

**THE KING'S BENCH**  
**WINNIPEG CENTRE**

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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "Applicants")

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

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**NOTICE OF MOTION**  
**(AMENDMENT TO THE SALE AGREEMENT AND OTHER RELIEF)**  
**DATE OF HEARING: TUESDAY, SEPTEMBER 12, 2023 AT 2:00 P.M.**  
**THE HONOURABLE MR. JUSTICE BOCK**

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

**NOTICE OF MOTION**  
**(AMENDMENT TO THE SALE AGREEMENT AND OTHER RELIEF)**

Deloitte Restructuring Inc. (the "**Monitor**"), the court appointed monitor of the undertakings, properties, and assets of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd., and 12986914 Canada Ltd. (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Bock on Tuesday, the 12<sup>th</sup> day of September, 2023 at 2:00 o'clock in the afternoon or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1.     An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion:
  - (a)    abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on September 12, 2023 at 2:00 p.m., and dispensing with further service thereof;

- (b) authorizing and approving the Monitor's execution of two documents for and on behalf of the Applicants, namely:
  - (i) the Amendment to the Asset Purchase Agreement dated August 31, 2023 (the "**Amending Agreement**") to provide the Monitor and Purchaser additional time to complete the Transaction in accordance with the Approval and Vesting Order of the Honourable Mr. Justice Bock dated July 21, 2023 (the "**AVO**"); and
  - (ii) the Settlement Agreement dated August 24, 2023 (the "**Settlement Agreement**") between the Applicants, the Principals, and Merchant Opportunities Fund Limited Partnership, by its general partner, Merchant Opportunities Fund Ltd. ("**Merchant**");
- (c) sealing the confidential supplement (the "**Confidential Supplement**") to the third report of the Monitor dated September 8, 2023 (the "**Third Report**") until the filing of the Monitor's Certificate (or further order of the Court);
- (d) extending the Stay Period (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**")) to November 3, 2023;
- (e) approving the Third Report, the Confidential Supplement, and the activities, actions, and conduct described therein;
- (f) approving the fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, MLT Aikins LLP, as set out in the Third Report;
- (g) amending paragraph 7 of the Order (Stay Extension, Interim Distribution, and Other Relief) of the Honourable Justice Bock dated July 21, 2023 (the "**July 21 Stay Extension Order**") to update the interim distributions contemplated by the same; and
- (h) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 2. For the purposes of this application, the Monitor relies on:
  - (a) sections 11, 11.02(2), and 36 of the *CCAA*; and

- (b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.
3. Unless otherwise defined herein, capitalized terms will have the meanings given to them in the ARIO, the AVO, and the Sale Agreement.

## **SERVICE**

4. The Monitor's Notice of Motion, Third Report, and Brief of Law were served by email on the members of the service list established in these proceedings, as contemplated by paragraph 51 of the ARIO.

## **THE AMENDING AGREEMENT**

5. As outlined in the Third Report and Confidential Supplement:
- (a) after the AVO was granted, the Purchaser lost its source of funding, since which time it has been working with a broker to source the alternative financing necessary to close the Transaction;
  - (b) pursuant to the Sale Agreement, the Transaction was to close by August 31, 2023 (the "**Outside Date**");
  - (c) with the consent of TD Bank, the Purchaser and Monitor negotiated and executed the Amending Agreement to:
    - (i) provide for a new Closing Date of September 29, 2023, or such other date as the parties may agree to in writing;
    - (ii) delete the definition of Outside Date;
    - (iii) stipulate that the Purchaser is responsible for funding the Applicants' operations until the Closing Date; and
    - (iv) increase the amount of the Deposit, which will be forfeited in the event the Purchaser fails to close the Transaction by the Closing Date or any of the Applicants ceases carrying on the Business in the ordinary course as a result of the Purchaser's failure to fund the same;

- (d) the Amending Agreement does not otherwise materially change the Transaction approved by the AVO; and
- (e) the Applicants no longer have directors and the remaining officer is not at arms-length, making it necessary for the Monitor to be authorized to execute the Amending Agreement for and on behalf of the Applicants.

## **THE SETTLEMENT AGREEMENT**

6. On August 11, 2023, Merchant filed a notice of motion seeking leave to appeal the AVO in its entirety. The issues identified in Merchant's motion were that the AVO:

- (a) approved the sale of accounts receivable that had already been sold to Merchant; and
- (b) released the Principals from their guarantees to Merchant.

7. Merchant's materials explained how the Monitor's motion materials in respect of the July 21, 2023 hearing failed to come to Merchant's attention prior to the AVO being granted as a result of a typographical error in the service email and a key Merchant employee not having been included on the Service List.

8. Merchant and the Principals subsequently negotiated a settlement of the appeal, which was formalized in the Settlement Agreement. The Applicants are party to the Settlement Agreement, such that it is necessary for the Monitor to be authorized to execute the Settlement Agreement on behalf of the Applicants.

## **SEALING ORDER**

9. The amount of the Amending Agreement's increased Deposit and the corresponding decrease to the Cash at Close have been redacted from the version appended to the Third Report, whereas the Settlement Agreement is subject to settlement privilege and therefore has not been made public. The Confidential Supplement contains the unredacted version of the Amending Agreement and the Settlement Agreement.

10. The sealing of the Confidential Supplement is being sought so as to keep the commercially sensitive terms of the Amending Agreement confidential and maintain privilege over the Settlement Agreement.

#### **EXTENDING THE STAY OF PROCEEDINGS**

11. The Stay Period expires on September 12, 2023. The Monitor is seeking an extension of the Stay Period until November 3, 2023 to facilitate the closing of the Transaction and allow the Monitor additional time to prepare a motion for a final distribution and discharge.

12. If the Transaction does not close in accordance with the Amending Agreement, then the additional time will be required to determine next steps and prepare any further motion materials that will be required to facilitate the same.

13. The Applicants have been acting and continue to act in good faith and with due diligence, and the Purchaser is contractually bound to finance the Applicants' continued operation until the Transaction closes.

#### **AMENDMENT TO THE JULY 21 STAY EXTENSION ORDER**

14. Paragraph 7 of the July 21 Stay Extension Order approved interim distributions from the Net Proceeds of the Transaction to reduce the amounts secured by the Administration Charge and the Dip Lender's Charge.

15. The Monitor is seeking to amend this paragraph to update the amounts it is authorized to pay from the Net Proceeds of the Transaction to reduce the amounts secured by the Administration Charge, which amounts have increased since the July 21 Stay Extension Order was issued.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The pleadings filed herein;
2. The Amended and Restated Initial Order pronounced February 14, 2023;
3. The Order pronounced April 5, 2023;
4. The Approval and Vesting Order pronounced July 21, 2023;
5. The First Report of Deloitte Restructuring Inc. dated April 3, 2023;
6. The Affidavit of Stephen Segal sworn February 6, 2023;
7. The Affidavit of Stephen Segal sworn April 3, 2023;
8. The Pre-Filing Report of the Monitor;
9. The First Report of the Monitor;
10. The Second Report of the Monitor and the Confidential Supplement thereto;
11. The Third Report of the Monitor and the Confidential Supplement thereto;
12. The Monitor's Brief of Law, to be served and filed;
13. The Affidavit of Service of Shelby Braun, to be filed; and
14. Such further and other documents and evidence as counsel may advise and this Honourable Court may permit.

September 8, 2023

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TO: SERVICE LIST (attached)

**THE KING'S BENCH**  
**WINNIPEG CENTRE**

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

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(the "**Applicants**")

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

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**SERVICE LIST**  
**AS AT SEPTEMBER 5, 2023**

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<b>PAULS GRINDING INDUSTRIES LTD.</b> 1446 Erin Street Winnipeg, MB R3E 2S8  <b>Yvette</b> <b>Email:</b> <a href="mailto:pgisaw1@shaw.ca">pgisaw1@shaw.ca</a>	(204) 774-2434		
<b>EMPIRE MACHINERY &amp; TOOLS LTD.</b> Box 20, Group 200 RR#2 390 Eagle Drive Winnipeg, MB R3C 2E6  <b>Sean Mashinter</b> <b>Email:</b> <a href="mailto:accountwg@empire-machinery.com">accountwg@empire-machinery.com</a>	204-779-7791	204-779-7796	
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<b>GATEWAY PLASTIC EXTRUSION</b> 385 De Baets Street Winnipeg, MB R2J 4J8  <b>Conrad Lefurgey</b> <b>Email:</b> <a href="mailto:conradl@gwygroup.com">conradl@gwygroup.com</a>	204-654-5893		
<b>3075487 MANITOBA LTD. (DBA NRG MANAGEMENT)</b> 1072 King Edward Street Winnipeg, MB R3H 0R2  <b>Email:</b> <a href="mailto:justin@nrgmgmt.ca">justin@nrgmgmt.ca</a>	204-788-4117 ext 210	204-788-4161	
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<b>MARITIME COFFEE SERVICE</b> 70 Thorne Avenue Dartmouth, NS B3B 1Y5  <b>Dwayne Storey</b> <b>Email:</b> dstorey@alliedcoffee.com	902-468-3952	902-468-1698	
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<b>CALDWELL MFG CO NA LLC</b> 2605 Manitou Road Rochester, NY 14624 USA  <b>Lori Van Voorhis</b> <b>Email:</b> lvanvoorhis@caldwellmfgco.com	1-888-347-7771 x1879		
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<b>H.B. FULLER</b>  <b>Gregg Walters</b> <b>Email:</b> gregg.walters@hbfuller.com	651-236-5977		
<b>2L2Q RENOVATIONS</b> 580 Cote Avenue P.O. Box 505 St. Pierrie Jolys, MB R0A 1V0  <b>Josue Rodriguez</b> <b>Email:</b> 2L2Qrenos@gmail.com	204-290-4191		
<b>SAFECON SOLUTIONS INC.</b> Box 168 Balmoral, MB R0C 0H0  <b>Brandy Dobson</b> <b>Email:</b> brandy@safecongroup.net	204-290-8866		
<b>ALTA PRO ELECTRIC LTD.</b> 13415 149 Street Edmonton, AB T5L 2T3  <b>Email:</b> accounting@altapro.ca	780-444-6510		
<b>RIMAC FABRICATORS LTD.</b> 265 Applewood Crescent Concord, Ontario L4K 4E7  <b>Email:</b> rick@metalcurving.com	905-669-6963		
<b>JOHN P. O'KEEFE</b> 64 Baldpate Road Boxford, MB 01921 USA  <b>Email:</b> johnokeefellc@gmail.com	978-352-6167	978 352-5614	
<b>AL-PACK ENTERPRISES LTD.</b> 60 Commerce Street Moncton, NB E1H 0A5  <b>Matthew Bulmer</b> <b>Email:</b> mathew.bulmer@al-pack.com	506-852-4262 ext 260		

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**Schedule "A"**

Court File No. CI 23-01-39360

**THE KING'S BENCH**  
**WINNIPEG CENTRE**

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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "**Applicants**")

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

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**ORDER**

**(AMENDMENT TO THE SALE AGREEMENT AND OTHER RELIEF)**  
**DATE OF HEARING: TUESDAY, SEPTEMBER 12, 2023 AT 2:00 P.M.**  
**THE HONOURABLE MR. JUSTICE BOCK**

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**McDougall Gauley LLP**  
**500 616 Main Street**  
**Saskatoon SK S7J 0H6**

**IAN A. SUTHERLAND, K.C. / CRAIG FRITH**  
**PHONE: (306) 665-5417 / (306) 665-5432**  
**FAX: (306) 664-4431**  
**FILE NO. 549268.11**

**THE KING'S BENCH****Winnipeg Centre**

THE HONOURABLE MISTER ) TUESDAY, THE 12<sup>TH</sup>  
 )  
 JUSTICE BOCK ) DAY OF SEPTEMBER, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "**Applicants**")

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

**ORDER**  
**(AMENDMENT TO THE SALE AGREEMENT AND OTHER RELIEF)**

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of the undertaking, property and assets of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd. (collectively, the "**Applicants**") for an order authorizing and approving the Monitor's execution of the the Amendment to the Asset Purchase Agreement dated August 31, 2023 (the "**Amending Agreement**") between the Monitor, in its capacity as the court-appointed monitor for and on behalf of the Applicants, as vendor, and Stephen Segal in trust for a corporation or corporations to be formed (the "**Purchaser**"), as purchaser, and Stephen Segal, Brant Enderle, and Tim Morris (collectively, the "**Principals**"), and other relief, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the third report of the Monitor dated September 8, 2023 (the "**Third Report**") and the confidential supplement thereto (the "**Confidential Supplement**"), and on hearing the submissions of counsel for the Monitor, the Applicants, and The Toronto-Dominion Bank ("**TD Bank**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shelby Braun sworn September 8, 2023; all filed:

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL OF THE AMENDING AGREEMENT**

2. THIS COURT ORDERS that the Monitor's execution of the Amending Agreement is hereby authorized and approved. The Monitor is hereby authorized and directed to take such additional steps and execute such additional documents, including further amending agreements, as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser (as those terms are defined in the Approval and Vesting Order of the Honourable Mr. Justice Bock dated July 21, 2023 (the "**AVO**")) in accordance with the AVO.

3. THIS COURT ORDERS that the Monitor shall not require further authorization or approval of the Court to execute further agreements amending the amount of the Deposit (as that term is defined in the Sale Agreement, as amended by the Amending Agreement).

### **APPROVAL OF THE SETTLEMENT AGREEMENT**

4. THIS COURT ORDERS that the Monitor's execution of the Settlement Agreement dated August 24, 2023 (the "**Settlement Agreement**") between the Monitor, in its capacity as the court-appointed monitor for and on behalf of the Applicants, the Principals, and

Merchant Opportunities Fund Limited Partnership, by its general partner, Merchant Opportunities Fund Ltd., is hereby approved.

#### **SEALING OF THE CONFIDENTIAL SUPPLEMENT**

5. THIS COURT ORDERS that the Confidential Supplement and the appendices thereto be filed under seal, kept confidential, and not form part of the public record. The Confidential Supplement shall be kept separate and apart from the other contents of the Court file in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by the Registrar of this Court and the Honourable Mr. Justice Bock (or another Justice of the Court of King's Bench). The Confidential Supplement shall only be made available or form part of the public record after the Monitor's Certificate (as that term is defined in the AVO) is filed, or further Order of this Court.

#### **EXTENSION OF THE STAY PERIOD**

6. THIS COURT ORDERS that the Stay Period (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023) is hereby extended from September 12, 2023 to November 3, 2023.

#### **APPROVALS**

7. THIS COURT ORDERS that the Third Report, the Confidential Supplement, and the activities, actions, and conduct of the Monitor described therein are hereby approved.

8. THIS COURT ORDERS that the fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, and the Applicants' legal counsel, MLT Aikins LLP, as set out in the Third Report are hereby approved.

#### **AMENDMENT TO JULY 21, 2023 STAY EXTENSION ORDER**

9. THIS COURT ORDERS that paragraph 7 of the Order (Stay Extension, Interim Distribution, and Other Relief) of the Honourable Justice Bock dated July 21, 2023 (the

"**July 21 Order**") is hereby amended as follows (with the bold and underlined text to be substituted for the struck out text):

7. THIS COURT ORDERS that the Monitor shall make the following interim distributions from the Net Proceeds:

- (a) first, to reduce the amounts presently owed by the Applicants and secured by the Administration Charge:
  - (i) to Deloitte Restructuring Inc., ~~\$247,132~~ **\$293,171.62** on account of the Monitor's outstanding fees and disbursements;
  - (ii) to McDougall Gauley LLP, ~~\$185,208~~ **\$209,561.58** on account of its outstanding fees and disbursements;
  - (iii) to MLT Aikins LLP, ~~\$201,545~~ **\$197,757.25** on account of its outstanding fees and disbursements;
- (b) second, in satisfaction of the DIP Lender's Charge, to TD Bank, the repayment of the DIP Facility to the maximum amount of \$2,350,000.

10. THIS COURT ORDERS that the Monitor or TD Bank may apply to this Court to further vary or amend paragraph 7 of the July 21 Order on notice to the Service List.

#### MISCELLANEOUS MATTERS

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

September \_\_, 2023

\_\_\_\_\_  
BOCK, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

J.J. Burnell, MLT Aikins LLP, counsel for the Applicants

Sam Gabor, Gowling WLG, counsel for The Toronto-Dominion Bank

AS DIRECTED BY THE HONOURABLE MR. JUSTICE BOCK