

**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 CANWEST PUBLISHING  
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS  
INC., AND CANWEST (CANADA) INC.

APPLICANTS

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**MOTION RECORD OF THE APPLICANTS  
(Re Administrative Reserve Order)**

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June 29, 2010

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**TO: THE SERVICE LIST**

**ONTARIO  
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# TAB 1

Court File No. CV-10-8533-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
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APPLICANTS

**NOTICE OF MOTION**

The Applicants will make a motion to a judge presiding over the Commercial List on July 6, 2010 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order, substantially in the form to be attached to the Motion Record (the "**Administrative Reserve Order**"):
  - (a) establishing an administrative reserve (the "**Administrative Reserve**") to be held in trust and administered by FTI Consulting Canada Inc. ("**FTI**"), as Court-appointed monitor of the LP Entities (the "**Monitor**") and to be used to pay certain specified administrative costs;
  - (b) expanding the powers of the Monitor so that it may further facilitate the completion of this CCAA proceeding and the winding up of the LP Entities' estate;
  - (c) granting certain additional protections to the Monitor; and

- (d) forcing the assignment of certain leases; and
2. such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THIS MOTION ARE:**

3. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended, pursuant to an initial Order of this Honourable Court dated January 8, 2010 (the "**Initial Order**"). The protections of the Initial Order were also extended to Canwest Limited Partnership/Canwest Société en Commandite (the "**Limited Partnership**" and together with the Applicants, the "**LP Entities**");
4. FTI Consulting Canada Inc. was appointed as Monitor of the LP Entities pursuant to the Initial Order;
5. The Initial Order authorized the LP Entities to conduct a sale and investor solicitation process (the "**SISP**") with the objective of soliciting offers for the acquisition or recapitalization of the businesses of the LP Entities that were superior to the terms of a pre-arranged support transaction with the LP Entities' senior lenders;
6. The SISP commenced on January 11, 2010 and was conducted in two phases;
7. At the end of Phase 2 of the SISP, RBC Capital Markets (the "**Financial Advisor**") received three binding offers, one of which was an offer (the "**AHC Bid**") by members of an *ad hoc* committee of holders of 9.25% notes issued by the LP Entities (the "**Ad Hoc Committee**") to acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. on a going concern basis for an effective purchase price of \$1.1 billion;
8. The terms of the transaction (the "**AHC Transaction**") contemplated by the AHC Bid are contained in an asset purchase agreement dated as of May 10, 2010 between the LP Entities, 7535538 Canada Inc. ("**Holdco**") and CW Acquisition Limited Partnership (as amended, the "**Amended AHC APA**");

9. The AHC Transaction is to be implemented pursuant to a consolidated plan of compromise (as amended, the “**Amended AHC Plan**”);
10. By Order dated June 18, 2010, the Court sanctioned the Amended AHC Plan;
11. The Amended AHC Plan provides that prior to the date of its implementation, the Administrative Reserve will be established using cash and cash equivalents from the accounts of the LP Entities and will be held in escrow in a segregated account and administered by the Monitor;
12. The Administrative Reserve is to be used to pay certain specified costs (the “**Administrative Reserve Costs**”) as identified in the Amended AHC Plan and the Amended AHC APA and as enumerated in the form of Order attached to this Motion Record;
13. The administration of the Administrative Reserve by the Monitor will contribute to the efficient implementation of the Amended AHC Plan and the efficient administration of the winding up of the estate of the LP Entities after the closing of the AHC Transaction;
14. Certain administrative steps will remain and be required before the CCAA proceeding and the winding up of the estate of the LP Entities can be completed, including the ongoing claims process and the preparation and filing of certain tax returns and statutory remittances;
15. The expansion of the Monitor’s powers will facilitate the completion of this CCAA proceeding and the winding up of the estate of the LP Entities;
16. The Monitor and the LP CRA support the creation of the Administrative Reserve and the requested expansion of the powers of the Monitor;
17. Pursuant to the Amended AHC APA, the Purchaser will be acquiring substantially all of the material contracts, leases and agreements of the LP Entities (the “**Contracts**”);
18. The LP Entities have conducted a review of the Contracts and identified those Contracts that contain anti-assignment provisions or that require consent prior to assignment;

19. The LP Entities have not been able to obtain consents from all of the counterparties to the Contracts;

20. In each case, the Contracts for which the LP Entities have not been able to obtain consents to assignments (the “**Assigned Leases**”) are important to the ongoing operations of certain of the businesses of the LP Entities;

21. Either the LP Entities or the Purchaser will satisfy any outstanding monetary obligations in respect of the Assigned Leases prior to the effective date of assignment;

22. There is no evidence that the Purchaser is not an appropriate counter-party to the Assigned Leases;

23. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

24. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

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

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

26. The Affidavit of Douglas E.J. Lamb, sworn June 29, 2010, and the exhibits thereto;

27. The Twelfth Report of the Monitor, to be filed; and

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

June 29, 2010

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PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND  
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Court File No: CV-10-8533-00CL

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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F. 1117119

**TAB 2**

Court File No. CV-10-8533-00CL

**ONTARIO  
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APPLICANTS

**AFFIDAVIT OF DOUGLAS E.J. LAMB  
(Sworn June 29, 2010)**

I, Douglas E.J. Lamb, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a senior employee of Canwest Publishing Inc./Publications Canwest Inc. (“**CPI**”). My principal areas of responsibility include the finance and accounting functions within the LP Entities. As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, where necessary I have also consulted with members of the senior management team of Canwest Global Communication Corp. (“**Canwest Global**”) and members of the senior management teams of the Applicants and Canwest Limited Partnership/Canwest Societe en Commandite (the “**Limited Partnership**” and, together with the CPI, Canwest Books Inc. and Canwest (Canada) Inc., the “**LP Entities**”).

2. Capitalized terms not defined in this affidavit are as defined in my affidavit sworn May 10, 2010 (the “**AHC Bid Affidavit**”). A copy of the AHC Bid Affidavit (without exhibits) is attached as Exhibit “A” to this Affidavit.

3. The LP Entities are currently in the process of selling their businesses to a corporation (the “**Purchaser**”) sponsored by members of an *ad hoc* committee of holders of 9.25% notes issued by the LP Entities and members of the syndicate of lenders that are parties to

Canwest Limited Partnership's senior subordinated credit agreement (the "**Ad Hoc Committee**"). The sale transaction (the "**AHC Transaction**") is being implemented pursuant to an amended plan of compromise (the "**Amended AHC Plan**") that has been approved by 97% in number and 99% in value of the affected creditors (the "**Affected Creditors**") participating in person or by proxy at the meeting of creditors held June 14, 2010 (the "**Creditors' Meeting**"). The Court sanctioned the Amended AHC Plan pursuant to an Order dated June 18, 2010.

4. The Amended AHC Plan provides that prior to the date of its implementation, an administrative reserve (the "**Administrative Reserve**") will be established by FTI Consulting Canada Inc., as Court-appointed monitor of the LP Entities (the "**Monitor**"), and held in escrow in a segregated account. The Administrative Reserve is to be administered by the Monitor. In this motion, the LP Entities are seeking an Order (the "**Administrative Reserve Order**") establishing the Administrative Reserve and setting forth the terms for its administration by the Monitor. In this motion the LP Entities also seek to expand the powers and duties of the Monitor to include certain post-implementation transition and winding up related functions.

5. The terms for the sale of the assets are contained in an asset purchase agreement (as described in greater detail below and as amended, the "**Amended AHC APA**"). Pursuant to the Amended AHC APA, the Purchaser will be acquiring substantially all of the contracts and agreements of the LP Entities. In the case of contracts that cannot be assigned or that require consent prior to assignment, the LP Entities are required to use commercially reasonable efforts to obtain consents to such assignments.

6. In this motion, the LP Entities are also seeking to force the assignment of a small number of leases in respect of which the LP Entities have not been able to obtain the required consents. I believe that the failure to assign these leases would prejudice and be disruptive to the transfer and ongoing operation of certain of the businesses of the LP Entities. I further believe that the forced assignment of such leases will not cause material prejudice to the affected counter-parties.

7. This affidavit is sworn in support of the LP Entities' motion.

## THE AHC Transaction

8. On January 8, 2010, CPI, Canwest Books Inc. and Canwest (Canada) Inc. were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to an initial order of this Honourable Court (the "**Initial Order**"). The Initial Order also extended protection to Canwest Limited Partnership and appointed FTI Consulting Canada Inc. as Monitor. A copy of the Initial Order (without schedules) is attached as Exhibit "B" to this Affidavit.

9. As described in greater detail in the AHC Bid Affidavit, the LP Entities have accepted an offer (the "**AHC Bid**") to sell substantially all of their businesses and assign certain specified liabilities to the Purchaser. The AHC Bid was the product of a lengthy and robust sale and investor solicitation process (the "**SISP**") that commenced on January 11, 2010 and was conducted in two phases over the course of more than fifteen weeks by RBC Capital Markets, as Financial Advisor, under the supervision of the Monitor. At the end of Phase 2 of the SISP, RBC Capital Markets (the "**Financial Advisor**") received three binding offers, one of which was an offer from the Ad Hoc Committee to acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. on a going concern basis for an effective purchase price of \$1.1 billion. The AHC Bid was the only Superior Cash Offer received at the Phase 2 bid deadline.

10. The AHC Bid presents many advantages to the LP Entities and their stakeholders. Its terms are contained in an asset purchase agreement between 7535538 Canada Inc. ("**Holdco**"), CW Acquisition Limited Partnership and the LP Entities that is dated as of May 10, 2010 (the "**AHC APA**"). A copy of the AHC APA (without schedules) is attached as Exhibit "C" to this Affidavit. The LP Entities, Holdco, CW Acquisition Limited Partnership and 7536321 Canada Inc. (the "**Purchaser**") have entered into an agreement dated as of June 10, 2010 (the "**Assignment and Amending Agreement**") under which, among other things, CW Acquisition Limited Partnership assigned all of its rights and obligations under the AHC APA to the Purchaser. The AHC APA, together with the Assignment and Amending Agreement, is referred to as the "Amended AHC APA".

11. The AHC APA and the Amended AHC Plan contemplate that the Purchaser will continue to operate all of the businesses of the LP Entities in substantially the same manner as

they are currently operated. The Purchaser will offer employment to substantially all of the employees of the LP Entities and will assume all of the pension liabilities (excluding any equity or equity-like compensation, supplementary retirement or supplementary pension arrangements or plans) and other benefits of employees that will be employed by the Purchaser. The AHC Transaction is to be implemented pursuant to the Amended AHC Plan. A copy of the Amended AHC Plan (without schedules) is attached as Exhibit "D" to this Affidavit.

12. By Order dated June 18, 2010 (the "**Plan Sanction Order**"), the Amended AHC Plan was sanctioned by the Court. Pursuant to a vesting order that was also issued on June 18, 2010 (the "**Vesting Order**"), the LP Entities' right, title and interest in the assets being acquired pursuant to the Amended AHC APA (the "**Acquired Assets**") will vest in the Purchaser upon delivery of a certificate by the Monitor certifying that all of the closing conditions in the Amended AHC APA have been satisfied or waived.

13. I am advised by counsel to the Ad Hoc Committee that on June 25, 2010, articles of amendment were filed for Holdco and the Purchaser. Effective as of June 25, 2010, 7535538 Canada Inc. (Holdco) will be known as Postmedia Network Canada Corp. and 7536321 Canada Inc. (the Purchaser) will be known as Postmedia Network Inc.

## **The Establishment of the Administrative Reserve**

14. As described in greater detail in the AHC Bid Affidavit, the Amended AHC APA and the Amended AHC Plan contemplate that on or before the date that the Amended AHC Plan is implemented (the "**Plan Implementation Date**"), an administrative reserve (the "**Administrative Reserve**") will be established in an amount to be agreed by the LP Entities, the Monitor and Holdco but not to exceed \$25 million, using cash and cash equivalents from the accounts of the LP Entities.

15. The Administrative Reserve is to be deposited by the Monitor into a segregated escrow account established by the Monitor for the benefit of those persons entitled to be paid certain types of costs (the "**Administrative Reserve Costs**"). The Amended AHC Plan sets forth certain categories of Administrative Reserve Costs. After discussions between the LP Entities, the Monitor and counsel for the Ad Hoc Committee, it has been agreed that certain additional categories of costs will be paid from the Administrative Reserve. Moreover, certain of the categories of Administrative Reserve Costs identified in the Amended AHC Plan will no longer

be administered from the Administrative Reserve, principally because such costs will be assumed by the Purchaser.

16. Pursuant to the draft Administrative Reserve Order, the Administrative Reserve Costs will include in general terms, to the extent not paid by the LP Entities or assumed by the Purchaser on or before the Plan Implementation Date:

- (a) professional fees and disbursements of Osler, Hoskin & Harcourt LLP (to the extent engaged by the Monitor), as counsel to the LP Entities, the Monitor and Stikeman Elliott LLP, as Monitor's counsel;
- (b) payments owed pursuant to the LP MIP (as defined in the Initial Order) and the consulting agreement dated as of April 1, 2010 between Mr. Dennis Skulsky and the LP Entities;
- (c) retention payments owed to employees of the LP Entities by the LP Entities to be paid pursuant to the authority granted in the Order dated March 26, 2010;
- (d) amounts owing to the LP CRA pursuant to the letter agreement dated as of July 1, 2010;
- (e) amounts owed to taxing authorities to satisfy remittances owed under applicable legislation in respect of payments to employees or former employees or other withholding arrangements;
- (f) fees and costs of any trustee in bankruptcy that may be appointed in respect of the LP Entities after the completion of the Ad Hoc Committee Transaction;
- (g) amounts owing to other persons retained by the Monitor in accordance with the Administrative Reserve Order; and
- (h) fees owed to other persons performing services related to the completion of the CCAA proceedings of the LP Entities or the winding up of the LP Entities' estate as determined by the Monitor in its discretion after consultation with the Purchaser.

17. Administrative Reserve Costs will be paid from the Administrative Reserve unless paid by the LP Entities or assumed by the Purchaser.

18. The draft Administrative Reserve Order provides that on the Plan Implementation Date, the LP Administrative Charge (as defined in the Initial Order) will be terminated, released and discharged as against the Acquired Assets, the Unsecured Creditors' Pool (as defined in the Amended AHC Plan) and all payments made to on or behalf of the LP Administrative Agent, the DIP Administrative Agent or any other Senior Lender but will continue as against the Administrative Reserve in respect of the fees, costs and expenses of the Monitor and any trustee in bankruptcy and their respective counsel and other advisors. The LP Administrative Charge will rank in priority to all other encumbrances notwithstanding the order of protection or attachment.

19. I am advised that the LP Entities and the Monitor, in consultation with counsel for Holdco, have performed an analysis of the probable quantum of the Administrative Reserve Costs. I am advised that the Monitor will be filing a report in connection with this motion containing more specific information as to the projected Administrative Reserve Costs.

20. Pursuant to the terms of the Administrative Reserve Order, after (i) payment of all Administrative Reserve Costs, (ii) completion by the Monitor of its duties in respect of the CCAA proceeding pursuant to the Initial Order, the Amended Claims Procedure Order, the Plan Sanction Order and the Administrative Reserve Order and all other Orders granted in the LP Entities' CCAA proceeding, and (iii) arrangements to pay the costs and fees of any trustee in bankruptcy are made satisfactory to such trustee in bankruptcy, any residual balance in the Administrative Reserve will be remitted to the Purchaser.

21. In the view of the LP Entities, the establishment of the Administrative Reserve to be administered by the Monitor is the most efficient and effective way to ensure timely payment of the Administrative Reserve Costs. The establishment of the Administrative Reserve will also facilitate the implementation of the Amended AHC Plan and contribute to the efficient winding up of the estate of the LP Entities after the closing of the AHC Transaction.

22. I am advised that the establishment of the Administrative Reserve and its administration on the terms described herein are supported by the Monitor and the LP CRA.



## **Transition Powers of the Monitor**

23. In addition to establishing the Administrative Reserve, the LP Entities also seek to expand the powers of the Monitor so that, after the Plan Implementation Date, the Monitor may perform certain additional functions necessary for the completion of this CCAA proceeding and the final winding up of the LP Entities' estate. Among other things, the LP Entities propose that after the Plan Implementation Date, the Monitor:

- (a) be authorized and directed to complete the claims process established by the Order dated April 12, 2010, as amended by the Order dated May 17, 2010;
- (b) be authorized (but not directed) to prepare and file tax returns, statutory returns and other employee-related remittances and engage, communicate and negotiate with government tax authorities on behalf of the LP Entities;
- (c) be at liberty to engage other persons to assist in the completion of this CCAA proceeding and the winding up of the LP Entities' estate; and
- (d) in addition to its prescribed powers under the CCAA, be empowered and authorized to assign the LP Entities into bankruptcy and perform other functions to facilitate the winding up of the LP Entities' estate.

24. The LP Entities also seek to reiterate, clarify and extend additional protections to the Monitor in the capacities that it will be acting pending the completion of the CCAA proceeding and the winding up of the LP Entities' estate.

## **The Assignment of Certain Leases**

25. As described in greater detail in the AHC Bid Affidavit, the businesses of the LP Entities are being sold to the Purchaser on a going concern basis. In connection with the AHC Bid, the LP Entities have been advised that the businesses of the LP Entities will continue to operate in substantially the same manner as they are currently operated with no immediate plans to shut down or change operations.

26. Pursuant to the Amended AHC APA, the Acquired Assets include all material contracts and agreements (including leases) relating to the businesses of the LP Entities to which any of the LP Entities is a party on the third business day after the Plan Sanction Order and the Vesting

Order become final. The Plan Sanction Order and the Vesting Order become final on the date of either (i) the expiry of the applicable appeal period; or (ii) in the event of an appeal or an application for leave to appeal, the final determination of such appeal by the relevant court (each a “**Contract**” and collectively, the “**Contracts**”). Where a Contract is not assignable or requires consent for an assignment, the Amended AHC APA requires that the LP Entities use commercially reasonable efforts to secure third party approval for such assignment.

27. The LP Entities have conducted a review of all of their Contracts to identify those Contracts that either do not permit assignment or that require consent prior to assignment. The LP Entities have made efforts to make contact with all of the counterparties to secure consents where required. In the majority of cases, consents have been secured. However, the LP Entities have not been able to obtain consents to the assignments of five leases because the parties to the leases had not yet delivered such consents prior to the date of the swearing of this Affidavit. A list of the leases requiring forced assignments (the “**Assigned Leases**”) is attached as Schedule “A” to the draft form of Order filed as part of the motion record of the LP Entities.

28. In all cases, the Assigned Leases are important to the businesses of the LP Entities that are being sold to the Purchaser. All of the Assigned Leases were entered into before January 8, 2010. In my view, it would be extremely disruptive to business operations if the businesses using the leased properties in question were not permitted to continue to use such properties pursuant to the terms of the existing leases. Significantly, the LP Entities and/or the Purchaser will pay any and all rent owing in arrears to the landlords pursuant to the Assigned Leases on or before the Plan Implementation Date.


29. As described in greater detail in the Amended AHC Bid Affidavit, the Ad Hoc Committee has represented that the businesses of the LP Entities will continue to operate in substantially the same manner that they are currently operated. One of the primary objectives of this CCAA restructuring has been to secure a going concern outcome for the businesses and stakeholders of the LP Entities. The AHC Bid was identified by the Monitor as a Superior Cash Offer and accepted by the LP Entities. This Honourable Court has approved the AHC Transaction. The Amended AHC Plan was approved by a significant majority of Affected Creditors and was sanctioned by this Honourable Court. There is no reason to believe that New Purchaser is not an appropriate counterparty to the Assigned Leases: New Purchaser will be

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operating the businesses of the LP Entities on a going concern basis. There is also no reason to believe that any prejudice will be caused to the landlords in question as the result of the assignment of the Assigned Leases. Moreover, the LP Entities have no reason to believe that any of the leased properties in question will be used in a different manner than they are currently used.

30. I am advised that the Monitor will be filing a report in connection with this motion containing its conclusions and recommendations in respect of the proposed assignment of the Assigned Leases.

SWORN BEFORE ME at the city of  
New York, in the state of New York, on  
June 29, 2010.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
DOUGLAS E.J. LAMB

Jacqueline Lee Allen,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-law.  
Expires April 12, 2013.

This is Exhibit "A" to the  
Affidavit of Douglas E.J. Lamb  
sworn before me this 29th day of June, 2010.

  
Commissioner for Taking Affidavits

• Jacqueline Lee Allen,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-law.  
Expires April 12, 2013.

Court File No. CV-10-8533-00CL

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COMMERCIAL LIST**

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INC., AND CANWEST (CANADA) INC.

APPLICANTS

**AFFIDAVIT OF DOUGLAS E.J. LAMB  
(Sworn May 10, 2010)**

I, Douglas E.J. Lamb, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a senior employee of Canwest Publishing Inc./Publications Canwest Inc. ("CPI"). My principal areas of responsibility include the finance and accounting functions within the LP Entities. In that capacity, I have been closely involved in the efforts to restructure the LP Entities, and have been heavily involved with the SISF, including attending management presentations given to prospective bidders and assisting in the preparation of financial information regarding the LP Entities (all as described below). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, where necessary I have also consulted with other members of Canwest Global Communication Corp. ("Canwest Global")'s senior management team and members of the senior management teams of the Applicants and Canwest Limited Partnership/Canwest Societe en Commandite (the "Limited Partnership").

2. Capitalized terms not defined in this affidavit are as defined in the affidavit of Thomas C. Strike sworn January 7, 2010 (the "Initial Order Affidavit"). A copy of the Initial Order Affidavit (without exhibits) is attached as Exhibit "A" to this Affidavit.

- 2 -

3. As described in greater detail in the Initial Order Affidavit, the LP Entities were significantly adversely affected by the economic downturn in Canada in 2008 and 2009. This led, in due course, to the LP Entities defaulting on their senior secured credit facilities and entering into protracted and difficult negotiations to bring about a consensual court-supervised restructuring under the CCAA.

4. On January 8, 2010, CPI, Canwest Books Inc. and Canwest (Canada) Inc. were granted protection under the CCAA pursuant to the Initial Order. The Initial Order also extended relief to the Limited Partnership. A copy of the Initial Order (without schedules) is attached as Exhibit "B" to this Affidavit.

5. The Initial Order contemplated a Support Transaction pursuant to which the LP Entities' senior lenders would acquire substantially all of the assets and certain of the liabilities of the LP Entities. It also required the LP Entities to carry out a robust sales and investor solicitation process (the SISP) to seek Superior Offers as defined in the SISP: that is, broadly, offers for the acquisition or recapitalization of substantially all of their assets that are superior to the Support Transaction.

6. Throughout the months leading up to the Initial Order, and in the period that has followed, the LP Entities have dedicated themselves to securing the best available going concern outcome for the business, in the interests of all of the stakeholders of the LP Entities. Thanks to the unwavering efforts of the LP Entities, the LP CRA, the Monitor and the Financial Advisor in carrying out the SISP, the LP Entities believe they have elicited an offer that represents exactly that.

7. The Financial Advisor received three bids from Qualified Bidders on the Phase 2 Bid Deadline. The Monitor, in consultation with the Financial Advisor and the LP CRA, determined that the bid by the *ad hoc* committee (the "**Ad Hoc Committee**") of holders of 9.25% senior subordinated notes (the "**LP Noteholders**") issued by the Limited Partnership (the "**AHC Bid**") is a Superior Cash Offer. Neither of the other bids was a Superior Offer. Accordingly, in accordance with the terms of the SISP Procedures, the Monitor has recommended that the AHC Bid be selected and a definitive agreement be negotiated and settled to carry out the transactions contemplated by the AHC Bid (the "**AHC Transaction**"). This recommendation is supported by the Financial Advisor and the LP CRA.

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8. The AHC Transaction, the material terms of which are contained in an asset purchase agreement (the "AHC APA"), contemplates that 7535538 Canada Inc. ("Holdco") will effect a transaction through a new limited partnership (CW Acquisition Limited Partnership or "Opco LP") in which it will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. and assume certain specified liabilities of the LP Entities for an effective purchase price totalling \$1.1 billion, as described below. At closing, Opco LP will offer employment to substantially all of the employees of the LP Entities and will assume all of the pension liabilities and other benefits for employees of the LP Entities that will be employed by Opco LP, as well as for retirees currently covered by registered pension plans or other benefit plans. The materials submitted with the AHC Bid indicate that Opco LP will continue to operate all of the businesses of the LP Entities in substantially the same manner as they are currently operated, with no immediate plans to discontinue operations, sell material assets or make significant changes to current management. The AHC Bid will also allow for a full pay-out of the debt owed by the LP Entities to the LP Secured Lenders under the LP Credit Agreement and the Hedging Creditors (as defined below) and provides an additional \$150 million in value which will be available to provide realization for the unsecured creditors of the LP Entities and may ultimately include up to 45% of the equity of Holdco.

9. The LP Entities are firmly of the view that the AHC Transaction represents the best available outcome for the business. It will provide stability for employees, retirees, suppliers and other stakeholders. It will also provide significant value for unsecured creditors, which is not available under either the Support Transaction or the other bids received during the SISF, and includes a full recovery for the smallest creditors of the LP Entities; unsecured creditors with proven claims equal to or less than \$1,000 will be paid the amount of their proven claim in cash. For the reasons set out herein, the Special Committee has accepted the Monitor's recommendation. The LP Entities are therefore seeking authorization to enter into the AHC APA and carry out the AHC Transaction, which is (if approved) presently targeted to close on July 15, 2010.

10. At the same time, the LP Entities recognize that it would be helpful if they could continue to benefit from the stability afforded by the Support Agreement, including maintaining the ability to pursue the Support Transaction in the event that the AHC Transaction is unable to close for whatever reason. Accordingly, the LP Entities are also seeking conditional sanction of

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the Senior Lenders' CCAA Plan (the basis of which is the Support Transaction) but on terms that will not undermine the ability of the LP Entities to pursue the more desirable AHC Transaction. The LP Entities intend to work diligently to implement the AHC Transaction while concurrently attempting to remain in compliance with the Support Agreement, including pursuing such steps as are required to effect the Support Transaction to the extent that they do not detract from the closing of the AHC Transaction.

11. I am swearing this affidavit in support of the motion brought by the Applicants seeking three Orders:

- (a) the first Order (the "**Order Approving the AHC Bid**") authorizing the LP Entities to enter into the AHC APA and approving and confirming the execution, delivery and performance of the AHC APA by the LP Entities, amending certain provisions the Order of this Honourable Court dated April 12, 2010 (the "**Claims Procedure Order**") relating to claims arising during the restructuring period and claims against the directors and officers of the LP Entities and amending the Procedures for the Sale and Investor Solicitation Process (as amended, the "**SISP Procedures**");
- (b) the second Order (the "**Meeting Order**") establishing procedures relating to a meeting of unsecured creditors convened for the purpose of a vote on the AHC Plan; and
- (c) the third Order (the "**Credit Bid Sanction Order**") conditionally sanctioning the Senior Lenders' CCAA Plan on the terms described below and in the Monitor's Seventh Report.

12. I am advised that the Monitor and the LP CRA support this motion.

### ***Background and the SISP***

#### **The Support Transaction and the CCAA Filing**

13. As described in greater detail in the Initial Order Affidavit, the LP Entities were significantly adversely affected by the economic downturn in Canada in 2008 and 2009. General declines in advertising revenues and increases in certain operating costs led the LP Entities on



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May 29, 2009 to fail for the first time to make certain interest and principal reduction payments and related interest and cross-currency swap payments owed to their Senior Lenders (which include the LP Secured Lenders and various counterparties to certain foreign currency and interest rate swap agreements with the LP Entities (the “**Hedging Creditors**”) whose obligations rank *pari passu* to the Claims of the LP Secured Lenders). Subsequent defaults occurred under the LP Credit Agreement as well as under the LP Senior Subordinated Credit Agreement and the LP Note Indenture.

14. On or around August 31, 2009, the Limited Partnership and certain of the LP Secured Lenders entered into the Forbearance Agreement, which was intended to provide the Limited Partnership, the LP Guarantors and the LP Secured Lenders with an opportunity to negotiate a pre-packaged restructuring or reorganization of the affairs of the LP Entities. After months of intensive negotiations, the LP Entities and the Senior Lenders agreed on the terms of the Support Transaction. The terms of the Support Transaction contemplated that, subject to Court approval and a Superior Offer in the SISP, the Senior Lenders would acquire substantially all of the assets the LP Entities in full satisfaction of the outstanding debt owed by the LP Entities to the Senior Lenders. On January 7, 2010, the LP Entities and the LP Administrative Agent entered into the Support Agreement, which set forth the terms of certain agreements and arrangements relating to the Support Transaction. Under the terms of the Support Agreement, the LP Entities agreed to, among other things: (i) commence a CCAA proceeding; (ii) use commercially reasonable efforts to implement the Support Transaction; and (iii) commence the SISP with the objective of obtaining a Superior Offer than the Support Transaction.

15. Subject to Court approval and a Superior Offer in the SISP, the Support Transaction was to be implemented pursuant to the Senior Lenders’ CCAA Plan, whose terms of implementation were contained in the Acquisition and Assumption Agreement. The Support Agreement and the Senior Lenders’ CCAA Plan both contemplate the possibility that a Superior Offer would be obtained in the SISP and pursued by the LP Entities as an alternative to the Support Transaction. As such, the Support Transaction was similar to a “stalking horse” bid.

16. As part of their initial application for protection under the CCAA, the LP Entities sought Court authorization to file the Senior Lenders’ CCAA Plan, the basis for which was the Support Transaction. Pursuant to the Initial Order, the Senior Lenders’ CCAA Plan was accepted

for filing. The Initial Order also authorized the LP Entities to commence the SISP. As noted in the Initial Order Affidavit, implementation of the Support Transaction was subject to the identification of a Superior Offer in the SISP.

### **The Conduct of the SISP**

17. On January 11, 2010, the Financial Advisor and the LP Entities commenced the SISP under the supervision of the Monitor on the terms set out in the SISP Procedures. A copy of the SISP Procedures, as amended by the Order of this Honourable Court dated February 2, 2010, is attached as Exhibit "C" to this Affidavit.

18. The SISP was conducted in two phases. In Phase 1, the Financial Advisor contacted strategic and financial parties about investing in and/or acquiring all or substantially all of the assets of the LP Entities. Prior to the Phase 1 Bid Deadline, a total of 38 strategic and financial parties executed confidentiality agreements and were provided with copies of a confidential information memorandum containing detailed, non-public information about the businesses and financial affairs of the LP Entities and National Post Inc. Confidentiality agreements were also executed by five lenders in connection with a potential single bid. Potential bidders were required to submit Non-Binding Indications of Interest prior to the Phase 1 bid deadline on March 5, 2010 (the "**Phase 1 Bid Deadline**").

19. By March 5, 2010, the Financial Advisor received ten Non-Binding Indications of Interest (as defined in the SISP Procedures). Of the ten, six Non-Binding Indications of Interest contemplated an acquisition of or investment in all of the businesses of the LP Entities, and four Non-Binding Indications of Interest were for individual assets of the LP Entities.

20. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Financial Advisor, the LP CRA and the LP Administrative Agent, reviewed the Non-Binding Indications of Interest pursuant to the terms of the SISP Procedures. As reported in the Fourth Report of the Monitor dated March 12, 2010, the Monitor then determined that there was a reasonable prospect of obtaining a credible, reasonably certain and financially viable offer that would result in a cash distribution to the LP Secured Lenders on closing of the amount owed to them less a discount of \$25 million (a "**Superior Cash Offer**"). Accordingly, the Monitor recommended to the Special Committee that the SISP continue to Phase 2 for a further seven

weeks. The Special Committee accepted the Monitor's recommendation, and Phase 2 of the SISP commenced on March 12, 2010.

21. During Phase 2 of the SISP, Qualified Bidders (or their authorized representatives) that had not been eliminated from the SISP at the recommendation of the Monitor were granted access to an electronic data room. The LP Entities also prepared and conducted numerous management presentations in which senior management provided Qualified Bidders or their authorized representatives with more extensive insight into the businesses of the LP Entities. During this period, the LP Entities fielded and responded to hundreds of specific due diligence questions and requests from the Qualified Bidders and conducted numerous site visits. In order to facilitate an "apples to apples" comparison with the Support Transaction, those interested in making Qualified Purchase Bids were provided with a form of Purchase Agreement which was based on the Acquisition and Assumption Agreement contemplated by the Support Transaction, and asked to provide a blacklined version along with their bid. Qualified Bidders were required to deliver final, binding proposals to the Financial Advisor on or before April 30, 2010 (the "**Phase 2 Bid Deadline**").

22. Pursuant to the SISP Procedures, subject to the ability of the Monitor to waive strict compliance, a bid received prior to the Phase 2 Bid Deadline had to fulfill certain requirements in order to be considered a Qualified Bid. Specifically, a Qualified Purchase Bid had to, among other things:

- (a) be irrevocable for thirty days following the Phase 2 Bid Deadline;
- (b) include a duly authorized and executed purchase agreement (including exhibits and schedules);
- (c) include evidence of a firm, irrevocable financing commitment;
- (d) not be conditional on financing or further due diligence;
- (e) fully disclose the identity of all participating entities;
- (f) contain an acknowledgment that the bidder has relied solely on its independent review and investigation and did not rely on any oral statements or

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representations regarding the assets except as expressly stated in purchase agreements submitted by bidders;

- (g) include evidence of approval from the bidder's board of directors or governing body;
- (h) be accompanied by a refundable deposit in the amount of \$10 million; and
- (i) contain full detail of the proposed number of employees that will be offered employment by the bidder and identify any pension liabilities or assets that the bidder intends to assume.

23. Similarly, in order to be considered a Qualified Investment Bid, a bid was required to, among other things:

- (a) include a duly authorized and executed term sheet;
- (b) be irrevocable for 30 days following the Phase 2 Bid Deadline;
- (c) include evidence of a firm, irrevocable financing commitment;
- (d) not be conditional on financing or further due diligence;
- (e) fully disclose the identity of all participating entities;
- (f) contain and acknowledgment that the bidder has relied solely on its independent review and investigation and not on any oral statements or representations regarding the assets;
- (g) include evidence of approval from the bidder's board of directors or governing body; and
- (h) be accompanied by a refundable deposit in the amount of \$10 million.

### **The Evaluation of the Qualified Bids**

24. The SISP attracted considerable interest at Phase 1, and the selected Qualified Bidders had approximately three and a half months in which to evaluate the opportunity

presented by the SISP. Bidders were advised that their offers should represent their final and best offer with respect to a Qualified Purchase Bid or a Qualified Investment Bid.

25. The Financial Advisor received three bids before the Phase 2 Bid Deadline as well as a letter from a Qualified Bidder indicating an inability to submit a bid in compliance with the terms of the SISP Procedures. Two of the bids contemplated purchase of the businesses of the LP Entities and one of the bids contemplated an investment in the LP Entities. Two of the bids, including the AHC Bid, were Qualified Bids.

26. In the days immediately following the Phase 2 Bid Deadline, the Monitor, in consultation with the Financial Advisor and the LP CRA, conducted an in-depth analysis of the material aspects of each of the Qualified Bids to determine which if any of them were Superior Offers. Particular attention was paid to terms relating to purchase price, financing and structure, excluded assets and excluded liabilities, treatment of employees and pension obligations, tax issues, material representations and warranties, regulatory issues, covenants, conditions, material closing risks and time to closing. Based on this analysis, the Monitor, in consultation with the Financial Advisor, determined that the AHC Bid was a Superior Cash Offer and the only Superior Offer received.

27. On May 10, 2010, the Monitor made a recommendation to the Special Committee that the LP Entities pursue the AHC Transaction (the "**Superior Cash Offer Recommendation**"). The Superior Cash Offer Recommendation was supported by the Financial Advisor and the LP CRA. The Special Committee accepted the Superior Cash Offer Recommendation.

28. Over the course of the past week, the LP Entities and the Ad Hoc Committee have negotiated amendments to the version of the AHC APA that was submitted by the Ad Hoc Committee as part of the AHC Bid. A copy of the AHC APA is attached as Exhibit "D" to this Affidavit.

29. Pursuant to the AHC APA, Opco LP will acquire substantially all of the financial and operating assets of the LP Entities and the shares of National Post Inc. on an as-is-where is basis for a total effective purchase price of approximately \$1.1 billion (the "**Purchase Price**"). The APA also provides that Holdco will issue shares as additional consideration that will be

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available for distribution to the unsecured creditors of the LP Entities. The materials submitted with the AHC Bid indicate that Opco LP will continue to operate the businesses of the LP Entities in substantially the same manner as they are currently operated: at present, there are no plans to divest or discontinue operations or to sell assets or change management.

### **Acquiring Entity**

30. Pursuant to the AHC APA, Holdco will effect the acquisition of the financial and operating assets of the LP Entities through Opco LP. Holdco will own all of the limited partnership interests in Opco LP, and a wholly-owned subsidiary of Holdco will be the general partner of Opco LP.

### **Purchase Price and Financing**

31. The Purchase Price will consist of:

- (a) A cash amount equal to the sum of the Senior Secured Claims Amount (as defined in the AHC APA) as at the Acquisition Date (as defined below) and the DIP Claims Amount (as defined in the AHC APA) as at the Acquisition Date;
- (b) A promissory note in the principal amount of \$150 million (less the amount of cash paid out to the unsecured creditors who elect to receive a cash payment as described below), which will be exchanged immediately after closing for up to 45% of the common shares of Holdco (the "**Holdco Common Shares**") (as described in greater detail below); and
- (c) The assumption by Opco LP of certain liabilities of the LP Entities.

32. The Ad Hoc Committee has indicated in its bid materials that Holdco has received commitments for \$950 million of funded debt and equity financing to finance the AHC Bid. This amount will include: (i) \$700 million of new senior funded debt to be raised by Opco LP and secured by the acquired assets and shares and assets of subsidiaries; and (ii) \$250 million of mezzanine debt and equity to be raised, including from the current members of the Ad Hoc Committee. The AHC Bid includes letters from reputable financial institutions indicating firm commitments to raise the \$700 million of senior debt financing within the timeframe contemplated by the AHC Bid.

### **Acquired Assets and Assumed Liabilities**

33. The AHC APA provides that Opco LP will purchase substantially all of the financial and operating assets of the LP Entities as well as the shares of National Post Inc. and the outstanding indebtedness owed by National Post Inc. to the LP Entities. Opco LP will also assume substantially all of the operating liabilities of the LP Entities, including liabilities to substantially all active employees and obligations under pension plans, as well as obligations of the LP Entities under those contracts and leases that are identified in schedules to the AHC APA.

### **Excluded Assets and Liabilities**

34. The AHC APA provides that certain assets and liabilities will not be acquired or assumed by Opco LP and will remain the property of the LP Entities. Although the vast majority of the assets of the LP Entities will be acquired, Opco LP will not be acquiring, among other things, the following assets (the "**Excluded Assets**"): (i) avoidance claims; (ii) corporate records; (iii) certain lease agreements; (iv) the LP Indenture, the LP Credit Agreement, the LP Senior Subordinated Credit Agreement, the LP DIP Facility and the Support Agreement; and (v) agreements that have been disclaimed or resiliated by the LP Entities.

35. The liabilities to be excluded under the AHC APA (the "**Excluded Liabilities**") include (but are not limited to):

- (a) liabilities relating to the Excluded Assets;
- (b) Restructuring Period Claims as defined in the Claims Procedure Order made in this proceeding dated April 12, 2010 ("**Restructuring Period Claims**");
- (c) all liabilities incurred by the LP Entities or arising out of events or circumstances that occurred or existed prior to January 8, 2010 except those expressly assumed (the "**Prefiling Liabilities**");
- (d) existing indebtedness, including under the LP Credit Agreement, the LP Senior Subordinated Credit Agreement and the LP Note Indenture;
- (e) prior ranking secured claims;
- (f) administrative reserve costs;

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- (g) liabilities under any of the charges in the Initial Order;
- (h) all liabilities for taxes payable or remittable by the LP Entities, other than transfer taxes payable in relation to the contemplated transaction;
- (i) certain employee-related liabilities, including all liabilities relating to employees other than those that are transferred to Opco LP pursuant to the AHC APA, and liabilities under the Southam Executive Retirement Arrangements (the "SERAs");
- (j) liabilities under material contracts that are not being assumed;
- (k) litigation liabilities;
- (l) encumbrances other than permitted encumbrances; and
- (m) generally, inter-company liabilities between and among the LP Entities and the CMI Entities.

### **Employee and Pension Issues**

36. The AHC APA provides that effective as of the closing date of the transaction (the "Acquisition Date"), Opco LP will offer employment to all substantially all employees of the LP Entities on the following terms:

- (a) in respect of all unionized employees whose collective agreement is in force (or is expired but is in effect by operation of law), on the terms and conditions provided for in the collective agreement or expired collective agreement, as applicable; and
- (b) in respect of all other employees, on substantially similar terms and conditions as their then-existing employment immediately prior to the Acquisition Date, subject to the option, exercisable on or before May 30, 2010, to not offer employment to up to ten percent of the non-unionized part-time or temporary employees employed by the LP Entities.

37. The AHC APA also provides that Opco LP will assume all pension liabilities and other benefits for employees of the LP Entities that will be employed by Opco LP after the Acquisition Date and retirees currently covered by registered pension plans or other benefit plans.



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38. Of particular importance to the LP Entities, the AHC APA does not include a provision that would allow Opco LP to elect not to assume pension plans, benefit plans or other employee obligations.

### **Other Material Provisions and Conditions**

39. Pursuant to the AHC APA, the AHC APA may be terminated if the Acquisition Date is not on or before August 15, 2010. The third party debt financing commitments expire on July 15, 2010.

40. The AHC Bid is not conditional on financing or the performance of additional due diligence and is irrevocable until the earlier of: (i) the selection of the Successful Bid; and (ii) 30 days after the Phase 2 Bid Deadline.

41. The AHC Bid contains certain assumptions and conditions, including assumptions relating to the LP Entities' cash on hand at closing and the DIP Claims Amount. I am advised that the LP Entities, the Monitor and the Financial Advisor have reviewed the conditions and assumptions and believe that they are not likely to present any serious impediment to consummation of the AHC APA.

### ***Acceptance of the Superior Cash Offer Recommendation***

42. I understand that the Monitor, in its reasonable business judgment and in consultation with the Financial Advisor and the LP CRA, has determined that the AHC Bid is a Superior Cash Offer, which is defined as a credible, reasonably certain and financially viable bid that would result in a cash distribution to the Senior Lenders on closing of the "Reference Amount" (as defined in the SISP). In fact, the proposed cash distribution to the Senior Lenders under the AHC Bid is greater than the Reference Amount. The Monitor, the Financial Advisor and the LP CRA also determined that neither of the other bids presented by the Phase 2 Bid Deadline was a Superior Cash Offer. On that basis, the Monitor made the Superior Cash Offer Recommendation that the Special Committee pursue the AHC Transaction. The Superior Cash Offer Recommendation was supported by the Financial Advisor and the LP CRA.

43. The AHC Transaction has many of the same key features as the Support Transaction. It will preserve substantially all of the business of the LP Entities to the benefit of the LP Entities' suppliers and the millions of people who rely on LP Entity publications every

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day. The AHC Transaction also preserves the employment of substantially all of the LP Entities' current employees, as well as largely protecting the interests of former employees and retirees.

44. The most significant difference between the AHC Transaction and the Support Transaction is that the AHC Transaction will provide for significant recoveries for unsecured creditors of the LP Entities. The AHC Bid contemplates that the AHC Transaction will be implemented through a plan of compromise or arrangement with LP Entities' unsecured creditors (as further described below, the "AHC Plan"). Pursuant to the proposed AHC Plan, if it is approved and sanctioned, unsecured creditors with claims of less than \$1,000 that have been proven ("Proven Claims") in the LP Claims Process (as defined below) will receive the value of their Proven Claims (up to \$1,000) in cash. Unsecured creditors with Proven Claims greater than \$1,000 will have the option of receiving either \$1,000 in cash or an amount of Holdco Common Shares calculated by reference to the value of the Proven Claim. The total amount available for distribution, in cash or shares, is \$150 million.

45. Also, the Support Transaction gives Acquireco, acting commercially reasonably, the option not to assume certain pension or employee benefit obligations. The AHC APA does not contain the same "optionality". Although the LP Administrative Agent has indicated, including in Court on numerous occasions, that it is not likely to exercise this option, the Monitor and the Financial Advisor considered the absence of optionality to be a factor in favour of the AHC Bid.

46. The LP Entities believe that the SISF was successful. It encouraged as many credible potential bidders as possible to come forward, and it gave potential bidders a long period to conduct meaningful due diligence with the full cooperation and assistance of the LP Entities, the Monitor and the Financial Advisor. Bidders were advised to put their best offer forward, and the LP Entities have every reason to believe that they did so.

47. For all of these reasons the LP Entities believe that the AHC Bid represents the best available outcome for the LP Entities. Accordingly, the Special Committee, after consulting with the LP CRA, the Financial Advisor and the Monitor, accepted the Monitor's recommendation. The LP Entities are committed to working to complete the AHC Transaction in an expeditious manner.

***Concurrent Sanction of the Senior Lenders' CCAA Plan***

48. The business carried on by the LP Entities is complicated: as set out in the Initial Order Affidavit, the LP Entities have a complex structure and operations across Canada. Many weeks' worth of very hard work will be required between the approval of the AHC APA (if granted) and closing of the AHC Transaction. The Monitor, the LP CRA and the Financial Advisor considered closing risks associated with the AHC Bid and concluded that the AHC Bid is credible, reasonably certain and financially viable. The LP Entities agree with that assessment.

49. However, the LP Entities also feel that they would continue to benefit from the stability provided by the Support Agreement during the period prior to closing and will benefit in particular from having the Support Transaction available if for some reason the AHC Transaction is unable to close. Although the closing risks associated with the AHC Transaction are not out of the ordinary, the consequences to the LP Entities of a non-closing of the AHC Transaction without a Support Transaction backstop should be avoided if reasonably possible.

50. The Support Agreement provides that it may be terminated if the LP Entities do not obtain an Order sanctioning the Senior Lenders' CCAA Plan before May 15, 2010. Pursuant to the terms of the Support Agreement, this deadline is effectively May 17, 2010 because May 15 is a Saturday. In order to preserve the option to pursue the Support Transaction if the AHC Transaction cannot be implemented, as part of this motion the LP Entities are also seeking conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's letter described below.

51. The LP Entities believe that simultaneously advancing the AHC Transaction and the Support Transaction, on certain conditions, does not cause material prejudice to any of the affected parties, and is the best way to secure a going concern outcome for the businesses of the LP Entities. The Support Agreement and the Senior Lenders' CCAA Plan, as well as the SISF Procedures, contemplate that the LP Entities will pursue a Superior Cash Offer to the extent that one is received. This has always been the agreement and understanding of the LP Entities and the Senior Lenders, and the Senior Lenders will receive a full cash pay-out of all amounts outstanding under the LP Credit Agreement if the AHC Transaction is implemented. It should also be noted that the interest obligations to the Senior Lenders are being paid on a current basis,

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as are the professional fees for counsel and a financial advisor to counsel for the LP Administrative Agent. Furthermore, the successful outcome of the SISP and the identification of a Superior Cash Offer with a Purchase Price that materially exceeds the value of the Support Transaction can be credited to a number of factors including the hard work and efforts of management, the Monitor and the Financial Advisor and the performance of the company in the months since filing for CCAA protection. Since January 8, 2010, the financial performance of the LP Entities has improved. On January 8, 2010 the LP Entities' had cash on hand of approximately \$40 million. They currently have cash on hand of approximately \$103.8 million. The improvement in cash is the result of several factors including seasonality, the fact that the filing had less of an impact on sales and supplier credit terms than expected and better than forecast financial results. The recent financial performance of the LP Entities makes it even less likely that the dual track will cause prejudice to the Senior Lenders: if the AHC Transaction closes, the Senior Lenders will be paid in full; if the AHC Transaction is not implemented, the LP Entities will proceed with the Support Transaction immediately. In my view, it is highly unlikely that such a delay would have a material impact on the value of the assets and businesses of the LP Entities.

52. In respect of the Ad Hoc Committee, the LP Entities intend to use good faith commercially reasonable efforts to consummate the AHC Transaction. It is only in the event that the AHC Transaction is not implemented that the LP Entities will proceed with the Support Transaction. The LP Entities are highly motivated to close the AHC Transaction because of its superior terms. However, in the view of the LP Entities, the prudent course is to leave open the prospect of closing the Support Transaction if the AHC Transaction fails to close for any reason. The LP Entities are therefore moving, consistent with the Monitor's recommendation, to obtain an Order conditionally sanctioning the Senior Lenders' CCAA Plan on the terms set out in the Monitor's letter dated May 7, 2010.

53. Going forward, the LP Entities intend to advance the AHC Transaction and the Support Transaction on parallel tracks until either (i) the Acquisition Date (under the AHC APA); (ii) it becomes apparent that the AHC Transaction cannot be implemented. This strategy has the advantage of allowing the LP Entities to pursue the highest value bid while maintaining the option to fall back on the Support Transaction. In either event, the LP Entities will have secured a going concern outcome for their businesses and stakeholders.

54. The implementation of the AHC Transaction and the Support Transaction will be time-consuming and will require significant dedication by the management and employees of the LP Entities and their advisors. Even under the most favourable circumstances, it is the best estimate of the LP Entities that the AHC Transaction will not close before well into July because of all of the steps required to consummate the sale of such a large and complex business. It is the intention of the LP Entities to give priority, in terms of management time and attention, to the closing of the AHC Transaction because it holds more value for the LP Entities and their stakeholders. The LP Entities will, of course, concurrently use reasonable efforts to advance the Support Transaction so that they will be in a position to close the Support Transaction if the AHC Transaction does not close for any reason.

#### **The Senior Lenders' CCAA Plan**

55. As part of the initial application for protection under the CCAA the LP Entities obtained authorization to file the Senior Lenders' CCAA Plan, the basis of which is the Support Transaction. A copy of the Senior Lenders' CCAA Plan, in the form attached as a schedule to the Initial Order, is attached as Exhibit "E" to this Affidavit.

56. Under the Senior Lenders' CCAA Plan, among other things:

- (a) only the claims of the Senior Lenders will be compromised, and the Senior Lenders' CCAA Plan will not affect or compromise any other claims against any of the LP Entities (the "**Unaffected Claims**");
- (b) no holders of Unaffected Claims will be entitled to vote on or receive any distributions in respect of their claims;
- (c) certain Unaffected Claims (including, without limitation, claims relating to the DIP Facility, claims relating to the provision of cash management services to the LP Entities, certain employee and pension related claims and secured claims ranking in priority to the claims of the Senior Lenders) will be paid by the LP Entities, assumed by AcquireCo or paid in full by the Monitor from a cash reserve

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established for the purpose of paying specified administrative claims and costs after the closing of the Support Transaction (the “**Cash Reserve**”);<sup>1</sup>

- (d) for the purposes of considering and voting on the Senior Lenders’ CCAA Plan there will be one class of Senior Lenders; and
- (e) subject to approval of the Senior Lenders’ CCAA Plan at the Senior Lenders’ Meeting, the Applicants will apply for the Credit Acquisition Sanction, Approval and Vesting Order.

57. Schedule 1.1(8) to the Senior Lenders’ CCAA Plan is the Acquisition and Assumption Agreement, which contains more of the specific terms of the Support Transaction. The Acquisition and Assumption Agreement addresses, among other things, acquisitions and assumptions, excluded assets, employee matters, tax matters, representations and warranties, covenants and conditions. As discussed in greater detail below, in this motion the LP Entities are also seeking conditional authorization to enter into the Acquisition and Assumption Agreement.

### **The Senior Lenders’ Claims Process**

58. For the purposes of voting on and distribution under the Senior Lenders’ CCAA Plan, the claims of the individual Senior Lenders were established in the Senior Lenders’ Claims Process. The Initial Order contains provisions relating to the Senior Lenders’ Claims Process and also establishes the procedures for a meeting of the Senior Lenders (the “**Senior Lenders’ Meeting**”).

59. The Senior Lenders’ Claims Process commenced immediately after the granting of the Initial Order. On January 12, 2010, the LP Administrative Agent delivered to the LP Entities a notice (the Notice of Claim – Syndicate Claims and Pro Rata Notice) setting out: (i) the aggregate amount owing by each of the LP Entities under the LP Credit Agreement as at January 8, 2010 (the “**Syndicate Claims**”); and (ii) each LP Secured Lenders’ *pro rata* share of that amount. On the same day, the LP Entities delivered to each Hedging Creditor a notice (the Notice of Claim – Hedging Agreements) setting out the termination amounts owed by each of

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<sup>1</sup> In the event that the AHC Transaction does not move forward, the LP Entities will be bringing a motion in advance of the Credit Bid Plan Implementation Date seeking to obtain an Order from this Honourable Court substantially in the form as attached as schedule [1.1(29)] to the Senior Lenders’ CCAA Plan that will set out the amount of the Cash Reserve and the process for administering the Cash Reserve.

the LP Entities to each of the Hedging Creditors and the interest amount payable on such amounts.

60. Pursuant to the Initial Order, the LP Entities and the LP Secured Lenders were required to file with the Monitor a Notice of Dispute – Syndicate Claims and Pro Rata Notice within five days after the posting or receipt of the Notice of Claim – Syndicate Claims and Pro Rata Notice if they intended to dispute the information contained in the notice. In both cases, failure to file a Notice of Dispute – Syndicate Claims and Pro Rata Notice within the prescribed time period was deemed confirmation of the amounts set out in the Notice of Claim – Syndicate Claims and Pro Rata Notice. I am advised that the Monitor did not receive any Notices of Dispute – Syndicate Claims and Pro Rata Notice from the LP Entities or any LP Secured Lender, so each LP Secured Lender's *pro rata* share of the Syndicate Claim was deemed to be finally determined and accepted as the proven principal claim (the "**Proven Principal Claim**") of such LP Secured Lender for the purposes of voting and distribution under the Senior Lenders' CCAA Plan ("**Finally Determined**").

61. Similarly, the Initial Order required any Hedging Creditor seeking to dispute an amount set out in the Notice of Claim – Hedging Agreements to file a Notice of Dispute – Hedging Agreements within five business days of receipt of the Notice of Claim – Hedging Agreements. I am advised that the Monitor did not receive any Notices of Dispute – Hedging Agreements, so the principal amounts set out in the Notice of Claim – Hedging Agreements were deemed to be Finally Determined.

62. The Initial Order also established a procedure for the assertion of claims by the Senior Lenders for amounts in addition to claims for principal (each an "**Additional Claim**") within ten business days of January 8, 2010 (the "**Filing Date**"). The Monitor did not receive any Additional Claims within ten business days of the Filing Date. Pursuant to the Initial Order, all Additional Claims by Senior Lenders were deemed to be forever extinguished and barred.

### **The Senior Lenders' Meeting**

63. The Initial Order authorized the LP Entities to conduct a meeting of the Senior Lenders on January 27, 2010 for the purpose of voting on a resolution to approve the Senior Lenders' CCAA Plan. I am advised that on January 12, 2010, pursuant to the terms of the Initial Order, the Monitor delivered to the LP Administrative Agent notice of the Senior Lenders'

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Meeting and other Meeting Materials. I am advised by counsel to the LP Administrative Agent that, on the same day, the LP Administrative Agent posted a copy of the Meeting Materials on two of the IntraLinks websites maintained by the LP Administrative Agent for the benefit of the Senior Lenders.

64. The Senior Lenders' Meeting was held at the offices of Stikeman Elliott LLP, counsel to the Monitor, at 12:30 p.m. on January 27, 2010. In accordance with the terms of the Initial Order, Paul Bishop, an officer of FTI Consulting Canada Inc. ("**FTI**"), acted as the chair (the "**Chair**") of the Senior Lenders' Meeting. Jodi Porepa of FTI acted as scrutineer (the "**Scrutineer**"). More extensive information on the conduct and outcome of the Senior Lenders' Meeting is contained in the Second Report of the Monitor dated January 29, 2010.

65. I am advised by Paul Bishop that the Chair held 156 proxies from the Senior Lenders holding Accepted Voting Claims, thereby satisfying the requirement that a quorum of the Senior Lenders be present either in person or by proxy. I am advised that the Chair declared that the Senior Lenders' Meeting was properly constituted.

66. I am also advised that a motion to consider a resolution to approve the Senior Lenders' CCAA Plan (the "**Resolution**") was proposed at the Senior Lenders' Meeting and a vote on the Resolution was called for by the Chair. Pursuant to the terms of the Initial Order and the Senior Lenders' CCAA Plan, the Senior Lenders voted as a single class.

67. In total, 97.5% in number and 88.7% of in value of the Senior Lenders holding Proven Principal Claims that were present and voting at the Senior Lenders' Meeting voted in favour to approve the Senior Lenders' CCAA Plan. Pursuant to the Initial Order, the Resolution had to be approved by a majority in number and two thirds in value of the Senior Lenders holding Accepted Senior Voting Claims (which included both Proven Principal Claims and Accepted Voting Claims, of which there were none) that were present and voting at the Senior Lenders' Meeting (the "**Required Majorities**"). The Required Majorities voted to approve the Senior Lenders' CCAA Plan.

68. As of the date of the Senior Lenders' Meeting there were no unresolved claims by any of the Senior Lenders.



**Conditional Sanction of the Senior Lenders' CCAA Plan**

69. As noted above, I strongly believe that it is prudent to concurrently obtain conditional sanction of the Senior Lenders' CCAA Plan if possible so that the Support Transaction may be implemented if the AHC Transaction does not close for whatever reason. The Support Agreement does not expressly preclude this dual track, although certain of its provisions may require amendment to accommodate the proposed approach. The advisors to the LP Entities, as well as the Monitor, the LP CRA and the Financial Advisor, have endeavoured to negotiate with both the Ad Hoc Committee and the LP Administrative Agent on the terms set out in the Monitor's letter described below. As of the date of the swearing of this affidavit, efforts are still underway to work out a path forward that includes Ad Hoc Committee and LP Administrative Agent consent to the concurrent approval of the AHC APA and conditional sanction of the Senior Lenders' CCAA Plan.

70. I am advised that on May 7, 2010, after "without prejudice" discussions with the Ad Hoc Committee and the LP Administrative Agent failed, the Monitor's counsel delivered a "with prejudice" proposal (the "Monitor's Letter") to counsel to the Ad Hoc Committee and counsel to the LP Administrative Agent with a proposal whereby the LP Entities would advance the AHC Transaction and the Support Transaction on parallel tracks. A copy of the Monitor's Letter is attached as Exhibit "F" to this Affidavit. I am advised that the Monitor supports the conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's Letter but does not support and would oppose conditional sanction of the Senior Lenders' CCAA Plan on a basis that might impair or prejudice the ability of the LP Entities to close the AHC Transaction if it is possible to do so. As noted herein, the procedure proposed in the Monitor's Letter is supported by the Financial Advisor, the LP CRA and counsel to the LP Entities.

71. I am further advised that, after discussions with the Monitor concerning the terms set out the Monitor Letter, the Ad Hoc Committee has accepted the procedure proposed by the Monitor.

72. The LP Entities also accept and support the procedure set out in the Monitor's Letter.

73. To date, the LP Administrative Agent has not consented to the procedure set out in the Monitor's Letter. The LP Administrative Agent delivered a response to the Monitor's

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Letter which I understand will be attached to a report filed by the Monitor in connection with this motion.

74. A form of sanction order (the Credit Acquisition Sanction, Approval and Vesting Order) was scheduled to the Support Agreement that was attached as Exhibit "X" to the Initial Order Affidavit and was also part of the Meeting Materials delivered in advance of the Senior Lenders' Meeting. The approval of the Senior Lenders' CCAA Plan included an approval of the form of Order.

75. The LP Entities now seek approval of a conditional sanction order (the "**Credit Bid Sanction Order**") that is identical to the form of Order approved at the Senior Lenders' Meeting but for the addition of certain provisions relating to the conditionality of the sanction and the approval of the Acquisition and Assumption Agreement. Pursuant to the terms of the draft Credit Bid Sanction Order, which incorporates the concepts set out in the Monitor's Letter, the sanction of the Senior Lenders' CCAA Plan will not be effective until after the Monitor delivers to the LP Entities and the LP Administrative Agent and files with the Court a certificate (the "**Monitor's Credit Bid Sanction Certificate**"). The Monitor will not deliver its certificate making the conditional Sanction of the Credit Acquisition operative if the AHC Bid closes and would not deliver it prior to July 29, 2010 unless the Monitor determines in its reasonable business judgment that there is no reasonable chance that the AHC Bid can close, in which case it may apply to Court on 4 business days' notice for authority to deliver the Monitor's certificate in advance of July 29, 2010. In the event that the Monitor's Credit Bid Sanction Certificate has not been delivered by July 30, 2010, the Credit Bid Sanction Order provides that the LP Administrative Agent may apply to the Court to compel delivery of such certificate by the Monitor. In the view of the LP Entities, the amendments to the Order approved at the Senior Lenders' Meeting are procedural and not material because they do not change any of the terms of implementation but rather merely establish the conditions upon which the sanction becomes effective. I understand that a copy of the proposed Credit Bid Sanction Order will be included in the material filed by the LP Entities in support of this motion.

76. Certain schedules to the draft Credit Bid Sanction Order and the Acquisition and Assumption Agreement, including the schedule of permitted encumbrances, have not been completed to date. It is anticipated that such schedules will be completed in the near term in

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respect of both the Support Transaction and the AHC Transaction. Upon the completion of such schedules, to the extent that parties' rights may be affected by the vesting language in the Credit Bid Sanction Order, the LP Entities will provide notice and serve such creditors whose rights may be affected and give them an opportunity to appear in Court well in advance of any closing of the Support Transaction.

77. As noted earlier, I understand that the Monitor will not support conditional sanction of the Senior Lenders' CCAA Plan if the Credit Bid Sanction Order contains any terms that would prejudice the ability of the LP Entities to close the AHC Transaction if it is possible to do so. In the Monitor's view, the AHC Bid is a Superior Cash Offer and should be pursued unless intervening events demonstrate that it cannot be implemented. In particular, the Monitor has expressed objection to any hard stop deadline that would compel the LP Entities to proceed with the Support Transaction even if the closing of the Ad Hoc Transaction were imminent. The draft Credit Bid Sanction Order therefore provides that the Monitor may delay the delivery of the Monitor's Credit Bid Sanction Certificate past July 29, 2010 if, in its reasonable business judgement and in consultation with the LP CRA and the Financial Advisor, it believes that the AHC Transaction will close within a reasonably short period of time after July 29, 2010.

78. The Senior Lenders' CCAA Plan contains the general terms for the plan of compromise or arrangement with the Senior Lenders; the Acquisition and Assumption Agreement that was attached as part of Exhibit "X" to the Initial Order Affidavit contains the specific terms for implementation and is attached as Exhibit "G" to this Affidavit. The draft Credit Bid Sanction Order provides that upon delivery of the Monitor's Credit Bid Sanction Certificate: (i) the LP Entities will be authorized to execute the Acquisition and Assumption Agreement; and (ii) the Acquisition and Assumption Agreement and the transactions contemplated thereby will be deemed approved.

### ***Revisions to Claims Procedure Order and the Continuation of the LP Claims Process***

79. Pursuant to terms of the Claims Procedure Order, the LP Entities have commenced a claims process (the "LP Claims Process") in which they are calling for the claims of certain of their creditors. A copy of the Claims Procedure Order (without schedules) is attached as Exhibit "H" to this Affidavit.

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80. The AHC Transaction must close on or before August 15, 2010. In order to implement all of the steps required to close the AHC Transaction by that date, the LP Entities have determined that the Meeting of Unsecured Creditors must be convened for the purpose of a vote on the AHC Plan (as defined below) no later than June 10, 2010. In order to permit certain additional creditors to participate in a vote on and eventual distribution under the AHC Plan, and in anticipation of the imminent Meeting of Unsecured Creditors, the LP Entities propose to make a number of amendments to the Claims Procedure Order relating to: (i) restructuring period claims (the “**Restructuring Period Claims**”); (ii) claims against the directors and officers of the LP Entities (the “**Director/Officer Claims**”); and (iii) claims by non-union employees arising after January 8, 2010 (the “**Restructuring Period Employee Claims**”). The LP Entities also propose to add provisions to the Claims Procedure Order relating to the determination of the *pro rata* claims of the individual LP Subordinated Lenders and LP Noteholders. The LP Entities, the Monitor, the Ad Hoc Committee and the LP Administrative Agent are still in the process of finalizing the specific terms of the Amended Claims Procedure Order. An Amended Claims Procedure Order, together with a blackline to the Claims Procedure Order, will be delivered to the Service List as soon as possible after the service of the LP Entities’ motion record.

**A. Restructuring Period Claims**

81. The Claims Procedure Order currently requires the LP Entities to deliver claims packages (the “**LP Claims Packages**”) to creditors with included claims arising after January 8, 2010 (the “**Restructuring Period Claims**”) as soon as practicable after the LP Entities have knowledge of such Restructuring Period Claims but in any event no later than 31 calendar days before any meeting of creditors. As a result, under the Claims Procedure Order as it is currently drafted, creditors with Restructuring Period Claims that arise after May 10, 2010 (which is 31 days in advance of the proposed Meeting of Unsecured Creditors) will not be included in or affected by the AHC Plan.

82. In order to enable a greater number of LP Creditors with Restructuring Period Claims to participate in the Meeting of Unsecured Creditors and the AHC Plan, the LP Entities propose to amend paragraph 21 of the Claims Procedure Order so that LP Claims Packages need be to be delivered before on or before May 20, 2010. The LP Entities also propose to amend the LP Restructuring Period Claims Bar Date to June 3, 2010. In the event that a Restructuring

Period Claim is not finally determined before the Meeting of Unsecured Creditors, the Claims Procedure Order permits the LP Entities to accept such LP Creditor's claim as a voting claim and then revisit the determination of the claim for distribution purposes.

**B. Director/Officer Claims**

83. The Claims Procedure Order currently excludes all claims against the directors and officers of the LP Entities (the "Director/Officer Claims"). The LP Entities now wish to call for certain Director/Officer Claims (which will include any and all claims against deemed or *de facto* directors and officers), whether part of the LP Claims Process or a separate process. As of the date of the swearing of this affidavit, the LP Entities, the LP CRA and the Monitor are still in discussions as to whether the Director/Officer Claims will either be: (i) Affected Claims and included in the Amended Claims Procedure Order; or (ii) the subject of a separate Order.

**C. Non-Union Employee Claims Arising During the Restructuring Period**

84. The LP Entities also propose to amend the Claims Procedure Order so that the LP Claims Process includes the Restructuring Period Claims of non-union employees that were terminated after January 8, 2010. At present, paragraph 2(k) of the Claims Procedure Order states that "Excluded Claims" include, among others:

...(iv) with the exception of SERA Claims and Termination and Severance Claims (as defined herein), all claims by current or former employees of the LP Entities, including both unionized and non-unionized employees, arising out of the employment of such employees or former employees by the LP Entities including, without limitation, Grievance Claims and Pension Claims (as defined herein)...

85. The LP Entities propose to amend paragraph 2(k) so that it provides that:

...(iv) with the exception of SERA Claims, Termination and Severance Claims and Restructuring Period Employee Claims (as defined herein)...

86. "Restructuring Period Employee Claim" will be defined as any claim by a non-unionized employee of the LP Entities arising out of the termination of the employment of such employee by the LP Entities after January 8, 2010.

87. The Monitor will post the Amended Claims Procedure Order on its website immediately after the granting of the Order Approving the AHC Bid.

**D. LP Subordinated Lender Claims Process and LP Noteholder Claims Process**

88. Pursuant to the Claims Procedure Order, the LP Subordinated Agent is authorized to file one or more LP Proofs of Claim on behalf of all of the LP Subordinated Lenders indicating the amount owing under the LP Senior Subordinated Credit Agreement on an aggregate basis. Similarly, the Bank of New York, as U.S. Trustee, and BNY Trust Company of Canada as Canadian Trustee under the LP Note Indenture (collectively, the “Trustees”) were authorized to file one or more LP Proofs of Claim on behalf of all of the LP Noteholders indicating the amount owing on an aggregate basis for all of the LP Notes. In advance of the Meeting of Unsecured Creditors, it is necessary to establish claims processes enabling the individual LP Subordinated Lenders and the individual LP Noteholders to establish their claims on a *pro rata* basis.

89. The LP Entities propose that, for the purposes of voting on and distribution under the AHC Plan, the individual claims of the LP Subordinated Lenders will be determined in the following manner (the “LP Subordinated Lenders’ Claims Process”):

- (a) Within two business days of the granting of the Order Approving the AHC Bid, the LP Subordinated Agent will send to the LP Entities a notice substantially in the form attached as a schedule to the draft Amended Claims Procedure Order (the “Notice of Subordinated Syndicate Pro Rata Claims”) setting out each LP Subordinated Lenders’ *pro rata* share of the aggregate amount owed by the LP Entities to the LP Subordinated Lenders (the “Subordinated Syndicate Claims”);
- (b) Concurrent with the delivery of the Notice of Subordinated Syndicate Pro Rata Claims, the LP Subordinated Agent will post a copy of the Notice of Subordinated Syndicate Pro Rata Claims to one of the IntraLinks websites (the “Subordinated Lenders’ Website”) maintained by the LP Subordinated Agent for the benefit of the LP Subordinated Lenders;
- (c) Within five business days of the receipt of the Notice of Subordinated Syndicate Pro Rata Claims the LP Entities will advise the Monitor whether the amounts set out therein are consistent with the books and records of the LP Entities. Failure to

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deliver a Notice of Dispute – Subordinated Syndicate Pro Rata Claims substantially in the form attached as a schedule to the draft Amended Claims Procedure Order will be deemed confirmation of the amounts set out in the Notice of Subordinated Syndicate Pro Rata Claims;

- (d) Within five business days of the posting of the Notice of Subordinated Syndicate Pro Rata Claims on the Subordinated Lenders' Website, each of the LP Subordinated Lenders holding claims must advise the Monitor whether such LP Subordinated Lender's *pro rata* share of the Subordinated Syndicate Claims is accurate. Failure to deliver a Notice of Dispute – Subordinated Syndicate Pro Rata Claims will be deemed confirmation of the amount set out in the Notice of Subordinated Syndicate Pro Rata Claims in respect of such LP Subordinated Lender;
- (e) If the amount of the LP Subordinated Lender's Claim is either (i) confirmed by the LP Entities; and (ii) confirmed by the individual LP Subordinated Lender, the amount set out in the Notice of Subordinated Syndicate Pro Rata Claims will be deemed to be finally determined ("**Finally Determined**") and accepted as the Proven Claim for such LP Subordinated Lender for purposes of voting and calculating entitlement to distribution under the AHC Plan;
- (f) In the event that a Notice of Dispute – Subordinated Syndicate Pro Rata Claims is delivered, the LP Entities, the LP Subordinated Agent and the applicable LP Subordinated Lender have three business days to reach an agreement as to the *pro rata* claim of such LP Subordinated Lender. If the LP Entities, the LP Subordinated Agent and the LP Subordinated Lender are unable to resolve their dispute, the claim of such LP Subordinated Lender will be determined by the Court on a motion for advice and directions brought by the Monitor; and
- (g) The LP Entities have discretion to accept an LP Subordinated Lender's *pro rata* claim for voting purposes without prejudice to the LP Entities' right to revisit the determination for distribution purposes.

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90. The LP Entities are currently working with counsel to the LP Noteholders to determine an appropriate process for the determination of the *pro rata* claims of the individual LP Noteholders (the “**LP Noteholders’ Claims Process**”). The terms of this procedure will be reflected in the draft Amended Claims Procedure Order that will be served and filed as soon as possible after the date of the swearing of this affidavit.

### **Continuation of LP Claims Process**

91. Pursuant to the Claims Procedure Order, after the initial call for claims, no steps were to be taken to adjudicate or resolve claims until the posting of notice by the Monitor that a determination had been made that such steps were required to close a Successful Bid or, after the closing of a Successful Bid, to facilitate a distribution of proceeds to unsecured creditors.

92. Subject to Court approval, the AHC Bid will be implemented through the AHC Plan. Before conducting a meeting of Unsecured Creditors, it is necessary that additional steps be taken in the LP Claims Process to adjudicate and determine claims. The AHC Transaction cannot close until the AHC Plan is approved at a meeting and sanctioned by the Court. In short, the adjudication and resolution of claims is necessary to close the AHC Bid.

93. The Monitor, the LP CRA, the LP Entities and the LP Administrative Agent have made a determination pursuant to the Claims Procedure Order that additional steps in the LP Claims Process are required for the closing of a Successful Bid. On May 7, 2010 counsel for the LP Entities wrote to counsel for the LP Administrative Agent seeking their consent to the continuation of the LP Claims Process. A copy of the letter is attached hereto as Exhibit “I”. The LP Administrative Agent agreed to the resumption of the LP Claims Process on terms set out in an e-mail from counsel for the LP Administrative Agent, a copy of which is attached hereto as Exhibit “J”.

### **The AHC Plan and the Meeting of Unsecured Creditors**

94. The AHC Bid contemplates that the AHC Transaction will be implemented pursuant to the AHC Plan between the LP Entities and certain unsecured creditors (the “**Affected Creditors**”) including those currently participating in a claims process (the “**LP Claims Process**”) pursuant to the Claims Procedure Order. The Affected Creditors are the only creditors of the LP Entities whose claims will be affected under the AHC Plan. They are also the only creditors that will be eligible to receive distributions under the AHC Plan. The specific terms of



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the AHC Plan are currently under negotiation, and the LP Entities intend to file the AHC Plan no later than May 20, 2010. An outline of the terms of the AHC Plan is contained in Schedule "1.1(29)" to the AHC APA.

95. In general terms, the AHC Plan will provide that, subject to Affected Creditor approval and sanction by this Honourable Court, the following will be approved and implemented:

- (a) Pursuant to the terms of the AHC APA, Opco LP will acquire substantially all of the assets of the LP Entities, including the shares and intercompany indebtedness of National Post Inc.;
- (b) The Senior Lenders will be unaffected creditors and will, on closing, receive a cash distribution equal to the full amount owing to them, including accrued interest and reimbursement of costs and expenses to the extent not previously paid by the LP Entities;
- (c) Opco LP will pay to any unsecured creditors with Proven Claims at the time of closing who have elected to receive a cash payment in an amount equal to the lesser of the amount of their Proven Claim and \$1,000 (the "**Cash Election**"), provided that any creditor making such Cash Election shall be deemed to vote in favour of the AHC Plan;
- (d) The balance of the consideration will be satisfied by an unsecured demand note or notes of Opco LP in the amount of \$150 million minus the aggregate cash amount paid pursuant to the previous sub-paragraph (the "**Opco Note**") to be issued in favour of the LP Entities;
- (e) Immediately after receipt of the Opco Note, the LP Entities will purchase from Holdco common shares of Holdco (the "**Holdco Common Shares**") in exchange for the Opco Note. The price per share will be \$13.33;
- (f) The Monitor will satisfy specified categories of administrative costs and claims outstanding on the Acquisition Date from an account established by the Monitor in trust pursuant to a further Order of this Court;

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- (g) Affected Creditors with Proven Claims will be required to certify whether they are Canadian for purposes of the *Income Tax Act*;
- (h) There will two classes of Holdco Common Shares: Voting Common Shares (for Affected Creditors that are Canadian and hold Proven Claims) and Limited Voting Shares (for Affected Creditors that are non-Canadian and hold Proven Claims);
- (i) The Monitor will advise Holdco as to the number of shares distributable to Affected Creditors that are Canadian, and Holdco will proportionately issue Voting Common Shares and Limited Common Shares. The Monitor will then immediately distribute the Holdco Common Shares on a *pro rata* basis, holding back shares in an amount reflecting the value of outstanding disputed claims in the LP Claims Process at the time of distribution;
- (j) Holdco will purchase additional units of Opco LP using the Opco Note and the Opco Note will be cancelled;
- (k) A full release will be provided in favour of the former directors and officers of the LP Entities, the advisors of the LP Entities, the Monitor and its advisors, the LP CRA and its advisors and the members of the Special Committee and its advisors; and
- (l) Following the plan implementation date and completion of the acquisition of the assets, Holdco will take steps to apply for the listing of its common shares on the Toronto Stock Exchange.

96. The AHC Plan also contemplates that, subject to Court approval in a subsequent Order, on or before the plan implementation date, an administrative reserve (the “**Administrative Reserve**”) will be established in an amount to be agreed by the Monitor, the LP Entities and Holdco, and not to exceed \$25,000,000, using cash and cash equivalents from the accounts of the LP Entities in a segregated account to be held in trust by the Monitor for the benefit of persons entitled to be paid certain specified costs and Holdco. These costs will include, among others, (i) amounts owing that are secured by the Administration Charge, the LP MIP Charge and the Financial Advisor Charge and the reasonable fees and costs of the Monitor and

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its counsel; (ii) amounts secured by the Directors' Charge; (iii) government priority claims; (iv) "Pension Priority Claims" as defined in the AHC APA; (v) fees and costs of any trustee in bankruptcy that may be appointed in respect of any of the LP Entities after the Acquisition Date; and (vi) trade payables incurred by the LP Entities after the filing date and before the Acquisition Date, in the ordinary course of business and in compliance with the Initial Order.

### **Meeting and Voting Procedures**

97. As part of this motion, the LP Entities also seek certain relief in respect of the Meeting of Unsecured Creditors and associated voting procedures. The LP Entities and the Ad Hoc Committee have agreed that, subject to Court approval, the LP Entities intend to call and conduct a meeting of the Affected Creditors on June 10, 2010 for the purpose of voting on a resolution to approve the AHC Plan. Because the LP Entities must close the AHC Transaction no later than August 15, 2010, it is critical that the Meeting of Unsecured Creditors take place as soon as possible so that the LP Entities can seek a sanction Order and take such other steps required prior to the Acquisition Date. A draft Meeting Order is under negotiation and will be served and filed as soon as possible after the swearing of this Affidavit.

98. The Monitor will preside as the chair of the Meeting of Unsecured Creditors (the "Chair"), and the only persons authorized to attend the Meeting of Unsecured Creditors will be the LP Entities, the Financial Advisor, the Monitor, the LP CRA and the Affected Creditors that are entitled to vote at the meeting, as well as their respective legal counsel. The Monitor or the LP Entities will have discretion to allow any other person to be admitted to the Meeting of Unsecured Creditors.

99. The only persons entitled to vote at the Meeting of Unsecured Creditors are those unsecured creditors of the LP Entities whose claims are included and have been proven in the LP Claims Process (the Affected Creditors). Pursuant to the Claims Procedure Order, the LP Entities have discretion in respect of disputed claims to make a determination as to the voting claim of an Affected Creditor without prejudice to review that creditor's claim for distribution purposes.

100. For purposes of classification of creditors and voting on the AHC Plan:

- (a) There will be one class of creditors consisting of Affected Creditors whose claims are included in the LP Claims Process;

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- (b) The quorum required at the Meeting of Unsecured Creditors will be one Affected Creditor present at such meeting in person or by proxy;
- (c) The Chair will direct a vote with respect to a resolution to approve the AHC Plan;
- (d) The Chair will be authorized to accept and rely on a proxy submitted in the form attached as Schedule "C" to the draft Meeting Order;
- (e) Any Affected Creditor that accepts the Cash Election in satisfaction of its claim will be deemed to have voted in favour of the AHC Plan;
- (f) After the vote, the Monitor will tally the votes, and the AHC Plan will be deemed to be accepted if it is approved by creditors present in person or represented at the Meeting of Unsecured Creditors holding claims totalling 66 2/3 % in value and a majority in number; and
- (g) Any vote will be binding on all Affected Creditors whether or not such Affected Creditor is present at the Meeting of Unsecured Creditors.

101. The LP Entities propose that, within two business dates of the granting of the Meeting Order, the Monitor will publish notice of the Meeting of Unsecured Creditors (the "**Meeting Notice**") substantially in the form attached as Schedule "A" to the draft Meeting Order for two business days in the *National Post, The Globe and Mail* (National Edition), *La Presse* and *The Wall Street Journal*.

102. Within three business days of the granting of the Meeting Order, the Monitor will send a copy of the Meeting Notice to each Affected Creditor together with the following documents and any other materials required by the Court to be delivered in connection with the calling and the conduct of the Meeting of Unsecured Creditors (collectively, the "**Meeting Materials**"):

- (a) a circular prepared by the LP Entities substantially in the form attached as Schedule "A" to the draft Meeting Order (the "**Notice to Affected Creditors**");
- (b) instructions to Affected Creditors substantially in the form attached as Schedule "B" to the draft Meeting Order (the "**Instructions to Affected Creditors**")

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- (c) a copy of the Meeting Order;
- (d) a copy of the AHC Plan;
- (e) a form of proxy for use at the Meeting of Unsecured Creditors, substantially in the form attached as Schedule "C" to the draft Meeting Order (the "Proxy"); and
- (f) and any other documents required by this Court to be delivered in connection with the calling and holding of the Meeting of Unsecured Creditors (collectively, the "Meeting Materials").

103. Affected Creditors that have opted for the Cash Election will not receive a Proxy as part of their Meeting Materials.

104. Pursuant to the draft Order Approving the AHC Bid, within two business days of the granting of the requested Order the Monitor will post the Meeting Materials on the Monitor's website at: <http://cfcanada.fticonsulting.com/clp>.

105. The only persons to whom notice is required to be provided in respect of the Meeting of Unsecured Creditors are the Affected Creditors.

106. The LP Entities propose that, in respect of the LP Subordinated Lenders, copies of the Meeting Notice and the Meeting Materials will be provided solely to the LP Subordinated Agent and, in respect of the LP Noteholders, copies of the Meeting Notice and the Meeting Materials will be provided solely to the Trustees.

### ***Amendment to the SISP Procedures***

107. Pursuant to the SISP Procedures, if the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor is directed to take steps toward implementation of the Superior Cash Offer. Specifically, the SISP Procedures provide that:

If the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall negotiate and settle a definitive agreement in accordance with the recommendation but subject to the terms and conditions of the Senior Lenders' CCAA Plan.

108. The LP Entities, in consultation with the Monitor, the Financial Advisor and the LP CRA, have determined that it is prudent and reasonable to seek conditional sanction of the Senior Lenders' CCAA Plan on the terms set out in the Monitor's Letter. The LP Entities wish to clarify and eliminate any concerns that the foregoing provision in the SISP Procedures precludes the concurrent pursuit of the AHC Transaction and the Support Transaction.

109. The SISP Procedures also provide that the Monitor's Superior Cash Offer Recommendation is conditional upon Court Approval and "the Superior Cash Offer closing within 60 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor, in consultation with the Financial Advisor and the LP CRA, and consented to by the Agent, acting in consultation with the Steering Committee." The LP Entities will endeavour to close the AHC Transaction as expeditiously as possible. However, the businesses of the LP Entities are extremely large and complex and the AHC Transaction – as well as the Support Transaction – contains numerous time-consuming conditions to closing. As a result, in the LP Entities best estimate, it is unlikely that the AHC Transaction will close by June 30, 2010, which is 60 days after the Phase 2 Bid Deadline. Furthermore, the Monitor has indicated that it does not support, and the Ad Hoc Committee will not support, conditional sanction of the Senior Lenders' CCAA Plan where the Order contains a hard stop deadline beyond which the LP Entities would be compelled to implement the Support Transaction. In order to accommodate the real possibility that such closing timeline will not be possible and to build flexibility into the process to accommodate reasonable delays caused by uncontrollable variables, the LP Entities wish to revise the SISP Procedures so that they provide that the 60-day provision may also be extended by further Order of the Court.

110. In order to clarify that the SISP Procedures permit concurrent pursuit of the AHC Transaction and the conditional sanction of the Senior Lenders' CCAA Plan and to introduce the possibility of a further revision of the closing deadline by the Court, the LP Entities therefore propose to revise the section of the SISP Procedures entitled "**Superior Cash Offer is Received**" as follows (with new additions in italics and underlined):

If the Monitor determines in its reasonable business judgment following consultation with the Financial Advisor and the LP CRA, that one or more of the Qualified Bids is a Superior Cash Offer, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall recommend (the "**Superior Cash Offer Recommendation**") to the Special Committee that the most favourable Superior Cash Offer be selected and that a definitive agreement be negotiated

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and settled in respect of that Superior Cash Offer, conditional upon Court approval and conditional on the Superior Cash Offer closing within 91 days after the Phase 2 Bid Deadline, or such longer period as shall be agreed to by the Monitor, in consultation with the Financial Advisor and the LP CRA, and consented to by the Agent, acting in consultation with the Steering Committee, or by further Order of the Court.

If the Special Committee accepts the Superior Cash Offer Recommendation, the Monitor, in consultation with the Financial Advisor and the LP CRA, shall negotiate and settle a definitive agreement in accordance with the recommendation but subject to the terms and conditions of the Senior Lenders' CCAA Plan, provided that nothing herein shall prevent the LP Entities or the Monitor from seeking sanction of the Senior Lenders' CCAA Plan which sanction will remain conditional upon delivery of a Monitor's Certificate on such terms as may be agreed to by the LP Entities, the Monitor and the Agent or ordered by the Court and, if such conditional sanction is granted, taking such commercially reasonable steps as are required for the LP Entities to remain in compliance with the terms of the Support Agreement and the Senior Lenders' CCAA Plan pending the closing of the Successful Bid (as defined herein).

111. I am advised that the Monitor and the LP CRA support this amendment to the SISP Procedures.

### **Conclusion**

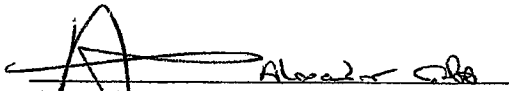
112. In the view of the LP Entities, the AHC Transaction represents the best value available for their businesses and stakeholders. The AHC Bid offers the highest available purchase price for the assets of the LP Entities and will provide significant recovery to those unsecured creditors participating in the LP Claims Process. In addition, Opco LP intends to offer employment to substantially all full-time employees and the vast majority of part-time employees of the LP Entities effective as of the Acquisition Date, thereby preserving approximately 5,000 jobs. Opco LP will also assume pension and retirement related obligations in respect of those employees who accept employment with Opco LP. The AHC Transaction promises to be a significant success for the CCAA process.


113. At the same time, the course of prudence is for the LP Entities to simultaneously pursue the Support Transaction if possible and, as a first step in that direction, seek the conditional sanction of the Senior Lenders' CCAA Plan. This strategy going forward mitigates the risk, however slight, that the AHC Transaction will not close and the LP Entities will have no available going concern path forward.

114. For the past four months, employees of the LP Entities have worked diligently to carry on business in the ordinary course while working to ensure that the SISP elicited a

transaction that would secure the best possible outcome for the LP Entities. The LP Entities are delighted that they have identified such a transaction in the AHC Bid and intend, with the benefit of the continuing stability afforded by the Support Agreement, to spare no effort to close it. The relief sought in this motion will set the stage for securing, over the next several weeks, an outcome that is in the best interests of the LP Entities' businesses, employees, retirees, suppliers and the many millions of Canadians that depend on them for their daily news.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
May 10, 2010.

  
Commissioner for Taking Affidavits

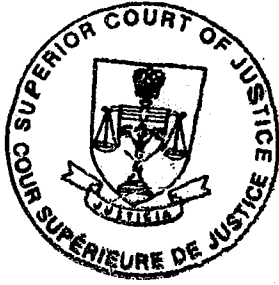
  
DOUGLAS E.J. LAMB



This is Exhibit "B" to the  
Affidavit of Douglas E.J. Lamb  
sworn before me this 29th day of June, 2010.

  
Commissioner for Taking Affidavits

Jacqueline Lee Allen,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-law.  
Expires April 12, 2013.



Court File No. CV-10-8533-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	FRIDAY, THE 8TH
	)	
JUSTICE PEPALL	)	DAY OF JANUARY, 2010

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 CANWEST PUBLISHING  
INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS  
INC. AND CANWEST (CANADA) INC.

**INITIAL ORDER**

THIS APPLICATION, made by Canwest Publishing Inc./Publications Canwest Inc. ("CPI"), Canwest Books Inc. ("CBI") and Canwest (Canada) Inc. ("CCI"), (together, the "Applicants"), 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 Thomas C. Strike sworn January , 2009 and the Exhibits thereto (the "**Strike Affidavit**") and the Report of the Proposed Monitor, FTI Consulting Canada Inc. ("**FTI Consulting**" or the "**Monitor**") (the "**Monitor's Pre-Filing Report**"), and on being advised that CIBC Mellon Trust Company and other secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and Canwest Limited Partnership/Canwest Societe en Commandite (the "**Limited Partnership**"), the Special Committee, being an existing committee comprised only of independent directors of the Board of Directors of Canwest Global Communications Corp. (the "**Special Committee**"), FTI Consulting, The Bank of Nova Scotia in its capacity as Administrative Agent (the "**Agent**") for the senior lenders to the Limited Partnership (collectively, the "**Senior Lenders**"), and the ad hoc committee of holders of 9.25% senior

subordinated notes issued by the Limited Partnership (the “**Ad Hoc Committee**”) and the directors and officers of the Applicants and on reading the consent of FTI Consulting to act as the Monitor,

## **PART I – CCAA RELIEF**

### **SERVICE**

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

### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Limited Partnership (together with the Applicants, the “**LP Entities**”) shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants have the authority to file the Senior Lenders CCAA Plan (as defined below) with this Court and that, subject to further Order of this Court, one or more of the Applicants, individually or collectively, with the consent of the Monitor and the LP CRA (as defined below), shall have the authority to file and may file with this Court other plans of compromise or arrangement (hereinafter referred to as an “**LP Plan**”) between, *inter alia*, one or more of the LP Entities and one or more classes of their applicable secured and/or unsecured creditors.

### **POSSESSION OF PROPERTY AND OPERATIONS OF THE LP ENTITIES**

4. THIS COURT ORDERS that the LP Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively the “**LP Property**”). Subject to this and further Order of this Court, the LP Entities shall each continue to carry on business in the ordinary course in a manner consistent with the preservation of their

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respective businesses (collectively the "**LP Business**") and LP Property. The LP Entities shall each be authorized and empowered to continue to retain and employ the consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order, with the prior approval of the Monitor in consultation with the LP CRA and subject to the provisions on the payment of the Assistants set forth in paragraph 9 hereof. The LP Entities shall each be further authorized and empowered to continue to retain and employ the employees currently employed by them, with liberty to employ such further employees as they deem reasonably necessary or desirable in the ordinary course of business.

5. Mr. Dennis Skulsky, the President of CPI (the "**President of CPI**") shall
  - (a) report directly and solely to the Special Committee;
  - (b) shall keep the Monitor and the LP CRA advised on a timely basis of developments in the operations and financial performance of the LP Entities and shall meet with the Monitor, the LP CRA and the financial advisor to counsel for the Agent (the "**McMillan Financial Advisor**") and collectively with counsel to the Agent and the other advisors to the Agent, the "**Agent's Advisors**") at least once per week, unless otherwise agreed by the McMillan Financial Advisor, to provide an update on operations and financial performance of the LP Entities; and
  - (c) advise the Monitor, the LP CRA and the McMillan Financial Advisor forthwith if the Special Committee disagrees with and precludes the President of CPI from proceeding with any recommended financial or operational initiative which the President of CPI believes is in the best interests of the LP Entities, in which case the Monitor will apply to the court for advice and direction, if the Monitor and the LP CRA are unable to assist the parties in coming to agreement.
6. The LP Entities shall provide the Agent's Advisors with any non-privileged information reasonably requested.
7. **THIS COURT ORDERS** that the LP Entities shall be entitled to continue to utilize the centralized cash management system currently in place as described in the Strike Affidavit or

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replace it with another substantially similar centralized cash management system satisfactory to the LP DIP Lenders (as defined below) and the Agent (the "**LP Cash Management System**"). Any present or future bank providing the LP 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 thereunder, or as to the use or application by the LP Entities of funds transferred, paid, collected or otherwise dealt with in the LP Cash Management System, shall be entitled to provide the LP Cash Management System without any liability in respect thereof to any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") other than the LP Entities, pursuant to the terms of the documentation applicable to the LP Cash Management System, and shall be, in its capacity as provider of the LP Cash Management System, an unaffected creditor in any plan of compromise or arrangement filed by the LP Entities under the CCAA, any proposal filed by the LP Entities under the *Bankruptcy and Insolvency Act of Canada* (the "**BIA**") or any other restructuring with regard to any claims or expenses it may suffer or incur in connection with the provision of the LP Cash Management System. All security interests over the LP Property granted by the LP Entities to The Bank of Nova Scotia to secure obligations under the LP Cash Management System (the "**Cash Management Existing Security**") up to \$7.5 million shall rank *pari passu* with the LP DIP Lenders' Charge (as defined below), in accordance with the terms of the Commitment Letter and the LP DIP Definitive Documents (as each term is hereinafter defined) and pursuant to paragraphs 54 and 56 hereof.

8. THIS COURT ORDERS that the LP Entities and the CMI Entities (as defined in the Strike Affidavit) shall continue to provide and pay for the shared services, as described in the Agreement on Shared Services and Employees (the "**New Shared Services Agreement**") dated as of October 26, 2009 attached as Exhibit "S" to the Strike Affidavit (collectively, the "**Shared Services**"), to each other and their other affiliated and related entities, in accordance with the New Shared Services Agreement. Notwithstanding any other provision in this Order, neither the LP Entities nor the CMI Entities shall modify, cease providing or terminate the provision of or payment for the Shared Services or any other provision of the New Shared Services Agreement except with the consent of the parties thereto, the Agent, acting in consultation with the Steering Committee, the LP CRA and the Monitor or further Order of this Court.

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9. THIS COURT ORDERS that, subject to availability under the LP DIP Facility (as defined below), subject to the LP DIP Definitive Documents and the LP Support Agreement (all as hereinafter defined), and subject to the cash flow forecasts delivered in accordance with the LP DIP Definitive Documents and the LP Support Agreement (the “**Approved Cash Flow**”), the LP Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, to the extent that such expenses are incurred or payable by the LP Entities:

- (a) all outstanding and future wages, salaries, employee and pension benefits (other than in respect of the Southam Executive Retirement Agreements or the CanWest MediaWorks Limited Partnership (now the Limited Partnership) Retirement Compensation Arrangement Plan), vacation pay, bonuses 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 compensation policies and arrangements;
- (b) without limiting the generality of paragraph 9(a), all current service, special and similar pension and/or retirement benefit payments (other than in respect of the Southam Executive Retirement Agreements or the CanWest MediaWorks Limited Partnership (now the Limited Partnership) Retirement Compensation Arrangement Plan), commissions and other incentive payments, payments to employees under collective bargaining agreements not otherwise covered by paragraph 9(a) and employee and director expenses and reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, but in the case of director legal expenses, only in accordance with paragraph 37 hereof;
- (c) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings, unless such payments are not permitted by this Order;
- (d) with the prior consent of the Monitor, all outstanding and future amounts owing to or in respect of individuals working as independent contractors or freelancers in connection with the LP Business;

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- (e) with the prior consent of the Monitor in consultation with the LP CRA, the reasonable fees and disbursements of any Assistants retained or employed by the LP Entities in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings;
- (f) any and all sums due and owing to Amex Bank of Canada (“**American Express**”), including, without limitation, amounts due and owing by the LP Entities to American Express in respect of the Corporate Card Program and Central Billed Accounts Program as described in the Strike Affidavit;
- (g) amounts collected in respect of various sales representation agreements under which the LP Entities sell as commissioned agent printed and/or online advertising on behalf of third-party clients; and
- (h) amounts owing for goods and services actually supplied to the LP Entities, or to obtain the release of goods contracted for prior to the date of this Order with the prior consent of the Monitor if, in the opinion of the LP CRA, in consultation with the LP Entities, the supplier is critical to the LP Business and ongoing operations of any of the LP Entities.

For greater certainty, unless otherwise ordered, the LP Entities shall not make (a) any payments to, or in satisfaction of any liabilities or obligations of the CMI Entities, save and except for payments in respect of the New Shared Services Agreement; or (b) any payments on account of change of control or other golden parachute arrangements, severance or termination pay, payment in lieu of notice of termination, claims for wrongful dismissal or other similar obligations.

10. THIS COURT ORDERS that, subject to availability under the LP DIP Facility, and subject to the LP DIP Definitive Documents and the LP Support Agreement, and subject to the Approved Cash Flow, the LP Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the LP Business in the ordinary course from and after

the date of 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 LP Property or the LP Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the LP Entities following the date of this Order.

For greater certainty, the LP Entities shall not make any payments to, or in satisfaction of any liabilities or obligations of the CMI Entities, save and except for payments in respect of the New Shared Services Agreement.

11. THIS COURT ORDERS that the LP Entities 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 the LP Entities' 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 LP Entities in connection with the sale of goods and services by the LP Entities, 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, workers' compensation, employer's health tax or other taxes, assessments or levies of any nature or kind which are entitled at law to



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be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the LP Business by the LP Entities.

12. THIS COURT ORDERS that, subject to availability under the LP DIP Facility, subject to the LP DIP Definitive Documents and the LP Support Agreement, and subject to the Approved Cash Flow, the LP Entities shall be entitled but not required to make available to National Post Inc. (formerly known as 4513401 Canada Inc.) secured revolving loans pursuant to the terms of the NP Intercompany Loan Agreement as defined and described in greater detail in the Strike Affidavit.

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with paragraph 18(c) of this Order, the LP Entities shall pay all amounts constituting rent or payable as rent under their respective 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 applicable LP Entity and the relevant landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a notice of disclaimer or resiliation under section 32 of the CCAA, the relevant LP Entity shall pay all Rent owing by the applicable LP Entity to the applicable landlord in respect of such lease due for the notice period stipulated in section 32 of the CCAA, to the extent that Rent for such period has not already been paid.

14. THIS COURT ORDERS that, except as otherwise specifically permitted herein, the LP Entities are 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 any one of the LP Entities to any of their creditors as of this date, including interest payable in respect of indebtedness owing by CPI to the Limited Partnership, which interest otherwise payable to the Limited Partnership shall cease to accrue as of the date hereof; (b) to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of the LP Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the LP Business.

### LP SUPPORT AGREEMENT

15. THIS COURT ORDERS that the LP Support Agreement made as of January 8, 2010 between the LP Entities and the Agent (the “**LP Support Agreement**”) is hereby approved and the LP Entities are hereby authorized and directed to pay and perform all of their indebtedness, liabilities and obligations under and pursuant to the LP Support Agreement. Without limiting the generality of the foregoing, as set forth in the LP Support Agreement, the LP Entities are authorized and directed to (i) make payments of interest on principal outstanding from time to time under the Senior Credit Agreement and the Hedging Agreements (as those terms are defined in the Senior Lenders CCAA Plan) (ii) pay all Recoverable Expenses (as defined in the LP Support Agreement); and (iii) make payments to the Agent of certain fees as contemplated in section 5.1 (i) of the LP Support Agreement.

### RESTRUCTURING

16. THIS COURT ORDERS that the Sale and Investor Solicitation Process, on the terms set out in Schedule “A” hereto (the “**SISP**”), is hereby authorized and approved and the LP Entities are hereby directed and authorized to proceed with the SISP.

17. THIS COURT ORDERS that in connection with the SISP and pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, the LP Entities shall disclose personal information of identifiable individuals to prospective bidders under the SISP and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the LP Property, or investment in the LP Business (each, a “**Transaction**”). Each prospective bidder to whom such personal information is disclosed shall sign an agreement to maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall return all such information to the LP Entities, or in the alternative destroy all such information. The Successful Bidder (as defined in the SISP) shall be entitled to continue to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the LP Entities, and shall return all other personal information to the LP Entities, or ensure that all other personal information is destroyed.

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18. THIS COURT ORDERS that the LP Entities shall, subject to such requirements as are imposed by the CCAA, subject to the LP DIP Facility, the LP DIP Definitive Documents and the LP Support Agreement and subject to the consent of the Monitor, acting with the assistance of and in consultation with the LP CRA or further Order of this Court, have the right to:

- (a) to the extent not inconsistent with the SISP, to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$1 million in any one transaction or \$5 million in the aggregate, so long as the proceeds of all such sales are applied to reduce the principal amount owed to the Senior Lenders under the Senior Credit Agreement (as defined below);
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant LP Entity deems appropriate in the ordinary course of business;
- (c) in accordance with paragraphs 19 and 20, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, in accordance with section 32 of the CCAA; and
- (d) disclaim or resiliate, in whole or in part, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the LP Entities deem appropriate, except the New Shared Services Agreement, the LP Support Agreement, the NP Intercompany Loan Agreement or any other agreements or documents entered into in connection with this Order, in accordance with section 32 of the CCAA and to deal with any claims arising from such disclaimer or resiliation in an LP Plan, if any,

all of the foregoing to permit the LP Entities to proceed with an orderly restructuring of the LP Business. For greater certainty, the LP Entities shall not shut down any of their daily newspapers without further prior Order of the Court.

19. THIS COURT ORDERS that LP Entities shall provide each of the relevant landlords with notice of the relevant LP Entity'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

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entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the LP Entity'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 relevant LP Entity, or by further Order of this Court upon application by the relevant LP Entity on at least two (2) days notice to such landlord and any such secured creditors. If an LP Entity disclaims or resiliates the lease governing such leased premises in accordance with paragraph 18(c) of this Order, 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 or resiliation of the lease shall be without prejudice to the LP Entity's claim to the fixtures in dispute.

20. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered by an LP Entity in respect of a leased premises, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the relevant landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant LP Entity and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, 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 LP Entity in respect of such lease or leased premises and such landlord shall be entitled to notify the LP Entity 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 LP ENTITIES OR THE LP PROPERTY**

21. THIS COURT ORDERS that until and including February 5, 2010, 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 LP Entities, the Monitor or the LP CRA or affecting the LP Business or the LP Property, except with the written consent of the applicable LP Entity, the Monitor and the LP CRA (in respect of proceedings affecting the LP Entities, the LP Property or the LP Business), or with leave of this

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Court, and any and all Proceedings currently under way against or in respect of the LP Entities, the Monitor or the LP CRA or affecting the LP Business or the LP Property are hereby stayed and suspended pending further Order of this Court. In the case of the LP CRA, no Proceeding shall be commenced against the LP CRA or its directors and officers without prior leave of this Court on seven (7) days notice to CRS Inc.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

22. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any Person against or in respect of the LP Entities, the Monitor and/or the LP CRA, or affecting the LP Business or the LP Property, are hereby stayed and suspended except with the written consent of the applicable LP Entity, the Monitor and the LP CRA (in respect of the rights and remedies affecting the LP Entities, the LP Property or the LP Business), the LP CRA (in respect of the rights and remedies affecting the LP CRA), or leave of this Court, provided that nothing in this Order shall (i) empower the LP Entities to carry on any business which the LP Entities are not lawfully entitled to carry on, (ii) exempt the LP Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

23. 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 LP Entities, except with the written consent of the relevant LP Entity, the LP CRA and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

24. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with an LP Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, computer software, communication and other data services, banking and cash management services, payroll services, insurance, transportation services, utility or other services to the LP Business or an LP Entity, 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 LP Entities, and that the LP Entities shall be entitled to the continued use of their 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 LP Entities in accordance with normal payment practices of the LP Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable LP Entity, with the consent of the LP CRA and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

25. THIS COURT ORDERS that, notwithstanding anything else contained herein, 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 LP Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

26. 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 (or their respective estates) of the LP Entities with respect to any claim against such directors or officers that arose prior to, on or after the date hereof and that relates to any obligations of the LP Entities 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 LP Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the LP Entities or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of any of the LP Entities, after the date hereof, to make payments in respect of the LP Entities of the nature referred to in paragraphs 9(a), 11(a), 11(b) and 11(c) of this Order, which they sustain or incur by reason of or

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in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct. For greater certainty, the indemnity provided by this paragraph 27 shall not indemnify such directors or officers of the Applicants from any costs, claims, charges, expenses or liabilities reasonably attributable to the CMI Entities.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**LP Directors' Charge**") on the LP Property, which charge shall not exceed an aggregate amount of \$35 million, as security for the indemnity provided in paragraph 27 of this Order. The LP Directors' Charge shall have the priority set out in paragraphs 54 and 56 herein.

29. 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 LP Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the LP Directors' Charge to the extent they do not have or are unable to obtain coverage under a directors' and officers' insurance policy or to the extent that such coverage is insufficient to pay amounts indemnified pursuant to paragraph 27 of this Order.

#### **APPOINTMENT OF MONITOR**

30. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor of the LP Entities, an officer of this Court, to monitor the LP Property and the LP Entities' conduct of the LP Business with the powers and obligations set out in the CCAA and as set forth herein and that the LP Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the LP Entities 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.

31. 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 LP Entities' receipts and disbursements;

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- (b) report to this Court and consult with the Agent's Advisors at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the LP Entities, the LP Property, the LP Business, and such other matters as may be relevant to the proceedings herein and with respect to any payments made pursuant to paragraph 9(h) herein;
- (c) assist the LP Entities, in their dissemination, to the McMillan Financial Advisor, the Agent and the LP DIP Agent (as defined below) and its counsel of financial and other information as agreed to between the LP Entities and the Agent or the LP Entities and the LP DIP Lenders (as defined below) which may be used in these proceedings;
- (d) advise the LP Entities in their preparation of the LP Entities' cash flow statements and reporting required by the LP DIP Lenders or the Agent, which information shall be reviewed with the Monitor and delivered to the McMillan Financial Advisor, the LP DIP Agent and the Agent in compliance with the LP DIP Definitive Documents and the LP Support Agreement, or as otherwise agreed to by the LP DIP Agent or the Agent;
- (e) assist the LP CRA in the performance of its duties set out in the LP CRA Agreement (as defined below);
- (f) advise the LP Entities in their development and implementation of the LP Plan, if any, and any amendments to any such LP Plan;
- (g) assist the LP Entities with the holding and administering of creditors' or shareholders' meetings for voting on any LP Plan, as applicable;
- (h) have full and complete access to the LP Property, including the premises, books, records, data (including data in electronic form), other financial documents of the LP Entities, and management, employees and advisors of the LP Entities, to the extent that is necessary to adequately assess the LP Entities' business and financial affairs or to perform its duties arising under this Order;



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- (i) 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;
- (j) monitor and, if necessary, report to the Court on any matters pertaining to the New Shared Services Agreement; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that in addition to its prescribed rights and obligations under the CCAA and the powers granted hereunder, the Monitor shall supervise the SISP and supervise the Financial Advisor (as hereinafter defined) in connection therewith and that the Monitor is hereby empowered, authorized and directed to take such actions and fulfill such roles as are contemplated in the SISP, including:

- (a) working with the Financial Advisor and the LP CRA to develop a list of potential bidders to be contacted;
- (b) working with the Financial Advisor, the LP CRA and counsel for the LP Entities, who at all times are to be instructed by the LP CRA, (together the “SISP Advisors”) on the negotiation of confidentiality agreements;
- (c) working with the SISP Advisors in the preparation and distribution of a confidential information memorandum;
- (d) working with the SISP Advisors in the establishment of and supervision of access to an electronic data room;
- (e) providing the Agent and the Agent’s Advisors with timely and regular updates and information as to the progress of the SISP, subject only to the Monitor reserving its right not to provide information concerning the particulars of any of the Qualified Non-Binding Indications of Interest (as defined in the SISP) or Qualifying Bids (as defined in the SISP) until after the conduct of the vote on the Senior Lenders CCAA Plan;

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- (f) in accordance with the terms of the SISP, supervising the conduct of Phase 1, and to the extent applicable Phase 2, of the SISP and exercising the duties, powers and authorities to be exercised by the Monitor under the terms of the SISP;
- (g) presenting such further and other recommendations to the Special Committee as contemplated in the SISP or as may be considered advisable by the Monitor or the LP CRA, it being understood that subject to further Order of this Court, the authorities and obligations of the Special Committee in the SISP and in the operations of the LP Entities to the extent there are any such obligations, and in the restructuring of the LP Entities generally, shall only be to deal with matters brought to it either by the President of CPI as contemplated by paragraph 5 of this Order or by the Monitor as contemplated by this paragraph in the Order; and
- (h) otherwise working with the SISP Advisors on any steps and actions considered necessary or desirable in carrying out the SISP.

33. THIS COURT ORDERS that the Monitor shall not take possession of the LP Property and shall take no part whatsoever in the management or supervision of the management of the LP Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the LP Business or LP Property, or any part thereof.

34. 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 LP 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

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in Possession of any of the LP Property within the meaning of any Environmental Legislation, unless it is actually in Possession.

35. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the LP DIP Lenders with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor provided that with respect to any Person acting, directly or indirectly, as or on behalf of a bidder or potential bidder involved in the SISP, the Monitor is not required to provide any such information unless the Monitor is satisfied that appropriate internal confidentiality screens are in place. 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 LP Entities may agree.

36. 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, 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.

37. THIS COURT ORDERS that, subject to the provisions of this paragraph, the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and financial advisor to the Special Committee, counsel to the directors and officers of the Applicants, the LP CRA, counsel to the LP CRA and the Financial Advisor, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, or as agreed under contracts, as long as such contracts, which shall include any contracts to obtain fairness opinions, are approved by this Court, whether incurred prior to or subsequent to the date of this Order, by the LP Entities, to the extent that such fees and disbursements relate to services provided to the LP Entities. From the date of this Order, the fees and disbursements paid by the LP Entities to:

- (a) counsel to the Special Committee shall be limited to those incurred in respect of advice given in connection with the authorities and obligations of the Special Committee as set forth in paragraph 32(g) herein; and

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- (b) counsel to the directors and officers of the Applicants shall not exceed \$75,000 in total.

The Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and financial advisor to the Special Committee, the LP CRA, counsel to the LP CRA, counsel to the Applicants' directors and officers and the Financial Advisor shall keep separate accounts for services provided in respect of the LP Entities and services provided in respect of the CMI Entities. The LP Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and financial advisor to the Special Committee on a weekly basis, and the accounts of the LP CRA, counsel to the LP CRA, and counsel to the Applicants' directors and officers and the Financial Advisor on a monthly basis, to the extent that such accounts relate to services provided to the LP Entities. The LP Entities shall not be liable for and shall not pay any expenses, fees, disbursements or retainers of the Monitor, counsel to the Monitor, counsel to the CMI Entities, counsel and financial advisor to the Special Committee, counsel to the Applicants' directors and officers or the Financial Advisor, to the extent that such expenses, fees, disbursements or retainers are not attributable to the LP Entities.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and if so ordered by the Court on motion brought by the Monitor, after consultation with the LP CRA, other counsel whose fees and disbursements are secured by the LP Administration Charge (as defined below), shall pass their accounts from time to time, and for this purpose the accounts of such parties are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

39. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the LP Entities, counsel and the financial advisor to the Special Committee, the LP CRA, and counsel to the LP CRA shall be entitled to the benefit of and are hereby granted a charge on the LP Property (the "**LP Administration Charge**"), which charge shall not exceed an aggregate amount of \$3 million, as security for their reasonable professional fees and disbursements incurred at their respective standard rates and charges in respect of such services, both before and after the making of this Order in respect of these proceedings. The LP Administration Charge shall have the priority set out in paragraphs 54 and 56 hereof.

40. THIS COURT ORDERS that the RBC Dominion Securities Inc., a member company of RBC Capital Markets (the "**Financial Advisor**") shall be entitled to the benefit of and is hereby

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granted a charge on the LP Property (the “**FA Charge**”), which charge shall not exceed an aggregate amount of \$10 million, as security for the fees and disbursements, including a success fee (if any) payable to the Financial Advisor pursuant to the engagement letter dated October 1, 2009 between CPI, the Limited Partnership and Financial Advisor (the “**Financial Advisor Agreement**”). The FA Charge shall have the priority set out in paragraphs 54 and 56 hereof.

#### **CHIEF RESTRUCTURING ADVISOR**

41. THIS COURT ORDERS that CRS Inc. (“**CRS**”) be and is hereby appointed as Chief Restructuring Advisor of the LP Entities in accordance with the terms and conditions of the agreement entered into between Canwest Global Communications Corp. (“**Canwest Global**”), the LP Entities and CRS (CRS and its President, Gary F. Colter, are collectively referred to herein as the “**LP CRA**”) dated November 1, 2009 (the “**LP CRA Agreement**”), effective as of the date of this Order.

42. THIS COURT ORDERS that the LP CRA Agreement is hereby approved and given full force and effect and that the LP CRA is hereby authorized to retain counsel as set out in the LP CRA Agreement. The LP CRA Agreement shall not be amended without prior Court approval.

43. THIS COURT ORDERS that the LP Entities are authorized and directed to continue the engagement of the LP CRA on the terms and conditions set out in the LP CRA Agreement.

44. THIS COURT ORDERS that the LP CRA shall not be or be deemed to be a director, officer or employee of any of the LP Entities.

45. THIS COURT ORDERS that the LP CRA and its directors and officers shall incur no liability or obligation as a result of the LP CRA’s appointment or the carrying out of the provisions of this Order, or the provision of services pursuant to the LP CRA Agreement, save and except as may result from gross negligence or wilful misconduct on the part of the LP CRA. In particular, the LP CRA and its directors and officers shall incur no liability, whether statutory or otherwise, as a director or officer of the LP Entities.

46. THIS COURT ORDERS that (i) the indemnification obligations of Canwest Global in favour of the LP CRA and its officers and directors set out in the LP CRA Agreement; and (ii)

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the payment obligations set out in the LP CRA Agreement shall be entitled to the benefit of and form part of the LP Administration Charge set out herein.

47. THIS COURT ORDERS that any claims of the LP CRA under the LP CRA Agreement shall be treated as unaffected in any plan of compromise or arrangement filed by the LP Entities under the CCAA, any proposal filed by the LP Entities under the BIA or any other restructuring.

#### **DIP FINANCING**

48. THIS COURT ORDERS that LP Entities are hereby authorized and empowered to obtain and borrow under a credit facility from The Bank of Nova Scotia as Administrative Agent (the "**LP DIP Agent**") and certain other lenders from time to time party to the LP DIP Definitive Documents (as defined below)(collectively, the "**LP DIP Lenders**") in order to finance the LP Entities' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$25 million unless permitted by further Order of this Court.

49. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the LP Entities, the LP DIP Lenders and LP DIP Agent dated as of January 8, 2010 (the "**Commitment Letter**"), filed.

50. THIS COURT ORDERS that the LP Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**LP DIP Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the LP DIP Lenders pursuant to the terms thereof, and the LP Entities are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the LP DIP Lenders under and pursuant to the Commitment Letter and the LP DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

51. THIS COURT ORDERS that the LP DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**LP DIP Lenders' Charge**") on the LP Property as security for any and all obligations of the LP Entities under the LP DIP Definitive Documents, which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the LP

DIP Definitive Documents. The LP DIP Lenders' Charge shall have the priority set out in paragraphs 54 and 56 hereof.

52. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the LP DIP Lenders or the LP DIP Agent may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the LP DIP Lenders' Charge or any of the LP DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the LP DIP Definitive Documents or the LP DIP Lenders' Charge, the LP DIP Lenders, upon 2 days notice to the LP Entities and the Monitor, may exercise any and all of their rights and remedies against the LP Entities or the LP Property under or pursuant to the Commitment Letter, LP DIP Definitive Documents and the LP DIP Lenders' Charge (except that the right to cease making advances or credit available under the LP DIP Definitive Documents, to set off and/or consolidate any amounts owing by the LP DIP Lenders to the LP Entities against the obligations of the LP Entities to the LP DIP Lenders under the Commitment Letter, the LP DIP Definitive Documents or the LP DIP Lenders' Charge and make demand or accelerate payment thereunder shall be without notice or demand), including, without limitation, to give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the LP Entities and for the appointment of a trustee in bankruptcy of the LP Entities, and upon the occurrence of an event of default under the terms of the LP DIP Definitive Documents, the LP DIP Lenders shall be entitled to seize and retain proceeds from the sale of the LP Property and the cash flow of the LP Entities to repay amounts owing to the LP DIP Lenders in accordance with the LP DIP Definitive Documents and the LP DIP Lenders' Charge, but subject to the priorities as set out in paragraphs 54 and 56 of this Order; and
- (c) the foregoing rights and remedies of the LP DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the LP Entities or the LP Property.

53. THIS COURT ORDERS AND DECLARES that the LP DIP Lenders shall be treated as unaffected in any plan of compromise or arrangement filed by the LP Entities under the CCAA, any proposal filed by the LP Entities under the BIA or any restructuring with respect to any advances made under the LP DIP Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

54. THIS COURT ORDERS that the priorities of the LP Directors' Charge, the LP DIP Lenders' Charge, the LP Administration Charge, the FA Charge and the LP MIP Charge (as defined below), shall be as follows:

First – LP Administration Charge

Second – LP DIP Lenders' Charge and the Cash Management Existing Security up to \$7.5 million on a *pari passu* basis;

Third – The FA Charge; and

Fourth – the LP Directors' Charge and the LP MIP Charge on a *pari passu* basis.

55. THIS COURT ORDERS that the filing, registration or perfection of the LP Directors' Charge, LP DIP Lenders' Charge, the LP Administration Charge, the FA Charge or the LP MIP 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.

56. THIS COURT ORDERS that the LP Directors' Charge, the LP DIP Lenders' Charge, the LP Administration Charge, the FA Charge and the LP MIP Charge shall constitute a charge on the LP Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected purchase money security interest in favour of any secured creditor or for any statutory Encumbrance existing on the date of this order in favour of any Person that is a "secured creditor" as defined in the CCAA in respect of source deductions from wages, employer health



tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, and amounts under the Wage Earners' Protection Program that are subject to a super priority claim under the BIA.

57. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the LP Entities shall not grant any Encumbrances over any LP Property that rank in priority to, or *pari passu* with, any of the LP Directors' Charge, the LP DIP Lenders' Charge, the LP Administration Charge, the FA Charge or the LP MIP Charge, unless the LP Entities also obtain the prior written consent of the Monitor, the beneficiaries of the LP Directors' Charge, the LP DIP Lenders' Charge, the LP Administration Charge, the LP MIP Charge or the FA Charge and the Agent, or upon further Order of this Court.

58. THIS COURT ORDERS that the LP Directors' Charge, the LP DIP Lenders' Charge, the LP Administration Charge, the FA Charge, the LP MIP Charge and the LP Support Agreement 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**") 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 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 LP Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery or performance of the Commitment Letter, the LP DIP Definitive Documents or the LP Support Agreement shall create or be deemed to constitute a breach by any of the LP Entities 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

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- or the execution, delivery or performance of the Commitment Letter or any LP DIP Definitive Documents; and
- (c) the LP Support Agreement, the Commitment Letter, the LP DIP Definitive Documents, payments made by the LP Entities pursuant to this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

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

60. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the terms and conditions with respect to any release and discharge of the Charges (as defined herein) shall be subject to the consent of the applicable Chargee and the Monitor or further Order of the Court.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

61. THIS COURT ORDERS that the Financial Advisor Agreement in the form attached to the Confidential Supplement to the Monitor's Pre-Filing Report (the "**Confidential Supplement**") is hereby approved and the LP Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

#### **MANAGEMENT INCENTIVE PLAN**

62. THIS COURT ORDERS that the LP Entities' management incentive plan (the "**LP MIP**"), the National Post Inc. management incentive plan (the "**NP MIP**") and employee special arrangements (the "**Special Arrangements**") in the forms attached to the Confidential Supplement are hereby approved and the LP Entities are authorized and directed to make payments contemplated thereunder in accordance with the terms and conditions of the LP MIP, the NP MIP and the Special Arrangements which shall not be amended without the consent of the Agent, acting in consultation with the Steering Committee and further Order of the Court.

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63. THIS COURT ORDERS that the key employees referred to in the LP MIP and the beneficiaries of the Special Arrangements shall be entitled to the benefit of and are hereby granted a charge (the “LP MIP Charge”) on the LP Property, which charge shall not exceed an aggregate amount of \$3 million, to secure amounts owing to such key employees under the LP MIP and amounts owing to the beneficiaries of the Special Arrangements.

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

64. THIS COURT ORDERS that the Confidential Supplement be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

#### **PART II – SENIOR LENDERS CCAA PLAN OF ARRANGEMENT**

##### **SENIOR LENDERS CCAA PLAN OF ARRANGEMENT**

65. THIS COURT ORDERS that capitalized terms used in Parts II, III, and IV of this Order not otherwise defined herein shall have the meanings given to them in the Senior Lenders CCAA Plan.

66. THIS COURT ORDERS that the plan of compromise or arrangement (hereinafter referred to as the “Senior Lenders CCAA Plan”) between the LP Entities and the Senior Secured Creditors, substantially in the form attached as Schedule “B” hereto, be and is hereby accepted for filing, and that the LP Entities are authorized to seek approval of the Senior Lenders CCAA Plan in the manner set forth herein.

67. THIS COURT ORDERS that the Agent is hereby authorized to amend, modify and/or supplement the Senior Lenders CCAA Plan at any time and from time to time prior to the Senior Lenders Meeting (as defined below). The Monitor shall disclose and make available all amendments, modifications and supplements to the Senior Lenders CCAA Plan at the Senior Lenders Meeting.

#### **PART III – SENIOR LENDERS CLAIMS PROCESS**

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68. THIS COURT ORDERS that for the purposes of voting and distribution under the Senior Lenders CCAA Plan, the Principal amount of the Senior Secured Claims shall be determined in the following manner (the “**Senior Lenders Claims Process**”):

- (a) Within two (2) Business Days of the date hereof (the “**Filing Date**”), the Agent, on behalf of the Senior Lenders, shall send to the LP Entities (with a copy to the Monitor):
  - (i) a notice substantially in the form attached as Schedule “C” hereto, setting out based upon its records: (x) the aggregate Principal amount of the Senior Secured Claims owing directly by each of the LP Entities under the Senior Credit Agreement as at the Filing Date (the “**Syndicate Claims**”) and (y) each Senior Lender’s pro rata share of the Syndicate Claims as at the Filing Date (all of which shall constitute, the “**Notice of Claim - Syndicate Claims and Pro Rata Notice**”).
  - (ii) concurrently with the delivery of the Notice of Claim - Syndicate Claims and Pro Rata Notice to the LP Entities, the Agent shall post a copy of the Notice of Claim - Syndicate Claims and Pro Rata Notice to one of the IntraLinks websites (the “**Senior Lenders Website**”) maintained by the Agent for the benefit of the Senior Lenders.
- (b) The LP Entities shall within five (5) Business Days of receipt of the Notice of Claim - Syndicate Claims and Pro Rata Notice advise the Monitor (with a copy to the Agent) whether the amounts set out therein are consistent with their books and records. If the LP Entities fail to file a notice of dispute substantially in the form attached as Schedule “D” hereto (a “**Notice of Dispute - Syndicate Claims and Pro Rata Notice**”), within the five (5) day period noted above, then the LP Entities shall be deemed to have confirmed the amounts set out in the Notice of Claim - Syndicate Claims and Pro Rata Notice.
- (c) Each of the Senior Lenders holding Syndicate Claims shall within five (5) Business Days of the posting of the Notice of Claim - Syndicate Claims and Pro Rata Notice to the Senior Lenders Website advise the Monitor (with a copy to the Agent) whether such Senior Lender’s pro rata share of the Syndicate Claims set out in the Notice of Claim - Syndicate Claims and Pro Rata Notice is accurate. If a Senior Lender fails to file a Notice of Dispute - Syndicate Claims and Pro Rata Notice within the five (5) day period noted above then such Senior Lender shall be deemed to have confirmed

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its pro rata share of the Syndicate Claims as set out in the Notice of Claim - Syndicate Claims and Pro Rata Notice is accurate.

- (d) If the amount of a Senior Lender's Syndicate Claim is: (i) confirmed by the LP Entities pursuant to paragraph 68(b); and (ii) confirmed by such Senior Lender pursuant to paragraph 68(c), then the amount designated in the Notice of Claim - Syndicate Claims and Pro Rata Notice to be such Senior Lender's pro rata share of the Syndicate Claims shall be deemed to be finally determined ("**Finally Determined**") and accepted as the Proven Principal Claim of such Senior Lender for the purposes of voting and for calculating the entitlement to distribution under the Senior Lenders CCAA Plan in respect of the Syndicate Claims.
- (e) Within two (2) Business Days of the Filing Date, the LP Entities shall send to each holder of a Senior Secured Claim under or pursuant to one or more Hedging Agreements (each, a "**Hedging Creditor**") (with a copy to the Monitor and the Agent) a notice, substantially in the form attached as Schedule "E" hereto, setting out the Principal amount of such Hedging Creditor's Senior Secured Claim owing directly by each of the LP Entities and the rate of interest payable on such Principal amount (each, a "**Notice of Claim - Hedging Agreements**").
- (f) Each Hedging Creditor shall within five (5) Business Days of receipt of their respective notices confirm to the Monitor whether the amounts and interest rate set out therein are accurate.
- (g) If the Principal amount and interest rate set out in a Notice of Claim - Hedging Agreements is confirmed by the specified Hedging Creditor or if such Hedging Creditor does not deliver a notice of dispute substantially in the form attached as Schedule "F" hereto (a "**Notice of Dispute - Hedging Agreements**") within five (5) Business Days of receipt of such Notice of Claim - Hedging Agreements, then the Principal amount set out in such Notice of Claim - Hedging Agreements shall be deemed to be Finally Determined and accepted as the Proven Principal Claim of such Hedging Creditor for the purposes of voting and for calculating the entitlement to distributions under the Senior Lenders CCAA Plan and the interest rate set out in the Notice of Claim - Hedging Agreements shall be deemed to be the proper interest rate

for the purposes of calculating the entitlement to distributions under the Senior Lenders CCAA Plan.

- (h) Within five (5) Business Days of receipt (or posting on the Senior Lenders Website) of either the Notice of Claim - Syndicate Claims and Pro Rata Notice or a Notice of Claim - Hedging Agreements, as the case may be, a Senior Lender holding a Syndicate Claim, the LP Entities or a Hedging Creditor (in such circumstances a “**Disputing Claimant**”) may deliver a Notice of Dispute - Syndicate Claims and Pro Rata Notice or a Notice of Dispute - Hedging Agreements to the Monitor (with a copy to the Agent in respect of a Notice of Dispute - Syndicate Claims and Pro Rata Notice) as follows:
- (i) the LP Entities or a Senior Lender holding a Syndicate Claim may deliver a Notice of Dispute - Syndicate Claims and Pro Rata Notice indicating that they dispute the amount set out in the Notice of Claim - Syndicate Claims and Pro Rata Notice. If a Notice of Dispute - Syndicate Claims and Pro Rata Notice is delivered pursuant to the preceding sentence, then the applicable Senior Lender, the Monitor, the LP Entities and the Agent shall have three (3) Business Days to reach an agreement in writing as to the Principal amount of the Senior Secured Claim that is subject to the Notice of Dispute - Syndicate Claims and Pro Rata Notice, in which case such agreement shall govern and the Principal amount of such Senior Secured Claim as agreed shall be deemed to be Finally Determined and accepted as the Senior Lender’s Proven Principal Claim for the purposes of voting and for calculating the entitlement to distributions under the Senior Lenders CCAA Plan in respect of the Syndicate Claims.
  - (ii) a Hedging Creditor may deliver a Notice of Dispute - Hedging Agreements indicating that it disputes the amount or interest rate set out in its Notice of Claim - Hedging Agreements. If a Notice of Dispute - Hedging Agreements is delivered pursuant to the preceding sentence, then the Monitor, the LP Entities and the Agent and the particular Hedging Creditor shall have three (3) Business Days to reach an agreement in writing as to the Principal amount of, and/or interest rate applicable to the Senior Secured Claim that is subject to the Notice of Dispute - Hedging Agreements, in which case such agreement shall govern and the Principal amount as agreed shall be deemed to be Finally Determined and accepted as the Proven Principal Claim of such Hedging Creditor for the purposes of voting and for calculating the entitlement to distributions under the Senior Lenders CCAA Plan and the interest rate, as agreed, shall be deemed to be the proper interest rate for the purposes of calculating the entitlement to distributions under the Senior Lenders CCAA Plan.

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- (i) If a Notice of Dispute - Syndicate Claims and Pro Rata Notice or a Notice of Dispute - Hedging Agreements is unable to be resolved in the manner and within the time period set out in paragraph 68(h) above, then the Claim of such Disputing Claimant shall be determined by the Court on a motion for advice and directions brought by the Monitor (the “**Dispute Motion**”) on notice to all interested parties. The Monitor and the Disputing Claimant shall each use reasonable efforts to have the Dispute Motion, and any appeals therefrom, disposed of on an expedited basis with a view to having the Claim of the Disputing Claimant Finally Determined on a timely basis.
- (j) If the Principal amount of a Senior Secured Claim held by a Senior Lender is the subject of a Notice of Dispute - Syndicate Claims and Pro Rata Notice and is not Finally Determined on or before the second Business Day immediately prior to the day of the Senior Lenders Meeting, then for the purposes of voting, such a Senior Lender shall be deemed to have an accepted Senior Secured Claim for voting purposes (an “**Accepted Voting Claim**”) equal to the amount of its pro rata share of the Syndicate Claims set out in the Notice of Claim - Syndicate Claims and Pro Rata Notice.
- (k) If the Principal amount of a Senior Secured Claim held by a Hedging Creditor is the subject of a Notice of Dispute - Hedging Agreements and is not Finally Determined on or before the second Business Day immediately prior to the day of the Senior Lenders Meeting, then for the purposes of voting, such a Hedging Creditor shall be deemed to have an Accepted Voting Claim equal to the amount set out in its Notice of Claim - Hedging Agreements.

69. **THIS COURT ORDERS** that any Senior Lender, who asserts that its Senior Secured Claim as at the Filing Date includes a claim or claims for amounts in addition to a claim for Principal (an “**Additional Claim**”), shall notify the Monitor (with a copy to the Agent and the LP Entities), of such Additional Claim and the amount of such Additional Claim within ten (10) Business Days of the Filing Date. If no such notice is received by the Monitor within ten (10) Business Days of the Filing Date, such Senior Lender’s Additional Claim shall be and is hereby forever extinguished and barred.

70. **THIS COURT ORDERS** that, for the purposes of calculating Senior Secured Claims for voting and distribution purposes, Senior Secured Claims denominated in US dollars shall be converted into Canadian dollars at the Bank of Canada United States/Canadian Dollar noon exchange rate in effect on the date of the Initial Order.

71. **THIS COURT ORDERS** that the Agent shall post a copy of this Order on the Senior Lenders Website within two (2) Business Days of the making of the Order.

#### **PART IV – SENIOR LENDERS MEETING**

##### **THE SENIOR LENDERS MEETING**

72. **THIS COURT ORDERS** that the holding and conduct of a meeting of the Senior Lenders on January 27, 2010 for the purpose of voting on, with or without variation, a resolution to approve the Senior Lenders CCAA Plan (the “**Senior Lenders Meeting**”) is hereby authorized.

73. **THIS COURT ORDERS** that an officer of the Monitor shall preside as the chair of the Senior Lenders Meeting (the “**Chair**”) and, subject to this Order and any further order of this Court, shall decide all matters relating to the conduct of the Senior Lenders Meeting.

74. **THIS COURT ORDERS** that the Chair is authorized to adjourn the Senior Lenders Meeting on one or more occasions to such time(s), date(s) and place(s) as the Chair deems necessary or desirable (without the need to first convene the Senior Lenders Meeting for the purpose of adjournment). Notice of such adjourned date shall be posted on the Monitor’s website and there shall be no requirement to provide any other notice.

75. **THIS COURT ORDERS** that the only persons entitled to attend the Senior Lenders Meeting shall be the LP Entities, the Monitor, the LP CRA, the Agent and the Senior Lenders entitled to vote at the Senior Lenders Meeting (including, for the purposes of attendance, speaking and voting, their respective proxy holders) and their respective legal counsel. Any other person may be admitted to the Senior Lenders Meeting by the Chair or the LP Entities.

76. **THIS COURT ORDERS** that the only Persons entitled to vote at the Senior Lenders Meeting are Senior Lenders holding Proven Principal Claims or Accepted Voting Claims (collectively “**Accepted Senior Voting Claims**”) on the second Business Day immediately prior to the day of the Senior Lenders Meeting.



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77. THIS COURT ORDERS that record date (the “**Record Date**”) for the purposes of voting on the Senior Lenders CCAA Plan shall be the date hereof.

78. THIS COURT ORDERS that if, after the Record Date, the holder of a Senior Secured Claim on the Record Date, or any subsequent holder of the whole of a Senior Secured Claim who has been acknowledged by the Monitor as the Senior Lender (as disclosed in either the Notice of Claim - Syndicate Claims and Pro Rata Notice or an applicable Notice of Claim - Hedging Agreements) in respect of such Senior Secured Claim, transfers or assigns the whole of such Senior Secured Claim to another Person, the Agent, the LP Entities and the Monitor shall not be obligated to give notice to or to otherwise deal with a transferee or assignee of a Senior Secured Claim as the Senior Lender for the purposes of such Person’s entitlement to vote at the Senior Lenders Meeting.

#### **CLASSIFICATION OF CREDITORS AND VOTING**

79. THIS COURT ORDERS that for the purpose of voting on the Senior Lenders CCAA Plan there shall be one class of creditors constituted by the Senior Lenders holding Accepted Senior Voting Claims.

80. THIS COURT ORDERS that the quorum required at the Senior Lenders Meeting shall be one Senior Secured Creditor holding an Accepted Senior Voting Claim present at the Senior Lenders Meeting in person or by proxy. If the requisite quorum is not present at the Senior Lenders Meeting, then the Senior Lenders Meeting shall be adjourned by the Chair to such time, date and place as the Chair deems necessary or desirable.

81. THIS COURT ORDERS that the Chair shall direct a vote with respect to a resolution to approve the Senior Lenders CCAA Plan and containing such other related provisions as the Agent, in consultation with the Monitor, may consider appropriate.

82. THIS COURT ORDERS that if any matter other than those referred to in paragraph 81 arises at the Senior Lenders Meeting and requires a vote, such vote shall be conducted in the manner decided by the Chair, and (i) if the Chair decides to conduct such vote by way of show of hands, the vote shall be decided by a majority of the votes given on a show of hands, and (ii) if the Chair decides to conduct such vote by written ballot, the vote shall be decided by a majority in number of Senior Lenders holding Accepted Senior Voting Claims and representing a two-

thirds majority in value of the Accepted Senior Voting Claims present and voting at the Senior Lenders Meeting (the “**Required Majority**”).

83. THIS COURT ORDERS that the Monitor is authorized to accept and rely upon a proxy submitted in the form attached hereto as Schedule “G”, or such other form of proxy as is acceptable to the Monitor, and received by the Monitor by 5:00 p.m. (Toronto time) on January 25, 2010 or 2 days prior to any adjournment of the Senior Lenders Meeting.

84. THIS COURT ORDERS that following the vote at the Senior Lenders Meeting, the Monitor shall tally the votes and determine whether the Senior Lenders CCAA Plan has been accepted by the Required Majority and how the result of the votes, for and against the Senior Lenders CCAA Plan, would have been affected if Senior Lenders had been allowed to vote in respect of the portion of any Senior Secured Claim, including, for greater certainty, any Additional Claim, that had not been Finally Determined at the time of the Senior Lenders Meeting (the “**Unresolved Senior Claims**”).

85. THIS COURT ORDERS that the result of any vote at the Senior Lenders Meeting shall be binding on all Persons affected by the Senior Lenders CCAA Plan, whether or not any such Person is present at the Senior Lenders Meeting.

#### **NOTICE OF SENIOR LENDERS MEETING**

86. THIS COURT ORDERS that on or before January 12, 2010, the Monitor shall deliver the following documents (collectively, the “**Meeting Materials**”) to the Agent and the Agent shall forthwith post such documents on the Senior Lenders Website:

- (a) A Notice of Senior Lenders Meeting, substantially in the form attached hereto as Schedule “H”;
- (b) A copy of this Order;
- (c) A copy of the Senior Lenders CCAA Plan, as amended; and
- (d) A form of proxy for use at the Senior Lenders Meeting, substantially in the form attached hereto as Schedule “G”;

87. THIS COURT ORDERS that on or before January 12, 2010, the Monitor shall post the Meeting Materials on the Monitor's website at: [<http://cfcanada.fticonsulting.com/clp>].

88. THIS COURT ORDERS that service of a copy of the Meeting Materials upon the Senior Lenders in the manner set out in paragraph 86 shall constitute good and sufficient service of the Senior Lenders CCAA Plan and this Order and good and sufficient notice of the Senior Lenders Meeting on all the Senior Lenders who may be entitled to receive notice thereof, or of these proceedings, and no other document or material need be served on any Persons in respect of these proceedings.

#### **SANCTION HEARING AND ORDER**

89. THIS COURT ORDERS that the Monitor shall file a report to this Court by no later than February 5, 2010, with respect to the results of the vote, including whether:

- (a) the Senior Lenders CCAA Plan was approved by the Required Majority; and
- (b) the votes, for and against the Senior Lenders CCAA Plan, that were cast by Senior Lenders holding Unresolved Senior Claims would affect the result of the vote on the Senior Lenders CCAA Plan.

90. THIS COURT ORDERS that if the approval or non-approval of the Senior Lenders CCAA Plan would be altered by the votes in respect of Unresolved Senior Claims, the Monitor shall, in consultation with the LP Entities and the Agent, request the direction of the Court.

91. THIS COURT ORDERS that if the Senior Lenders CCAA Plan has been accepted by the Required Majority, the LP Entities shall bring a motion seeking the Sanction Order (the "**Sanction Hearing**") on a date to be determined by the Monitor in accordance with the SISP and in consultation with the LP CRA and the Agent, or such other date as the Court may set.

92. THIS COURT ORDERS that service of the Meeting Materials and this Order pursuant to paragraphs 86 and 96 hereof shall constitute good and sufficient service of notice of the Sanction Hearing upon all Persons who are entitled to receive such service and no other form of service need be made and no other materials need be served on any Person in respect of the Sanction Hearing.

93. THIS COURT ORDERS that any Person intending to object to the motion seeking the Sanction Order shall serve on counsel to the Monitor, the Agent and the LP Entities and those persons listed on the LP Entities' service list and file with the Court no later than three days before the Sanction Hearing a written notice containing a description of its proposed grounds of contestation.

94. THIS COURT ORDERS that in the event that the Sanction Hearing is adjourned, only those Persons who have filed and served a Notice of Appearance herein are required to be served with notice of the adjourned date.

#### **SERVICE AND NOTICE**

95. THIS COURT ORDERS that the LP Entities and the Monitor shall (i) without delay, publish, in each of the National Post, the Globe and Mail and La Presse newspapers, one notice containing the information prescribed under the CCAA, (ii) within five (5) 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 LP Entities of more than \$5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims (other than in respect of Senior Lenders holding Senior Secured Claims, as contemplated by the LP Support Agreement), 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, provided that the Monitor shall not make the names and addresses of individual creditors publicly available.

96. THIS COURT ORDERS that the LP Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the LP Entities' creditors or other interested parties at their respective addresses as last shown on the records of the LP Entities 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.

97. THIS COURT ORDERS that the LP Entities, 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, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/clp>.

#### **GENERAL**

98. THIS COURT ORDERS that the LP Entities, the Monitor or the Agent may from time to time apply to this Court for advice and directions in connection with, *inter alia*, the discharge of powers and duties hereunder.

99. 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 LP Entities, the LP Business or the LP Property.

100. 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 LP Entities, 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 LP Entities 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 LP Entities and the Monitor and their respective agents in carrying out the terms of this Order.

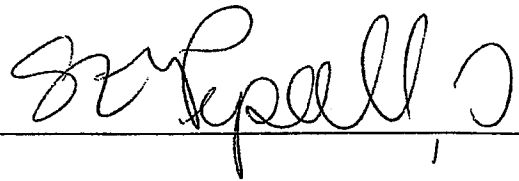
101. THIS COURT ORDERS that each of the LP Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, 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.

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102. THIS COURT ORDERS that any interested party (including the LP Entities, the Monitor and the Agent) 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, provided however that the LP DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the Commitment Letter and the LP DIP Definitive Documents up to and including the date this Order may be varied or amended.

103. THIS COURT ORDERS that, notwithstanding the immediately preceding paragraph, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the Commitment Letter or the LP DIP Definitive Documents, unless notice of a motion for such order is served on the Monitor and the LP Entities, the Agent and the LP DIP Lenders returnable no later than February 11, 2010.

104. 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.



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

JAN 15 2010

PER / PAR: JSN Joanne Nicoara  
Registrar, Superior Court of Justice