

Estate File No. 31-2481648
Estate File No. 31-2481649

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF GREEN EARTH STORES LTD. AND GREEN EARTH
ENVIRONMENTAL PRODUCTS

FIRST REPORT OF CROWE SOBERMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF GREEN EARTH STORES LTD. AND GREEN EARTH
ENVIRONMENTAL PRODUCTS

March 5, 2019

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1. This report (the “**First Report**”) is filed by Crowe Soberman Inc. (“**Crowe**”) in its capacity as proposal trustee (the “**Proposal Trustee**”), in connection with the Notices of Intention to Make a Proposal (“**NOIs**”) filed by each of Green Earth Stores Ltd. (“**GESL**”) and Green Earth Environmental Products, a partnership (“**GEEP**” and together with GESL the “**Companies**”).
2. On March 4, 2019 (the “**Filing Date**”), the Companies each filed an NOI pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B.-3, as amended (the “**BIA**”) and Crowe was appointed as Proposal Trustee under each NOI. Copies of the Certificates of Filing issued by the Superintendent of Bankruptcy for each of the Companies are attached hereto as **Appendix “A”**.
3. The purpose of this First Report is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
 - a. a limited summary of certain background information about the Companies;
 - b. the Companies’ proposed post-filing strategy, including information on the liquidation process proposed to be undertaken by the Companies in

respect of the Companies' inventory and owned furniture, fixture and equipment ("FF&E") at the Companies' retail locations and warehouse in accordance with the sale guidelines (the "**Sale Guidelines**") appended to the Liquidation Process Order (as hereinafter defined);

- c. the Companies' engagement of FAAN Advisors Group Inc. ("FAAN") as Chief Restructuring Advisors (in such capacity the "**CRA**") and the key terms of the FAAN engagement letter (the "**CRA Engagement Letter**");
- d. the Companies' engagement of Shawn Parkin as liquidation consultant ("**Consultant**") and the key terms of a consulting agreement (the "**Consulting Agreement**") between the Companies and Shawn Parkin;
- e. a summary of the proposed use of the Companies' cash management system (the "**Cash Management System**");
- f. the proposed charges (the "**Charges**") sought by the Companies;
- g. the Companies' request for an order approving the key employee retention agreement (the "**KERA**");
- h. the Companies' request for an order approving the administrative consolidation of the Companies' proposal proceedings; and
- i. the Companies' request for an extension of the stay initiated on the Filing Date (the "**Stay Period**") to May 3, 2019.

I. TERMS OF REFERENCE

- 4. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.
- 5. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited internal financial information prepared by the Companies' representatives, the Companies' books and records and discussions with their management, staff, agents and consultants (collectively, the "**Information**"). The

Proposal Trustee has not performed an audit or other verification of the Information in a manner that would comply with Generally Accepted Assurance Standards (“GAAS”) pursuant to the Chartered Professional Accountant of Canada Handbook (the “CPA Handbook”) and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

II. GENERAL BACKGROUND INFORMATION ON THE COMPANIES

6. The Companies operate a retail business known as Green Earth Stores (“Green Earth”), with 29 leased retail locations in shopping malls in the Province of Ontario. The Companies’ business, affairs, financial performance and position, as well as the causes of their insolvency are detailed in the affidavit of Mr. Matthew McBride sworn March 4, 2019 (the “McBride Affidavit”) in support of the Companies’ March 7, 2019 motion and are, therefore, not repeated herein. The Proposal Trustee has reviewed the McBride Affidavit and discussed the business and affairs of the Companies with senior management personnel of the Companies and is of the view that the McBride Affidavit provides a fair summary thereof.

Corporate Structure

7. GESL is a private company incorporated under the *Business Corporations Act* (Ontario) whose registered office is located at 40 King St. West, Suite 5800, Toronto, Ontario. GESL owns the inventory sold in the Green Earth stores (the “Inventory”), maintains an e-commerce website for online sales, and owns the real property that houses the Companies’ warehouse and distribution center located in London, Ontario (the “Real Property”).
8. GEEP is a general partnership that was registered in Ontario on October 27, 1995 pursuant to the *Partnership Act* (Ontario) whose registered head office is also at 40 King St. West, Suite 5800, Toronto, Ontario. GEEP operates the Green Earth retail business and employs the majority of the Companies’ employees.

9. The partners of GEEP consist of Matthew McBride Holdings Inc. (“**McBride Holdings**”) and Beckstette Holdings Inc. (“**Beckstette Holdings**”). McBride Holdings is a wholly owned subsidiary of Matthew McBride Enterprises Corp. (“**McBride Enterprises**”). Beckstette Holdings is the wholly owned subsidiary of Beckstette Enterprises Corp. (“**Beckstette Enterprises**”), and together with McBride Enterprises, the “**Enterprises**”). A chart showing the Companies’ corporate structure is attached as Exhibit “B” to the McBride Affidavit.

Overview of Retail Operations

10. As at the Filing Date, Green Earth operated out of 29 retail locations in shopping malls in the Province of Ontario. Of the Companies’ 29 store leases, 22 are in GEEP’s name, and 7 are in GESL’s name. Although 7 of the store leases are in GESL’s name, GEEP pays the monthly rent for all store locations. A chart detailing the physical store locations by city is attached as Exhibit “A” to the McBride Affidavit.
11. The Companies originally sold environmentally conscious ‘green’ products to their customers but over time shifted their core product lines to home, garden, and novelty products due to a change in the Ontario retail landscape.
12. As outlined in the McBride Affidavit, the Inventory purchased by GESL is stored in a warehouse and distribution center (the “**Distribution Center**”) located on the Real Property owned by GESL. GESL employs 13 employees on a full-time basis, consisting of managerial and administrative staff operating out of the Distribution Center.
13. GEEP runs the Companies’ retail operations, and has 202 employees, the majority of whom are sales personnel who work on a part-time basis. Each retail location also has an in-house manager, acting manager or assistant manager who reports to a regional senior district manager.
14. All the Companies’ employees are non-unionized, and the Companies do not sponsor any pension plans for their employees.

15. The details of the internal supply chain between the Companies, including the agreement between GEEP and GESL (the “**Inventory Agreement**”) are outlined in paragraphs 18-21 of the McBride Affidavit, which outlines the manner in which Inventory is supplied by and paid for an intercompany basis, with GESL supplying Inventory to GEEP. The cost of goods sold are paid at a rate of 35.5% of the sale proceeds of the Inventory, calculated monthly, plus an administration fee of 15%. The Proposal Trustee understands that the Inventory Agreement will remain in place during the proposal proceedings while Inventory is being liquidated.

The Companies’ Creditors

16. Copies of the creditor lists included in each of the Companies’ proposal proceedings are attached hereto as **Appendix “B”**. The creditor lists of the Companies reflect the claims of secured creditors as well as the unsecured group of vendors and suppliers.

17. As detailed in the McBride Affidavit, the Companies have had a banking relationship with the Royal Bank of Canada (“**RBC**”) for over 20 years and maintain their operating accounts at RBC.

18. As at February 26, 2019, GESL was indebted to RBC in the amount of \$3,254,740.85. GESL granted certain security to RBC (the “**GESL Security**”) to secure the indebtedness owing to RBC including a general security agreement and a collateral mortgage registered on title to the Real Property in the amount of \$3,425,000.00. Copies of the GESL Security are attached to the McBride Affidavit as Exhibit “C”. In addition, GEEP guaranteed amounts owing by GESL to RBC and granted a general security agreement (the “**GEEP Security**”) in favour of RBC to secure the amounts guaranteed to the RBC (together with the GESL Security the “**RBC Security**”). Copies of the GEEP Security are attached to the McBride Affidavit as Exhibit “D”.

19. The Proposal Trustee has received an opinion from its independent legal counsel, Stikeman Elliott LLP, confirming that subject to typical qualifications and assumptions, the RBC Security is valid and enforceable in the province of Ontario.

20. On February 26, 2019, McBride Enterprises and Beckstette Enterprises took an assignment of indebtedness owing by GESL to RBC, and an assignment of the RBC Security. A copy of the assignment agreement evidencing the assignment of the RBC debt and RBC Security is attached to the McBride Affidavit as Exhibit "E".
21. As detailed in the McBride Affidavit, the Companies have also received support and funding from the Enterprises in order to finance operations. The Companies each issued two separate non-interest-bearing notes in favour of the Enterprises on June 19, 2009 (collectively, the "**Promissory Notes**"). As security for the Companies' obligations to the Enterprises including under the Promissory Notes, the Companies provided general security agreements to the Enterprises on June 19, 2009 (collectively the "**Enterprises Security**"). Copies of the Enterprises Security are attached as Exhibits "F" and "G" to the McBride Affidavit.
22. The Proposal Trustee has received an opinion from its independent legal counsel, Stikeman Elliott LLP, confirming that subject to typical qualifications and assumptions, the Enterprises Security is valid and enforceable in the province of Ontario.
23. In addition to the RBC Security and the Enterprises Security, the Proposal Trustee is aware of one other registration in respect of specific leased assets, made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**"). A copy of the PPSA search results are attached as Exhibits "L" and "M" to the McBride Affidavit.
24. In addition to the amounts owed by the Companies to the Enterprises, the Companies estimate that, as at the Filing Date, they have unsecured obligations totaling approximately \$1.6 million to their inventory suppliers and service providers.
25. The Proposal Trustee understands that the Companies are current with their returns and payments to the Canada Revenue Agency for GST/HST and employee/employer payroll deductions.

26. The Companies use a third-party payroll provider ("ADP"), and do not owe employees any wages. The McBride Affidavit has identified that there are accrued vacation pay amounts that will be paid in the ordinary course.
27. The Proposal Trustee understands that the Companies paid all of their March 1st lease payments.

The Companies' Financial Results

28. As described in the McBride Affidavit, due to a number of factors, including unfavourable retail market trends, low foot traffic, and Inventory that did not align with consumer preferences, the Companies' financial performance has declined, and its operations have suffered.
29. Summarized below are the Companies' historical financial results for the fiscal years ended September 30, 2018, and September 30, 2017, which are summarized from the draft financial statements for fiscal 2018 for GESL and GEEP attached to the McBride Affidavit as Exhibits "N" and "O".

GESL		
Historical Financial Results		
	Year Ended (In 000's)	Year Ended Sep-18 Sep-17
Sales	9,744	10,403
COGS	9,240	6,744
Gross Profit	504	3,659
Expenses	2,937	3,619
EBITDA from Operations	-2432	40
GEEP		
Historical Financial Results		
	Year Ended (In 000's)	Year Ended Sep-18 Sep-17
Sales	17,209	18,374
COGS	8,690	9,281
Gross Profit	8,519	9,092
Expenses	9,385	9,274
EBITDA from Operations	-866	-182

30. The Companies' accountants, Deloitte LLP ("Deloitte"), reported on the Companies' financial statements for the fiscal year ending 2018, that GESL had a net loss of \$2 million and GEEP has a net loss of \$787,000. Deloitte added a going concern note on both statements that the Companies' present financial status may cast significant doubt about the Companies' ability to continue as a going concern.

31. On January 15, 2019, Crowe was formally retained by the Companies to act as a financial advisor with a primary focus on advising the Companies on the options available for winding down their operations.

III. THE NOI PROCEEDINGS

32. Due the losses incurred by the Companies, an oversupply of unpopular Inventory and an uncertain retail landscape, the Companies have determined that, following the filing of the NOIs, it is in the best interest of all stakeholders for the Companies to complete an orderly liquidation of their Inventory and other assets (the

“**Liquidation Sale**”), with the assistance of the Consultant and the CRA, and under the supervision of the Proposal Trustee

33. It is currently contemplated that the Real Property will be sold as part of the Companies’ proposal proceedings. In this regard, the Proposal Trustee understands that a listing agreement (“**Listing Agreement**”) has already been executed between GESL and their agent CBRE Limited (“**CBRE**”), and that CBRE has listed the Real Property for sale via the Multiple Listing Service (“**MLS**”). The Real Property will remain listed in accordance with this listing arrangement.

The Need for a Chief Restructuring Advisor

34. The Companies have recognized, and been encouraged by their advisors, to consider the benefit that retaining a CRA will bring to the conduct of Liquidation Sale, and the proposal proceedings as a whole. As described below, as part of the process commenced by Crowe to solicit proposals seeking assistance in the conduct of the Liquidation Sale, the CRA submitted a joint proposal with the Consultant. Following a series of meetings, including input from their advisors, the Companies decided that it is in their best interest to engage the CRA in conjunction with the Consultant.

35. The key elements of the CRA Engagement Letter are as follows:

- a. the CRA will act as an independent contractor to the Companies and will perform a review and assessment of the Companies’ business, assets, liabilities and operations;
- b. the CRA will assist the Companies with reviewing and developing cash flow projections and financial reporting;
- c. the CRA will assist the Companies in identifying sale strategies and cost reduction opportunities and will oversee the activities of the Consultant in carrying out the Liquidation Sale;

- d. the CRA will be responsible for overseeing the activities of the Consultant, including but not limited to reviewing that the store closings are conducted in accordance with the Court Orders obtained in conjunction with the store closings;
- e. the CRA will assist the Companies with communications and act as a point of contact to stakeholders, such as employees and landlords; and
- f. the CRA will be paid a base fee and its expenses on a weekly basis, with an additional fee payable at the end of the CRA's mandate based on the achievement of certain objectives and milestones. The Terms of the additional fee have not been finalized but the Proposal Trustee will continue to be involved in reviewing the proposed terms and will report back to the Court in this regard.

36. The Proposal Trustee has reviewed the CRA Engagement Letter and supports its approval by the Court. A redacted copy of the CRA Engagement Letter is attached to the McBride Affidavit as Exhibit "R".

37. The Proposal Trustee is of the view that the CRA firm selected by the Companies is cost effective, has relevant experience in recent national retailer liquidations, and is cognizant of the interest of the various stakeholders.

IV. THE LIQUIDATOR SELECTION PROCESS

38. It is the Companies' and the Proposal Trustee's belief that realizations from retail operations will be maximized through the appointment of an experienced liquidator to assist the Companies in carrying out the Liquidation Sale.

39. In early February 2019, Crowe commenced a process (the "RFP") to solicit proposals from liquidators to assist the Companies to liquidate their Inventory and owned FF&E via a 'going-out-of-business' or 'store closing' sale scenario. The key aspects of the RFP are summarized as follows:

- a. Crowe, in consultation with management of the Companies, assembled a list of liquidators (in both Canada and the US) with experience managing mid to large scale retail insolvencies (the “**Liquidators**”);
- b. three (3) Liquidators were contacted on the RFP and executed a non-disclosure agreement (the “**NDA**”). Crowe provided each with information regarding the Companies’ Inventory levels and valuations, historical and present sales information, store profiles, and other financial information, in order to assist with the Liquidators’ due diligence efforts;
- c. the Companies received three (3) proposals (the “**Liquidation Proposals**”) to assist the Companies with the Liquidation Sale. The Companies reviewed the Liquidation Proposals with their counsel and Crowe;
- d. the Companies’ management and Crowe participated in meetings with certain Liquidators in order to discuss their proposals and answer any questions on the Liquidation Sale;
- e. two (2) of the Liquidation Proposals were from traditional third-party liquidators. The third proposal was a hybrid proposal, which contemplated the engagement of both the CRA and the Consultant to assist with the Liquidation Sale.

40. A comparison schedule summarizing the Liquidation Proposals (the “**Comparative Analysis**”) is attached hereto as **Confidential Appendix “1”**. As the Comparative Analysis includes certain sensitive commercial and competitive information, the Proposal Trustee believes that it is appropriate for the Comparative Analysis to be filed with the Court on a confidential basis and sealed until further order of the Court. In the Proposal Trustee’s view, the disclosure of these terms could have a detrimental impact on each of the bidders (whether in these proceedings or otherwise), as it may reveal confidential information to their competitor. In addition, the Proposal Trustee is not aware of any material prejudice that would be suffered by third parties as a result of the sealing of the Comparative Analysis.

41. Following a review of the Liquidation Proposals received, the Proposal Trustee is of the view that the hybrid proposal, involving the appointment of the CRA and the Consultant to assist with the Liquidation Sale, is the most cost-effective of the three Liquidation Proposals received, and will permit the Companies to realize the greatest value for their Inventory. The CRA will assist the Companies in developing their strategy for maximizing recoveries from their retail assets, while the Consultant will assist in carrying out that strategy. Both the CRA and Consultant offer a wealth of experience in the retail arena that should provide comfort to the stakeholders.

V. THE CONSULTING AGREEMENT

42. Following the review of the Liquidation Proposals and the Comparative Analysis, counsel for the Companies contacted the CRA and the Consultant to advise them that the Companies wished to proceed with their proposals to assist the Companies with the Liquidation Sale.

43. Subsequent to notifying the CRA and the Consultant of the desire to proceed with their proposals, the Companies worked with the CRA, the Consultant and their advisors to finalize the terms of the CRA Engagement Letter and the Consulting Agreement. The CRA and the Consultant commenced working for the Companies on February 25, 2019.

44. In connection with the above, the Proposal Trustee notes that prior to the filing of the NOIs, the Companies worked with the CRA and the Consultant to develop a strategy to maximize recoveries from their retail assets.

45. On February 25, 2019, the Companies and the Consultant agreed on the final form of the Consulting Agreement, a redacted copy of which is attached as Exhibit "S" to the McBride Affidavit. The key elements of the Consulting Agreement, are as follows:

- a. the Consultant will act as an independent contractor of the Companies and will assist the Companies and the CRA in conducting the Liquidation Sale in an effort to sell all Inventory, merchandise and other owned assets in the retail locations;
- b. the Consultant will assist the Companies in developing a budget for the Liquidation Sale. The Companies shall be responsible for all reasonable costs and expenses in connection with the Liquidation Sale;
- c. the Consultant will determine and recommend appropriate point of purchase, sale and external advertising in respect of the Liquidation Sale and will determine the appropriate pricing, display, discounting and transfer of Inventory and staffing levels at the stores;
- d. the Consultant will assist the Companies in developing sale incentives and an employee retention plan for store employees during the Liquidation Sale;
- e. in consideration of its services, the Consultant will earn a weekly fee as well as a bonus, as part of the Liquidation Sale; and
- f. the Consultant will be paid 20%, from the net sale proceeds of the Companies' owned FF&E.

46. The Proposal Trustee is supportive of the engagement of the Consultant and the execution and implementation of the Consulting Agreement.

VI. THE LIQUIDATION SALE AND SALES GUIDELINES

47. The Proposal Trustee has reviewed the terms of the proposed liquidation with the Company, the CRA and Consultant. The proposed terms are as outlined in the draft Liquidation Sale Order and Sales Guidelines attached thereto and provide as follows:

- a. the Liquidation Sale will commence immediately after the court approval of the Liquidation Process Order, and will conclude no later than June 30, 2019, or such other dates as agreed to by the Companies and the Consultant. Due to the size of the Inventory that is remaining on hand, a short time frame to complete the Liquidation Sale is preferred;
- b. subject to certain exceptions, the Liquidation Sale is to be conducted in accordance with the terms of the applicable leases for each of the Companies' retail locations;
- c. the Consultant shall be granted access to the Companies' retail locations throughout the sales process;
- d. the Sale Guidelines do not provide for any augmentation of the Companies merchandise;
- e. the CRA and Consultant will work the landlords in respect of the proposed signage in respect of the liquidation sales;
- f. the outside date for the completion of the sales will be [July 30, 2019]. Rent will continue to be paid throughout the sales process and disclaimer notice period; and
- g. the Companies may work with the Proposal Trustee and the Consultant to coordinate the disclaimer of leases (as the case may be) such that the disclaimers become effective on the conclusion of the Liquidation Sale at each store location.

48. The Proposal Trustee is also of the view that the contemplated Liquidation Sale satisfies the factors to be considered, pursuant to section 65.13(4) of the BIA. In particular, the Proposal Trustee is of the view that:

- a. conducting the Liquidation Sale with the assistance of the Consultant, an experienced retail liquidator, will maximize recoveries for the benefit of all of the Companies' stakeholders;

- b. the RFP process in respect of the liquidation bids leading to the Consulting Agreement was reasonable in the circumstances, based on the size of the Companies and the amount of Inventory to be liquidated;
- c. the Consultant has experience working with Canadian landlords of retail tenants in insolvency proceedings and understands their requirements and concerns;
- d. in the Proposal Trustee's view, the Sale Guidelines are in a form consistent with recent Canadian retail liquidations;
- e. the fee payable to the Consultant, in the Proposal Trustee's experience, is comparable to or less than other retail liquidators;
- f. the Enterprises, the Companies' ranking secured creditors, support the Liquidation Sale, the retention of the Consultant and the Consulting Agreement; and
- g. the Proposal Trustee notes that the cost of the Consultant and CRA will be shared equally as between GEEP and GESL.

VII. CASH MANAGEMENT SYSTEM

49. The Companies' Cash Management System, which is integrated between the Green Earth retail locations and centrally managed by GESL, is detailed in paragraphs 22 to 27 of the McBride Affidavit.

50. The McBride Affidavit lists the bank accounts maintained by the Companies in addition to RBC. Those accounts are for deposits only to facilitate the daily deposits of cash from the retail locations. It is contemplated that the Companies will continue to use the existing Cash Management System during their proposal proceedings.

51. It is the Proposal Trustee's experience that attempting to implement changes to a cash management system can be challenging. The Companies operate 29 separate retail locations, with a sophisticated point of sale system ("POS") on the front end that is integrated with a central reporting system via the Magstar software system ("MAGSTAR") on the back end. The Proposal Trustee is satisfied in the Cash Management System of the Companies after reviewing the reporting of the Companies, their policies, procedures and software (namely the POS and MAGSTAR system).

52. The Proposal Trustee supports the addition of the CRA as a signing officer on the Companies' bank accounts and the requirement for the CRA to approve any transaction over \$5,000.

VIII. ADMINISTRATIVE CONSOLIDATION

53. The Companies are seeking an order administratively consolidating the proposal proceedings of each of GEEP and GESL and authorizing the Proposal Trustee to administer the Companies' proposal proceedings as if they were a single proceeding for the purpose of filing materials and reporting to the Court.

54. As noted in the McBride Affidavit, the relationship between the Companies is closely intertwined. The Companies share common management and administrative support, share office space at the Real Property, and have parallel obligations to the Enterprises. In addition, the proposed Liquidation Sale involves the sale of substantially all of the Inventory located at the Real Property and the retail locations.

55. It is the Companies' belief, and that of the Proposal Trustee, that the administrative consolidation of the Companies proposal proceedings is appropriate, as it would avoid duplication of efforts in reporting and be more efficient and cost effective. The proposed consolidation is on an administrative level only and not on a substantive basis.

56. The Enterprises do not object to the proposed consolidation and the proposed consolidation will not result in any prejudice to the creditors of the Companies.
57. For the above reasons, the Proposal Trustee is supportive of the Companies' request for the administrative consolidation of the Companies' proposal proceedings.

IX. KERA

58. To ensure retention of key office personnel through the completion of the Liquidation Sale, and the Companies' proposal proceedings, the Companies, in consultation with the Proposal Trustee, are seeking the Court's approval of the KERA for those in management positions and certain staff at the Distribution Center (the "**KERA Beneficiaries**").
59. Given the condensed timetable to complete the Liquidation Sale, it is critical that the Companies retain the KERA Beneficiaries to assist with the orderly wind-down of the Companies' operations and liquidation of their Inventory. The Companies believe that additional incentives will be required to ensure that the KERA Beneficiaries continue their employment during the Liquidation Sale and the proposal proceedings generally.
60. The KERA provides for retention payments to be paid to each of the KERA Beneficiaries at specific dates and milestones during the Companies' proposal proceedings (depending on the KERA Beneficiary's role and position). In order for the KERA Beneficiaries to receive retention payments pursuant to the KERA, the participating employees cannot have disclosed the terms of the KERA (subject to certain specific exceptions) and eligible participants must remain employed by the Companies on the date the KERA Payments are due to be paid, or such earlier date at the discretion of the Companies.
61. A copy of the KERA, including a schedule detailing the KERA Beneficiaries and their respective retention payments, is provided to the Court hereto as

Confidential Appendix 2. In view of the sensitive personal information contained in the KERA, the Proposal Trustee is of the view that the KERA should be filed with the Court on a confidential basis and sealed until further order of the Court.

62. The Proposal Trustee is of the view that the KERA appears appropriate and reasonable in the circumstances. Accordingly, the Proposal Trustee is supportive of the Companies' request for approval of the KERA.

63. In addition to the KERA, the Consultant will work with the Companies to provide for retention and incentive bonuses at the store level to ensure ongoing employment of employees to assist with the Liquidation Sale. The Proposal Trustee understands that the terms of the retention plan are currently being finalized, however it is estimated to total in aggregate \$80,000 to \$120,000 depending on the store closing sale outcome. Confidential Appendix 2 contains details on the proposed retention and incentive bonuses.

X. COURT ORDERED CHARGES

64. The Companies are seeking an order providing for the following Charges: Administration Charge, D&O Charge, and KERA Charge (each as hereinafter defined).

Administration Charge

65. The Companies are seeking an order (the "Administration Order") granting, among other things, a charge in the maximum amount of \$400,000 against the property of the Companies, to secure the fees and disbursements incurred in connection with professional services rendered to the Companies both before and after the commencement of the proposal proceedings by the following entities: the Proposal Trustee and its legal counsel, the Companies' legal counsel, the CRA, and the Consultant (the "Administration Charge"). The Administration Charge is proposed to rank first on the Companies' property.

66. The quantum of the Administration Charge sought by the Company was determined in consultation with the Proposal Trustee. The creation of the Administration Charge is typical in similar proceedings as is the proposed priority of the Administration Charge.

D&O Charge

67. The proposed Administration Order also provides for a charge in the maximum amount of \$500,000 against the assets of the Companies, to indemnify the officers and directors for liabilities incurred by the Companies that result in post-filing claims against the directors and officers in their personal capacities (the “D&O Charge”). The D&O Charge is proposed to rank second in priority against the Companies’ property after the Administration Charge.

68. The Proposal Trustee understands that the Companies’ directors and officers do not have a directors and officers liability insurance policy in effect (the “D&O Insurance”). As the Companies will require the participation and experience of the directors and officers to ensure that, among other things, the Liquidation Sale is carried out successfully and value is maximized for Companies’ creditors, the Proposal Trustee is of the view that the D&O Charge (both the amount and the priority ranking) is required and reasonable in the circumstances.

69. The Companies worked with the Consultant to prepare the D&O Charge quantum, considering the potential director liabilities. The Proposal Trustee has reviewed the basis of the size estimate prepared by the Companies and Consultant and supports the quantum of the D&O Charge.

KERA Charge

70. In addition to the Administration Charge and the D&O Charge, the Administration Order also provides for a charge, in the maximum amount of \$100,000 (the “KERA Charge”) against the property of the Companies to secure all amounts potentially payable under the KERA. The KERA Charge is proposed to rank third in priority against the Companies’ property after the Administration and D&O Charge.

71. As noted in the McBride Affidavit, without the security provided by the KERA Charge, there is a real concern that the KERA Employees would resign prior to the completion of the Liquidation Sale and wind-down of the Companies' operations, to the detriment of the Companies' stakeholders.

72. In the circumstances, and given the short timeframe to complete the Liquidation Sale, the Proposal Trustee is of the view that the KERA Charge is appropriate and reasonable.

Summary and Proposed Ranking of the Court Ordered Charges

73. The priorities of the Charges sought by the Companies in the proposed Administration Order are as follows:

- a. First-the Administration Charge;
- b. Second- the D&O Charge; and
- c. Third- the KERA Charge

74. The Administration Order sought by the Companies provides that the Charges will rank in priority to the security interests of the Enterprises, and the Proposal Trustee understands the Enterprises have consented to the proposed ranking of the Charges.

75. As noted above, the Proposal Trustee believes that the Charges and rankings are required and reasonable in the circumstances and, as such, supports the granting and proposed ranking of the Charges.

XI. EXTENSION OF THE STAY PERIOD TO MAY 3, 2019

76. The initial 30-day stay period granted upon the filing of the NOI expires on April 3 2019. The Companies are seeking an extension of the Stay Period to May 3, 2019 (the "Stay Extension").

77. In support of the request for the Stay Extension, the Companies, with the assistance of the Proposal Trustee (and the Consultant), have prepared individual

forecasts of their receipts and disbursements for the period March 4, 2019 to May 3, 2019 (the “**Cash Flow Forecasts**”). A copy of the Cash Flow Forecasts is attached hereto as **Appendix “C”** and is summarized below.

GEEP Cash Flow Forecast for Period from March 4 to May 3, 2019		GESL Cash Flow Forecast for Period from March 4 to May 3, 2019	
Receipts		Receipts	
Retail Sales	4,263,104	Receipt from Sale of Inventory	2,152,868
	4,263,104	AR Collections	172,000
Disbursements		Online Sales	9,215
Payroll	759,185		2,334,083
Rent, Utilities, Repair & Insurance	736,886	Disbursements	
HST/WSIB	163,436	Payroll	312,867
Sales and Shipping Costs	50,591	Rent, Utilities, Repair & Insurance	48,910
Payment to GESL for inventory	2,152,868	HST/WSIB	243,959
Professional Fees	229,875	Sales and Shipping Costs	142,902
Contingency	93,500	Professional Fees	229,875
	4,186,341	Contingency	55,699
Net Cash Flow	76,764		1,034,212
Opening Cash	1,146,894	Net Cash Flow	1,299,871
Net Cash Flow	76,764	Opening Cash	876,633
Ending Cash	1,223,658	Net Cash Flow	1,299,871
		Ending Cash	2,176,504

78. The Cash Flow Forecasts indicate that the Companies will have sufficient liquidity to fund both operating costs and the costs of these proposal proceedings for the period of the Stay Extension, if granted.

79. The Proposal Trustee supports the Companies’ request for the Stay Extension for the following reasons:

- More than thirty (30) days will be required to complete the Liquidation Sale. The Consulting Agreement contemplates the Liquidation Sale commencing between March 8, 2019 and concluding no later than June 30, 2019 (or such other dates agreed to by the Companies and the Consultant);

- b. The Stay Extension is necessary to provide the Companies sufficient time to advance the Liquidation Sale and complete the orderly wind-down of their operations;
- c. The Companies are acting in good faith and with due diligence in taking steps to monetize their assets for the benefit of their stakeholders; and
- d. It is the Proposal Trustee's view that the Stay Extension will not prejudice or adversely affect any group of creditors.

XII. CONCLUSION AND RECOMMENDATIONS

80. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court issues the Liquidation Process Order and the Administration Order, as requested by the Companies:

- a. approving the appointment of the CRA and the CRA Engagement Letter;
- b. approving the Consulting Agreement and the Sale Guidelines;
- c. authorizing and directing the Companies, with the assistance of the Consultant and the CRA, to conduct the Liquidation Sale in accordance with the Sale Guidelines, and to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein;
- d. authorizing the Companies to continue using their existing Cash Management System;
- e. approving the administrative consolidation of the Companies' proposal proceedings;
- f. approving the Charges;
- g. approving the KERA; and

h. approving the extension of the Stay Period to May 3, 2019.

All of which is respectfully submitted this 5th day of March 2019.

CROWE SOBERMAN INC.

Trustee acting under a Notice of Intention to Make a Proposal of
Green Earth Environmental Products and Green Earth Stores Ltd.

Per


Hans Rizari, CIRP, LIT

APPENDIX “A”



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2481649
Estate No. 31-2481649

In the Matter of the Notice of Intention to make a
proposal of:

GREEN EARTH STORES LTD.

Insolvent Person

CROWE SOBERMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 04, 2019

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforesigned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforesigned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 04, 2019, 15:15

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2481648
Estate No. 31-2481648

In the Matter of the Notice of Intention to make a
proposal of:

GREEN EARTH ENVIRONMENTAL PRODUCTS
Insolvent Person

CROWE SOBERMAN INC.
Licensed Insolvency Trustee

Date of the Notice of Intention: March 04, 2019

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

-- AMENDED --

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforesigned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforesigned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 06, 2019, 14:50

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

APPENDIX “B”

**Available upon Request, please contact
the NOI Trustee directly**

Email: Green.Earth@CroweSoberman.com

Phone: (647) 288-2728

APPENDIX “C”

Green Earth Stores Ltd.

Projected Statement of Cash Flows

For the period from March 4 - May 3, 2019 (\$C, Unaudited)

For the Week Ending	Notes	8-Mar	15-Mar	22-Mar	29-Mar	5-Apr	12-Apr	19-Apr	26-Apr	3-May	Total
Receipts											
Receipt from sale of inventory	1	211,247	268,451	242,054	256,404	229,657	239,502	216,665	246,160	242,728	2,152,868
AR Collections		~	~	~	72,000	~	~	~	~	100,000	172,000
Online Sales		805	805	805	805	1,091	1,091	1,392	1,091	1,332	9,215
Total Receipts		\$ 212,051	\$ 269,256	\$ 242,859	\$ 329,209	\$ 230,748	\$ 240,593	\$ 218,057	\$ 247,251	\$ 344,060	\$ 2,334,083
Projected Disbursements											
Payroll	2	62,256	~	62,345	~	63,693	~	61,082	~	63,492	312,867
Rent, Utilities, Repairs & Insurance		10,000	~	~	15,500	3,955	~	~	~	19,455	48,910
HST, WSIB		~	~	~	~	96,891	~	~	~	~	147,067
Sales and Shipping Costs		8,298	19,000	13,000	19,875	15,954	19,000	13,000	19,875	14,900	243,959
Professional Fees	3	50,125	25,125	25,125	25,125	20,125	18,875	18,875	18,875	27,625	142,922
Contingency, Office & Other		6,699	5,500	5,500	8,000	5,500	5,500	5,500	8,000	5,500	229,875
Total Disbursements		\$ 137,377	\$ 49,625	\$ 105,970	\$ 68,500	\$ 206,118	\$ 43,375	\$ 98,457	\$ 46,750	\$ 278,039	\$ 1,034,211
Net Cash Flow		\$ 74,674	\$ 219,631	\$ 136,889	\$ 260,703	\$ 24,630	\$ 197,218	\$ 119,600	\$ 200,501	\$ 66,021	\$ 1,299,871

Opening Cash Balance	\$ 876,633	\$ 951,307	\$ 1,170,937	\$ 1,307,827	\$ 1,568,535	\$ 1,593,165	\$ 1,790,382	\$ 1,909,983	\$ 2,110,484
Closing Cash Balance	\$ 951,307	\$ 1,170,937	\$ 1,307,827	\$ 1,568,535	\$ 1,593,165	\$ 1,790,382	\$ 1,909,983	\$ 2,110,484	\$ 2,176,504

Notes:

1. Receipt for the sale of inventory (35.5% of the gross sales) from Green Earth Stores Ltd. ("GESL") to Green Earth Environmental Products ("GEEP") at the time the inventory is sold to customers at GEEP's stores and a 15% administration fee for head office and warehouse services provided to GEEP.
2. Payroll for head office employees including source deductions. The company uses ADP to process payroll and remit source deductions.
3. Fees of the the Applicants counsel, the store closing consultant and the NOI trustee and its counsel, the store closing consultant and the Chief Restructuring Advisor, all allocated on an equal basis between GEEP and GESL.

Green Earth Environmental Products

Projected Statement of Cash Flows

For the period from March 4 - May 3, 2019 (\$C, Unaudited)

		For the Week Ending									
		8-Mar		15-Mar		22-Mar		29-Mar		5-Apr	
Receipts		1	418,310	531,587	479,315	507,731	454,766	474,261	429,039	487,446	480,649
Total Receipts		\$	\$ 418,310	\$ 531,587	\$ 479,315	\$ 507,731	\$ 454,766	\$ 474,261	\$ 429,039	\$ 487,446	\$ 480,649
Projected Disbursements											
Payroll	2	159,217	—	151,562	—	160,024	—	144,907	—	143,376	
Rent, Utilities, Repairs & Insurance		24,000	5,842	—	348,569	1,950	6,007	—	—	350,519	
HST, WSIB		—	—	—	60,942	—	—	—	—	736,886	
Sales and Shipping Costs		2,000	—	2,000	—	22,788	—	2,000	—	102,494	
Payment to GESL for inventory	3	211,247	268,451	242,054	256,404	239,657	239,502	216,665	246,160	163,436	
Professional Fees	4	50,125	25,125	25,125	25,125	20,125	18,875	18,875	242,728	50,351	
Contingency, Office & Other		36,175	7,175	7,175	7,175	7,175	7,175	7,175	27,625	21,803	
Total Disbursements		\$ 482,764	\$ 306,553	\$ 428,016	\$ 637,273	\$ 502,660	\$ 271,558	\$ 389,621	\$ 272,210	\$ 229,875	
Net Cash Flow		\$ (64,453)	\$ 224,994	\$ 51,299	\$ (129,542)	\$ (47,894)	\$ 202,702	\$ 39,417	\$ 215,236	\$ 93,500	
Opening Cash Balance		\$ 1,146,894	\$ 1,082,441	\$ 1,307,435	\$ 1,358,734	\$ 1,229,192	\$ 1,181,298	\$ 1,384,000	\$ 1,423,418	\$ 1,638,653	
Closing Cash Balance		\$ 1,082,441	\$ 1,307,435	\$ 1,358,734	\$ 1,229,192	\$ 1,181,298	\$ 1,384,000	\$ 1,423,418	\$ 1,638,653	\$ 1,223,658	

Notes:

1. Based on analysis of prior year retail sales for the same period, which are anticipated to be positively impacted by the promotion of the store closing sale. Assumes the store closing sales commence on March 8, 2019.
2. Payroll for store level employees including source deductions. The company uses ADP to process payroll and remit source deductions.
3. Payment for sale of inventory (35.5% of the gross sales) from Green Earth Stores Ltd. ("GESL") to Green Earth Environmental Products ("GEEP") at the time the inventory is sold to customers at GEEP stores and a 15% administration fee for head office and warehouse services provided to GEEP.
4. Fees of the the Applicants counsel, the NOI trustee and it's counsel, the store closing consultant and the Chief Restructuring Advisor, all allocated on an equal basis between GEEP and GESL.

TAB 1

CONFIDENTIAL APPENDIX “1”

(Subject to a request for a sealing order)

TAB 2

CONFIDENTIAL – APPENDIX “2”

(Subject to a request for a sealing order)

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF GREEN
EARTH STORES LTD. AND GREEN EARTH ENVIRONMENTAL PRODUCTS

Court File No.: 31-2481648
31-2481649

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

FIRST REPORT OF CROWE SOBERMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL
OF GREEN EARTH STORES LTD. AND GREEN
EARTH ENVIRONMENTAL PRODUCTS

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street Toronto, Canada M5L 1B9

Elizabeth Pillon LSO#: 35638M
Tel: (416) 869-5623
Email: lpillon@stikeman.com

Sanja Sopic LSO#: 66487P
Tel: (416) 869-6825
Email: ssopic@stikeman.com
Fax: 416-947-0866

Lawyers for the Proposal Trustee