

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

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

MOTION RECORD
(Motion for Delivery of Records)

October 31, 2014

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TO THE ATTACHED SERVICE LIST

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

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

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

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

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

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<p>ONTARIO SECURITIES COMMISSION Mostafa Asadi Legal Counsel, Investment Funds Branch Ontario Securities Commission 20 Queen Street West, 19th Floor Toronto, Ontario M5H 3S8 Email: masadi@osc.gov.on.ca Tel: (416) 593-8171</p>	<p>Counsel for Ontario Securities Commission</p>
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(the "APPLICANT")

MOTION RECORD
(Motion for Delivery of Records)

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1	Notice of Motion returnable November 27, 2014
2	Affidavit of C. Ian Ross (sworn October 31, 2014) and exhibit thereto
3	Draft Order

TAB 1

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

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

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

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GROWTHWORKS CANADIAN FUND LTD.

**NOTICE OF MOTION
(Motion for Delivery of Records)
(Returnable November 27, 2014)**

GrowthWorks Canadian Fund Ltd. (the “**Applicant**” or the “**Fund**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on November 27, 2014 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, in the City of Toronto.

THE MOTION IS FOR an order:

- (a) compelling GrowthWorks WV Management Ltd. and GrowthWorks Capital Ltd. (together, the “**Former Manager**”) to deliver forthwith to the Fund, at its own cost and expense, all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund (the “**Fund Records**”) in a form accessible to the Fund, and providing unfettered access to the Fund of any Fund Records stored or otherwise contained on an electronic information storage system;

- (b) compelling the Former Manager to deliver only the Fund Records to the Fund, and where such records are co-mingled or otherwise maintained in a manner causing such Fund Records to be combined with other records, to separate, at the Former Manager's own cost and expense, the Fund Records from such other records, and to deliver forthwith the Fund Records to the Fund in a form accessible to the Fund, as the Fund may elect; and
- (c) such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. The Fund is a labour-sponsored venture capital fund with investments in primarily illiquid securities consisting primarily of minority equity interests in private companies.
2. The Fund has been under *Companies' Creditors Arrangement Act* ("CCAA") protection since October 1, 2013, on which date an initial order was granted by Justice Newbould (as amended by order of Justice Mesbur dated October 29, 2014, the "**Initial Order**"). The Initial Order provided for, among other things, a stay of proceedings up to and including January 15, 2014. The Stay Period has been extended to May 31, 2015.

The Former Manager

3. Prior to these proceedings, under a management agreement between the Fund and GrowthWorks WV Management Ltd. dated July 15, 2006 (the "**Management Agreement**"), GrowthWorks WV Management Ltd. was required to provide all day-to-

day management necessary for the conduct of the business of the Fund, including, among other things, investment management, administration services, accounting, record keeping, investor relations, public disclosure, regulatory obligations, retention of the auditor and maintenance of the shareholder register (the “**Services**”). GrowthWorks WV Management Ltd. delegated all its obligations under the Management Agreement to GrowthWorks Capital Ltd., an affiliate of Matrix Asset Management Inc., the parent corporation of GrowthWorks WV Management Ltd.

4. On the investment management side of its duties, the Former Manager’s duties under the Management Agreement included:

- (a) managing the daily operations of the Fund;
- (b) providing portfolio advisory and investment management services, including identifying and evaluating investment opportunities and structuring and negotiating prospective investments;
- (c) monitoring, supervising and enforcing compliance with all agreements entered into by the Fund;
- (d) ensuring compliance with all relevant securities laws;
- (e) preparing and making recommendations for follow-on investments in the Portfolio Companies to the Investment Committee of the Board or to the Board;
- (f) monitoring the Fund’s portfolio investments, which included actively participating on portfolio companies’ boards of directors and evaluating financial and other key performance indicators;

- (g) reporting to the Board on the Fund's investment portfolio; and
- (h) dealing with portfolio disposition;

5. On the administration side of its duties, the Former Manager's responsibilities were comprehensive and included:

- (a) calculating the net asset value per share of each series of Class A Shares in accordance with policies and procedures approved by the Board and the Audit and Valuation Committee of the Board on the relevant valuation date;
- (b) creating and maintaining registers of shareholders, including transfers of beneficial interest, redemptions, and distributions;
- (c) maintaining complete and accurate books of account for the Fund;
- (d) arranging for the preparation and filing of all returns, reports and filings required to be made with governmental authorities;
- (e) retaining and working with the Board and the Fund's auditor to permit the audit of the Fund and arranging the filing and posting of audited and unaudited financial statements as necessary to comply with securities laws applying to the Fund;
- (f) providing information technology systems and application thereof, including a shareholder database, transaction processing and accounting, to the extent necessary to provide the Services;
- (g) recording and maintaining information necessary for the filing of tax returns by the Fund and preparing and submitting tax returns; and

- (h) providing administrative and support services to the Board and committees of the Board, and providing office premises and information technology systems, including shareholder database, transaction processing, and accounting systems.

6. In performing its obligations under the Management Agreement, the Former Manager agreed that:

- (a) The Former Manager would ensure that all persons associated with providing the Services would have the necessary registrations and approvals under applicable securities laws and regulations; and
- (b) The Former Manager would comply with the securities laws and regulations of the Canadian Securities Administrators and policy statements of securities regulatory authorities.

7. In return for providing these services, the Former Manager received management and administration fees based upon the net assets of the Fund (the “**Management Fees**”). Over the last two fiscal years prior to the termination of the Management Agreement, the Fund paid approximately \$14.3 million in Management Fees to the Former Manager.

8. The Former Manager was obliged to pay from its own resources, without reimbursement, all normal operating expenses of the Fund incurred in providing the Services, including audit and legal fees, premiums for directors’ and officers’ liability insurance, comprehensive business insurance and other expenses described in the Management Agreement.

Termination of the Management Agreement

9. On September 30, 2013, as a result of the Former Manager's material defaults in respect of certain of its obligations, the Fund terminated the Management Agreement in accordance with its terms.

10. Section 8.5 of the Management Agreement provides that in the event that the Management Agreement is terminated by the Fund, the Former Manager must 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.

The Manager has Failed to Deliver the Fund Records

11. As the manager of the Fund, the Former Manager had all or substantially all of the Fund Records in its possession, custody or control. The Former Manager elected to co-mingle the information pertaining to the Fund's shareholders with the personal information of shareholders of other investment funds managed by the Former Manager.

12. The Former Manager has failed to comply with the requirement under the Management Agreement deliver the Fund Records to the Fund. In response to repeated requests by the Fund, the Former Manager has only delivered certain limited documentation in an intentionally disordered and haphazard manner, but has failed to provide the majority of the documentation the Fund requires to appropriately manage its operations.

13. Further, the Former Manager has proposed to deliver co-mingled records to the Fund, placing the Fund in the untenable position of having to receive and assume

responsibility for third party personal information. The Former Manager is well aware of its obligation to deliver stand-alone documents and it is inappropriate for the Former Manager to breach third party privacy rights by delivering to the Fund shareholder records belonging to third parties and containing private, third party information.

14. In its failure to comply with its obligations under the Management Agreement, the Former Manager has limited the Fund's ability to perform its portfolio management and its administrative functions such as accounting, auditing, maintenance of the shareholder register, issuance of tax forms to investors and filing of tax returns.

15. In particular, the Former Manager has failed to deliver Fund Records critically important to the continued operations of the Fund, including but not limited to:

- (a) A current list of the shareholders of the Fund on a per series and per shareholder basis, including, without limitation, the names and addresses of each shareholder and any other information regarding any shareholder of the Fund;
- (b) Copies of all requests seeking redemption of Class A shares of the Fund that are outstanding;
- (c) The entire backup folder at the Former Manager for the Transfer Agency system (UMP – Unitholder Management Plus) being the set of PROGRESS relational database files including, without limitation, UMP.db as at September 30, 2013, being the integrated database of the Fund under FundSERV codes “WOF” and “WVN”;

- (d) All contracts to which the Fund is a party or is otherwise bound (to the extent not previously delivered to the Fund's lawyers);
- (e) All accounting books and records for the year ended August 31, 2013 and the interim period ending September 30, 2013, including, without limitation, the general ledger, trial balances, all sub ledgers, all excel work sheets and other work product used to support accounting balances and/or note financial statement note disclosure and all working papers prepared for KPMG LLP to complete the Fund's fiscal 2013 financial statement audit;
- (f) All records relating to any investment held by the Fund in any portfolio company or otherwise, including, without limitation, contact information for all investee companies of the Fund and their respective securityholders;
- (g) The identity, contact name, telephone number and email address of all third party suppliers who provide services to the Fund, GWC or any of their respective affiliates to assist the Manager with its obligations under the Management Agreement, including, without limitation, auditors, valuers, shareholder recordkeeping service providers, technology licensors, and commissions payable service providers;
- (h) All tax records;
- (i) All bank account and related records; and
- (j) All brokerage or similar account and related records.

The Fund Records Should Be Returned Forthwith

16. Due to the Former Manager's breach of its obligations, the Fund has suffered, and will continue to suffer, damages. While the Former Manager continues to delay delivery of the Fund Records, the Fund cannot meet its obligations and its shareholders are exposed to potentially drastic tax liabilities arising from, among other things, the failure of the Fund to register timely transfers of beneficial ownership between RRSP accounts to RRIF accounts of its shareholders.

17. The Fund Records are the property of the Fund and the Former Manager has no basis to continue to withhold possession of and access to the Fund Records. The Former Manager agreed, pursuant to the Management Agreement, to deliver the Fund Records, and its obligation is clear and unambiguous.

18. The Fund therefore requests an order that the Former Manager be compelled deliver forthwith to the Fund, at the Former Manager's own cost and expense, the Fund Records in its possession, custody and control, and to provide unfettered access to the Fund and Monitor of any Fund Records stored or otherwise contained on an electronic information storage system. Where the Fund Records have been comingled with other records, the Fund requests that the Former Manager be directed to separate the Fund Records at its own cost and expense, and to deliver forthwith to the Fund only the Fund Records.

19. The Fund relies upon the following:

- (a) Section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- 1. Affidavit of C. Ian Ross sworn October 31, 2014 in support of this motion and exhibits thereto; and
- 2. Such further and other materials as counsel may advise and this Court may permit.

October 31, 2014

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Lawyers for the Applicant

TO: ATTACHED SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE NOVEMBER 27, 2014)**

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TAB 2

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.

AFFIDAVIT OF C. IAN ROSS,
SWORN OCTOBER 31, 2014
(Motion for Delivery of Records)

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

1. I am the Chairman of GrowthWorks Canadian Fund Ltd. (the “**Fund**”), the applicant in these proceedings. I am a director of the Fund and interim chief executive officer of the Fund, in which role I am responsible for the daily operations of the Fund, acting under the oversight of 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 have sworn a series of affidavits in these *Companies Creditors’ Arrangement Act* (“**CCAA**”) proceedings, including an affidavit on September 30, 2013 in support of the initial application of the Fund pursuant to the CCAA (the “**Initial Order Affidavit**”). Capitalized terms contained but not defined herein, have the meanings provided in the Initial Affidavit.

3. I swear this affidavit in support of a motion for an order:

- (a) compelling GrowthWorks WV Management Ltd. and GrowthWorks Capital Ltd. (together, the “**Former Manager**”), at its own cost and expense, to forthwith provide the Fund with full and complete access to and possession of all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in the custody, possession or control of the Former Manager or any of its delegates or affiliates (the “**Fund Records**”), and providing unfettered access to the Fund of any Fund Records stored or otherwise contained on an electronic information storage system; and
- (b) such other relief as this Honourable Court may allow.

BACKGROUND

(a) **CCAA PROCEEDINGS**

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

5. For the reasons described in the Initial Order Affidavit, the Fund sought CCAA protection. On October 1, 2013, the Fund sought and obtained an order (as amended, the “**Initial Order**”) granting, among other things, a stay of proceedings up to and including January 15, 2014 (the “**Stay Period**”). The Stay Period is now extended up to and including May 31, 2015. FTI Consulting Canada Inc. (the “**Monitor**”) is acting as the court-appointed monitor in these CCAA proceedings.

(b) **THE FORMER MANAGER**

6. The Fund was a party to an amended and restated management agreement with the Former Manager dated July 15, 2006 (the “**Management Agreement**”), pursuant to which GrowthWorks WV Management Ltd. was required to provide all day-to day management necessary for the conduct of the business of the Fund, including, among other things, investment management and administration services, including accounting, recordkeeping, investor relations, public disclosure, regulatory obligations, retention of the auditor and maintenance of the shareholder register (the “**Services**”).

7. GrowthWorks WV Management Ltd. delegated all its obligations under the Management Agreement to GrowthWorks Capital Ltd., an affiliate of Matrix Asset Management Inc., the parent corporation of GrowthWorks WV Management Ltd.

8. On the investment management side of its duties, the Former Manager’s duties under the Management Agreement included:

- (a) managing the daily operations of the Fund;
- (b) providing portfolio advisory and investment management services, including identifying and evaluating investment opportunities and structuring and negotiating prospective investments;
- (c) monitoring, supervising and enforcing compliance with all agreements entered into by the Fund;
- (d) ensuring compliance with all relevant securities laws;
- (e) preparing and making recommendations for follow-on investments in the Portfolio Companies to the Investment Committee of the Board or to the Board;

- (f) monitoring the Fund's portfolio investments, which included actively participating on portfolio companies' boards of directors and evaluating financial and other key performance indicators;
- (g) reporting to the Board on the Fund's investment portfolio; and
- (h) dealing with portfolio dispositions.

9. On the administration side of its duties, the Former Manager's responsibilities were comprehensive and included:

- (a) calculating the net asset value per share of each series of Class A Shares in accordance with policies and procedures approved by the Board and the Audit and Valuation Committee of the Board on the relevant valuation date;
- (b) creating and maintaining registers of shareholders, including transfers of beneficial interest, redemptions, and distributions;
- (c) maintaining complete and accurate books of account for the Fund;
- (d) arranging for the preparation and filing of all returns, reports and filings required to be made with governmental authorities;
- (e) retaining and working with the Board and the Fund's auditor to permit the audit of the Fund and arranging the filing and posting of audited and unaudited financial statements as necessary to comply with securities laws applying to the Fund;
- (f) providing information technology systems and application thereof, including a shareholder database, transaction processing and accounting, to the extent necessary to provide the Services;

- (g) recording and maintaining information necessary for the filing of tax returns by the Fund and preparing and submitting tax returns; and
- (h) providing administrative and support services to the Board and committees of the Board, and providing office premises and information technology systems, including shareholder database, transaction processing, and accounting systems.

10. Under the Management Agreement, the Former Manager covenanted that it would ensure that all persons associated with providing the Services would have the necessary registrations and approvals under applicable securities laws and regulations¹ and that it would comply with the securities laws and regulations of the Canadian Securities Administrators and policy statements of securities regulatory authorities.²

11. 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 under the Management Agreement.

12. In return for the Services, the Former Manager received management and administration fees based upon the net assets of the Fund (the "**Management Fees**"). Over the last two fiscal years prior to the termination of the Management Agreement, the Fund paid approximately \$14.3 million in Management Fees to the Former Manager.

(c) **TERMINATION OF THE MANAGEMENT AGREEMENT**

13. The Management Agreement provided at Section 8.2 that

¹ Management Agreement appended as Exhibit A to the Initial Order Affidavit, s. 3.7.

² Management Agreement appended as Exhibit A to the Initial Order Affidavit, s. 3.4.

8.2 Earlier Termination by a Fund - 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;

(d) immediately, upon the Manager failing to maintain all necessary securities registrations;³

14. On September 30, 2013, as a result of material defaults on the part of the Former Manager, the Fund terminated the Management Agreement in accordance with its terms. In its letter terminating the Management Agreement and in subsequent demands made to the Former Manager, the Fund requested the return of all Fund Records, including, without limitation,

- (a) a current list of the shareholders of the Fund on a per series and per shareholder basis, including, without limitation, the names and addresses of each shareholder and any other information regarding any shareholder of the Fund;
- (b) copies of all requests seeking redemption of Class A shares of the Fund that are outstanding;
- (c) the entire backup folder at the Former Manager for the Transfer Agency system (UMP – Unitholder Management Plus) being the set of PROGRESS relational database files including, without limitation, UMP.db as at September 30, 2013, being the integrated database of the Fund under FundSERV codes “WOF” and “WVN”;

³ Management Agreement appended as Exhibit A to the Initial Order Affidavit, s. 8.2.

- (d) all contracts to which the Fund is a party or is otherwise bound (to the extent not previously delivered to the Fund's lawyers);
- (e) all accounting books and records for the year ended August 31, 2013 and the interim period ending September 30, 2013, including, without limitation, the general ledger, trial balances, all sub ledgers, all excel work sheets and other work product used to support accounting balances and/or note financial statement note disclosure and all working papers prepared for KPMG LLP to complete the Fund's fiscal 2013 financial statement audit;
- (f) all records relating to any investment held by the Fund in any portfolio company or otherwise, including, without limitation, contact information for all investee companies of the Fund and their respective securityholders;
- (g) the identity, contact name, telephone number and email address of all third party suppliers who provide services to the Fund, GWC or any of their respective affiliates to assist the Manager with its obligations under the Management Agreement, including, without limitation, auditors, valuers, shareholder recordkeeping service providers, technology licensors, and commissions payable service providers;
- (h) all tax records;
- (i) all bank account and related records; and
- (j) all brokerage or similar account and related records.⁴

⁴ Termination Letter appended to the Initial Order Affidavit as Exhibit B.

15. Section 8.5 of the Management Agreement provides that:

Upon termination of this Agreement under Sections 8.2 or 8.3, the Manager shall promptly 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.

16. The Manager's obligation to deliver to the Fund all Fund Records is clear and unambiguous and survives the termination of the Management Agreement and continues in full force and effect.⁵

(d) FAILURE TO DELIVER THE FUND RECORDS

17. As indicated above, the Former Manager's responsibilities under the Management Agreement included creating and maintaining registers of the Class A and other shareholders of the Fund. Those registers and other information relating to the Fund's shareholders maintained by the Former Manager forms part of the Fund's records. I am advised that, under applicable privacy laws, the Fund remains accountable for that information.

18. The Former Manager has advised the Fund that the Former Manager elected to co-mingle the information pertaining to the Fund's shareholders with the personal information of shareholders of other investment funds managed by the Former Manager, and, as a result, that the Former Manager does not have a separate data file containing only information pertaining to the Fund's shareholders. The Former Manager has proposed to send that co-mingled file to the Fund, thereby placing the Fund in the untenable position of being in receipt of personal information belonging to third parties or to engage a third party for the purpose of extracting the Fund's records and assume responsibility for that third party personal information.

⁵ Management Agreement appended as Exhibit A to the Initial Order Affidavit, s. 10.2.

19. Under the terms of the Management Agreement, the Former Manager must deliver to the Fund, in a form accessible to the Fund, an electronic copy of the shareholder records of the Fund. That file must not (and, in my view, should not) include the personal information of any party other than the Fund's shareholders. The Former Manager's obligation to deliver a stand-alone data file containing only the Fund's shareholder information following a termination of the Management Agreement was entirely foreseeable by the Former Manager and it was entirely within the control of the Former Manager to maintain that information separately and to not commingle it with information pertaining to other investment funds managed by the Former Manager. The information of the other investment funds that has been commingled with the shareholder information of the Fund is confidential to those other investment funds and their shareholders and, in respect to the shareholders, subject to their privacy rights.

20. Despite having entered into the Management Agreement, and assumed its obligations under, and enjoyed the benefits of, that agreement, the Former Manager has failed to comply with its obligations under the Management Agreement to deliver to the Fund all Fund Records, including, without limitation, 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.

21. The Fund has made repeated requests of the Former Manager. Most recently, on October 16, 2014, the Fund sent a letter to the Former Manager demanding the delivery of the Fund Records to which it is entitled under the Management Agreement. A copy of the letter is appended hereto as Exhibit "A".

22. The Former Manager has now delivered certain limited documentation but has failed to provide the majority of the documentation the Fund requires to appropriately manage its operations.

23. The Former Manager continues to delay delivery of the Fund Records. The Fund Records that have been sent to the Fund and/or the Monitor have been sent in an intentionally haphazard and disorganized manner without proper consultation with the Fund. This has caused the Fund to incur unnecessary time and expense to receive and sort through the documentation and data delivered.

24. The Former Manager has also refused to send the Fund Records directly to the Fund despite being instructed twice in writing to send the Fund Records to the Fund's lawyers. Instead, the Former Manager has insisted on dealing solely with the Monitor to the exclusion of the Fund, and without regard to the Fund's input as to the most efficient manner of delivering the Fund Records.

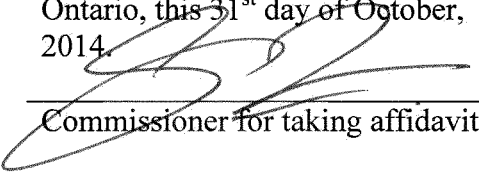
25. While the Former Manager continues to delay and unnecessarily complicate delivery of the outstanding Fund Records, the Fund cannot meet its obligations and continues to incur liabilities, and its shareholders are exposed to potentially drastic tax liabilities arising from, among other things, failure of the Fund to register timely transfers of beneficial ownership between RRSP and RRIF accounts of its shareholders.

26. Without the Fund Records, the Fund is even limited in its ability to perform routine portfolio management and administrative functions such as accounting, auditing, maintenance of the shareholder register, issuance of tax forms to investors and filing of tax returns.

ORDER REQUESTED

27. Accordingly, this affidavit is sworn in support of a motion by the Fund for an order substantially in the form appended to the Fund’s Motion Record requiring the Former Manager to provide forthwith the Fund with full and complete access to and possession of all Fund Records, at the Former Manager’s own cost and expense.

SWORN BEFORE ME at the City
of Toronto, in the Province of
Ontario, this 31st day of October,
2014.



Commissioner for taking affidavits



C. IAN ROSS

TAB A

GROWTHWORKS
 **Canadian Fund Ltd.**

Via Electronic Mail and Regular Mail

October 16, 2014

GrowthWorks WV Management Ltd.
 2600-1055 West Georgia St.
 Vancouver, BC V6E 3R5

Attention: David Levi, Chief Executive Officer

RE: Demand for records belonging to GrowthWorks Canadian Fund Ltd.

Dear Sirs/Mesdames:

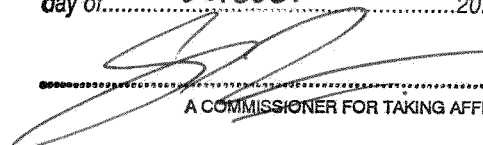
Reference is made to the amended and restated management agreement dated July 15, 2006 (the "**Management Agreement**") between GrowthWorks Canadian Fund Ltd. (the "**Fund**") and GrowthWorks WV Management Ltd. (the "**Former Manager**") and the letter dated September 30, 2013 from the Fund to the Former Manager (the "**Records Demand Letter**").

Until September 30, 2013, the Former Manager acted as the manager of the Fund pursuant to the terms of the Management Agreement and was responsible for directing the day to day affairs, and manage the business of, the Fund. The Former Manager's duties under the Management Agreement included providing share register and transfer agency services and bookkeeping and internal accounting services. In its capacity as the manager of the Fund, all of the Fund's books and records in respect of periods up to that date were (or should have been) kept in the possession or under the control of the Former Manager.

In the Records Demand Letter and subsequent communications to you and your representatives by or on behalf of the Fund and FTI Consulting Canada Inc. (the "**Monitor**"), the court-appointed monitor in the Fund's proceedings (the "**CCAA Proceedings**") under the *Companies Creditors Arrangement Act* (Canada), the Fund has, pursuant to Section 8.5 of the Management Agreement, demanded that the Former Manager promptly deliver to the Fund all books and records ("**Fund Records**") of or relating to the affairs of the Fund in the custody, possession or control of the Former Manager or any of its delegates of affiliates including, without limitation, electronic records or data in a form accessible to the Fund.

We understand that in September 2014, the Former Manager delivered in paper format to the Monitor limited Fund Records relating to various shareholder transfer, redemption and registered retirement income fund requests and weekly pricing information. The Former Manager has not returned to the Fund any other Fund Records and has failed entirely to deliver a significant portion of the Fund Records, including, without limitation:

This is Exhibit.....A.....referred to in the
 affidavit of.....Ian C. Ross.....
 sworn before me, this.....31st.....
 day of.....October.....20.....14.....


 A COMMISSIONER FOR TAKING AFFIDAVITS

- (i) a current list of the shareholders of the Fund on a per series and per shareholder basis, including, without limitation, the names and addresses of such shareholders and any other information regarding any shareholder of the Fund;
- (ii) the entire folder of the backup folder at the Former Manager for the Transfer Agency system (UMP - Unitholder Management Plus) being the set of PROGRESS relational database files including, without limitation, UMP.db as at the date of this letter, being the integrated database of the Fund under FundSERV codes "WOF" and "WVN";
- (iii) copies of all requests seeking redemption of Class A shares of the Fund that are outstanding;
- (iv) contracts to which the Fund is a party or is otherwise bound;
- (v) accounting books and records in respect of the Fund, including, without limitation, the general ledger, trial balances, debt balances, equity balances, sub-ledgers, excel work sheets and other work product used to support accounting balances and/or note financial statement note disclosure and working papers prepared for any accountant or auditor of the Fund;
- (vi) all records relating to any investment held by the Fund in any portfolio company or otherwise, including, without limitation, the adjusted cost of all of the Fund's investments, contact information for all investee companies of the Fund and their respective securityholders, and all working papers, work product and other information provided to any valuator to complete any valuation of the Fund's investment portfolio;
- (vii) all tax records, including, without limitation, all information relating to the Fund's compliance with any "pacing requirements" or income, sales, goods and services, harmonized sales or employer health tax legislation;
- (viii) all bank account and related records; and
- (ix) all brokerage or similar account and related records.

The Fund has made repeated requests to the Former Manager for the return of the Fund Records. These requests have largely been ignored by the Former Manager. The Former Manager is in breach of its obligations under the Management Agreement and the initial court order in the CCAA Proceedings, as amended, in failing to produce the Fund Records despite the Fund Records being within the power and control of the Former Manager. These repeated intentional and wilful breaches of those obligations, have caused and will continue to cause the Fund to incur actual and contingent losses, costs, expenses and other liabilities.

The Fund hereby demands that the Former Manager deliver the Fund Records to the Fund's counsel, McCarthy Tétrault LLP at Suite 5300, Toronto Dominion Bank Tower, 66 Wellington Street West, Toronto, Ontario M5K 1E6 (Attention: Emily Ng), including, without limitation, the Fund Records described in clauses (i) to (ix) above.

You are advised that the Fund will seek a motion against the Former Manager, within the CCAA Proceedings, to seek an order compelling the Former Manager to deliver the Fund Records. The Fund will also seek its costs of the motion.

You are further advised that the Fund intends to hold liable, on a joint and several basis, the Former Manager and its representatives for all losses, costs and expenses incurred by the Fund, including, without limitation, all loss of profits, opportunities and other special damages for the Former Manager's breaches of its obligations under the Management Agreement.

Yours truly,

GrowthWorks Canadian Fund Ltd.

A handwritten signature in black ink, appearing to read "C. Ian Ross". The signature is written in a cursive style with a large initial "C" and "I".

C. Ian Ross, Interim Chief Executive Officer

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF C. IAN ROSS
(Motion for Delivery of Records)
(sworn October 31, 2014)

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Lawyers for the Applicant
13825240

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
) , THE
))
JUSTICE) DAY OF , 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.

PRODUCTION ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the “**Fund**”) for an order compelling the delivery of all records in respect of the business and affairs of the Fund, which are in the possession and control of GrowthWorks WV Management Ltd. and GrowthWorks Capital Ltd. (together, the “**Former Manager**”) and their affiliates, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Notice of Motion and the affidavit of C. Ian Ross sworn on October 31, 2014 (the “**Motion Record**”), the responding Motion Record of the Former Manager, and the factums and briefs of authority, filed, and on hearing the submissions of counsel for the Fund, the FTI Consulting Canada Inc. (the “**Monitor**”), Roseway Capital S.a.r.l. (“**Roseway**”), and Former 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 Motion Record is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses

with further service thereof.

ACCESS TO AND DELIVERY OF RECORDS

2. THIS COURT ORDERS that the Former Manager and any of its officers, directors, employees, consultants, lenders, contractors, lawyers and accountants, including, without limitation, R.C. Morris & Company and its officers, directors and employees, who is in possession, custody or control of any books, documents, securities, contracts, orders, corporate, tax and accounting records, shareholder registers, and any other papers, records and information of any kind related to the business or affairs of the Fund, and any computer programs, computer tapes, computer disks or other data storage media containing any such information, including, without limitation, papers, documents and information described in Schedule A to this Order (the foregoing, collectively, the “**Fund Records**”), shall at their own cost and expense, deliver forthwith the Fund Records to the Fund and/or its representatives in a form accessible to the Fund and in such manner as the Fund may elect.

3. THIS COURT ORDERS that if any Fund Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all persons, including, without limitation, the Former Manager, in possession, custody or control of Fund Records shall, at their own cost and expense, forthwith give unfettered access to the Fund for the purpose of allowing the Fund to recover and fully copy all of the information contained therein, and shall not alter, erase or destroy any Fund Records without the prior written consent of the Fund. All persons, including, without limitation, the Former Manager, in possession, custody or control of any Fund Records shall, at their own cost and expense, provide the Fund with any instructions, access codes, account names, account numbers and other information that may be required to gain access to the Fund Records.

4. THIS COURT ORDERS that when complying with paragraph 2 of this order, only the Fund Records will be delivered, and if any Fund Records, including without limitation, the Fund’s shareholder registers, have been commingled or otherwise maintained in a manner causing such Fund Records to be combined with other records that are not Fund Records, the Fund Records shall forthwith be separated from such other records by the Former Manager, at its

own cost and expense and thereafter delivered forthwith to the Fund in a form accessible to the Fund, as the Fund may elect.

Schedule A

1. A current list of the shareholders of the Fund on a per series and per shareholder basis, including, without limitation, the names and addresses of each shareholder and any other information regarding any shareholder of the Fund;
2. Copies of all requests seeking redemption of Class A shares of the Fund that are outstanding;
3. The entire backup folder at the Former Manager for the Transfer Agency system (UMP – Unitholder Management Plus) being the set of PROGRESS relational database files including, without limitation, UMP.db as at September 30, 2013, being the integrated database of the Fund under FundSERV codes “WOF” and “WVN”;
4. All contracts to which the Fund is a party or is otherwise bound (to the extent not previously delivered to the Fund’s lawyers);
5. All accounting books and records for the year ended August 31, 2013 and the interim period ending September 30, 2013, including, without limitation, the general ledger, trial balances, all sub ledgers, all excel work sheets and other work product used to support accounting balances and/or note financial statement note disclosure and all working papers prepared for KPMG LLP to complete the Fund’s fiscal 2013 financial statement audit;
6. All records relating to any investment held by the Fund in any portfolio company or otherwise, including, without limitation, contact information for all investee companies of the Fund and their respective securityholders;
7. The identity, contact name, telephone number and email address of all third party suppliers who provide services to the Fund, GWC or any of their respective affiliates to assist the Manager with its obligations under the Management Agreement, including, without limitation, auditors, valuers, shareholder recordkeeping service providers, technology licensors, and commissions payable service providers;

8. All tax records;
9. All bank account and related records; and
10. All brokerage or similar account and related records.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

PRODUCTION ORDER

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Lawyers for the Applicant

13430748

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

MOTION RECORD
(Motion for Delivery of Records)
(Returnable November 27, 2014)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Sharon A. Kour LSUC#: 58328D
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