

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

THE HONOURABLE *Mr.* ) THURSDAY, THE  
 )  
JUSTICE PENNY ) 7<sup>TH</sup> DAY OF MARCH, 2019  
 )  
BETWEEN:

Estate/Court File No.: 31-2481648

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP  
ESTABLISHED IN THE PROVINCE OF ONTARIO**

Applicant

Estate/Court File No.: 31-2481649

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
GREEN EARTH STORES LTD., A CORPORATION INCORPORATED IN THE  
PROVINCE OF ONTARIO**

Applicant

**ADMINISTRATION ORDER**

**THIS MOTION**, made by made by Green Earth Environmental Products (“**GEEP**”) and Green Earth Stores Ltd. (“**GESL**” and together the “**Applicants**”) pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the “**BIA**”) for an Order, among other things, appointing FAAN Advisors Group Inc. as Chief Restructuring Advisor, approving the administrative consolidation of the Applicants’ proposal proceedings, approving certain charges, extending the time for filing a proposal (the “**Proposal Period**”) pursuant to s. 50.4(9) of the BIA, and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Matthew McBride sworn March 4, 2019 and exhibits thereto (the “**McBride Affidavit**”), the First Report (the “**First Report**”) of Crowe Soberman Inc. (“**Crowe Soberman**”), in its capacity as proposal trustee of the Applicants (in such capacity, the “**Proposal Trustee**”), and the confidential appendices thereto, filed, and on hearing the submissions of respective counsel for the Applicants, the Proposal Trustee, The Cadillac Fairview Corporation Limited, Morguard Investments Limited, Morguard Real Estate Investment Trust, Riocan Management Inc., Riocan

Real Estate Investment Trust, Cushman & Wakefield Asset Services Inc., Ivanhoe Cambridge Inc., Ivanhoe Cambridge II Inc. and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Alina Stoica sworn March 5, 2019 filed;

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

### **ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of Green Earth Environmental Products (Estate Number 31-2481648) and Green Earth Stores Ltd. (Estate Number 31-2481649) (collectively, the “**Proposal Proceedings**”) are hereby administratively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings, *nunc pro tunc*:

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

### **IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP ESTABLISHED IN THE PROVINCE OF ONTARIO, AND GREEN EARTH STORES LTD., A CORPORATION INCORPORATED IN THE PROVINCE OF ONTARIO**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Court only in the GEEP Estate and Court file, being Estate/Court File No. 31-2481648.

4. **THIS COURT ORDERS** that Crowe Soberman, in its capacity as the Proposal Trustee of the consolidated Proposal Proceedings, may administer the Proposal Proceedings on a consolidated basis, and in doing so the Proposal Trustee is authorized to administer the Proposal Proceedings as if they were a single proposal proceeding for the purpose of carrying out its



administrative duties and responsibilities as proposal trustee under the BIA with respect to the administration of proposal proceedings generally, including without limitation:

- (i) the Proposal Trustee is authorized to issue consolidated reports in respect of the Proposal Proceedings; and
- (ii) the Proposal Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the Proposal Proceedings required under the BIA.

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### **APPROVAL OF ENGAGEMENT OF CRA**

5. **THIS COURT ORDERS** that the agreement dated February 25, 2019 pursuant to which the Applicants have engaged FAAN Advisors Group Inc. as Chief Restructuring Advisor (“CRA”), a copy of which is attached as an exhibit in a redacted form to the McBride Affidavit and was filed as confidential exhibit “1” to the McBride Affidavit, as may be amended by the parties thereto with the consent of the Proposal Trustee (the “**CRA Engagement Letter**”) and the appointment of the CRA pursuant to the terms thereof are hereby approved.

### **CASH MANAGEMENT**

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the cash management system currently in place as described in the McBride Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that the CRA be added as a required signing officer on the Applicants’ bank accounts for the pendency of the Proposal Proceedings that shall authorize all expenditures of \$5,000 or greater.

### **APPROVAL OF THE ADMINISTRATION CHARGE**

7. **THIS COURT ORDERS** that the Proposal Trustee, Stikeman Elliott LLP as counsel for the Proposal Trustee (the “**Proposal Trustee’s Counsel**”), Miller Thomson LLP as counsel to the Applicants in connection with these Proposal Proceedings (the “**Applicants’ Counsel**”), shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges or as set out in the approved engagement letters, by the Applicants as part of the costs of these Proposal Proceedings. The Applicants are hereby authorized and directed to pay the accounts of

the Proposal Trustee, the Proposal Trustee's Counsel and the Applicants' Counsel (for work performed in connection with these Proposal Proceedings) on a weekly basis.

8. **THIS COURT ORDERS** that the Proposal Trustee, the Proposal Trustee's Counsel, the Applicants' Counsel, the CRA and the Consultant (as defined in the Liquidation Procedure Order granted in these Proposal Proceedings) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all assets, rights, undertakings and properties of the Applicants, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"), which Administration Charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 14 and 15 herein.

#### **APPROVAL OF THE D&O CHARGE**

9. **THIS COURT ORDERS** that the Applicants shall indemnify their current and future directors and officers (the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the Proposal Proceedings, including, without limitation, in respect of any failure to pay wages and source deductions and vacation pay, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct.

10. **THIS COURT ORDERS** that the Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000 as security for the indemnity provided in paragraph 9 of this Order. The D&O Charge shall have the priority set out in paragraphs 14 and 15 herein.

11. **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 D&O Charge, and (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 9 of this Order.



### **APPROVAL OF THE KERA AND KERA CHARGE**

12. **THIS COURT ORDERS** that the key employment retention term and agreement (“**KERA**”) attached as Confidential Appendix “1” to the First Report is hereby approved and the Applicants are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the KERA.

13. **THIS COURT ORDERS** that the employees who are the beneficiaries of the KERA (the “**KERA Beneficiaries**”) shall be entitled to the benefit of and are hereby granted a charge (the “**KERA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000 as security of all amounts now or hereafter owing under the KERA to the KERA Beneficiaries, before and after the making of this Order. The KERA Charge shall have the priority set out in paragraphs 14 and 15 herein.

### **PRIORITY OF CHARGES**

14. **THIS COURT ORDERS** that the priorities of the Administration Charge, the D&O Charge, the KERA Charge (together, the “**Charges**”), as among them, be as follows:

First - the Administration Charge (to the maximum amount of \$400,000);

Second - the D&O Charge (to the maximum amount of \$500,000); and

Third - the KERA Charge (to the maximum amount of \$100,000).

15. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any individual, firm, corporation, governmental body or agency or any other entity (each of the foregoing being a “**Person**”), other than any secured creditors who have not been served with the Applicants’ Motion Record dated March 1, 2019, perfected purchase money security interests under the Ontario Personal Property Registry or such other applicable provincial legislation unless otherwise provided herein.

16. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these Proposal 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 Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants 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 the creation of the Charges; and
- (c) the granting of the Charges, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

19. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **STAY EXTENSION**

20. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including May 3, 2019.

#### **SEALING**

21. **THIS COURT ORDERS** that the unredacted CRA Engagement Letter, the unredacted Consulting Agreement filed separately with the Court, the Comparative Analysis (as defined in the First Report) and the KERA filed as Confidential Appendices "1" and "2" to the First Report are hereby sealed and shall not form part of the public record, pending further order of the Court.

#### **PROPOSAL TRUSTEE DUTIES**

22. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court, including, without limitation, to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Property, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants in their preparation of the Applicants' cash flow statements, which information shall be reviewed with the Proposal Trustee;
- (d) assist the Applicants in their development of proposals to their creditors and any amendments to such proposals;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on any proposals;



- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under the BIA or this Order;
- (g) be at liberty to engage such Persons as the Proposal Trustee deems necessary or advisable respecting the exercise of its powers and performance of its obligations under the BIA or this Order; and
- (h) perform such other duties as are required by the BIA, this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Applicants' business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Applicants' business or the Property, or any part thereof.

24. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee 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 to the Proposal Trustee under the BIA or any applicable legislation.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/Toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "**Rules**"), this Order shall constitute an Order for substituted service



pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: <https://crowesoberman.com/insolvency/engagements/green-earth-stores-ltd-green-earth-environmental-products>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these Proposal Proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

27. **THIS COURT ORDERS** that the Applicants, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these Proposal Proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

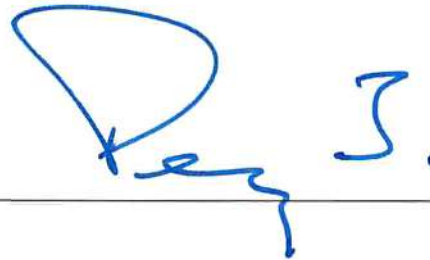
#### **GENERAL**

28. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Proposal Trustee 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 Applicants and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that any interested party (including the Applicants and the Proposal Trustee) 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.



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PER / PAR: *RW*

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

Estate/Court File No.: 31-2481648

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**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ADMINISTRATION ORDER  
(DATED: MARCH 7, 2019)**

**MILLER THOMSON LLP  
SCOTIA PLAZA  
40 KING STREET WEST, SUITE 5800  
P.O. BOX 1011  
TORONTO, ONTARIO M5H 3S1**

**Kyla Mahar LSO#: 44182G**  
Tel: 416.597.4303 / Fax: 416.595.8695  
kmahar@millerthomson.com

**Stephanie De Caria LSO#: 68055L**  
Tel: 416.597.2652 / Fax: 416.595.8695  
sdecaria@millerthomson.com

Lawyers for the Applicants