificate (defined below);

g. "**Class A Distribution Pool**" means, in respect of any Distribution, the Available Cash on the Distribution Record Date for such Distribution less (i) the amount of any Distributions to be made pursuant to paragraph 9 of this Order, (ii) any amounts due and owing to creditors of the Applicant on such Distribution Record Date, (iii) the estimated cost of such Distribution, and (iv) a reserve for the estimated costs of the Applicant, the Monitor and their respective Representatives from such Distribution Record Date to the CCAA Termination Time, in each case determined by the Applicant in consultation with the Monitor;

h. "**Class A Eligible Shareholder**" means, in respect of any Distribution, a holder of one or more Class "A" shares of the Applicant as of the close of business on the Distribution Record Date for such Distribution that has not been barred from receiving distributions pursuant to paragraphs 11 or 13 hereof;

i. "**Court**" means the Ontario Superior Court of Justice (Commercial List);

j. "**Director**" means any Person who, as at the CCAA Termination Time, is a former or current director or officer of the Applicant or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of the Applicant or who currently manages or supervises the management of

the business and affairs of the Applicant or did so in the past;

k. "**Distribution**" means a distribution to be made pursuant to this Order;

l. "**Distribution Date**" means the date on which a Distribution is made pursuant to this Order as designated in a Monitor's Distribution Certificate (defined below);

m. "**Distribution Record Date**" means, in respect of any Distribution, the date that is seven Business Days prior to the date upon which such Distribution is made;

n. "**Filing Date**" means October 1, 2013;

o. "**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant circumstances;

p. "**including**" means including, without limitation;

q. "**Initial Order**" means the initial order of the Court made in the CCAA Proceedings on October 1, 2013, as amended and restated on October 29, 2013;

r. "**Monitor's Website**" means the website established by the Monitor in respect of the CCAA Proceedings;

s. "**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer 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;

t. "**Released Claims**" means any and all demands, claims (including claims for contribution or indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders

(including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits or alleged oppression, misrepresentation, wrongful conduct, fraud or breach of fiduciary duty by the Applicant or any of its Representatives) that any Person has or may be entitled to assert, whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, matter or occurrence existing or taking place at or prior to the CCAA Termination Time, that in any way relate to or arise out of or in connection with (i) the assets, obligations, business or affairs of the Applicant; or (ii) the CCAA Proceedings or any matter, transaction or occurrence involving the Applicant or any of its Representatives occurring in or in connection with the CCAA Proceedings, but "Released Claims" does not include a claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA;

u. "**Released Parties"** means each of the Directors, the Monitor and its Representatives and the Applicant's Representatives;

v. "**Representatives**" means, in relation to a Person, such Person's current and former directors, officers, partners, employees, consultants, legal counsel, accountants, auditors, actuaries, advisors and agents, the current and former directors, officers, partners and employees of any such consultant, legal counsel, accountant, auditor, actuary, advisor or agent, and, in each case, including their respective heirs, executors, administrators and other legal representatives, successors and assigns; and

w. "**Service List**" means the service list in the CCAA Proceedings.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including the earlier of: (i) December 31, 2024; and (ii) the CCAA Termination Time (the "**Stay Extension Period**").

COMPLETION OF ORDERLY LIQUIDATION

3. **THIS COURT ORDERS** that, during the Stay Extension Period, the Applicant may continue to take such steps as the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor as appropriate, determines is appropriate to effect an orderly liquidation of its investment portfolio.

4. **THIS COURT ORDERS** that if the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor as appropriate, determines that it is no longer appropriate to continue its efforts to liquidate its investment portfolio considering the proceeds likely to be realized, the estimated cost of such efforts and such other factors as the Applicant determines relevant in the circumstances, the Applicant may cease taking any further steps to liquidate its investment portfolio.

5. **THIS COURT ORDERS** that, upon the Applicant ceasing to take any further steps to liquidate its investment portfolio, the Applicant, in consultation with the Monitor, may donate any security held by the Applicant to one or more charities or otherwise deal with any security held by the Applicant in the manner determined by the Applicant, in consultation with the Monitor, or in accordance with further order of this Court.

AUTHORIZATION OF DISTRIBUTIONS

6. **THIS COURT ORDERS** that the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, may make one or more Distributions from the Class A Distribution Pool to Class A Eligible Shareholders in accordance with the respective terms of the various outstanding series of Class "A" shares of the Applicant.

7. **THIS COURT ORDERS** that, on each Distribution Date, the Monitor shall serve on the Service List and post on the Monitor's Website, a certificate in the form attached as **Schedule "A"** hereto (a "**Monitor's Distribution Certificate**") certifying that a Distribution has been made and specifying the aggregate amount of the Distribution to Class A Eligible Shareholders and the amount of the Distribution made on account of each Class "A" share held by a Class A Eligible Shareholder pursuant to this Order.

8. **THIS COURT ORDERS** that any Distribution to a Class A Eligible Shareholder shall be made by (i) cheque sent by prepaid ordinary mail to the address of such Class A Eligible Shareholder on file with the Applicant or its transfer agent on the Distribution Record Date for such Distribution, or (ii) electronic transfer of immediately available funds to an account designated in writing by such Class A Eligible Shareholder.

9. **THIS COURT ORDERS** that, on the initial Distribution Date, the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, may make a Distribution to the holder of the Class "B" shares of the Applicant as of such Distribution Record Date in accordance with the terms of the Class "B" shares of the Applicant by (i) cheque sent by prepaid ordinary mail to the address of the applicable shareholder on file with the Applicant or its transfer agent on the Distribution Record Date for such Distribution, or (ii) electronic transfer of immediately available funds to an account designated in writing by the applicable shareholder.

10. **THIS COURT ORDERS AND DECLARES** that the holder of the Class "C" shares of the Applicant is not entitled to receive any further dividends or payments on account of those shares.

11. **THIS COURT ORDERS** that the Applicant and any other Person facilitating payments pursuant to this Order will be entitled to deduct and withhold from any such payment to any Person such amounts as may be required to be deducted or withheld under any Applicable Law and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Person as the remainder of the payment in respect of which such

withholding or deduction was made. Any Class A Eligible Shareholder whose address on file with the Applicant or its transfer agent on the applicable Distribution Record Date is not a Canadian address will be treated as a non-resident of Canada for purposes of any applicable non-resident withholding tax on all payments hereunder, subject to receipt by the Applicant of information satisfactory to it (in their sole discretion) that such Class A Eligible Shareholder is not a non-resident. No gross-up or additional amount will be paid on any payment hereunder to the extent the Applicant or any other Person deducts or withholds amounts pursuant to this paragraph. Notwithstanding any withholding or deduction, each Person receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

12. **THIS COURT ORDERS** that, if any Distribution made to a Class A Eligible Shareholder under this Order is returned as undeliverable (an "**Undeliverable Distribution**"), then neither the Applicant nor the Monitor will be required to make further efforts to deliver such Distribution to such Class A Eligible Shareholder unless and until the Applicant and Monitor are notified in writing by such Class A Eligible Shareholder of such Class A Eligible Shareholder's current address or provides written transfer instructions acceptable to the Applicant and the Monitor in their sole discretion, at which time all such Distributions will be made to such Class A Eligible Shareholder. The obligations of the Applicant and Monitor to a Class A Eligible Shareholder with respect to an Undeliverable Distribution will expire on the first Business Day that is six months following the applicable Distribution Date, after which date any entitlement with respect to such Undeliverable Distribution and any further Distributions pursuant to this Order will be forever discharged and forever barred, without any compensation therefor. No interest will be payable in respect of an Undeliverable Distribution. On the first Business Day that is six months following the applicable Distribution Date for an Undeliverable Distribution, the amount of any Undeliverable Distribution will be released to the Applicant and form part of Available Cash.

13. **THIS COURT ORDERS** that, if any cheque in payment of a Distribution to a Class A Eligible Shareholder under this Order is not cashed within six months after the date of the applicable

Distribution Date (an "**Uncashed Distribution**"):

a. such cheque may be cancelled by the Applicant, the Monitor or any other Person facilitating payments pursuant to this Order, as applicable, after which date any entitlement with respect to such Distribution and any further Distributions pursuant to this Order will be forever discharged and forever barred and the obligations of the Applicant and Monitor with respect thereto will expire, without any compensation therefor; and

b. the amount otherwise payable pursuant to such cancelled cheque will be released to the Applicant and form part of Available Cash.

14. **THIS COURT ORDERS** that all amounts to be paid by the Applicant hereunder will be calculated by the Applicant, with the assistance of the Monitor. All calculations made by the Applicant will be conclusive, final and binding upon Class A Eligible Shareholders, the Applicant and any other Person, absent manifest error.

15. **THIS COURT ORDERS** that, if at any time the Applicant determines, in consultation with the Monitor, that the costs of making a Distribution are likely to exceed the Available Cash, the Applicant, in consultation with the Monitor, may donate any portion of the Available Cash to one or more charities or otherwise deal with the Available Cash in the manner determined by the Applicant and the Monitor or in accordance with further order of this Court.

16. **THIS COURT ORDERS AND DECLARES** that notwithstanding: (i) the pendency of these CCAA Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the CCAA or otherwise in respect of the Applicant and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of the Applicant, all Distributions and payments contemplated by this Order will not constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, CCAA or any other applicable federal, provincial or territorial legislation, nor will any Distribution or payment contemplated by

this Order constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal, provincial or territorial legislation.

17. **THIS COURT ORDERS AND DECLARES** that any payments or deliveries under this Order made or assisted by the Monitor shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Applicant or "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and the Monitor in making any such payments or deliveries of funds or assets in relation to this Order is not "distributing", not shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any payments or deliveries under this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Applicant's tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries under this Order and any claims of this nature are hereby forever barred.

ORDERS IN THE CCAA PROCEEDINGS

18. **THIS COURT ORDERS** that:

a. except to the extent that the Initial Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial Order shall remain in full force and effect until the CCAA Termination Time;

b. the releases, injunctions and prohibitions provided for in the Claims Procedure Order issued in the CCAA Proceedings and dated January 9, 2014 and the Post-Filing Claims Procedure Order issued in the CCAA Proceedings and dated November 30, 2021, be and are hereby confirmed and shall operate in addition to the provisions of this Order, including the releases, injunctions and prohibitions provided for

hereunder and thereunder, respectively; and

c. all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by this Order or any further Orders of this Court in the CCAA Proceedings.

19. **THIS COURT ORDERS** that the Applicant and the Monitor shall have all of the protections given to them by the CCAA and the Initial Order and that none of the Applicant, the Directors, the Monitor or their respective Representatives shall incur any liability or obligation as a result of carrying out their obligations under, or exercising any authority or discretion granted by, this Order.

TERMINATION, DISCHARGE AND DISSOLUTION

20. **THIS COURT ORDERS** that immediately upon the Monitor serving on the Service List, posting on the Monitor's Website and filing with the Court a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's CCAA Completion Certificate**") certifying the completion of all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the CCAA Proceedings are hereby terminated without any other act or formality and the Administration Charge and Directors' Charge (as each are defined in the Initial Order) shall be terminated, released and discharged.

21. **THIS COURT ORDERS** that, from and after the CCAA Termination Time, the Applicant shall be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority, provided, however, that the Applicant shall cause to be filed with the appropriate Governmental Authority such articles, agreements or other documents of dissolution for the Applicant to the extent required by Applicable Law.

22. **THIS COURT ORDERS** that at the CCAA Termination Time, without any further act or formality, FTI is hereby discharged from its duties as Monitor and has no further duties, obligations, or responsibilities as Monitor from and after the CCAA Termination Time; provided however,

notwithstanding the discharge of FTI as Monitor, the Monitor shall have the authority to carry out, complete or address any matters that are ancillary or incidental to the CCAA Proceedings following the CCAA Termination Time, as may be required (collectively, the "**Monitor Incidental Matters**") and shall be entitled to act as Monitor in relation to such Monitor Incidental Matters.

23. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, (i) nothing herein shall affect, vary, derogate from, limit or amend, and FTI and its legal counsel shall continue to have the benefit of, all of the rights, approvals, releases, and protections in favour of the Monitor and its legal counsel at common law or pursuant to the CCAA, the Initial Order, or any other order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any Monitor Incidental Matters and other actions taken by the Monitor pursuant to this Order following the CCAA Termination Time, and (ii) nothing herein impacts the validity of any orders of this Court made in the CCAA Proceedings or any actions or steps taken by any Person pursuant to or as authorized by any orders of this Court made in the CCAA Proceedings.

RELEASES

24. **THIS COURT ORDERS AND DECLARES** that, as at the CCAA Termination Time, the Released Parties are hereby fully, finally and irrevocably released and discharged from all Released Claims and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability or obligation in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of gross negligence or willful misconduct on the part of the applicable Released Party.

25. **THIS COURT ORDERS** that, as at the CCAA Termination Time, all Persons shall be and shall be deemed to be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner or forum, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment,

award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner or forum, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person commences, conducts, continues or makes a claim or might reasonably be expected to commence, conduct, continue or make, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum), including by way of contribution or indemnity or other relief, against one or more of the Released Parties, unless such claim of such other Person is itself a Released Claim; and (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any encumbrance of any kind against any of the Released Parties or their property or assets with respect to any and all Released Claims.

26. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court and on prior written notice to the applicable Released Parties.

APPROVAL OF MONITOR ACTIVITIES

27. **THIS COURT ORDERS AND DECLARES** that the Thirtieth Report and the activities and conduct of the Monitor as described in the Thirtieth Report be and are hereby ratified and approved.

28. **THIS COURT ORDERS AND DECLARES** that the Monitor has satisfied all of its obligations up to and including the date of this Order and all claims of any kind or nature against the Monitor arising from or relating to these CCAA Proceedings up to and including the date of this Order are hereby barred, extinguished and released save and except for claims of gross negligence or wilful misconduct on the part of the Monitor.

29. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and under the other Orders of this Court, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under this Order and to complete all matters incidental to the

termination of the CCAA Proceedings.

APPROVAL OF FEES

30. **THIS COURT ORDERS** that (i) the fees and disbursements of the Monitor from June 1, 2017 to October 31, 2022 (the "**Fee Period**") totaling CAD $521,267.76 (including HST) and its estimate of fees and disbursements from November 1, 2022 through completion of its remaining activities in connection with these CCAA Proceedings of $355,000 (excluding HST) and (ii) the fees and disbursements of Reconstruct LLP in its capacity as legal counsel to the Monitor during the Fee Period totaling CAD $313,984.58 (including HST) and its estimate of fees and disbursements from November 1, 2022 through completion of the remaining activities in connection with these CCAA Proceedings of CAD $120,000 (excluding HST), be and are hereby approved.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall not be required to pass any further accounts in these CCAA Proceedings unless otherwise requested by the Applicant.

EXTENSION OF SECOND AMENDED AND RESTATED IAA

32. **THIS COURT ORDERS** that the Applicant is authorized to execute and deliver an Extension Notice extending the Term of the Second Amended and Restated IAA to and including the last day of the Stay Extension Period (the "**Extended Term**") and that such extension is hereby approved (as each term is defined in the Second Amended and Restated IAA).

33. **THIS COURT ORDERS** that the Applicant is authorized to continue to perform its obligations under the Second Amended and Restated IAA during the Extended Term.

34. **THIS COURT ORDERS** that paragraphs 4 to 7 of the Stay Extension Order of the Honourable Mr. Justice Hainey made March 22, 2019 shall continue to apply during the Extended Term.

SEALING ORDER

35. **THIS COURT ORDERS** that Confidential Exhibit "H" to the Ross Affidavit, which contains a confidential summary of the Fund's significant remaining investments shall be kept

confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the court file for these proceedings, in a sealed envelope attached to a notice that sets out the title of these proceedings and the statement that the contents are subject to this Motion and sealing Order, and remain under seal until further Order of this Court.

NOTICE

36. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Order, the Monitor shall cause a copy of this Order to be posted on the Monitor's Website, and the Applicant shall serve a copy on the parties on the Service List and those parties who appeared at the hearing of the motion for this Order.

37. **THIS COURT ORDERS** that the measures in paragraph 36 shall constitute good and sufficient service and notice of this Order on all Persons who may be entitled to receive notice thereof or who may have an interest in these proceedings, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of these proceedings.

GENERAL

38. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the Applicant and the Monitor shall each remain entitled to seek advice, directions or assistance from the Court in respect of any matters arising from or in relation to the matters set out herein.

39. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

40. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

41. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this

Order.

42. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada) and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory of Canada and any court or any judicial, regulatory or administrative body of the United States of America, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

_____

SCHEDULE "A"

FORM OF MONITOR'S DISTRIBUTION CERTIFICATE

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.

MONITOR'S DISTRIBUTION CERTIFICATE

WHEREAS pursuant to the Order of this Court dated October 1, 2013, as amended and restated on October 29, 2013, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicant;

AND WHEREAS pursuant to the Order of this Court dated December 13, 2022 (the "**Distribution, Termination and Discharge Order**"), this Court authorized the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, to make one or more Distributions from Available Cash to Eligible Shareholders;

AND WHEREAS paragraph 7 of the Distribution, Termination and Discharge Order requires the Monitor, on each Distribution Date, to serve on the Service List and post on the Monitor's Website a certificate certifying that a Distribution has been made and specifying the aggregate amount of the Distribution and the amount of the Distribution made on account of each Class "A" share held by an Eligible Shareholder;

AND WHEREAS a Distribution has been made;

AND WHEREAS all capitalized terms used, but not defined, herein shall have the meanings

given to them in the Distribution, Termination and Discharge Order.

THE MONITOR HEREBY CERTIFIES that:

1. a Distribution was made on _____, which is a Distribution Date for the purposes of the Distribution, Termination and Discharge Order;

2. the aggregate amount of the Distribution to Class A Eligible Shareholders was $_____; and

3. the amount of the Distribution made on account of each Class "A" share held by a Class A Eligible Shareholder was $_____.

FTI Consulting Canada Inc., solely in its capacity as court appointed monitor of the Applicant, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"

FORM OF MONITOR'S CCAA COMPLETION CERTIFICATE

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.

MONITOR'S CCAA COMPLETION CERTIFICATE

WHEREAS pursuant to the Order of this Court dated October 1, 2013, as amended and restated on October 29, 2013, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicant;

AND WHEREAS pursuant to the Order of this Court dated December 13, 2022 (the "**Distribution, Termination and Discharge Order**"), this Court authorized the Applicant to cease taking any further steps to liquidate its investment portfolio if the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Applicant) and the Monitor, determined that it was no longer appropriate to continue those efforts considering the proceeds likely to be realized and the cost of such efforts;

AND WHEREAS the Monitor is satisfied that the Applicant has taken appropriate steps to effect an orderly liquidation of its investment portfolio;

AND WHEREAS pursuant to the Distribution, Termination and Discharge Order, this Court authorized the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, to make one or more Distributions;

AND WHEREAS one or more Distributions have been made in accordance with the Distribution, Termination and Discharge Order;

AND WHEREAS the Applicant has determined, in consultation with the Monitor, that the costs of making a further Distribution are likely to exceed the Available Cash;

AND WHEREAS paragraph 20 of the Distribution, Termination and Discharge Order requires that, upon the completion of all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the Monitor shall serve on the Service List, post on the Monitor's Website and file with the Court a certificate certifying that all matters to be attended to in connection with the CCAA Proceedings have been, to the satisfaction of the Monitor, attended to;

AND WHEREAS the Monitor is satisfied that all matters to be attended to in connection with the CCAA Proceedings have been attended to;

AND WHEREAS all capitalized terms used, but not defined, herein shall have the meanings given to them in the Distribution, Termination and Discharge Order.

THE MONITOR HEREBY CERTIFIES that:

1. All matters to be attended to in connection with the CCAA Proceedings have been attended to;

2. Upon the filing of this Monitor's CCAA Completion Certificate:

    a. the CCAA Proceedings shall be terminated;

    b. the Applicant shall be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority;

    c. FTI Consulting Canada Inc. shall be discharged and released from its duties, obligations and responsibilities as Monitor of the Applicant and shall be forever

released, remised and discharged from any claims against it relating to its activities as Monitor of the Applicant;

d. the releases and injunctions provided for in the Distribution, Termination and Discharge Order shall become effective; and

e. the Administration Charge and Directors' Charge shall be terminated, released and discharged;

3. This Certificate is delivered by the Monitor on _____ at _____ which is the CCAA Termination Time for the purposes of the Distribution, Termination and Discharge Order.

FTI Consulting Canada Inc., solely in its capacity as court appointed monitor of the Applicant, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

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

DISTRIBUTION, TERMINATION AND DISCHARGE ORDER

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD

(Distribution, Termination and Discharge Order)
(Returnable December 13, 2022)

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