

**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 PLAN
OF COMPROMISE OR ARRANGEMENT OF
GROWTHWORKS CANADIAN FUND LTD.

**FOURTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

November 26, 2013

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1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”, a copy of which is attached hereto as Appendix “A”) was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013, which stay of proceedings was thereafter extended until January 15, 2014 (the “**Stay of Proceedings**”) and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. The Fund is a labour sponsored venture capital fund that currently has a mature and diversified portfolio consisting primarily of investments made in small and medium-sized Canadian businesses (the “**Portfolio Companies**”). The Fund was formed in 1988 with the

investment objective of achieving long term appreciation for its Class A shareholders, whom principally comprise retail investors.

3. The Fund experienced liquidity issues because of, *inter alia*, an inability to access short-term financing as well as unfavourable market conditions impacting its ability to divest, at a profit, its relatively illiquid investments. As a result of these liquidity issues, the Fund was unable to meet its obligations as they became due, including the obligation of the Fund to make a \$20 million dollar payment to Roseway Capital S.a.r.l (“**Roseway**”), its sole secured creditor, which payment became due on September 30, 2013. With the consent of Roseway, the Fund filed for and obtained protection under the CCAA on October 1, 2013.

4. Prior to September 30, 2013 and the commencement of these CCAA Proceedings, the Fund’s day to day operations were delegated to GrowthWorks WV Management Ltd. (the “**Manager**”) pursuant to a Management Agreement dated July 15, 2006 (“**Management Agreement**”). In accordance with the terms of the Management Agreement, the Manager was permitted to delegate its duties under the Management Agreement to third parties. Pursuant to the Management Agreement, the Manager delegated the Manager’s obligations to GrowthWorks Capital Ltd. On September 30, 2013, the Fund terminated the Management Agreement for the reasons outlined in the Affidavit of Ian Ross, sworn September 30, 2013 and filed.

5. Pursuant to an Order granted by the Court on October 29, 2013, the Initial Order was amended and restated and the Stay of Proceedings was extended until January 15, 2014 (the “**Amended and Restated Initial Order**”). A copy of the October 29, 2013 Order attaching the Amended and Restated Initial Order is attached as Appendix “B”.

6. Pursuant to an Order granted by the Court On November 18, 2013, the Court approved a sales and investor solicitation process (“SISP”) for the purpose of offering the opportunity for potential investors to purchase or invest in the business or property of the Fund.

PURPOSE OF THIS REPORT

7. The purpose of this fourth report of the Monitor is to provide the Court with the background information and Monitor’s recommendation relating to the motion of Roseway for an order authorizing the Fund, with the consent of the Monitor, to make distributions to Roseway of the Collateral (as defined herein) or the proceeds thereof on account of the indebtedness owing by the Applicant to Roseway.

TERMS OF REFERENCE

8. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor and, where appropriate, the Applicants’ books and records and discussions with various parties including the Manager, the Fund’s management and its advisors.

9. Future-oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecasts and such variations may be material.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the affidavit of Michael Forer, director of Roseway, sworn November 22, 2013 and filed (the “**Roseway Affidavit**”).

11. This report should be read in conjunction with the Roseway Affidavit as certain information contained in the Roseway Affidavit has not been included herein in order to avoid unnecessary duplication.

PROPOSED DISTRIBUTIONS TO ROSEWAY

Cash Position of the Applicant

12. The cash flow forecasts prepared by the Applicant indicate that the Fund held approximately \$6.6 million in its bank accounts at the commencement of these proceedings. Since the CCAA filing date, the Monitor has obtained additional funds in the approximate amount of \$930,000 that was previously held in accounts at Royal Bank of Canada (“RBC”) in the name of the Manager. RBC also holds GICs totalling \$975,000 (the “RBC GICs”) that are being held in accordance with the designated investment focus of two outstanding series of Class A Shares of the Fund designated as GIC series. The Monitor is in the process of transferring the RBC GICs to the Monitor’s account.

13. The Applicant will also likely be in receipt of additional cash over the next several months from the potential sale of shares held by the Fund in Ambit Biosciences Corporation. In addition, the SISP contemplates that any Qualified LOI, Qualified Bid or Final Bid (each as defined therein) must include cash consideration sufficient to pay Roseway in full, or must provide for such other consideration as may be acceptable to Roseway in its sole discretion. Accordingly, any consummation of a transaction pursuant to the terms of the SISP will involve payment to Roseway in cash or in kind.

Review of the Roseway Security

14. As explained in the Second Report of the Monitor dated October 28, 2013, a copy of which is attached without appendices as Appendix “C”, Osler, Hoskin & Harcourt LLP (“**Osler**”), as counsel to the Monitor, conducted a review as to the validity and enforceability of the security held by Roseway over the Collateral (as defined in the Security Agreement granted by the Fund in favour of Roseway).

15. The opinion of Osler, attached as Appendix “G” to the Roseway Affidavit, contains the usual qualifications and assumptions and also contains the comment that the Participation Agreement does not use typical debtor/creditor language to create a debt or loan obligation owing from the Fund to Roseway. The opinion states that:

the Participation Agreement should be characterized as a debt or loan obligation of the Fund for the following reasons: (i) the Participation Agreement evidences a promise by the Fund to repay the amount of \$20,000,000 advanced to the Fund by Roseway and to pay Roseway for the use of the advanced amount; (ii) the Fund was obligated to Roseway for the repayment and use of the advanced amount irrespective of whether it obtained sufficient earnings from any divestment proceeds to do so; (iii) the Fund’s obligation under the Participation Agreement was recorded as a liability on its financial statements; and (iv) the Fund gave security for its obligations under the Participation Agreement in the security documents granted by the Fund to Roseway which contain events of default. The existence of security and event of default language, including acceleration of all payments due to Roseway upon the occurrence of an event of default, is consistent with a debtor/creditor relationship.

16. Accordingly, and subject to the assumptions and qualifications contained therein, the opinion concludes that Roseway’s personal property security has been validly perfected in the Province of Ontario and is enforceable as against a trustee in bankruptcy of the Fund.

Roseway as the Sole Secured Creditor of the Applicant

17. As noted in the factum filed by the Fund in support of its application for CCAA protection, the Fund acknowledged that Roseway is its sole secured creditor. This was later acknowledged by the Monitor in the Third Report of the Monitor dated November 18, 2013.

18. The Monitor understands that there is a *Personal Property Security Act* (Ontario) registration in favour of RBC (the “**RBC Registration**”). The RBC Registration was registered subsequent to the registration in favour of Roseway and relates to a guarantee granted by the Fund to RBC in connection with a loan extended by RBC to one of the Fund’s Portfolio Companies. In connection with such loan, the RBC GICs were pledged by the Fund to RBC as security for the guarantee. Based on discussions with counsel to the Fund, the Monitor understands that the guarantee granted by the Fund in favour of RBC was terminated and that RBC has communicated to counsel to the Applicant that it intends to discharge the RBC Registration.

Roseway’s Motion

19. On Friday November 22, 2013, Roseway served a motion for an Order of the Court declaring, *inter alia*, that the Fund, with the consent of the Monitor, may make distributions of the Collateral or proceeds thereof from time to time to Roseway without further Order of this Court (the “**Roseway Order**”).

20. The Roseway Order provides that the Applicant, with the consent of the Monitor shall only be able to make distributions to Roseway without further Order of the Court provided however, that prior to making such distributions, the Monitor shall be satisfied that certain Priority Payables (as defined therein and reproduced below) are being paid when due and that the

funds remaining in the hands of the Applicant and the Monitor after any such distribution to Roseway are sufficient to pay the Priority Payables accrued to the date of any such distribution.

Priority Payables are defined in the Roseway Order as:

- (a) amounts secured by the Administration Charge (as defined in the Amended and Restated Initial Order made herein and dated October 1, 2013 (the “Initial Order”)), to the maximum amount of \$500,000;
- (b) amounts secured by the Directors’ Charge (as defined in the Initial Order), to the maximum amount of \$1,000,000;
- (c) amounts secured by the Critical Supplier’s Charge (as defined in the Initial Order), to the maximum amount of \$50,000;
- (d) amounts due to the Government of Canada or a Province (each, a “**Governmental Entity**”) which, by virtue of a statutory deemed trust or lien in favour of such Governmental Entity, are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway, and
- (e) amounts due to employees or former employees of GrowthWorks which are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway.

The Position of the Monitor

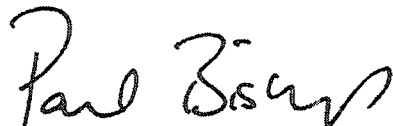
21. The Monitor is of the view that the proposed Roseway Order is reasonable. In addition, the ability of the Fund to make a payment to Roseway will reduce the interest that

continues to accrue at a rate of 20% per annum on the total indebtedness owing by the Fund to Roseway.

22. Any distributions to Roseway are at the discretion of the Fund and must be consented to by the Monitor. Accordingly, prior to making any such distribution to Roseway, the Monitor, in consultation with the Applicant, will ensure that, in addition to the Priority Payables referred to above, sufficient funds are retained by the Monitor in order to enable the Fund to continue to operate in the ordinary course in these CCAA proceedings (the “**Restructuring Holdbacks**”). The Monitor anticipates that the Restructuring Holdbacks to be established will include, *inter alia*, holdbacks of funds sufficient for payment of transition services to the Manager, Directors’ fees, D&O insurance, audit and professional fees, and any fees incidental to the implementation of the terms of the SISP. In addition to the foregoing, as the timing and quantum of future receipts and disbursements of the Fund are uncertain, the Monitor will also retain sufficient funds to cover various contingencies, the amount of which will be determined prior to any distribution to Roseway.

The Monitor respectfully submits to the Court this Fourth Report.

Dated this 26th day of November, 2013.

A handwritten signature in black ink, appearing to read "Paul Bisson". The signature is written in a cursive, flowing style.

FTI Consulting Canada Inc.

in its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its personal or corporate capacity

APPENDIX “A”

Court File No.: »

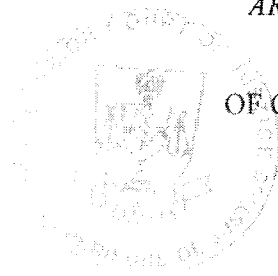
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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")



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), 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) 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 defined in the Ross Affidavit) 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 (as defined in the Ross Affidavit), 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.

-9- *this Order is without prejudice to any arguments of the Fund, 2/5*

CRITICAL SUPPLIERS

20. THIS COURT ORDERS AND DECLARES that Growthworks WV Management Ltd. (the "Manager"), GrowthWorks Capital Ltd. ("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~~ *the purported termination of 2/5*

~~to the Management Agreement described in the Ross Affidavit (the "Management Agreement") is a critical supplier to the Applicant as contemplated by Section 11.4 of the CCAA (each, a "Critical Supplier")~~ *2/5*

21. THIS COURT ORDERS that 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; (b) the amount to which the Manager is entitled to be paid under section 8.6(b) of the Management Agreement; and (c) \$50,000. The Critical Supplier Charge shall have the priority set out in paragraphs 36 and 38 herein.

to the extent this Court declares any Person a critical Supplier as contemplated by Section 11.4 of the CCAA by subsequent order

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. 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 with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers 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.

(each, a "Critical Supplier") 2/5

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. 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 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

25. 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, 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 23 of this Order.

APPOINTMENT OF MONITOR

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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, 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

34. 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.

35. 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 36 and 38 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. 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); and

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

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge and the Critical Suppliers' 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.

38. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and the Charges 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.

39. 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.

40. 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.

41. 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

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] 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.

43. 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.

44. 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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.



ENREGISTRÉ / INSCRIT À TORONTO
CN / BOOK NO:
LE / DANS LE REGISTRE NO.



OCT 01 2013

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-13-10279-0002L

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

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant
#12547919

APPENDIX “B”

**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,

in "**counsel for Roseway,**" *see*

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".



FILED
CLERK OF COURT
LEWIS & CLARK COUNTY



OCT 29 2013

SCHEDULE "A" – AMENDED AND RESTATED INITIAL ORDER

**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.

APPENDIX “C”

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 PLAN OF COMPROMISE OR ARRANGEMENT
OF GROWTHWORKS CANADIAN FUND LTD.

**SECOND REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

October 28, 2013

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Solicitors for the Monitor

**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 PLAN OF COMPROMISE OR ARRANGEMENT
OF GROWTHWORKS CANADIAN FUND LTD.

**SECOND REPORT OF FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013 and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**” or “**FTI**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached hereto as Appendix A.

2. The Fund is a labour sponsored venture capital fund that currently has a mature and diversified portfolio consisting primarily of investments made in small and medium sized Canadian businesses. The Fund was formed in 1988 with the investment objective of achieving long term appreciation for its Class A shareholders, whom principally comprise retail investors.

3. The Fund experienced liquidity issues because of, *inter alia*, an inability to access short-term financing as well as unfavourable market conditions impacting on its ability to divest, at a profit, its relatively illiquid investments. As a result of these liquidity issues, the Fund was unable to meet its obligations as they became due, including the obligation of the Fund to make a \$20 million dollar payment to Roseway, its sole secured creditor, which payment became due on September 30, 2013. With the consent of Roseway, the Fund filed for and obtained protection under the CCAA on October 1, 2013.

4. Prior to September 30, 2013 and the commencement of these CCAA Proceedings, the Fund's day to day operations were delegated to GrowthWorks WV Management Ltd. (the "**Manager**") pursuant to a Management Agreement dated July 15, 2006, as amended ("**Management Agreement**"). In accordance with the terms of the Management Agreement, the Manager was permitted to delegate its duties under the Management Agreement to third parties. The Manager exercised such delegation of the Manager's obligations to Growth Works Capital Ltd ("**GWC**"). On September 30, 2013 the Fund terminated the Management Agreement for the reasons outlined in the September 30 Affidavit (as defined herein).

5. On October 1, 2013 the Applicant sought from the Court the granting of a provision in the Initial Order designating the Manager as well as GWC a critical supplier of the Fund. The proposed critical supplier provisions were not acceptable to all parties and accordingly it was agreed that they would not be included in the Initial Order. A

motion before this Honourable Court to consider the inclusion of such provision was adjourned until October 9, 2013 and again until October 29, 2013.

6. The First Report of the Monitor dated October 8, 2013, attached hereto as Appendix B, sets out, *inter alia*, the Monitor's comments with respect to the causes of the Applicant's insolvency, as well as the reasonableness of the October 1 Forecast.

PURPOSE OF THIS REPORT

7. The purpose of this report is to update and inform the Court on the following:

- (a) The activities of the Fund and the Monitor since the date of the First Report;
- (b) The Fund's request for the granting of an amended and restated Initial Order (the "**Amended and Restated Initial Order**") providing for, *inter alia*,
 - (i) the designation of each of the Manager and GWC as a critical supplier of the Fund, and in connection therewith a court-ordered charge in favour of the Manager and GWC for the provision of Critical Transition Services (as defined herein); and
 - (ii) a court ordered charge in favour of any current and future director of any of the Portfolio Companies that have been nominated by the Fund (the "**Portfolio Company Directors**");

- (c) the status of the discussions with the Potential Merger Partner (as defined herein);
- (d) the development and implementation of a sales and investment solicitation process (“SISP”) in respect of the Fund;
- (e) the opinion of counsel to the Monitor in respect of the validity, enforceability and perfection of the security held by Roseway over the assets of the Fund;
- (f) the receipts and disbursements of the Fund for the period from the commencement of the CCAA Proceedings to the week ending October 25, 2013;
- (g) the Fund’s cash flow projections for the period from the start of the CCAA Proceedings to January 24, 2014; and
- (h) the Applicant’s request for an extension of the Stay Period (as defined herein) until January 15, 2014 and the Monitor’s recommendation thereon.

TERMS OF REFERENCE

8. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Applicants’ books and records and discussions with various parties including the Manager, the Fund’s management and its advisors.

9. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the affidavit of C. Ian Ross, Chairman of the Applicant, sworn September 30, 2013 and filed in support of the CCAA Proceedings (the "**September 30 Affidavit**"), and the affidavit of C. Ian Ross, sworn October 25, 2013 and filed (the "**October 25 Affidavit**").

11. This report should be read in conjunction with the October 25 Affidavit as certain information contained in the October 25 Affidavit has not been included herein in order to avoid unnecessary duplication.

ACTIVITIES OF THE FUND AND THE MONITOR

12. As set out in the Monitor's First Report, the Monitor made the Initial Order and various other materials related to the CCAA Proceedings available on its website. The Monitor continues to update its website by posting, *inter alia*, the Monitor's reports, motion materials and Orders granted in these CCAA Proceedings

13. Pursuant to paragraph 42 of the Initial Order and section 23(1) of the CCAA, the Monitor on October 10, 2013 and October 17, 2013, published in the Globe and Mail (National Edition) Notice of the CCAA Proceedings in accordance with section 23(1) of the CCAA, and such notices are attached hereto as Appendix C. In addition to

the foregoing, the Monitor has responded to various stakeholder inquiries received from the toll free hotline established by the Monitor to allow stakeholders, including security holders of the Fund, to communicate directly with the Monitor in order to address any questions or concerns in respect of the CCAA Proceedings. To date, the Monitor has received over 400 calls and emails and continues to respond to these inquiries in a timely manner.

14. Since the commencement of the CCAA Proceedings, the Monitor and its counsel have participated in weekly status conference calls with the Fund, its counsel, and CCC. In addition, the Monitor has had regular discussions with Roseway's advisors to keep them informed as to the CCAA Proceedings, the state of affairs of the Fund as well as the status of the Fund's discussions with the Potential Merger Partner and the development and implementation of a SISF.

15. The Monitor has participated in meetings with the Fund, the Manager and CCC to facilitate the transition of information and documentation pertaining to the Fund and the Portfolio Companies from the Manager to the Fund's interim CEO.

16. The Monitor continues to work with the Manager in respect of its initial and ongoing requests for information and documentation as they relate to the Fund and its Portfolio Companies.

17. Counsel to the Fund and Monitor's counsel have facilitated open and ongoing communication with staff of the Investment Funds Branch of the Ontario Securities Commission (OSC). McCarthy Tetrault LLP, on behalf of the Fund, arranged

and attended a meeting with staff of the OSC to update them on the CCAA Proceedings of the Fund and to answer and address any questions and concerns. Subsequent to the meeting, Monitor's counsel corresponded with legal counsel to the Investment Fund Branch of the OSC to facilitate a dialogue between the OSC and the Monitor. At the request of the OSC, the OSC Investigations Branch has been added to the service list and thereby will be provided with any updates regarding any developments with respect to the Fund in the CCAA Proceedings.

CRITICAL SUPPLIER

18. As noted above, on October 1, 2013 and October 9, 2013, the Court adjourned hearings to consider certain provisions in the draft Initial Order designating each of the Manager and GWC as a critical supplier as contemplated by section 11.4 of the CCAA.

19. The Applicant sought to have the Manager designated as a critical supplier in order to ensure that necessary transition services (the "**Critical Transition Services**") would be conducted by the Manager pursuant to the terms of the Management Agreement, subsequent to the termination thereof. The reasons for the Applicant's requested critical supplier relief is outlined in the September 30 Affidavit.

20. The Monitor understands that it is the Manager's position that the termination of the Management Agreement by the Fund was ineffective.

21. As set out in paragraph 36 of the September 30 Affidavit, the Fund takes the position that, pursuant to the Management Agreement, the Manager has continuing obligations to provide transitional services to the Fund after termination.

22. Since the granting of the Initial Order, representatives of the Manager and the Fund, with the involvement of the Monitor, have engaged in discussions with respect to the critical supplier status of the Manager, including the proposed critical supplier charge, the scope of the Critical Transition Services to be provided and the costs of such services.

23. The Fund and the Manager in consultation with the Monitor reached an agreement with respect to these issues and have entered into the Critical Transition Services Agreement dated October 25, 2013 (the "CTSA"). The CTSA provides for, *inter alia*, (i) the preservation of the claims of the Manager and the Fund which arose prior to the notice of termination of the Management Agreement delivered by the Fund on September 30, 2013 (the "Notice") and which relate to the Notice and the conduct of the Manager under the Management Agreement; (ii) the agreed specific Critical Transition Services which shall be provided by the Manager; and (iii) the hourly cost of providing such services calculated on the basis of time spent by the Manager's staff, which calculation is based on the total actual annual salary of an individual employee, plus benefits and other employment costs. The CTSA and a summary of the terms and provisions thereof are attached to and more fully described in the October 25 Affidavit.

24. The Monitor has reviewed the terms of the CTSA and is of the view that the provision of Critical Transition Services by the Manager as set out in the CTSA will assist in facilitating an orderly transition of the responsibilities and duties of the Manager.

25. The Applicant seeks to designate the Manager, GWC and each person engaged or contracted by the Manager and/or GWC (excluding employees of the Manager or GWC), in connection with providing transitional services to the Fund pursuant to the Management Agreement on or after October 1, 2013, as a critical supplier to the Fund in relation to such transitional services with the benefit of a critical suppliers charge ("**Critical Suppliers Charge**") over the property of the Fund in an amount equal to the lesser of (a) the value of the goods and services supplied by a critical supplier designated as a critical supplier under the Amended and Restated Initial 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 Critical Transition Services Agreement.

26. The proposed Amended and Restated Initial Order provides that the Critical Suppliers Charge, to a maximum amount of \$50,000, ranks in priority to all Encumbrances (as defined in the Amended and Restated Initial Order) and ranks subordinate to all Encumbrances for any amounts owed to a Critical Supplier that exceed \$50,000 and remain unpaid. Accordingly, the Critical Supplier Charge will only rank ahead of the security granted by the Applicant to Roseway or to any other secured creditor for up to \$50,000.

27. Given the necessity for Critical Transition Services to be provided to the Fund by the Manager for the ongoing operation of the Fund, the Monitor supports the Applicant's request for the proposed designation of each of the Manager and GWC as a critical supplier. As set out in the Revised Cash Flow, it is anticipated that the Manager and GWC will be paid for any Critical Transition Services in accordance with the CTSA.

DIRECTORS' CHARGE FOR FUND-NOMINATED DIRECTORS OF THE PORTFOLIO COMPANIES

28. As more fully outlined in the October 25 Affidavit, where possible the Fund monitors its investment portfolio through, inter alia, the appointment of directors nominated by the Fund to the board of directors of its Portfolio Companies. The current Portfolio Company Directors are employees of the Manager (the "**Manager Portfolio Company Directors**"). It is currently anticipated that the Manager Portfolio Company Directors will resign in the near term and be replaced with Portfolio Company Directors that are not employees of the Manager.

29. The Manager Portfolio Company Directors have attended meetings with representatives of the Fund and the Monitor in order to provide information to the Fund and the Monitor with respect to the Portfolio Companies. In order to ensure an orderly transition of the nominee directors of the Fund, the Manager and the Manager Portfolio Company Directors (pursuant to the terms of the CTSA), will continue to meet with the Fund and the Monitor to provide further information with respect to the Portfolio Companies as needed, and will, if required, attend at board of directors meetings of the Portfolio Companies prior to their resignation.

30. The Applicant is requesting protections in the Amended and Restated Initial Order for the Portfolio Company Directors substantially similar to those protections currently afforded to the officers and directors of the Fund as provided in the Initial Order, including, *inter alia*, (i) a stay of proceedings against the Portfolio Company Directors with respect to any claim that arose before, on or after the date of the Initial Order; (ii) the authority to provide an indemnity, at the sole discretion of the Applicant and in consultation with the Monitor, for any liability that the Portfolio Company Directors may incur by acting in such capacity except to the extent the liability arose as a result of the director's gross negligence or wilful misconduct; and (iii) a charge over the property of the Fund as security for any indemnity (the "**Portfolio Company Directors' Charge**") provided by the Applicant to the Portfolio Company Directors. The Portfolio Company Directors' Charge, which charge shall not exceed an aggregate amount of \$10,000,000, ranks subordinate to any Encumbrance and *pari passu* with the Critical Suppliers Charge in excess of \$50,000.

31. The Monitor is of the view that it is important to maintain ongoing representation of the Fund on the boards of the Portfolio Companies. The Portfolio Company Directors' Charge will apply only to the extent that (i) an indemnity is provided by the Fund; and (ii) the Portfolio Company Directors are not covered by applicable directors' and officers' insurance. Accordingly, the Monitor supports the Applicant's request for the Portfolio Company Directors' Charge and is of the view that the amount of the charge is reasonable.

SALE PROCESS

32. As more fully described in the September 30 Affidavit and the October 25 Affidavit, the Fund has been in merger discussions with a potential merger partner (the “**Potential Merger Partner**”). The Monitor understands that the Potential Merger Partner is currently undertaking due diligence with respect to the Fund and that it is the goal of the Fund to finalize and execute a merger agreement with the Potential Merger Partner by mid-November. Although the Monitor has not yet had significant involvement or any direct communication with the Potential Merger Partner, the Monitor intends to be actively involved in any negotiations regarding the entering into of a proposed merger agreement between the Fund and the Potential Merger Partner.

33. In addition to the foregoing, the Monitor and its counsel continue to work with the Fund, its counsel and CCC to consider the strategic options available to the Fund and to develop a fair and transparent SISP. Based on preliminary discussions with the Fund and CCC regarding a proposed SISP, the Monitor understands that the SISP will include reasonable timeframes conducive for the Fund and CCC, with the assistance of the Monitor, to properly canvass the market, and to allow sufficient time for other potential interested parties to conduct due diligence and submit offers and proposals in competition with any agreement that may be proposed by the Potential Merger Partner.

34. The Monitor understands that the Applicant anticipates bringing a motion to this Court seeking approval of a proposed merger agreement with the Potential Merger Partner and a SISP in November, at which time the Monitor will report further to this

Court. The Monitor is of the view that the early development and implementation of the SISIP should be afforded the highest priority.

REVIEW OF THE ROSEWAY SECURITY

35. The Monitor's counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), was asked to conduct a review of security held by Roseway. Osler has now rendered an opinion to the Monitor with respect to the validity, enforceability and perfection of the security held by Roseway in the Province of Ontario.

36. The opinion of Osler contains the usual qualifications and assumptions and also provides that the Participation Agreement does not use typical debtor/creditor language to create a debt or loan obligation owing from the Fund to Roseway. However, it is the view of Osler that the Participation Agreement should be characterized as a debt or loan obligation of the Fund for the following reasons: (i) the Participation Agreement evidences a promise by the Fund to repay the amount of \$20,000,000 advanced to the Fund by Roseway and to pay Roseway for the use of the advanced amount; (ii) the Fund was obligated to Roseway for the repayment and use of the advanced amount irrespective of whether it obtained sufficient earnings from any divestment proceeds to do so; (iii) the Fund's obligation under the Participation Agreement was recorded as a liability on its financial statements; and (iv) the Fund gave security for its obligations under the Participation Agreement in the security documents granted by the Fund to Roseway which contain events of default. The existence of security and event of default language, including acceleration of all payments due to Roseway upon the occurrence of an event of default, is consistent with a debtor/creditor relationship.

37. Accordingly, (and subject to the assumptions and qualifications contained therein including as described in paragraph 36 above) it is the opinion of Osler that Roseway's personal property security has been validly perfected in the Province of Ontario and is enforceable as against a trustee in bankruptcy of the Fund.

PRE-FILING PAYMENTS

38. On October 16 and October 18, 2013, the Monitor made two payments totalling \$184,653 to KPMG, the Fund's auditor, on account of outstanding payments due in respect of the Fund's audit for the year ending August 31, 2013. The payments were made at the direction of the Fund in order to retain KPMG's services with respect to the continuation and completion of audit field work.

39. As authorized by the Initial Order and as reflected in the October 1 Forecast (as defined in the First Report), the Monitor made a payment on account of accrued interest payable under the terms of the Participation Agreement, as amended, less the amount of a previous overpayment made by the Fund in respect of proceeds from a Portfolio Company investment. On Wednesday October 23, 2013, the Monitor made a net payment to Roseway in the amount of \$1,476,753.

ACTUAL RECEIPTS AND DISBURSEMENTS OF THE FUND FOR THE PERIOD OCTOBER 1, 2013 TO OCTOBER 25, 2013

40. The Company's actual net cash flow for the period from October 1, 2013 to October 25, 2013 (the "Current Period") together with an explanation of key variances as compared to the October 1 Forecast is set out below. Actual net cash flows

for the Current Period were approximately \$520 thousand higher than forecast, summarized as follows:

	Forecast	Actual	Variance
Cash Inflow			
Venture Exits	\$ -	\$ -	\$ -
Total Cash Inflow	\$ -	\$ -	\$ -
Cash Outflow			
Follow on Funding	\$ -	\$ -	\$ -
CEO Fees & Expenses	\$ 22	\$ -	\$ (22)
Insurance Fees	\$ 100	\$ -	\$ (100)
Financial Advisor Fees	\$ 130	\$ 20	\$ (110)
Interest Fees	\$ 1,477	\$ 1,477	\$ -
Other	\$ 197	\$ 185	\$ (12)
Total Cash Outflow	\$ 1,926	\$ 1,682	\$ (244)
Restructuring Costs			
Financial Advisor Fees	\$ 470	\$ 194	\$ (276)
Total Restructuring Fees	\$ 470	\$ 194	\$ (276)
Net Cash Flow	\$ (2,396)	\$ (1,875)	\$ 521
Opening Cash Balance	\$ 6,560	\$ 6,437	\$ (123)
Net Cash Flow	\$ (2,396)	\$ (1,875)	\$ 521
Unrealized FX Gain/Loss	\$ -	\$ 13	\$ 13
Ending Cash Balance	\$ 4,164	\$ 4,575	\$ 411

Note: The cash balance is denominated in USD and has been translated to CAD based on foreign exchange rates from the Bank of Canada. The Unrealized Gain/Loss balance is subject to change and will fluctuate with the USD/CAD exchange rate.

41. The variance in actual receipts and disbursements is comprised primarily of the following:

(a) A positive variance of approximately \$100 thousand in insurance costs. This variance is temporary in nature and is expected to reverse the following week when it is paid; and

A positive variance of approximately \$400 thousand in professional and other fees. This variance is temporary in nature and is expected to reverse in the coming weeks as invoices are submitted by the professionals and paid by the Fund.

42. In addition to the funds under the Monitor's control, additional funds totaling approximately \$1.9 million are held in RBC accounts in the name of the Manager for the benefit of the Fund. The Monitor is working with RBC to assume control of these funds; in the meantime RBC has been notified of the CCAA Proceedings and has frozen the accounts.

43. The Monitor is aware of a dispute between Roseway and the Fund as to Roseway's entitlement to approximately \$2 million included in the cash at bank under the control of the Monitor. The Monitor has agreed to hold the disputed funds separately (the "**Segregated Funds**"), on the express understanding that segregation of these funds does not indicate the Fund's, or the Monitor's agreement as to Roseway's claim to the Segregated Funds. The Segregated Funds remain available to the Fund should they be needed. The Monitor's and Monitor's counsel are willing to assist in resolving such dispute if requested to do so.

THE COMPANY'S CASH FLOW FORECAST

44. The Company has prepared a revised cash flow forecast for the period October 26, 2013 to January 24, 2014 (the "**October 26 Forecast**"). A copy of the October 26 Forecast is attached as Appendix D. The October 26 Forecast shows a negative net cash flow of approximately \$1 million, and is summarized below:

\$000	CAD
Cash Inflow	
Venture Exits	\$ 1,238
Total Cash Inflow	\$ 1,238
Cash Outflow	
Follow on Funding	\$ -
CEO Fees & Expenses	\$ 77
Insurance Fees	\$ 100
Financial Advisor Fees	\$ 350
Board Fees	\$ 160
Other	\$ 273
Total Cash Outflow	\$ 960
Restructuring Costs	
Professional Fees	\$ 1,299
Total Restructuring Fees	\$ 1,299
Net Cash Flow	\$ (1,021)
Opening Cash Balance	\$ 4,575
Net Cash Flow	\$ (1,021)
Ending Cash Balance	\$ 3,554

45. It is anticipated that the Company's projected liquidity requirements throughout the October 26 Forecast period will continue to be met by existing cash available to the Company.

EXTENSION OF THE STAY

46. The stay period currently expires on October 31, 2013 (the "**Stay Period**"). Continuation of the stay proceedings is required for the Fund to continue its merger discussions with the Potential Merger Partner and to facilitate the development and implementation of the SISP. Accordingly, the Fund seeks an extension of the stay period to January 15, 2014. While it is expected that the Fund will be appearing before the Court on one or more occasions before January 15, 2014, the Fund and the Monitor believe that the proposed extension to the Stay Period will allow an appropriate amount of time for (i) the Fund to negotiate a transaction with the Potential Merger Partner; (ii) a

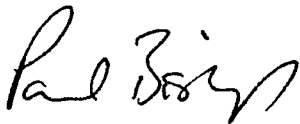
proper canvassing of the market for alternative competing bids, whether by acquisition or refinancing; (iii) competing bidders to submit expressions of interest and complete necessary due diligence for submission of a binding offer; and (iv) for the Fund, CCC and the Monitor to analyze the value of any bids received against each other and as against any transaction proposed by the Potential Merger Partner if a transaction is ultimately entered into.

47. The Monitor believes that the various stakeholders and creditors of the Fund would not be materially prejudiced by an extension of the Stay Period to January 15, 2014. The Monitor is also of the belief that the Fund has acted, and is acting, in good faith and with due diligence and that circumstances exist that warrant an extension of the Stay Period to January 15, 2014.

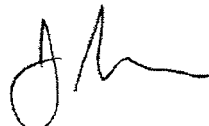
The Monitor respectfully submits to the Court this Second Report.

Dated this 28th day of October, 2013.

FTI Consulting Canada Inc.
in its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its
personal or corporate capacity



Paul Bishop
Senior Managing Director



Jodi B. Porepa
Managing Director

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

**THE FOURTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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