

THE KING'S BENCH
WINNIPEG CENTRE

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

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

(the "Applicants")

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

NOTICE OF MOTION
(DISTRIBUTION, DISCHARGE, AND CCAA TERMINATION)
DATE OF HEARING: THURSDAY, JUNE 27, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK

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

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CLIENT FILE NO. 549268.11

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

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

(the "**Applicants**")

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

NOTICE OF MOTION
(DISTRIBUTION, DISCHARGE, AND CCAA TERMINATION)

BDO Canada Limited (the "**Monitor**"), the court appointed monitor of Polar Window of Canada Ltd. ("**Polar Window**"), Accurate Dorwin (2020) Inc. ("**Accurate Dorwin**"), Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors ("**Allsco**"), 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd., and 12986914 Canada Ltd. (collectively, the "**Applicants**"), will make a motion before the Honourable Mr. Justice Bock on Thursday, June 27, 2024 at 10:00 a.m. or so soon after that time as the motion can be heard at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg, in Manitoba.

THE MOTION IS FOR:

1. An Order in substantially the form attached hereto as Schedule "A" to this Notice of Motion (the "**Termination Order**"):
 - (a) abridging the time for service of this notice of motion and all other materials filed in support of the same such that this motion is properly returnable on June 27, 2024 at 10:00 a.m., and dispensing with further service thereof;

- (b) unsealing the Confidential Supplement to the Second Report of the Monitor dated July 20, 2023 (the "**Confidential Supplement**")
- (c) discharging, releasing, and terminating the DIP Lender's Charge, the Directors' Charge, and the KERP Charge (as defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**"));
- (d) authorizing and directing the Monitor to retain a holdback of \$125,000 (the "**Monitor's Holdback**") from the proceeds of the Amended Transaction (the "**Trust Funds**") on account of further fees and disbursements of the Monitor and its legal counsel, and apply from time to time the amounts so held against such further fees and disbursements (without the requirement of taxation or passing of accounts);
- (e) authorizing and directing the Monitor to make the following distributions from the Trust Funds:
 - (i) first, to reduce the amounts presently owed by the Applicants and secured by the Administration Charge:
 - A. \$24,652 to BDO Canada Limited on account of the Monitor's outstanding fees and disbursements; and
 - B. \$39,186 to McDougall Gauley LLP on account of its outstanding fees and disbursements;
 - (ii) second, \$115,674 to Canada Revenue Agency ("**CRA**") on account of its deemed trust priority claim for unremitted pre-filing payroll source deductions;
 - (iii) third, \$26,436 to Service Canada on account of its subrogated claim for amounts paid pursuant to the *Wage Earners Protection Program Act*; and
 - (iv) fourth, \$103,287 to The Toronto-Dominion Bank ("**TD Bank**") on account of its security interest in the assets of Accurate Dorwin; and
 - (v) fifth, in accordance with the agreed upon settlement between Sallyport Commercial Finance ULC ("**SPCF**") and TD Bank:
 - A. \$27,000 to SPCF on account of its security interest in the assets of Allsco; and

- B. \$78,958 to TD Bank on account of its security in the assets of Allsco;
- (f) authorizing and directing the Monitor to distribute the entirety of any residual amounts left over from the Monitor's Holdback after the payment of the Monitor and its legal counsel's final invoices to TD Bank;
 - (g) approving the Eighth Report of the Monitor dated June 24, 2024 (the "**Eighth Report**") and the Monitor's activities, actions, and conduct described therein;
 - (h) approving the professional fees and disbursements of the Monitor and the Monitor's legal counsel, as set out in the Eighth Report;
 - (i) providing that upon the filing of a certificate in substantially the form as that attached to the draft Termination Order (the "**Monitor's Discharge Certificate**"):
 - (i) the Administration Charge (as defined in the ARIO) will be discharged, terminated, and released;
 - (ii) the within proceedings shall be terminated;
 - (iii) the Monitor shall be discharged;
 - (iv) Deloitte Restructuring Inc., the Monitor, McDougall Gauley LLP, The Toronto-Dominion Bank, Gowling WLG (Canada) LLP, and MLT Aikins LLP, and their respective, directors, officers, shareholders, partners, employees, agents, executor, successors, administrators, and assigns (collectively, the "**Released Parties**") shall be released and discharged from any and all liabilities they now have or may have by reason of, or in any way arising out of, their acts or omissions in relation to these proceedings, save and except for liabilities arising from the Released Parties' gross negligence or willful misconduct; and
 - (v) no action or other proceeding shall be commenced against the Released Parties, except with prior leave of this Court on notice to the applicable Released Parties;
 - (j) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUND FOR THE MOTION ARE:

2. For the purposes of this motion, the Monitor relies on:
 - (a) sections 11 and 11.51(3) of the *Companies' Creditors Arrangement Act* (Canada) (the "*CCAA*"); and
 - (b) Rules 1.04, 3.02(1), 16.04(1), and 16.08 of the *King's Bench Rules*.

INTERPRETATION

3. Unless otherwise defined, capitalized terms will have the meanings given to them in the ARIO, Eighth Report, and Order (Directors' and Officers' Claims Process) of the Honourable Justice Bock dated January 26, 2024 (the "**D&O Claims Process Order**").

SERVICE

4. The Monitor's notice of motion, the Eighth Report, and the Monitor's brief of law were served by email on the members of the Service List established in these proceedings as contemplated by paragraph 51 of the ARIO.

UNSEALING THE CONFIDENTIAL SUPPLEMENT

5. The Confidential Supplement remains sealed pursuant to paragraph 10 of the Approval and Vesting Order of the Honourable Justice Bock dated July 21, 2023 (the "**AVO**"). The transaction approved by the AVO closed in December of 2023 such that the sealing is no longer required.

TERMINATING THE CHARGES

6. All amounts secured by the DIP Lender's Charge and KERP Charge have been paid to the beneficiaries of the charges, such that they are no longer necessary.

7. With respect to the Directors' Charge, the Applicants' directors' and officers' liability insurance provider, AIG Insurance Company of Canada, has confirmed that the Past and Present Directors and Officers (as defined in the Order (Directors' and Officers' Claims Process) of the Honourable Justice Bock dated January 26, 2024 (the "**D&O Claims Process Order**")) are entitled to insurance coverage for the Claims admitted in the Claims Process, namely:

- (a) employee claims for unpaid wages and vacation pay pursuant to provincial legislation imposing liability on corporate directors for amounts the corporate employers fail to pay; and
- (b) CRA claims against the directors pursuant to section 227.1 of the *Income Tax Act* (Canada) and section 323 of the *Excise Tax Act* (Canada).

8. Accordingly, by virtue of the paragraph 24 of the ARIO, the Applicants' directors and officers are not entitled to the benefit of the Directors' Charge in respect of the Claims.

9. As described in the Eighth Report, the Consumer Investigations Unit of Alberta is investigating three complaints made against Polar Window and the Past and Present Directors and Officers of Polar Window by customers pursuant to sections 31(2), 35(b), (g), and (j), and 104(1) of the *Consumer Protection Act* (Alberta) (collectively, the "**Complaints**") and section 10(2) of the *Prepaid Contracting Business Licensing Regulation* (Alberta).

10. The purpose of the Claims Process was to crystallize the Claims against the Past and Present Directors and Officers for which they could seek to be indemnified by the Applicants and the Directors' Charge. In the Monitor's view, the Complaints against the Past and Present Directors and Officers of Polar Window:

- (a) are outside of the timeframes contemplated by paragraph 12 of the D&O Claims Process Order; and
- (b) allege wrongful conduct by the Past and Present Directors and Officers of Polar Window as contemplated by section 5.1(2) of the *CCAA*, such that they would be Excluded Claims for the purposes of the Claims Process.

11. The Complaints would not have been admitted in the Claims Process in any event, and the discovery of the Complaints at this stage of the proceedings should not delay the termination of the Directors' Charge and the distribution of the \$300,000 secured thereby in accordance with the succedent claims.

DISTRIBUTIONS

12. The proposed distributions are based on the Monitor's assessment of the priorities to the Trust Funds on a per entity basis:

- (a) paragraphs 42 and 44 of the ARIO provide that the Administration Charge ranks in priority to all other Encumbrances affecting the Trust Funds;
- (b) section 227(4.1) of the *Income Tax Act* (Canada) gives the CRA a deemed trust for unremitted source deductions that ranks in priority to any *security interests* (as defined in section 224(1.3) of the *Act*);
- (c) Service Canada is subrogated to the rights of the employees who received benefits pursuant to the *Wage Earner Protection Program* and would otherwise be entitled to a priority payment as a result of the combined effect of sections 36(7) and 6(5)(a) of the *CCAA*; and
- (d) finally, each of TD Bank and SPCF have priority to the balance of the Trust Funds as a result of:
 - (i) their perfected security interests; and
 - (ii) the agreement between the parties more particularly described in the Eighth Report.

TERMINATION OF THE CCAA PROCEEDINGS

13. Once the Monitor has made the final distributions and completed any residual administrative work:

- (a) all amounts secured by the Administration Charge will have been paid, making the continuation of the charge unnecessary; and

- (b) the Monitor will have discharged its mandate, and its continued appointment, as well as the *CCAA* proceedings themselves, will no longer serve any further purpose.

14. The Monitor is therefore seeking to terminate the Administration Charge, the Monitor's appointment, and the *CCAA* proceedings upon the filing of the Monitor's Discharge Certificate in substantially the same form as that appended to the draft Termination Order.

RELEASES

15. The Monitor is of the view that the release of the Released Parties is fair and reasonable in the circumstances for the following reasons:

- (a) the Released Parties each played distinct, but nevertheless critical, roles in the Applicants' restructuring and meaningfully contributed to the same;
- (b) the motion is being made on notice to the Service List and the Seventh Report details the nature and effect of the releases sought;
- (c) any Person (as defined in the ARIIO) who objects to the release will have the opportunity to oppose the same at the hearing of this matter; and
- (d) the releases are fair, reasonable, and not overly broad, as they do not release the Released Parties from claims based on gross negligence or willful misconduct.

16. The proposed releases therefore satisfy the criteria established in the case law.

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

1. The pleadings filed herein;
2. The Amended and Restated Initial Order pronounced February 14, 2023;
3. The Order pronounced April 5, 2023;

4. The Approval and Vesting Order pronounced July 21, 2023;
5. The Stay Extension, Interim Distribution, and Other Relief Order pronounced July 21, 2023;
6. The Amendment to the Sale Agreement and Other Relief Order pronounced September 12, 2023;
7. The Affidavit of Stephen Segal sworn February 6, 2023;
8. The Affidavit of Stephen Segal sworn April 3, 2023;
9. The Pre-Filing Report of the Monitor dated February 7, 2023;
10. The First Report of the Monitor dated April 3, 2023;
11. The Second Report of the Monitor and the Confidential Supplement thereto, both dated July 20, 2023;
12. The Third Report of the Monitor and the Confidential Supplement thereto, both dated September 8, 2023;
13. The Fourth Report of the Monitor and the Confidential Supplement thereto, both dated October 24, 2023;
14. The Supplement to the Fourth Report of the Monitor dated October 26, 2023;
15. The Fifth Report of the Monitor and the Confidential Supplement thereto, both dated December 3, 2023;
16. The Sixth Report of the Monitor dated January 23, 2024;
17. The Seventh Report of the Monitor dated April 22, 2024;
18. The Eighth Report of the Monitor dated June 24, 2024;
19. The Monitor's Notice of Motion dated June 25, 2024;
20. Monitor's Brief of Law dated June 25, 2024;
21. The Affidavit of Service of Shelby Braun, to be filed; and
22. Such further and other documents and evidence as counsel may advise and this Honourable Court may permit.

June 25, 2024

McDOUGALL GAULEY LLP

500 – 616 Main Street, Saskatoon SK S7J 0J6

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SCHEDULE "A"

Court File No. CI 23-01-39360

**THE KING'S BENCH
WINNIPEG CENTRE**

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

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

(the "**Applicants**")

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**ORDER
(DISTRIBUTION, DISCHARGE, AND CCAA TERMINATION)
DATE OF HEARING: THURSDAY, JUNE 27, 2024 AT 10:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK**

**McDougall Gauley LLP
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THE KING'S BENCH
WINNIPEG CENTRE

THE HONOURABLE) the 27th day of June, 2024
MR. JUSTICE BOCK)

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

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(the "**Applicants**")

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

ORDER
(STAY EXTENSION, INTERIM DISTRIBUTION, AND OTHER RELIEF)

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed monitor (the "**Monitor**") of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc. ("**Accurate Dorwin**"), Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors ("**Allsco**"), 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd. (collectively, the "**Applicants**") for an order (i) abridging the time for service; (ii) discharging, releasing, and termination the DIP Lender's Charge, the Directors' Charge, and the KERP Charge (as defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023 (the "**ARIO**")); (iii) authorizing and directing the Monitor to make certain distributions; (iv) approving the Eighth Report of the Monitor dated June 24, 2024 (the "**Eighth Report**") and the Monitor's activities, actions, conduct, and professional fees and disbursements (including the Monitor's legal counsel's

professional fees and disbursements) set out therein; (v) discharging the Monitor; and (vi) other relief, was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

ON READING the Eighth Report, and on hearing the submissions of counsel for the Monitor, The Toronto-Dominion Bank ("**TD Bank**"), Canada Revenue Agency ("**CRA**"), no one appearing for any other person on the Service List, although properly served as appears from the affidavit of Shelby Braun affirmed June 25, 2024; all filed:

INTERPRETATION

1. THIS COURT ORDERS that, unless otherwise defined in this Order, capitalized terms appearing in this Order will have the meanings given to them in the ARIO.

SERVICE

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

UNSEALING THE CONFIDENTIAL SUPPLEMENT TO THE SECOND REPORT

3. THIS COURT ORDERS that the Sealing Order granted by paragraph 10 of the Approval and Vesting Order of the Honourable Justice Bock dated July 21, 2023 is hereby lifted. The Confidential Supplement to the Second Report of the Monitor dated July 20, 2023 shall be unsealed and form part of the public record.

CHARGES

4. THIS COURT ORDERS that the DIP Lender's Charge, the Directors' Charge, and the KERP Charge are hereby discharged, released, and terminated.

DISTRIBUTIONS

5. THIS COURT ORDERS that that the Monitor shall be authorized and directed to retain a holdback in the amount of \$125,000 (the "**Monitor's Holdback**") from the proceeds of the Amended Transaction (the "**Trust Funds**") on account of further fees and disbursements of the Monitor and its legal counsel, and apply from time to time the amounts so held against such further fees and disbursements (without the requirement of taxation or passing of accounts);

6. THIS COURT ORDERS that that the Monitor shall be directed and authorized to make the following distributions from the Trust Funds:

- (a) first, to reduce the amounts presently owed by the Applicants and secured by the Administration Charge:
 - (i) \$24,652 to BDO Canada Limited on account of the Monitor's outstanding fees and disbursements; and
 - (ii) \$39,186 to McDougall Gauley LLP on account of its outstanding fees and disbursements;
- (b) second, \$115,674 to CRA;
- (c) third, \$26,436 to Service Canada; and
- (d) fourth, from the remaining Trust Funds attributable to the Property of Accurate Dorwin, \$103,287 to TD Bank;
- (e) fifth, from the remaining Trust Funds attributable to the Property of Allsco:
 - (i) \$27,000 to Sallyport Commercial Finance ULC; and
 - (ii) \$78,958 to TD Bank;
- (f) finally, the entirety of any residual amounts left over from the Monitor's Holdback after the payment of the Monitor and its legal counsel's final invoices to TD Bank.

APPROVALS

7. THIS COURT ORDERS that the Eighth Report and the Monitor's activities, actions, and conduct described therein are hereby approved.

8. THIS COURT ORDERS that the professional fees and disbursements of the Monitor, its legal counsel, McDougall Gauley LLP, are hereby approved.

TERMINATION OF THE CCAA

9. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 6 of this Order and the filing of the Monitor's Discharge Certificate substantially in the form as attached as Schedule "A" hereto confirming that the administration of the within proceedings has been completed to the Monitor's satisfaction:

- (a) the Administration Charge shall be discharged, terminated, and released;
- (b) the within proceedings shall be terminated without any other act or formality, save and except as provided in this Order; provided, however, that nothing in this Order affects the validity of any Orders made in these proceedings or any actions or steps taken by any Person;
- (c) the Monitor shall be discharged as Monitor of the Applicants and shall have no further duties, obligations, or responsibilities as Monitor, including with respect to the administration of the Wage Earner Protection Program pursuant to paragraph 3 of the Order (Stay Extension and Other Relief) of the Honourable Justice Bock dated January 26, 2024 (as amended); provided, however, that notwithstanding its discharge herein:
 - (i) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the proceedings herein; and
 - (ii) the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. and BDO Canada Limited in their capacities as Monitor.

RELEASES

10. THIS COURT ORDERS that once the Monitor's Certificate is filed:
- (a) Deloitte Restructuring Inc., the Monitor, McDougall Gauley LLP, The Toronto-Dominion Bank, Gowling WLG (Canada) LLP, and MLT Aikins LLP, and their respective, directors, officers, shareholders, partners, employees, agents, executor, successors, administrators, and assigns (collectively, the "**Released Parties**") shall be released and discharged from any and all liabilities they now have or may have by reason of, or in any way arising out of, their acts or omissions in relation to these proceedings, save and except for liabilities arising from the Released Parties' gross negligence or willful misconduct; and
 - (b) no action or other proceeding shall be commenced against the Released Parties, except with prior leave of this Court on notice to the applicable Released Parties.

MISCELLANEOUS MATTERS

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

12. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

_____, 2024

BOCK, J.

Schedule A – Form of Monitor's Discharge Certificate

Court File No. CI 23-01-39360

THE KING'S BENCH WINNIPEG CENTRE

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

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the of the Honourable Justice Bock of the Manitoba Court of King's Bench (the "**Court**") dated February 14, 2023, Deloitte Restructuring Inc. ("**Deloitte**") was appointed as the Monitor of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd. (collectively, the "**Applicants**").

B. Pursuant to an Order of the Honourable Justice Martin of the Court dated December 22, 2023, BDO Canada Limited was substituted in place of Deloitte as the *CCAA* monitor (the "**Monitor**").

C. Pursuant to an Order of the of the Honourable Justice Bock of the Court dated April 26, 2024, the Court approved the Monitor's discharge, to be effective upon the filing by the Monitor with the Court of a Monitor's Certificate confirming the administration of the within proceedings has been completed to the Monitor's satisfaction.

THE MONITOR CERTIFIES that:

1. The administration of the within proceedings has been completed to the Monitor's satisfaction.

BDO Canada Limited, in its capacity as Monitor of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd., and not in its personal or corporate capacity

Per: _____
Name:
Title: