

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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**

Applicants

**MOTION RECORD  
(RETURNABLE JUNE 13, 2019)**

**MILLER THOMSON LLP  
SCOTIA PLAZA  
40 KING STREET WEST, SUITE 5800  
P.O. BOX 1011  
TORONTO, ON CANADA 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, Matthew  
McBride Enterprises Corp. and  
Beckstette Enterprises Corp.

TO: THE SERVICE LIST

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# TAB 1

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

**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**

Applicants

**NOTICE OF MOTION**  
**(Returnable June 13, 2019)**

The Applicants, Green Earth Stores Ltd. (“**GESL**”) and Green Earth Environmental Products (“**GEEP**”, and together with GESL, the “**Applicants**”), and the secured creditors, Matthew McBride Enterprises Corp. (“**McBride Enterprises**”) and Beckstette Enterprises Corp. (“**Beckstette Enterprises**”, and together with McBride Enterprises, the “**Secured Creditors**”) will make a motion to a Judge presiding over the Commercial List on June 13, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order (the “**Ancillary Order**”) substantially in the form of the draft Order located at Tab 4 of the Motion Record:
  - (a) abridging and validating the time for service of the Notice of Motion, such that this Motion is properly returnable and further service thereof is dispensed with;

- (b) approving the fees of Crowe Soberman Inc., in its capacity as proposal trustee of the Applicants (in such capacity, the “**Proposal Trustee**”), and the Proposal Trustee’s legal counsel Stikeman Elliot LLP (“**Stikeman**”);
  - (c) approving the Third Report of the Proposal Trustee to be filed (the “**Third Report**”) and its conduct set out therein; and
  - (d) discharging FAAN Advisors Group Inc. (“**FAAN**”), in its capacity as Chief Restructuring Advisors (the “**Chief Restructuring Advisor**”) of the Applicants;
2. an Order (the “**Receiver Appointment and Distribution Order**”), substantially in the form of the draft Order located at Tab 5 of the Motion Record:
- (a) appointing Crowe Soberman Inc., as receiver (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), without security, of all of the assets, undertakings and properties of each of GESL and GEEP, acquired for or used in relation to the businesses carried on by the Applicants effective June 18, 2019;
  - (b) authorizing and directing the Receiver to distribute the monies held by the Receiver on behalf of GEEP after the date of the deemed bankruptcy of GEEP, net of any monies the Receiver determines are required for the administration of the receivership of GEEP and to satisfy any claims that rank ahead of the Secured Creditors (collectively, the “**Priority Claims**”), in order of priority as follows:
    - (i) first to pay any amounts owing to the beneficiaries under the Administration Charge (as defined in the Administration Order dated March 7, 2019 (the “**Administration Order**”));
    - (ii) second to pay any amounts owing to the beneficiaries of the KERA Charge (as defined in the Administration Order”);
    - (iii) third to pay any amounts owing by GEEP for source deductions, which are subject to the super priority deemed trust, if any;



- (iv) fourth to repay an amount to the Secured Creditors in respect of the secured indebtedness assigned by Royal Bank of Canada (“**RBC**”) to the Secured Creditors (the “**Assigned Indebtedness**”) (such amount to be allocated but it is currently expected to be approximately 10 percent of the Assigned Indebtedness), which when combined with the amount repaid by the Receiver from the monies held by GESL to the Secured Creditors in respect of the Assigned Indebtedness results in the Assigned Indebtedness being repaid in full; and
  - (v) fifth to repay amounts to the Secured Creditors on a *pro rata* basis until \$734,798 owing by GEEP is repaid in full to McBride Enterprises and \$734,867 owing by GEEP is repaid in full to Beckstette Enterprises (collectively, the “**GEEP Enterprises Indebtedness**”);
- (c) authorizing and directing the Receiver to distribute the monies held by the Receiver on behalf of GESL after the date of the deemed bankruptcy of GESL, net of any monies the Receiver determines are required for the administration of the receivership of GESL and to satisfy any Priority Claims, in order of priority as follows:
- (i) first to pay any amounts owing to the beneficiaries of the Administration Charge;
  - (ii) second to pay any amounts owing to the beneficiaries of the KERA Charge;
  - (iii) third to pay any amounts owing by GESL for source deductions, which are subject to the super priority deemed trust, if any;
  - (iv) fourth to repay the Assigned Indebtedness less the amount available to be paid by monies held by the Receiver from GEEP results in the Assigned Indebtedness being repaid in full to the Secured Creditors; and

- (v) fifth to repay amounts owing to the Secured Creditors on a *pro rata* basis until \$2,424,777 owing by GESL is repaid in full to McBride Enterprises and \$2,411,077 owing by GESL is repaid in full to Beckstette Enterprises (collectively, the “**GESL Enterprises Indebtedness**”);

## **THE GROUNDS FOR THE MOTION ARE:**

### **The NOI Proceedings**

3. As a result of a deteriorating financial condition, on March 4, 2019, the Applicants each commenced Proposal Proceedings under the BIA (the “**Proposal Proceedings**”) by each filing a Notice of Intention to File a Proposal (“**NOI**”). Crowe Soberman Inc. was appointed Proposal Trustee of each of the Applicants;

### **Overview of the Applicants’ Business Operations**

4. Prior to the Proposal Proceedings, the Applicants operated a retail business known as the “Green Earth” stores across Ontario (“**Green Earth**”), with 29 retail store located in shopping malls across Ontario;

5. GEEP is a general partnership registered in Ontario pursuant to the *Partnership Act* (Ontario), with a registered office address in Toronto, Ontario. The partnership is comprised of two partners, being Matthew McBride Holdings Inc. (“**McBride Holdings**”) and Beckstette Holdings Inc. (“**Beckstette Holdings**”). GEEP operates the Green Earth retail business across Ontario;

6. GESL is a private company incorporated pursuant to the *Business Corporations Act* (Ontario), with a registered business address in Toronto, Ontario. GESL purchases and owns the inventory sold in the Green Earth stores (the “**Inventory**”), operates an e-commerce website for online sales of the Inventory and owns real property that houses its warehouse and distribution centre, which is located at 19-23 Buchanan Court, London, Ontario N5Z 4P9 (the “**Real Property**”);

### **Administration Order and Liquidation Process Order**

7. In connection with the Proposal Proceedings, the Applicants brought a motion returnable March 7, 2019 seeking an Administration Order and a Liquidation Process Order (both as hereinafter defined);

8. On March 7, 2019, Justice Penny granted an Order (the “**Administration Order**”), among other things, extending the Proposal Period to May 3, 2019, approving the administrative consolidation of the Applicants’ Proposal Proceedings, approving the engagement of the Chief Restructuring Advisor, and approving certain court-ordered charges;

9. In addition, on March 7, 2019, Justice Penny granted an Order (the “**Liquidation Process Order**”), among other things, approving the consulting agreement between the Applicants and Shawn Parkin dated February 25, 2019 (the “**Consulting Agreement**”), approving the Sale Guidelines attached as Schedule “A” to the Liquidation Process Order for the conduct of the liquidations and authorizing the Applicants, with the assistance of the Chief Restructuring Advisor and the Consultant to conduct the liquidations sales at the retail locations in accordance with the Liquidation Process Order and the Sale Guidelines (the “**Liquidation Sales**”);

### **Proposal Period Extension Order**

10. On April 29, 2019, Justice Hainey granted an Order (the “**Proposal Period Extension Order**”), extending the proposal period (“**Proposal Period**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) by 45 days to June 17, 2019;

### **Receiver Appointment and Distribution Order**

11. In consultation with the Proposal Trustee and the Chief Restructuring Advisor, the Applicants have determined that in light of the secured indebtedness (described below) and the expected amounts available for distribution (described below), neither GESL nor GEEP have sufficient monies to fund a proposal to unsecured creditors;

12. The Applicants will be deemed to have made an assignment in bankruptcy effective the date following the expiry of the Proposal Period since they will not be filing a proposal to their unsecured creditors;

13. As a result, the Applicants and Secured Creditors seek the appointment of the Receiver pursuant to the Appointment and Distribution Order for the purposes of distributing the amount available for distribution and marketing and selling the Real Property of GESL;

14. It is intended that upon its appointment, the Receiver will take possession of the Applicants' property, including the real property owned by GESL and bank accounts, and will attend to marketing and selling the real property;

### **Secured Indebtedness**

15. McBride Enterprises and Beckstette Enterprises are first-ranking secured creditors of both GESL and GEEP;

16. Pursuant to an Assignment of Debt and Security dated February 26, 2019, McBride Enterprises and Beckstette Enterprises took an assignment of indebtedness owing by GESL to RBC in the amount of \$3,254,740.85 (the "**Assigned Indebtedness**") and the security granted by GESL and GEEP in favour of RBC to secure such indebtedness (the "**RBC Security**");

17. The RBC Security provides that, upon default, the secured creditor may appoint a receiver in section 13 of the general security agreements executed by GEEP and GESL in favour of RBC;

18. The Proposal Trustee has received an opinion from its counsel that subject to typical qualifications and assumptions, the RBC Security is valid and enforceable in the province of Ontario;

19. McBride Enterprises and Beckstette Enterprises are also second-ranking secured creditors of both GESL and GEEP;

20. McBride Enterprises and Beckstette Enterprises would make advances from time to time to both GEEP and GESL in order to finance the Applicants' business operations (the "**Enterprise Indebtedness**"). To secure these advances, in June 2009, GEEP and GESL each granted general security agreements to each of the Secured Creditors (the "**Enterprise Security**");

21. The Proposal Trustee has received an opinion from its counsel that subject to typical qualifications and assumptions, the Enterprise Security is valid and enforceable in the province of Ontario;

### **Estimated Amount Available for Distribution**

22. Based on current estimates, it is expected that there will be between approximately \$1,600,000 and \$1,800,000 available to be distributed in GEEP and between approximately \$3,600,000 and \$3,750,000 available to be distributed in GESL;

23. The proposed distribution order contemplates GEEP repaying a portion of the Assigned Indebtedness (approximately 10 percent), which will be calculated to allow GEEP to repay the GEEP Enterprise Indebtedness in the amount of \$1,469,665. The Secured Creditors support allocating the Assigned Indebtedness in this manner;

24. The proposed Receiver Appointment and Distribution Order contemplates the monies from GESL repaying the remainder of the Assigned Indebtedness and then to the extent money is available making distributions on account of the GESL Enterprise Indebtedness. Currently, it is estimated that there will be a shortfall to the Secured Creditors in respect of the GESL Enterprise Indebtedness of approximately \$4,200,000 prior to the sale of the Real Property;

25. In determining the allocation of the Assigned Indebtedness, the rights of subrogation and marshalling were considered;

26. It is intended that after the expiry of the Proposal Period, that the Receiver will make the distributions in accordance with the proposed order of distributions set out in the Receiver Appointment and Distribution Order;

### **Discharge of Chief Restructuring Advisor**

27. The Applicants are seeking an Order discharging FAAN as Chief Restructuring Advisor of the Applicants in these Proposal Proceedings;

28. The Liquidation Sale commenced on March 9, 2019 and progressed in accordance with the Liquidation Process Order. The Liquidation Sale at the last store concluded on May 29, 2019 and all 29 retail store locations are now closed;

29. Accordingly, the role of the Chief Restructuring Advisor in these Proposal Proceedings has also concluded, such that the Chief Restructuring Advisor can be discharged and released;

### **Approval of Fees and Third Report**

30. The Third Report sets out in detail the conduct of the Proposal Trustee since the date of its Second Report dated April 24, 2019. The Applicants are seek approval of the Proposal Trustee's conduct as set out in the Third Report;

31. The Third Report sets out the fees and disbursements of the Proposal Trustee and its counsel, Sikeman. The Applicants seek approval of the fees and disbursements of the Proposal Trustee, as well as those of its legal counsel, Stikeman;

### **General**

32. Sections 243 of the BIA and the other provisions of the BIA;

33. section 101 of the CJA;

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

35. Such further grounds as counsel may advise and this Court may see fit.

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

1. The Affidavit of Matthew McBride, sworn June 7, 2019;
2. The Third Report, to be filed; and

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

June 7, 2019

**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada 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, Matthew McBride  
Enterprises Corp. and Beckstette Enterprises Corp.

TO: THE SERVICE LIST ATTACHED HERETO AS SCHEDULE "A"

SCHEDULE "A"

**EMAIL SERVICE LIST**  
**AS AT MARCH 26, 2019**

<b>TO:</b>	<p><b>MILLER THOMSON LLP</b> 40 King Street West, Suite 5800 Toronto, ON M5H 3S1 Fax: 416.595.8695</p> <p><b>Kyla Mahar</b> Tel: 416.595.4303 Email: kmahar@millerthomson.com</p> <p><b>Stephanie De Caria</b> Tel: 416.595.2652 Email: sdecaria@millerthomson.com</p> <p>Lawyers for Green Earth Stores Ltd. and Green Earth Environmental Products</p>
<b>AND TO:</b>	<p><b>CROWE SOBERMAN INC.</b> 2 St. Clair Avenue East, Suite 1100 Toronto, ON M4T 2T5 Fax: 416.929.2555</p> <p><b>Hans Rizarri</b> Tel: 416.963.7175 Email: hans.rizarri@crowesoberman.com</p> <p><b>Graeme Hamilton</b> Tel: 416.963.7140 Email: graeme.hamilton@CroweSoberman.com</p> <p>Proposal Trustee</p>
<b>AND TO:</b>	<p><b>STIKEMAN ELLIOT LLP</b> 199 Bay Street Toronto, ON M5L 1B9 Fax: 416.947.0866</p> <p><b>Elizabeth Pillon</b> Tel: 416.869.5623 Email: lpillon@stikeman.com</p> <p><b>Sanja Sopic</b> Tel: 416.869.6825 Email: ssopic@stikeman.com</p> <p>Lawyers for the Proposal Trustee, Crowe Soberman Inc.</p>



<b>AND TO:</b>	<b>FAAN ADVISORS GROUP INC.</b> 20 Adelaide St E, Suite 920 Toronto, ON M5C 2T6  <b>Daniel Sobel</b> Tel: 647.272.8383 Email: daniel@faanadvisors.com  <b>Naveed Manzoor</b> Tel: 416.815.8488 Email: naveed@faanadvisors.com  Chief Restructuring Advisors
<b>Federal and Provincial Offices</b>	
<b>AND TO:</b>	<b>MINISTRY OF FINANCE</b> Office of Legal Services 33 King Street West, 6th Floor Oshawa, ON L1H 8H5  <b>Kevin J. O'Hara</b> Tel: 905.433.6934 Fax: 905.436.4510 Email: kevin.ohara@fin.gov.on.ca
<b>AND TO:</b>	<b>ATTORNEY GENERAL OF CANADA</b> <b>Department of Justice Canada</b> <b>Ontario Regional Office -Tax Law Section</b> The Exchange Tower 130 King Street West Suite 3400, P.O. Box 36 Toronto, ON M5X 1K6  <b>Diane Winters</b> Tel: 416.973.3172 Fax: 416.973.0810 Email: diane.winters@justice.gc.ca  Lawyers for the Minister of National Revenue
<b>AND TO:</b>	<b>OFFICE OF THE SUPERINTENDENT IN BANKRUPTCY</b> 595 Bay Street #800 Toronto, ON M5G 1M6  <b>Marie-Josée Sicard</b> Tel: 647.649.8447 Email: Marie-Josée.Sicard@canada.ca

<b>Landlords and/or Counsel for Landlords</b>		<b>Properties</b>
<p><b>AND TO:</b> <b>CAMELINO GALESSIERE LLP</b> 6 Adelaide St. East, Suite 220 Toronto, ON M5C 1H6</p> <p><b>Linda Galessiere</b> Tel: 416.306.3827 Fax: 416.306.3820 Email: lgalessiere@cglegal.ca</p> <p>Lawyers for Cushman &amp; Wakefield Asset Services Inc., Morguard Investments Limited, Morguard Real Estate Investment Trust, Riocan Management Inc., Riocan Real Estate Investment Trust, Ivanhoe Cambridge II Inc. and Ivanhoe Cambridge Inc.</p>	<p>Devonshire Mall (Windsor)</p> <p>Georgetown Market Place (Georgetown)</p> <p>Quinte Mall (Belleville)</p> <p>Pen Centre Mall (St. Catherine's)</p> <p>Lansdowne Mall (Peterborough)</p> <p>Northgate Shopping Centre (North Bay)</p> <p>New Sudbury Centre (Sudbury)</p> <p>Intercity Shopping Centre (Thunder Bay)</p> <p>Georgian Mall (Barrie)</p> <p>Erin Mills Town Centre (Mississauga)</p> <p>Cambridge Centre (Cambridge)</p> <p>Conestoga Mall (Waterloo)</p> <p>Lambton Mall (Lambton)</p> <p>Oshawa Centre (Oshawa)</p> <p>Bramalea City Centre (Brampton)</p> <p>St. Laurent Shopping Centre (Ottawa)</p> <p>Burlington Mall (Burlington)</p>	
<p><b>AND TO:</b> <b>TORYS LLP</b> 79 Wellington St W, Suite 3000 Toronto, ON M5K 1N2</p> <p><b>David Bish</b> Tel: 416.865.7353 Fax: 416.865.7380 Email: dbish@torys.com</p> <p>Lawyers for The Cadillac Fairview Corporation Limited</p>	<p>Masonville Mall (London)</p> <p>Fairview Park Mall (Kitchener)</p> <p>Lime Ridge Mall (Guelph)</p>	

<b>AND TO:</b>	<b>GARDINER ROBERTS LLP</b> 22 Adelaide St W, Suite 3600 Toronto, ON M5H 4E3  <b>Michael Citak</b> Tel: 416.865.6706 Fax: 416.865.6636 Email: mcitak@grllp.com  Lawyers for Oxford Properties Group	Upper Canada Mall (Newmarket)
<b>AND TO:</b>	<b>WHITE OAKS MALL HOLDINGS LTD.</b> <b>c/o BENTALL KENNEDY (CANADA) LP</b> 65 Port Street East, Unit 110 Mississauga, ON L5G 4V3  <b>Garnet Peirson</b> Email: gpeirson@bentallkennedy.com	White Oaks Mall (London)
<b>AND TO:</b>	<b>LYNDEN PARK MALL LIMITED</b> <b>c/o NORTH AMERICAN DEVELOPMENT</b> <b>GROUP</b> 2851 John Street, Suite One, Markham, Ontario L3R 5R7  <b>Julia R. Sugden</b> Email: jsugden@nadg.com	Lynden Park Mall (Brantford)
<b>AND TO:</b>	<b>LINDSAY SQUARE MALL INC.</b> <b>c/o DAVPART INC.</b> 1200 Sheppard Avenue East, Suite 106 Toronto, ON M2K 2S5  <b>Jennifer Huntley</b> Email: huntleyj@davpart.com	Lindsay Square Mall (Lindsay)
<b>AND TO:</b>	<b>ORANGEVILLE MALL PROPERTY HOLDINGS</b> <b>INC.</b> 700 Applewood Crescent, Suite 100 Vaughan, ON L4K 5X3  <b>Dana Schott</b> Email: dschott@strathallen.com	Orangeville Mall (Orangeville)

<b>AND TO:</b>	<b>CATARAQUI HOLDINGS INC.</b> <b>c/o PRIMARIS MANAGEMENT INC.</b> 1 Adelaide Street East, Suite 900 Toronto, ON M5C 2V9  <b>Leigh Murray</b> Email: lmurray@primarisreit.com	Cataraqui Centre (Kingston)  Stone Road Mall (Guelph)
<b>AND TO:</b>	<b>TANURB (FESTIVAL MARKETPLACE) INC.</b> 10 King Street East, Suite 800 Toronto, ON M5C 1C3  <b>Alexia Bourelia</b> Email: alexia@tanurb.com  <b>Melanie Yorke</b> Email: melanie@tanurb.com	Festival Marketplace (Startford)
<b>AND TO:</b>	<b>PLACE D'ORLEANS HOLDINGS INC.</b> <b>c/o PRIMARIS MANAGEMENT INC.</b> 1 Adelaide Street East, Suite 900 Toronto, ON M5C 2V9  <b>Gino Ranno</b> Email: granno@primarisreit.com	Place d'Orleans (Orleans)

kmahar@millerthomson.com; sdecaria@millerthomson.com;  
hans.rizarri@crowesoberman.com; graeme.hamilton@CroweSoberman.com;  
lpillon@stikeman.com; ssopic@stikeman.com; kevin.ohara@fin.gov.on.ca;  
diane.winters@justice.gc.ca; Marie-Josée.Sicard@canada.ca; gpeirson@bentallkennedy.com;  
tfazari@centrecorp.com; huntleyj@davpart.com; dschott@strathallen.com;  
lmurray@primarisreit.com; alexia@tanurb.com; melanie@tanurb.com;  
granno@primarisreit.com; daniel@faanadvisors.com; naveed@faanadvisors.com;  
mcitak@grllp.com; lgalessiere@clegal.ca; dbish@torys.com; melanie@tanurb.com;  
jsugden@nadg.com

**COURIER SERVICE LIST**

<b>TO:</b>	<b>DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.</b> 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4  Secured Party
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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
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**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Returnable June 13, 2019)**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada 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, Matthew  
McBride Enterprises Corp. and  
Beckstette Enterprises Corp.

# TAB 2

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

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

Applicants

**AFFIDAVIT OF MATTHEW MCBRIDE**  
**(Sworn June 7, 2019)**

I, MATTHEW MCBRIDE, of the Town of Mulmur, of the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and a director of the Applicant, Green Earth Stores Ltd. (“**GESL**”). I am also the President and sole director of Matthew McBride Holdings Inc. (“**McBride Holdings**”), a 50% partner of the Applicant, Green Earth Environmental Products (“**GEEP**”, and together with GESL, the “**Applicants**”). I am also the President and sole director of the secured creditor, Matthew McBride Enterprises Corp. (“**McBride Enterprises**”). As a result of my roles with the Applicants and McBride Enterprises, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and belief obtained from others, I have stated the source of that information and belief and believe such information to be true.

2. This Affidavit is sworn in support of a Motion brought jointly by the Applicants and the secured creditors, McBride Enterprises and Beckstette Enterprises Corp. (“**Beckstette Enterprises**” and together with McBride Enterprises, the “**Secured Creditors**”), seeking:

(a) an Order (the “**Ancillary Order**”):

(i) approving the fees of Crowe Soberman Inc., in its capacity as proposal trustee of the Applicants (in such capacity, the “**Proposal Trustee**”), and the Proposal Trustee’s legal counsel Stikeman Elliot LLP (“**Stikeman**”);



- (ii) approving the Third Report of the Proposal Trustee to be filed (the “**Third Report**”) and its conduct set out therein; and
  - (iii) discharging FAAN Advisors Group Inc. (“**FAAN**”), in its capacity as Chief Restructuring Advisor (the “**Chief Restructuring Advisor**”) of the Applicants; and
- (b) an Order (the “**Receiver Appointment and Distribution Order**”), among other things:
- (i) appointing Crowe Soberman Inc., as receiver (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), without security, of all of the assets, undertakings and properties of each of GESL and GEEP, acquired for or used in relation to the businesses carried on by the Applicants effective on June 18, 2019;
  - (ii) authorizing and directing the Receiver to distribute the monies held by the Receiver on behalf of GEEP after the date of the deemed bankruptcy of GEEP, net of any monies the Receiver determines are required for the administration of the receivership of GEEP, in order of priority as follows:
    - (A) first to pay any amounts owing to the beneficiaries under the Administration Charge (as defined in the Administration Order dated March 7, 2019 (the “**Administration Order**”));
    - (B) second to pay any amounts owing to the beneficiaries of the KERA Charge (as defined in the Administration Order”);
    - (C) third to pay any amounts owing by GEEP for source deductions, which are subject to the super priority deemed trust, if any;
    - (D) fourth to repay an amount to the Secured Creditors in respect of the secured indebtedness assigned by Royal Bank of Canada (“**RBC**”)

to the Secured Creditors (the “**Assigned Indebtedness**”), which when combined with the amount repaid by the Receiver from the monies held by GESL to the Secured Creditors in respect of the Assigned Indebtedness results in the Assigned Indebtedness being repaid in full; and

- (E) fifth to repay amounts to the Secured Creditors on a *pro rata* basis until \$734,798 owing by GEEP is repaid in full to McBride Enterprises and \$734,867 owing by GEEP is repaid in full to Beckstette Enterprises (collectively, the “**GEEP Enterprises Indebtedness**”);
- (iii) authorizing and directing the Receiver to distribute the monies held by the Receiver on behalf of GESL after the date of the deemed bankruptcy of GESL, net of any monies the Receiver determines are required for the administration of the receivership of GESL, in order of priority as follows:
- (A) first to pay any amounts owing to the beneficiaries of the Administration Charge;
  - (B) second to pay any amounts owing to the beneficiaries of the KERA Charge;
  - (C) third to pay any amounts owing by GESL for source deductions, which are subject to the super priority deemed trust, if any;
  - (D) fourth to repay the Assigned Indebtedness less the amount available to be paid by monies held by the Receiver from GEEP (as calculated above) results in the Assigned Indebtedness being repaid in full to the Secured Creditors; and
  - (E) fifth to repay amounts owing to the Secured Creditors on a *pro rata* basis until \$2,424,777 owing by GESL is repaid in full to McBride Enterprises and \$2,411,077 owing by GESL is repaid in

full to Beckstette Enterprises (collectively, the “**GESL Enterprises Indebtedness**”).

## **BACKGROUND**

3. The Applicants operate a retail business known as the “Green Earth” stores across Ontario (“**Green Earth**”). The Green Earth business started in 1990 with its first store opening in Windsor, Ontario. At the time, the business was focused on environmental awareness and nature, and contained product lines that promoted an environmentally friendly lifestyle.

4. GEEP is a general partnership registered in Ontario pursuant to the *Partnership Act* (Ontario), with a registered office address in Toronto, Ontario. The partnership is comprised of two partners, being Matthew McBride Holdings Inc. (“**McBride Holdings**”) and Beckstette Holdings Inc. (“**Beckstette Holdings**”). GEEP operates the Green Earth retail business across Ontario.

5. GESL is a private company incorporated pursuant to the *Business Corporations Act* (Ontario), with a registered business address in Toronto, Ontario. GESL purchases and owns the inventory sold in the Green Earth stores (the “**Inventory**”), operates an e-commerce website for online sales of the Inventory and owns real property that houses its warehouse and distribution centre, which is located at 19-23 Buchanan Court, London, Ontario N5Z 4P9 (the “**Real Property**”).

6. In the early to mid-1990s, the retail climate changed and environmentally friendly products became commonly sold in supermarkets. As a result, Green Earth’s business concept evolved and the product lines shifted to aesthetic merchandise, such as relaxation products and home décor.

7. The business continued expanding throughout the 1990s and 2000s, with the opening of additional stores across Ontario. As at the date of commencing the Proposal Proceedings, there were 29 Green Earth stores located in shopping malls across Ontario that continue to sell relaxation and home décor product lines, among other things.

8. The Applicants' business had been experiencing declining financial and retail performance over the year prior to commencing these Proposal Proceedings due to unfavourable retail market trends, such as a change in consumer preferences away from the Green Earth product line and decreased foot traffic in the retail stores due to a rising preference for online shopping.

9. As a result of their deteriorating financial condition, the Applicants retained Crowe Soberman Inc. as its financial advisor on January 15, 2019.

10. Despite the Applicants' efforts to revitalize the business and overcome the financial decline, the Applicants determined that the best way to maximize recoveries for their stakeholders was through a court supervised and orderly liquidation process and wind-down of their retail operations.

11. As a result, on March 4, 2019, each of the Applicants commenced proposal proceedings (the "**Proposal Proceedings**") under the BIA by each filing a Notice of Intention to File a Proposal ("**NOI**"), which appointed Crowe Soberman Inc. as Proposal Trustee in respect of each of the Applicants.

12. On March 4, 2019, I swore an affidavit (the "**March 4<sup>th</sup> Affidavit**") in support of the Applicants' motion returnable March 7, 2019 seeking an Administration Order and a Liquidation Process Order (as both terms are defined below).

13. Further background information on the Applicants and the circumstances leading to the commencement of the Proposal Proceedings can be found in my March 4<sup>th</sup> Affidavit, a copy of which, without exhibits, is attached hereto as **Exhibit "A"**.

14. On April 18, 2019, I swore a second affidavit in support of the Applicants motion (the "**April 18<sup>th</sup> Affidavit**") returnable April 29, 2019, seeking an Order extending the time for each of the Applicants to file a proposal (the "**Proposal Period**") for 45 days to June 17, 2019, to allow the Liquidation Sale (as defined below) to be concluded so that the Applicants could determine whether they would be in a position to put forward a proposal to their creditors.

15. Further information in respect of the status of the Proposal Proceedings as at April 18, 2019, including the status of the Liquidation Sale, can be found in my April 18<sup>th</sup> Affidavit, a copy of which, without exhibits, is attached hereto and marked as **Exhibit “B”**.

16. All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in my March 4<sup>th</sup> Affidavit and April 18<sup>th</sup> Affidavit.

#### **ADMINISTRATION ORDER AND LIQUIDATION PROCESS ORDER**

17. As further described in my April 18<sup>th</sup> Affidavit, on March 7, 2019, Justice Penny granted an Order (the “**Administration Order**”), among other things:

- (a) extending the Proposal Period to May 3, 2019;
- (b) approving the administrative consolidation of the Applicants’ Proposal Proceedings;
- (c) approving the engagement of FAAN as Chief Restructuring Advisor of the Applicants;
- (d) directing that the Chief Restructuring Advisor be added as a required signing officer on the Applicants’ bank accounts for the pendency of the Proposal Proceedings and required to authorize all expenditures of \$5,000 or greater;
- (e) approving certain court-ordered charges, including the Administration Charge and the D&O Charge (as defined in the Administration Order); and
- (f) approving the key employment retention agreement (the “**KERA**”), a copy of which was attached as a confidential appendix to the First Report of the Proposal Trustee, and approving the KERA Charge.

A copy of the Administration Order is attached hereto as **Exhibit “C”**.

18. In addition, on March 7, 2019, Justice Penny granted an Order (the “**Liquidation Process Order**”), among other things:

- (a) approving the consulting agreement between the Applicants and Shawn Parkin as the Consultant (the “**Consultant**”) dated February 25, 2019 (the “**Consulting Agreement**”);
- (b) approving the Sale Guidelines attached as Schedule “A” to the Liquidation Process Order for the conduct of the Liquidation Sale;
- (c) authorizing the Applicants, with the assistance of the Chief Restructuring Advisor and the Consultant, to conduct the Liquidations Sales at the retail locations in accordance with the Liquidation Process Order and the Sale Guidelines; and
- (d) authorizing that, until June 30, 2019 or such earlier date as a lease is disclaimed in accordance with the BIA or such later date as may be agreed to by the Consultant, the Applicants and the applicable landlord, the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Applicants and the Applicants have granted the right of access to the applicable Closing Store to the Consultant.

A copy of the Liquidation Process Order is attached hereto as **Exhibit “D”**.

#### **STATUS UPDATE IN RESPECT OF PROPOSAL PROCEEDINGS AND LIQUIDATION SALE**

19. As set out above, these Proposal Proceedings were initiated on March 4, 2019. The Proposal Period was initially extended to May 3, 2019 pursuant to the Administration Order. On April 29, 2019, Justice Hainey granted an Order (the “**Proposal Period Extension Order**”) extending the Proposal Period pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) by 45 days to June 17, 2019. A copy of the Proposal Period Extension Order is attached hereto as **Exhibit “E”**.

20. The extension of the Proposal Period to June 17, 2019 was obtained to allow the Applicants, the Consultant, and the Chief Restructuring Advisor the time needed to complete the Liquidation Sales and to consider next steps in these Proposal Proceedings with the Proposal Trustee and their advisors having the benefit of the results from the completed Liquidation Sales.

**i. Liquidation Sale**

21. As set out above, at the commencement of the Proposal Proceedings, the Applicants operated 29 retail locations across Ontario. Although GEEP operated all of the retail locations, 7 of the 29 leases are in the name of GESL and the remainder are in the name of GEEP.

22. The Liquidation Sale commenced on March 9, 2019. The Liquidation Sale concluded on May 29, 2019. For the period commencing on the first day of the Liquidation Sale and ending on the last day of Liquidation Sale, the Liquidation Sale generated \$5,473,503.91. This amount exceeds projections that were included in the cash flow forecasts filed with the Court during these Proposal Proceedings.

23. As set out in my March 4<sup>th</sup> Affidavit, GESL owned the Inventory that was sold through the retail store locations operated by GEEP. Title to the Inventory transferred from GESL to GEEP at the register when the sale occurs to the customer. Pursuant to the Inventory Agreement, GESL renders an account to GEEP for the Inventory sold on a monthly basis based upon a reasonable estimate of the costs of the goods sold, which since October 1, 2013 has been estimated at 35.5% of the sale price of the Inventory in the stores, plus a 15% administration fee. This invoicing arrangement is a long standing practice of the business.

24. During the Proposal Proceedings, GEEP continued to pay for Inventory based on the above noted fee structure. As a result, during the Proposal Proceedings, GEEP paid GESL \$2,764,119.48 for the Inventory.

25. The Applicants have placed excess monies resulting from the Liquidation Sale in GICs so that the money would earn interest during the Proposal Proceedings.

26. In accordance with the Consulting Agreement, the Consultant was given notice on May 15, 2019 terminated effective on May 30, 2019.

**ii. Lease Disclaimers and Store Closures**

27. The Applicants issued lease disclaimers in respect of all 29 retail store locations in accordance with BIA by delivering the requisite Form 45 *Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant* to the relevant landlord.

28. In accordance with the Liquidation Process Order, upon issuing a notice of lease disclaimer, the Applicants paid rent to the effective date of the lease disclaimer. No counterparty to a disclaimed lease disputed the Applicants' disclaimer or termination of the relevant agreement.

29. The period for each of the lease disclaimers has expired and the leased premises have been returned to the relevant landlord in broom swept condition in accordance with the Liquidation Order. The last store was returned to the landlord on Thursday, May 30, 2019.

### **iii. Employee Terminations**

30. As at the date of the commencement of the Proposal Proceedings, GEEP employed approximately 202 individuals across its retail store locations, 179 on a part-time basis and GESL employed 13 full-time head office and warehouse employees. All employees are non-unionized. The employees' wages were current at the time of the filing of the Proposal Proceedings.

31. As described in my April 18<sup>th</sup> Affidavit, the Applicants filed a Notice of Termination with the Ministry of Labour on March 28, 2019 and issued individual letters of termination to the employees of GEEP and GESL. The Notice of Termination was posted at each of the 29 retail locations and the head office/warehouse distribution centre.

32. During the Proposal Proceedings, the Applicants have made its payroll payments to employees in the ordinary course. As employees have been terminated or quit, all amounts owing to such employees for wages, vacation pay and any stay bonus or KERA, if applicable, have been paid to the employees on their last payroll.

33. A number of employees were terminated in the last week of May when the Applicants closed the final stores and concluded the Liquidation sale. Those employees last payroll will be paid on June 14, 2019, which will include all amounts owing to them for wages, vacation pay and any stay bonus or KERA, if applicable.

34. As at the date of this affidavit, all of GEEP's employees have been terminated except for me and all of GESL's employees have been terminated, with the exception of approximately 5



employees that are assisting with accounting, administration and clean up at the Applicants' head office. It is expected that all remaining employees will be terminated by the end of the Proposal Period, subject to the Receiver determining that certain employees will be needed to assist the Receiver during the receivership. The Applicants intend to fund the remaining employees' final payroll prior to the end of the Proposal Period, which amount will include all outstanding wages, vacation pay and any stay bonus or KERA, if applicable.

**iv. KERA**

35. Certain employees of GESL and GEEP are the beneficiaries of the KERA (the "**KERA Beneficiaries**"). Further details in respect of the KERA, including eligibility for the KERA Beneficiaries to receive payments thereunder, are set out at paragraphs 33 to 35 of my April 18<sup>th</sup> Affidavit.

36. Following commencement of the Proposal Proceedings, one employee that was offered a KERA has resigned and therefore is not be eligible for the KERA.

37. In respect of KERA Beneficiaries that have been terminated, the amount payable to each of them under the KERA was paid on their payroll. To the extent that employees are entitled to a KERA and have not been paid prior to the appointment of the Receiver, the Receivership Order provides that the Receiver shall pay the amounts secured by the KERA Charge.

38. In respect of KERA Beneficiaries that have not yet been terminated or were terminated on the last store closure date on May 30, 2019, as noted above, the amount payable to each of them under the KERA will be paid on their last pay cheque.

39. To ensure that all KERA Beneficiaries are paid their KERA, I understand that the proposed Receiver Appointment and Distribution Order authorizes and directs the Receiver make distributions to the outstanding KERA Beneficiaries.

**v. Stay Bonus and Incentive Program**

40. Further details with respect to the stay bonus program for certain store employees is set out in my March 4<sup>th</sup> Affidavit and April 18<sup>th</sup> Affidavit.

41. As set out above, in respect of store level employees that were eligible to participate in the stay bonus program, the amounts payable to each of them thereunder was paid on their last payroll. For those employees that were eligible to participate in the stay bonus program and were terminated in the last week of May, they will receive their stay bonus on their last payroll on June 14, 2019.

**vi. Other Post-Filing Obligations**

42. As set out above, the Applicants have paid all wages, vacation pay and source deductions throughout the Proposal Proceedings. The Applicants are not aware of any source deductions owing to Canada Revenue Agency I understand that once the Receiver is appointed, it will request a source deductions audit from Canada Revenue Agency to confirm that there are no amounts owing in respect of source deductions and that the Receiver will reserve amounts that are in their view sufficient to address any priority claims.

43. The Applicants are not aware of any other claims that would rank in priority to the Secured Creditors after the date of bankruptcy. However, Canada Revenue Agency is being served with the motion.

44. The Applicants have been filing their HST returns and paying the amount owing for HST every month. The Applicants intend to pay the amount owing for HST for the month of May prior to the end of the Proposal Period. The Liquidation Sale ended at the end of May and the Applicants did not operate in June or collect any HST in the month June. The Applicants are not aware of any HST that is owing. However, I also understand from counsel, the priority of HST reverses in a bankruptcy.

45. The Applicants have been paying for all post filing services in the ordinary course of business and it is expected that all post filing amounts will be paid prior to the expiry of the Proposal Period.

**REAL PROPERTY MARKETING PROCESS**

46. The status of the Real Property owned by GESL has remained the same since my April 18<sup>th</sup> Affidavit. CBRE is currently the listing and marketing agent, and the Real Property is listed for sale at \$6,500,000.

47. There has been interest in the Real Property, however, to date no offers or letters of intent have been received in respect of the Real Property. One of the main reasons that the Applicants and the Secured Creditors are seeking the appointment of the Receiver is to allow the Receiver to continue to market and sell the Real Property.

#### **RECEIVER APPOINTMENT AND DISTRIBUTION ORDER**

48. The Applicants have worked closely with their counsel, the Chief Restructuring Advisor and the Proposal Trustee to consider whether there would be sufficient funds available to allow either or both of the Applicants to put forward a proposal to their unsecured creditors prior to the expiry of the Proposal Period. After reviewing the amount of the Secured Indebtedness and the expected amount available for distribution, the Applicants have determined that neither GESL nor GEEP have sufficient monies to fund a proposal to unsecured creditors.

49. The Applicants are therefore not going to file a proposal or seek an extension of the Proposal Period. While the proposal Proceedings are coming to an end. The creditors will have their respective rights and priorities in the bankruptcy and as described below, the Receiver will be able to continue to market and sell the Real Property of GESL and distribute the funds of GESL and GEEP in order of priority to the creditors.

50. I am advised by the Applicants' counsel that the Applicants will be deemed to have made an assignment in bankruptcy effective the date following the expiry of the Proposal Period since a proposal to the unsecured creditors will not be made.

51. The Applicants are of the view that the Proposal Proceedings to effect the Liquidation Sale was still the best option for the following reasons:

- (a) the Applicants, who were long term owners of the business, remained in possession of the business and were able to conduct and oversee the Liquidation Sale with the assistance of the Consultant and the Chief Restructuring Advisor;
- (b) the employees remained employed through the Liquidation Sale and were dealt with in a fair and orderly manner;

- (c) the landlords were all given proper notices of disclaimer and the retail locations were turned over to the landlords in a broom swept condition;
- (d) the highest recover was achieved because the Proposal Proceedings had the least amount of stigma associated with it as compared to other insolvency proceedings; and
- (e) Proposal Proceedings were the most cost effective court proceeding to liquidate the business in part because the Applicants remained in possession.

### **Amount of Secured Indebtedness**

52. As set out in detail in my March 4<sup>th</sup> Affidavit, McBride Enterprises and Beckstette Enterprises are first-ranking secured creditors of both GESL and GEEP. Pursuant to an Assignment Agreement, McBride Enterprises and Beckstette Enterprises took an assignment of the Assigned Indebtedness from RBC in the amount of \$3,254,740.85 as at February 26, 2019 and the security granted by GESL and GEEP in favour of RBC to secure such indebtedness (the “**RBC Security**”). The Assigned Indebtedness bears interest at RBC’s prime rate plus 5 percent per annum.

53. The RBC Security provides that upon default, the secured creditor may appoint a receiver in section 13 of the general security agreements executed by GEEP and GESL in favour of RBC. A copy of the general security agreements are attached hereto as **Exhibit “F”**.

54. As reported in the First Report of the Proposal Trustee, the Proposal Trustee has received an opinion from its independent legal counsel, Stikeman, confirming that subject to typical qualifications and assumptions, the RBC Security is valid and enforceable in the province of Ontario.

55. McBride Enterprises and Beckstette Enterprises are also second-ranking secured creditors of both GESL and GEEP. As further described in my March 4<sup>th</sup> Affidavit, McBride Enterprises and Beckstette Enterprises would make advances from time to time to both GEEP and GESL in order to finance the business operations. To secure these advances, in June 2009, GEEP and

GESL each granted general security agreements to each of the Secured Creditors (the “Enterprise Security”).

56. As at the date of filing this Affidavit, the GEEP Enterprise Indebtedness is comprised of \$734,798.00 owing to McBride Enterprises and \$734,866.50 owing to Beckstette Enterprises.

57. As of the date of swearing this Affidavit, the GESL Enterprise Indebtedness is comprised of \$2,424,777.02 owing to McBride Enterprises and \$2,411,076.52 owing to Beckstette Enterprises.

58. As reported in the First Report of the Proposal Trustee, the Proposal Trustee has received an opinion from its independent legal counsel, Stikeman, confirming that subject to typical qualifications and assumptions, the Enterprise Security is valid and enforceable in the province of Ontario.

#### **Estimated Amount Available for Distribution**

59. Based on current estimates, it is expected that there will be between approximately \$1,600,000 and \$1,800,000 available to be distributed in GEEP.

60. Based on current estimates, it is expected that there will be between approximately \$3,600,000 and \$3,750,000 available to be distributed in GESL.

61. These amounts are still being finalized and I understand the Proposal Trustee will provide an update in its next Report.

62. As set out above, the Assigned Indebtedness is an obligation of both GEEP and GESL. The proposed distribution order contemplates GEEP repaying a portion of the Assigned Indebtedness (approximately 10 percent), which will be calculated to allow GEEP to repay the full amount of the GEEP Enterprise Indebtedness which is \$1,469,665. The Secured Creditors support allocating the Assigned Indebtedness in this manner.

63. The proposed distribution order contemplates that GESL repaying the remainder of the Assigned Indebtedness and then making distributions on account of the GESL Enterprise Indebtedness. Currently, it is estimated that there will be a shortfall to the Secured Creditors in

respect of the GESL Enterprise Indebtedness of approximately \$4,200,000 prior to the sale of the Real Property.

64. In determining the allocation of the Assigned Indebtedness, I understand from the Applicants' counsel, that the rights of subrogation and marshalling were considered.

65. I understand from the Applicants' counsel that in the event that the Real Property sale results in net proceeds after the costs of the sale and receivership are in excess of the amount that will remain unpaid to the Secured Creditors in respect of the GESL Enterprise Indebtedness then money will become available for unsecured creditors of GESL (and potentially for unsecured creditors of GEEP to the extent that rights of subrogation arise). I understand from the Proposal Trustee/proposed Receiver, that it would consider this issue if and when the result arises.

#### **Appointment of Receiver and Distributions**

66. In light of the foregoing, the Applicants and the Secured Creditors seek the appointment of the Receiver pursuant to the Appointment and Distribution Order.

67. It is intended that upon its appointment, the Receiver will take possession of the Applicants' property, including the Real Property and bank accounts, and will attend to marketing and selling the Real Property. I understand that the Receiver intends to continue to have CBRE market the Real Property under the current listing and marketing agreement.

68. As noted above, there are approximately 5 head office staff employees that currently remain employed by GESL and that are intended to continue working until the Applicants' deemed assignment in bankruptcy. In the event that there are administrative matters that remain outstanding as at this time, the Receiver may elect to retain these employees to continue work through the receivership until all administrative/clean up matters are completed.

69. It is intended that after the expiry of the Proposal Period, that the Receiver will make the distributions in accordance with the proposed order of distributions set out in the Receiver Appointment and Distribution Order.

**TERMINATION OF CONSULTANT AND DISCHARGE OF CHIEF  
RESTRUCTURING ADVISOR**

70. Given that the Liquidation Sale has concluded, the Applicants are seeking an Order discharging the Chief Restructuring Advisor in these Proposal Proceedings.

71. Currently, the Chief Restructuring Advisor is a signatory to the GESL and GEEP bank accounts and is required to authorize any transaction over \$5,000. It is intended that the Receiver will take possession of the bank accounts upon its appointment.

**CONCLUSION**

72. I swear this affidavit in support of the Receiver Appointment and Distribution Order and the Ancillary Order sought in these Proposal Proceedings and for no improper purpose.

SWORNBEFORE ME at the City of Toronto, in  
the Province of Ontario this 7<sup>th</sup> day of June, 2019.

  
A Commissioner for taking Affidavits



**MATTHEW MCBRIDE**

**This is Exhibit "A" referred to in the affidavit  
of MATTHEW MCBRIDE, SWORN BEFORE ME  
this 7th day of June 2019**

A handwritten signature in blue ink, appearing to read "K. Mahler", written over a horizontal line.

**A COMMISSIONER FOR TAKING AFFIDAVITS**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Estate/Court File No.:

**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.:

**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

**AFFIDAVIT OF MATTHEW MCBRIDE  
(Sworn March 4, 2019)**

I, MATTHEW MCBRIDE, of the Town of Mulmur, of the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and a director of the Applicant, Green Earth Stores Ltd. (“**GESL**”). I am also the sole director and President of Matthew McBride Holdings Inc. (“**McBride Holdings**”), a 50% partner of the Applicant, Green Earth Environmental Products (“**GEEP**”, and together with GESL, the “**Applicants**”). As a result of roles with the Applicants I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and belief obtained from others, I have stated the source of that information and belief and believe such information to be true.

2. On March 4, 2019, each of the Applicants commenced proposal proceedings (the “**Proposal Proceedings**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended (the “**BIA**”) by each filing a Notice of Intention to File a Proposal (“**NOI**”). Crowe

Soberman Inc. was appointed Proposal Trustee of each of the Applicants (in such capacity, the “**Proposal Trustee**”).

3. This Affidavit is sworn in support of a Motion sought by the Applicants seeking:
- (a) an Order (the “**Administration Order**”), substantially in the form located at Tab 4 of the Applicants’ Motion Record:
    - (i) approving the administrative consolidation of the Applicants’ Proposal Proceedings and authorizing the Proposal Trustee to administer the Proposal Proceedings as if the Proposal Proceedings were a single proceeding for the purposes of carrying out its duties and responsibilities as a proposal trustee under the BIA;
    - (ii) approving the appointment of FAAN Advisory Group Inc. (“**FAAN**”) as Chief Restructuring Advisors (in such capacity, the “**CRA**”) to the Applicants in these Proposal Proceedings, and approving the Engagement Letter (the “**CRA Engagement Letter**”) between FAAN and the Applicants dated February 25, 2019;
    - (iii) authorizing the Applicants to continue using the Cash Management System (as hereinafter defined) currently in place;
    - (iv) approving the Administration Charge (as hereinafter defined) in the amount of \$400,000 against the property, assets and undertakings (the “**Property**”);
    - (v) approving the D&O Charge (as hereinafter defined) in the amount of \$500,000 against the Property;
    - (vi) approving a key employee retention terms and agreement (the “**KERA**”), and approving the KERA Charge (as hereinafter defined) in the amount of \$100,000 against the Property;

- (vii) extending the time for filing a proposal (the “**Proposal Period**”) pursuant to section 50.4(9) of the BIA for 30 days to May 3, 2019; and
  - (viii) sealing the unredacted CRA Engagement Letter, the unredacted Consulting Agreement (as defined below) each filed separately with the Court and the Comparative Analysis (as defined in the First Report of the Proposal Trustee (the “**First Report**”)) and the KERA filed as confidential appendices “1” and “2” to the First Report pending further order of the Court;;
- (b) an Order (the “**Liquidation Process Order**”) substantially in the form located at Tab 5 of the Applicants’ Motion Record:
- (i) approving the consulting agreement (the “**Consulting Agreement**”) between the Applicants and Shawn Parkin (the “**Consultant**”) dated February 25, 2019 and the transactions contemplated thereunder;
  - (ii) approving the sale guidelines (the “**Sale Guidelines**”) in the form attached as Schedule A to the Liquidation Process Order;
  - (iii) authorizing the Applicants, with the assistance of the CRA (as hereinafter defined) and the Consultant, to conduct a sale in accordance with the Liquidation Process Order, the Sale Guidelines and the Consulting Agreement; and
  - (iv) authorizing and directing the Applicants to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the transactions contemplated therein; and
- (c) such further and other relief as the Court may deem just.

## OVERVIEW OF THE APPLICANTS OPERATIONS AND ASSETS

### Introduction to the Applicants' Business

4. The Applicants operate a retail business known as the "Green Earth" stores across Ontario ("**Green Earth**"). The Green Earth business started in 1990 with its first store opening in Windsor, Ontario. At the time, the business was focused on environmental awareness and nature, and contained product lines that promoted an environmentally friendly lifestyle.

5. In the early to mid-1990s, the retail climate changed and environmentally friendly products became commonly sold in supermarkets. As a result, Green Earth's business concept evolved and the product lines shifted to aesthetic merchandise, such as relaxation products and home décor.

6. The business continued expanding throughout the 1990s and 2000s, with the opening of additional stores across Ontario. As at the time of swearing this affidavit, there are 29 Green Earth stores located in shopping malls across Ontario that continue to sell the relaxation and home décor product lines, among other things. Attached hereto and marked as **Exhibit "A"** is a listing of the Green Earth store locations.

7. As further described below, the Applicants' business has experienced declining financial and retail performance over the last year. Despite their own efforts to revitalize the business and overcome the financial decline, the Applicants believe that the best way to maximize recoveries for their stakeholders is through a court supervised and orderly liquidation process and wind-down of their retail operations.

### Corporate Structure

8. GEEP is a general partnership registered in Ontario pursuant to the *Partnership Act* (Ontario). The partnership is comprised of two partners, being McBride Holdings and Beckstette Holdings Inc. ("**Beckstette Holdings**"). GEEP operates the Green Earth retail business across Ontario. GEEP's registered business address is 40 King Street West, Suite 5800, Toronto Ontario, M5H 3S1.

9. GESL is a private company incorporated pursuant to the *Business Corporations Act* (Ontario). GESL owns the inventory sold in the Green Earth stores (the "**Inventory**"), operates

the online sales of the Inventory and owns real property that houses its warehouse and distribution centre, which is located at 19-23 Buchanan Court, London, Ontario N5Z 4P9 (the “**Real Property**”). Its registered business address is 40 King Street West, Suite 5800, Toronto Ontario, M5H 3S1.

10. McBride Holdings and Beckstette Holdings are non-operating holding companies. Each holding company hold a 50% partnership interest in GEEP and 50% of the shares of GESL.

11. McBride Holdings is the 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, “**Enterprises**”).

12. A chart showing the corporate structure is attached hereto and marked as **Exhibit “B”**.

### **Employees**

13. Currently, GEEP employs approximately 202 individuals across its retail store locations, of which 179 are employed on a part-time basis and all of whom are non-unionized.

14. GESL employs 13 full-time head office and warehouse employees all of whom are non-unionized. Of these employees, approximately 3 make up senior management.

15. The employees of GEEP and GESL are paid on a biweekly basis one week in arrears. The last payroll was paid on February 22, 2019 for the pay period ending February 15, 2019. The next payroll is due to be paid on March 8, 2019.

16. The Applicants do not sponsor any pension plans for their employees.

### **Office and Warehouse/Distribution Centre**

17. As set out above, in addition to the 29 retail store locations, the Real Property owned by GESL houses a warehouse and distribution centre where the Inventory is stored, picked and shipped to the stores. The Applicants’ managerial and administrative staff also work out of this location.

18. The Real Property was purchased by GESL in 2016 for \$3,425,000. Given the financial difficulties facing the Applicants' business, in December 2018, GESL entered into a Listing Agreement with CBRE Limited, as Brokerage (collectively, the "**Listing Agreement**") to market and sell the Real Property at a listing price of \$6,500,000. To date, GESL has received no offers on the Real Property. The Applicants intend to work with the CRA to determine the best approach to maximize value of this asset.

### **Inventory Supply Chain**

19. As noted above, GESL owns the Inventory that is sold through the retail store locations operated by GEEP. Title to the inventory transfers from GESL to GEEP at the register when the sale occurs to the customer. GESL purchases the Inventory from third party suppliers. Given the financial difficulties that GESL has been facing, GESL has not purchased Inventory since the end of October 2018.

20. Pursuant to an Agreement between GESL and GEEP dated October 1, 2004 (the "**Inventory Agreement**"), GESL invoiced GEEP monthly for the payment of the Inventory after the Inventory is sold in the retail stores by GEEP. In particular, GESL renders an account to GEEP for the Inventory sold on a monthly basis based upon a reasonable estimate of the costs of the goods sold, which since October 1, 2013 has been estimated at 35.5% of the sale price of the Inventory in the stores, plus a 15% administration fee. This invoicing arrangement is a long standing practice of the business. Historically, the amount owing by GEEP to GESL for the purchased Inventory invoiced was added to the intercompany accounts on a monthly basis. During the course of the year, GEEP would advance funds to GESL as and when needed to operate the GESL business and these advances would also be recorded against the intercompany accounts and then a reconciliation would occur at year end.

21. As discussed below, the Applicants have engaged the Consultant and the CRA to assist them to liquidate the Inventory and wind down their retail store operations as part of these Proposal Proceedings.

22. As a result, during these Proposal Proceedings, GEEP intends to pay GESL for the Inventory based on the current fee structure (i.e. 35.5% of the sale price plus 15% administration fee) and these payments are forecasted to be made weekly in arrears to ensure that the proceeds

from the sale of the Inventory are accounted for between GESL and GEEP. Consistent with such treatment, GEEP paid GESL \$791,628.26 prior to the NOI filing, which represents payment for the Inventory sold from GESL to GEEP for the month of February 2019.

### **Cash Management System**

23. In the ordinary course of the business, the Applicants use a centralized cash management system (the “**Cash Management System**”) to, among other things, collect funds and pay expenses associated with their operations.

24. Given, GEEP’s retail business it maintains bank accounts in Ontario with Royal Bank of Canada (“**RBC**”), Scotiabank, Bank of Montreal, TD Canada Trust, CIBC and Kawartha Credit Union. All of GEEP’s accounts are Canadian dollar accounts except one U.S. dollar account. The accounts at all banks other than RBC are only deposit accounts to facilitate the deposit of cash from the various retail locations.

25. GEEP aggregates its cash deposits into its RBC operating account. Historically this was done on a monthly basis. Receipts from credit card issuers go directly into GEEP’s RBC operating account.

26. GESL maintains bank accounts in Ontario with the RBC and Your Neighbourhood Credit Union. All of GESL’s accounts are Canadian dollar accounts except one US. dollar account at RBC.

27. The Applicants will continue to operate the existing cash management systems with the oversight of the CRA and the Proposal Trustee.

28. The CRA will be added to a signatory to the GESL and GEEP bank accounts and be required to authorize any transaction over \$5,000.

### **LIABILITIES**

#### **Indebtedness owing to RBC assigned to Enterprises**

29. GESL and GEEP have banked with RBC for over 20 years and continue to maintain their operating accounts at RBC.

30. Given the financial difficulties facing the Applicants, the Applicants made concerted efforts to reduce the amounts owing to RBC over the last several months and cancelled its revolving demand facility with RBC.

31. As at February 26, 2019, GESL was indebted to RBC in the amount of \$3,254,740.85. GESL granted certain security to RBC 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 security granted by GESL to RBC is attached hereto and marked as **Exhibit "C"**.

32. GEEP guaranteed the amounts owing by GESL to RBC by way of two guarantees and granted a general security agreement in favour of RBC to secure the amounts guaranteed to the RBC. Copies of the guarantees and the security granted by GEEP to RBC is attached hereto and marked as **Exhibit "D"**.

33. Prior to commencing these Proposal Proceedings, on February 26, 2019, RBC, as Assignor, and McBride Enterprises and Beckstette Enterprises, as Assignees, entered into a Without Recourse Assignment of Debt and Security (the "**Assignment Agreement**"), a copy of which is attached hereto and marked as **Exhibit "E"**.

34. Pursuant to the Assignment Agreement, McBride Enterprises and Beckstette Enterprises took an assignment of indebtedness owing by GESL to RBC in the amount of \$3,254,740.85 as at February 26, 2019 and the security granted by GESL and GEEP in favour of RBC to secure such indebtedness, including among other things, the security previously attached to this Affidavit as Exhibits "C" and "D".

#### **Indebtedness owing to Enterprises**

35. In order to finance the business operations in addition to facilities the Applicants had with RBC, Enterprises would make advances from time to time to GEEP and GESL. To secure the advances made by Enterprises to GEEP and GESL, in June 2009, GEEP and GESL each granted a general security agreement to each of McBride Enterprises and Beckstette Enterprises.

#### *GEEP Security in Favour of Enterprises*



36. On June 19, 2009, GEEP granted a general security agreement to in favour of McBride Enterprises to secure advances made by McBride Enterprises to GEEP, a copy of which is attached hereto and marked as **Exhibit "F"**.

37. On the same date, GEEP granted a general security agreement in favour of Beckstette Enterprises to secure advances made by Beckstette Enterprises to GEEP, a copy of which is attached hereto and marked as **Exhibit "G"**.

*GESL Security in Favour of Enterprises*

38. On June 19, 2009, GESL granted a general security agreement to in favour of McBride Enterprises to secure advances made by McBride Enterprises to GESL, a copy of which is attached hereto and marked as **Exhibit "H"**.

39. On the same date, GESL granted a general security agreement in favour of Beckstette Enterprises to secure advances made by Beckstette Enterprises to GESL, a copy of which is attached hereto and marked as **Exhibit "I"**.

*Demands for Payment*

40. On December 11, 2018, Enterprises collectively issued a demand to GEEP for a total of \$4,721,772.00 being comprised of \$2,351,948.00 owing to McBride Enterprises and \$2,351,917.00 owing to Beckstette Enterprises and \$17,907.00 owing from McBride Holdings to McBride Enterprises (the "**GEEP Demand**"). A copy of the GEEP Demand is attached hereto and marked as **Exhibit "J"**.

41. Since the date of the GEEP Demand, GEEP has repaid certain amounts to Enterprises. As of the date of swearing this Affidavit, GEEP owes McBride Enterprises \$734,798.00 and GEEP owes Beckstette Enterprises \$734,866.50.

42. On December 21, 2018, Enterprises collectively issued a demand to GESL for a total of \$4,890,126.00 being comprised of \$2,450,248.00 owing to McBride Enterprises and \$2,439,878.00 owing to Beckstette Enterprises (the "**GESL Demand**"). A copy of the GEEP Demand is attached hereto and marked as **Exhibit "K"**.

43. Since the date of the GESL Demand, GESL has repaid certain amounts to Enterprises. As of the date of swearing this Affidavit, GESL owes McBride Enterprises \$2,424,777.02 and GESL owes Beckstette Enterprises \$2,411,076.52.

#### **PPSA Registrations**

44. A certified search of the Personal Property Security Registration System (the "PPSRS") in Ontario as of February 26, 2019 for GESL is attached hereto as **Exhibit "L"**. In addition, to registrations to perfect the security set out above, there is one equipment lessor registered that has security over two fork lifts. The Applicants intend to pay for this equipment for as long as it is needed in these Proposal Proceedings.

45. A certified search of the PPSRS in Ontario as of February 27, 2019 for GEEP is attached hereto as **Exhibit "M"**. Other than the registrations related to the security discussed above, there are no other secured parties

#### **Employee Liabilities**

46. As noted above, as of February 28, 2019, GEEP has 202 employees and GESL has 15 employees. The Applicants payroll was last paid on February 22, 2019, which paid the employees to February 15, 2019. The Applicants are current on all required payments in respect of employee wages to their employees, as well as outstanding obligations of amounts required to be remitted to governmental authorities through source deductions or otherwise. The next payroll is to be paid on March 8, 2019. Given the critical importance of having the employees remain during the proposed liquidation to take place, the Applicants intend to make its payroll payments in the ordinary course during these Proposal Proceedings.

47. As of the pay period ending February 15, 2019, there are vacation pay accruals totalling approximately \$46,829.74 for GEEP employees and \$33,177.73 for GESL employees that would be paid in the ordinary course.

#### **GST/HST Liabilities**

48. Through their retail operations, GEEP and GESL are payors of HST. Returns are filed in the ordinary course one month in arrears of operations. The January HST returns were filed and

the obligations owing as reflected in the return totalling \$34,337.70 for GEEP and \$84,934.24 for GESL have been paid. The February HST returns are due to be filed in March.

### **Unsecured Indebtedness**

49. In addition to the liabilities described above, GESL owes approximately \$1,587,617.69 to inventory suppliers and other service providers and GEEP owes approximately \$19,464.72 to service providers.

50. In February 2019, GESL was served with three statements of claim in respect of actions commenced by certain of GESL's inventory suppliers for payment of outstanding invoices. The total amount claimed is approximately \$148,648.76 plus U.S.57,798.04 both including fees and interest claimed. I understand from the Applicants' counsel, Miller Thomson LLP ("**Miller Thomson**"), that the time period to deliver a defence/reply to each of these actions had not expired when these Proposal Proceedings were commenced.

### **FINANCIAL DIFFICULTIES**

51. Over the last year, the Applicants have experienced declining financial performance due to unfavourable retail market trends, such as a change in consumer preferences away from the Green Earth product line and decreased foot traffic in the retail stores due to a rising preference for online shopping. As a result, the Green Earth stores are over-stocked with Inventory that is not popular among consumers. The Applicants were hopeful that the holiday season would have turned the business around, however, it did not. Over the last 60 days, the Applicants have attempted to offer sales in the stores to address the negative financial situation, but these efforts have proven challenging and the business operations continue to suffer.

52. The draft financial statements for GEEP for the year ending September 30, 2018 are attached hereto and marked as **Exhibit "N"**. They indicate that GEEP operated at a net loss of \$787,229 in 2018. The financial statements also indicate that GEEP's liabilities exceeded its assets by \$978,371 in 2018.

53. The draft financial statements for GESL for the year ending September 30, 2018 are attached hereto and marked as **Exhibit "O"**. They indicate that GESL operated at a net loss of

\$2,018,418 in 2018. The financial statements also indicate that GESL's liabilities exceeded its assets by \$2,018,318 in 2018.

54. As a result of their deteriorating financial condition, the Applicants retained Crowe Soberman as its financial advisor on January 15, 2019.

55. After considering the available options, the Applicants have determined that they are not in the financial position to continue to operate the business in the ordinary course while continuing to incur losses. Accordingly, the Applicants have elected to commence these Proposal Proceedings and intend to liquidate the Inventory and close the stores through an orderly and court supervised process with the assistance of the CRA and the Consultant.

### **PROPOSAL PROCEEDINGS**

56. On March 4, 2019, each of GEEP and GESL filed an NOI under the BIA and commenced the Proposal Proceedings. Copies of the certificates of the NOIs are attached hereto as **Exhibits "P"** and **"Q"**, respectively. The NOI filings were necessary to provide stability to the Applicants and to permit the implementation of the proposed liquidation, which is further described below.

57. The NOI filing was authorized by the directors of GESL, and by both partners of GEEP being McBride Holdings and Beckstette Holdings.

### **Cash Flow Statements**

58. The CRA and the Proposal Trustee have assisted the Applicants in preparing a cash flow forecast which sets out projected cash flows for the 9 week period ending May 3, 2019 (the **"Cash Flow Period"**), a copy of which I understand from the Proposal Trustee will be attached as an appendix to the First Report. As set out in the Cash Flow Forecast, the Applicants are expected to have sufficient liquidity to operate to the end of the Cash Flow Period. The Applicants' principal use of cash during this period will consist of regular course operating expenditures, including amounts to be paid to employees and landlords.

### **Proposed Process for Proposal Proceeding**

59. The Applicants, with input from Crowe Soberman, determined that the best manner in which to maximize the recovery on existing retail operations was through the appointment of a

chief restructuring advisor along with a consultant to assist with the orderly wind down of the retail stores.

60. I believe that the realizations under an orderly and court supervised liquidation conducted by the Applicants, with the assistance of the CRA and the Consultant, are likely to exceed the recoveries under a sale of the assets in a receivership or bankruptcy scenario. At the same time, the Applicants intend to work with the CRA and the Proposal Trustee to pursue other asset recoveries including the sale of the Real Property and potentially the online platform.

### **Liquidation Sale and Selection Process**

61. The Applicants, with the assistance of Crowe Soberman, requested proposals from two third party liquidators to consider the best path forward. After there being some delay in obtaining one of the two proposals, Crowe Soberman reached out to FAAN to discuss other potential ways to liquidate and wind down the operations. FAAN in turn introduced the Applicants to the Consultant who has extensive liquidation experience. As a result, we considered three proposals in respect of an orderly liquidation of the Applicants' inventory through the conduct of a "going-out-of-business" or similar themed sale (the "**Liquidation Sale**").

62. Of the three proposals reviewed and considered, the Applicants, with the assistance of Crowe Soberman, have elected to retain FAAN as CRA and Shawn Parkin as the Consultant to assist the Applicants undertake a Liquidation Sale. This selection was made on the basis that the CRA will assist the Applicants with developing a strategy to maximize recoveries from their retail assets, among other things as described below, and the Consultant will assist with effecting the Liquidation Sale and the disposition of Inventory. I believe that the CRA and the Consultant will complement each other throughout the Proposal Proceedings and that there will not be any duplication of efforts as each have distinct and separate roles, as further described below.

63. The proposed Liquidation Sale will be conducted by the Applicants in accordance with the Sale Guidelines attached to the Liquidation Process Order, with the assistance of the CRA and the Consultant, as further described below.

### **CRA Engagement Letter**

64. On February 25, 2019, the Applicants and FAAN agreed on a final form of the CRA Engagement Letter. A redacted copy of the executed CRA Engagement Letter is attached hereto and marked as **Exhibit "R"**. I understand from the Applicants' counsel, Miller Thomson, that the unredacted copy will be filed separately with the Court and the Applicants are requesting an Order sealing same. The key terms of the CRA Engagement Letter are as follows:

- (a) the CRA will act as an independent contractor of the Applicants, and not an agent or employee of the Applicants throughout its engagement;
- (b) the CRA will perform a review and assessment of the Applicants' business, assets, liabilities and operations all with respect to the Applicants' strategic alternatives;
- (c) the CRA will assist the Applicants in the identification and implementation of sales strategies and cost reduction opportunities, including closing stores and dealing with employee matters;
- (d) the CRA will support the Applicants in reviewing and developing cash flow projections based on various potential restructuring alternatives, as well communications and public relations strategies;
- (e) the CRA will be responsible for overseeing the activities of the Consultant to assist in the closing of the stores and sale of the Inventory;
- (f) the CRA will serve as a primary contact with the Applicants' financial and legal advisors, creditors (including landlords) and other stakeholders;
- (g) the CRA will be paid by the Applicants for its services on a weekly basis with an additional fee payable at the end of the mandate.

### **Consulting Agreement**

65. On February 25, 2019, the Applicants, with input from Crowe Soberman and the CRA, agreed on a final form of Consulting Agreement, a redacted copy of which is attached hereto and

marked as **Exhibit "S"**. I understand from the Applicants' counsel, Miller Thomson, that the unredacted copy will be filed separately with the Court and the Applicants are requesting an Order sealing the same. The key terms of the Consulting Agreement are as follows:

- (a) the Consultant will act as an independent contractor of the Applicants, and not an agent or employee of the Applicants throughout its engagement
- (b) the Consultant will assist the Applicants in developing a budget for the Liquidation Sale;
- (c) the Consultant will assist the Applicants to oversee the Liquidation Sale in an effort to sell all merchandise, furniture, fixtures and equipment;
- (d) the Consultant will determine and recommend appropriate points of purchase, sale and external advertising in respect of the Liquidation Sale;
- (e) the Consultant will determine the appropriate pricing, display and discounting of Inventory, as well as recommend appropriate staffing levels for the stores;
- (f) the Consultant will assist the Applicants in developing sale incentives and employee retention plan to be utilized during the Liquidation Sale for store employees;
- (g) the Consultant will determine and recommend appropriate transfers of Inventory between retail stores and the warehouse in order to maximize sales;
- (h) the Consultant will coordinate the sales and discount reporting;
- (i) the Consultant will be paid a base fee on a weekly basis and will be entitled to a bonus at the conclusion of the Liquidation Sale; and
- (j) the Consultant will also be paid 20% of net proceeds from the sale of furniture, fixtures and equipment.

66. It is currently expected that the Liquidation Sale will take approximately 3 months. I understand that the Consultant and the CRA will have a better sense of the exact length of the Liquidation Sale after they have been able to track sales for a few weeks.

67. The rents due on March 1, 2019 have been paid and the rents will continue to be paid throughout the Liquidation Sale and disclaimer period.

#### **Administration Charge**

68. The Applicants seek an order granting a charge over the Property securing the fees and disbursements of counsel to the Applicants, the Proposal Trustee and its counsel, the CRA and the Consultant in the amount of \$400,000 (the “**Administration Charge**”). The professionals whose fees are to be secured by the Administration Charge have taken on, and will continue to take on, a critical role in these Proposal Proceedings and there will be no unwarranted duplication of roles.

69. The Applicants have worked with the Proposal Trustee and other insolvency professionals to estimate the proposed quantum of the Administration Charge and I believe it to be reasonable and appropriate in the circumstances. The amount of the Administration Charge contemplates that professionals are paid on a current basis during these Proposal Proceedings.

70. The Administration Charge is proposed to rank first in priority on the Property. Enterprises, as secured creditors, have agreed to the Administration Charge ranking ahead of their secured debt position in respect of each of the Applicants.

#### **D&O Charge**

71. To ensure that the liquidation is carried out successfully and value is maximized for the creditors of the Applicants, the Applicants require the continued participation of their respective directors and officers.

72. I am advised by the Applicants’ counsel, Miller Thomson, that in certain circumstances directors can be held liable for certain obligations of a corporation owing to employees and government entities.



73. The Applicants do not have directors' and officers' liability insurance. The directors and officers of the Applicants will play an integral part of these Proposal Proceedings. As a result, in order to protect them from any potential personal exposure arising going forward, the Applicants are seeking a charge on all of the Property in the amount of \$500,000, in order to indemnify them against post-filing liabilities in their personal capacities (the "**D&O Charge**").

74. The Applicants have worked with the CRA and the Proposal Trustee to size the D&O Charge.

75. The D&O Charge is proposed to rank second in priority on the Property. Enterprises, as secured creditors, have agreed to the D&O Charge ranking ahead of their secured debt position in respect of each of the Applicants.

76. The D&O Charge will allow the Applicants to continue to benefit from the efforts and knowledge of their directors and officers throughout these Proposal Proceedings. The Applicants, the CRA and the Proposal Trustee believe that the D&O Charge is reasonable in the circumstances.

#### **KERA**

77. Given the short timeframe of the retail operations wind-down, in my view it is imperative that the Applicants are able to maintain certain key office employees to assist with the orderly wind down of the operations and the liquidation of the Inventory. The Applicants have worked with the CRA and the Proposal Trustee to identify those key office employees and the amounts which are available to offer to assist with maintaining their ongoing involvement during key timeframes.

78. In an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the Applicants are seeking approval of the KERA and are seeking a charge on all of the Property in the amount of \$100,000 to secure the amounts to be paid to key employees under the KERA, (the "**KERA Charge**").

79. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax

advisors or as required by law); or (b) at any time on or before the date any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

80. I understand from the Proposal Trustee that a copy of the KERA will be filed as a confidential appendix to the First Report. The Applicants are seeking a sealing Order pending further order of the Court with respect to this confidential appendix given the personal and sensitive employee information it contains.

### **Stay Bonus and Incentive Program**

81. I understand from the CRA and the Consultant that it is common in orderly liquidation situations to offer stay and incentive bonuses to certain staff at the retail stores that are key to the success of the liquidation process. As a result, the Applicants are working with the CRA, the Consultant and the Proposal Trustee to structure a stay bonus program. It is expected that the total estimated value of these incentive programs will be between \$80,000 and \$120,000 and that they will be based in part on the performance of the liquidation process at the store level. I understand from the Proposal Trustee and the CRA that the document setting out the KERA, which the Proposal Trustee will be filed as a confidential appendix to the First Report, will also provide information relating to the stay bonus and incentive program at the store level.

### **Administrative Consolidation**

82. As noted above, the relationship between the Applicants is closely intertwined. The Applicants share common management and administrative support, occupy common office space, and are indebted to the same related entities.

83. The Applicants are seeking an order consolidating the administration of the Proposal Proceedings for each of GESL and GEEP, and authorizing the Proposal Trustee to administer the Proposal Proceedings if they were a single proceeding for the purpose of filing materials and reporting to the Court.

84. For greater certainty, the Applicants are not seeking to substantively consolidate the estates of GESL and GEEP. The Applicants, with the oversight of the CRA and the Proposal Trustee, will continue to maintain separate bank accounts, have prepared and will continue to

prepare separate cash flow forecasts to be filed in these Proposal Proceedings and are not substantively consolidating the Applicants.

85. The proposed administrative consolidation of each of the Applicants' Proposal Proceeding is appropriate, as it would allow the Proposal Trustee to avoid issuing separate reports for each of the Applicants, and would be more efficient and cost effective. Enterprises, as the largest creditors of the Applicants, have no objections to the proposed consolidation and the proposed consolidation will not result in any prejudice to the creditors of the Applicants.

86. I believe that the administrative consolidation of the Proposal Proceedings would prevent the duplication of efforts to file and maintain two separate sets of motion materials over the course of the Proposal Proceedings, which will reduce costs in these proceedings.

#### **Stay Extension**

87. The Applicants have discussed the timing of commencing the Liquidation Sale with the CRA, the Consultant and the Proposal Trustee and expect that it will commence immediately after obtaining the Liquidation Process Order. The Applicants are working with the CRA and the Consultant to determine the expected end date and are currently contemplating that the Liquidation Sale will last approximately 12 weeks.

88. During the stay period, the Applicants, the Consultant, CRA, the Proposal Trustee and their advisors will be working together to complete the Liquidation Sale, deal with employees, suppliers, customers and other stakeholder issues, and otherwise advance the Proposal Proceedings.

89. A 30-day extension of the Proposal Period would give the Applicants the time needed to move forward with the Liquidation Sale. Thereafter, a further stay extension is anticipated to be needed to complete the Liquidation Sale. The Applicants intend to return to Court prior to April 30, 2019 with a further update and timeline.

90. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to May 3, 2019.

**Sealing Orders**

91. The CRA Engagement Letter and the Consulting Agreement contain financially sensitive information and as a result, the Applicants are seeking to have the unredacted copies of these documents that were filed with the Court separately sealed by the Court.

92. The Comparative Analysis includes certain sensitive commercial and competitive information related to the parties that submitted proposals related to the Liquidation Sale. As a result, the Applicants are seeking an order sealing the Comparative Analysis, which will be filed as confidential appendix "1" to the First Report.

93. The KERA contains sensitive personal information about certain of the Applicants' employees, the disclosure of which could cause harm to the key employees identified by the Applicants. As a result, the Applicants are seeking an order sealing the KERA, which will be filed as confidential appendix "2" to the First Report.

**CONCLUSION**

94. I swear this affidavit in support of the Orders sought in the Proposal Proceedings and for no improper purpose.

SWORNBEFORE ME at the City of London, in  
the Province of Ontario this 4<sup>th</sup> day of March,  
2019.

  
A Commissioner for taking Affidavits

  
MATTHEW MCBRIDE

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

Estate/Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF MATTHEW MCBRIDE  
(Sworn March 4, 2019)**

**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada 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

**This is Exhibit "B" referred to in the affidavit  
of MATTHEW MCBRIDE, SWORN BEFORE ME  
this 7th day of June 2019**

A handwritten signature in blue ink, appearing to read "X. Mahar", is written over a horizontal line.

**A COMMISSIONER FOR TAKING AFFIDAVITS**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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**

Applicants

**AFFIDAVIT OF MATTHEW MCBRIDE  
(Sworn April 18, 2019)**

I, MATTHEW MCBRIDE, of the Town of Mulmur, of the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and a director of the Applicant, Green Earth Stores Ltd. (“**GESL**”). I am also the sole director and President of Matthew McBride Holdings Inc. (“**McBride Holdings**”), a 50% partner of the Applicant, Green Earth Environmental Products (“**GEEP**”, and together with GESL, the “**Applicants**”). As a result of roles with the Applicants, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and belief obtained from others, I have stated the source of that information and belief and believe such information to be true.

2. This Affidavit is sworn in support of a Motion sought by the Applicants seeking an Order:

- (a) extending the time for each of the Applicants to file a proposal (the “**Proposal Period**”) pursuant to section 50.4(9) *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the “**BIA**”) for 45 days to June 17, 2019; and
- (b) approving the First Report of Crowe Soberman Inc. (“**Crowe Soberman**”), in its capacity as proposal trustee of each of the Applicants (in such capacity, the “**Proposal Trustee**”) dated March 5, 2019 (the “**First Report**”) and the Second

Report of the Proposal Trustee to be filed (the “**Second Report**” and collectively with the First Report, the “**Reports**”) and the activities of the Proposal Trustee described therein;

## **BACKGROUND**

3. The Applicants operate a retail business known as the “Green Earth” stores across Ontario (“**Green Earth**”). The Green Earth business started in 1990 with its first store opening in Windsor, Ontario. At the time, the business was focused on environmental awareness and nature, and contained product lines that promoted an environmentally friendly lifestyle.
4. GEEP is a general partnership registered in Ontario pursuant to the *Partnership Act* (Ontario), with a registered office address in Toronto, Ontario. The partnership is comprised of two partners, being Matthew McBride Holdings Inc. (“**McBride Holdings**”) and Beckstette Holdings Inc. (“**Beckstette Holdings**”). GEEP operates the Green Earth retail business across Ontario.
5. GESL is a private company incorporated pursuant to the *Business Corporations Act* (Ontario), with a registered business address in Toronto, Ontario. GESL purchases and owns the inventory sold in the Green Earth stores (the “**Inventory**”), operates an e-commerce website for online sales of the Inventory and owns real property that houses its warehouse and distribution centre, which is located at 19-23 Buchanan Court, London, Ontario N5Z 4P9 (the “**Real Property**”).
6. In the early to mid-1990s, the retail climate changed and environmentally friendly products became commonly sold in supermarkets. As a result, Green Earth’s business concept evolved and the product lines shifted to aesthetic merchandise, such as relaxation products and home décor.
7. The business continued expanding throughout the 1990s and 2000s, with the opening of additional stores across Ontario. As at the date of commencing the Proposal Proceedings, there were 29 Green Earth stores located in shopping malls across Ontario that continue to sell relaxation and home décor product lines, among other things.



8. The Applicants' business had been experiencing declining financial and retail performance over the year prior to commencing these Proposal Proceedings due to unfavourable retail market trends, such as a change in consumer preferences away from the Green Earth product line and decreased foot traffic in the retail stores due to a rising preference for online shopping.

9. As a result of their deteriorating financial condition, the Applicants retained Crowe Soberman as its financial advisor on January 15, 2019.

10. Despite the Applicants' efforts to revitalize the business and overcome the financial decline, the Applicants determined that the best way to maximize recoveries for their stakeholders was through a court supervised and orderly liquidation process and wind-down of their retail operations.

11. As a result, on March 4, 2019, each of the Applicants commenced proposal proceedings (the "**Proposal Proceedings**") under the BIA by each filing a Notice of Intention to File a Proposal ("**NOI**"), which appointed Crowe Soberman as Proposal Trustee of each of the Applicants.

12. Further background information on the Applicants and the circumstances leading to the commencement of the Proposal Proceedings can be found in my affidavit sworn March 4, 2019 (my "**March 4<sup>th</sup> Affidavit**"), a copy of which, without exhibits, is attached hereto as **Exhibit "A"**.

#### **APPROVAL OF THE ADMINISTRATION ORDER AND THE LIQUIDATION PROCESS ORDER**

13. Prior to the commencement of the Proposal Proceedings, the Applicants, with the assistance of Crowe Soberman, requested proposals from two third party liquidators to consider the best path forward. After there being some delay in obtaining one of the two proposals, Crowe Soberman reached out to FAAN Advisors Group Inc. ("**FAAN**") to discuss other potential ways to liquidate and wind down the operations. FAAN in turn introduced the Applicants to the Consultant who has extensive liquidation experience. As a result, the Applicants received and considered three proposals in respect of an orderly liquidation of the

Applicants' inventory through the conduct of a "going-out-of-business" or similar themed sale (the "**Liquidation Sale**").

14. Following consideration of the three proposals received, the Applicants, in consultation with Crowe Soberman, elected to retain FAAN as Chief Restructuring Advisor ("**CRA**") and Shawn Parkin as the Consultant (the "**Consultant**") to assist the Applicants undertake a Liquidation Sale.

15. In connection with the Proposal Proceedings, the Applicants brought a motion returnable March 7, 2019 seeking an Administration Order and a Liquidation Process Order (both as hereinafter defined).

16. On March 7, 2019, Justice Penny granted an Order (the "**Administration Order**"), among other things:

- (a) extending the Proposal Period to May 3, 2019;
- (b) approving the administrative consolidation of the Applicants' Proposal Proceedings;
- (c) approving the engagement of FAAN as CRA;
- (d) directing that the CRA be added as a required signing officer on the Applicants' bank accounts for the pendency of the Proposal Proceedings and required to authorize all expenditures of \$5,000 or greater;
- (e) approving certain court-ordered charges, including the Administration Charge and the D&O Charge (as defined in the Administration Order); and
- (f) approving the key employment retention agreement (the "**KERA**"), a copy of which was attached as a confidential appendix to the First Report, and approving the KERA Charge (as defined in the Administration Order).

A copy of the Administration Order is attached hereto as **Exhibit "B"**.

17. In addition, on March 7, 2019, Justice Penny granted an Order (the “**Liquidation Process Order**”), among other things:

- (a) approving the consulting agreement between the Applicants and the Consultant dated February 25, 2019 (the “**Consulting Agreement**”);
- (b) approving the Sale Guidelines attached as Schedule “A” to the Liquidation Process Order for the conduct of the Liquidation Sale;
- (c) authorizing the Applicants, with the assistance of the CRA and the Consultant, to conduct the Liquidations Sales at the retail locations in accordance with the Liquidation Process Order and the Sale Guidelines; and
- (d) authorizing that, until June 30, 2019 or such earlier date as a lease is disclaimed in accordance with the BIA or such later date as may be agreed to by the Consultant, the Applicants and the applicable landlord, the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Applicants and the Applicants have granted the right of access to the applicable Closing Store to the Consultant.

A copy of the Liquidation Process Order is attached hereto as **Exhibit “C”**.

## **STATUS OF LIQUIDATION SALES AND STORE CLOSURES**

### **Liquidation Sales**

18. The Liquidation Sales commenced on March 9, 2019 and are ongoing at all stores as of the date of swearing this affidavit.

19. Upon issuance of the Administration Order and Liquidation Process Order, the Applicants provided a copy of the store sign package to counsel for the landlords that requested to review same in advance of the Liquidation Sales commencing.

20. I have been advised the CRA that upon the commencement of the Liquidation Sales, the CRA received two inquiries from landlord representatives regarding the signage installed in respect of the Liquidation Sales. The CRA explained that the signs were designed to be in

compliance with the Sale Guidelines approved by the Court and no further follow up from landlords was received regarding the signage or the commencement of the Liquidation Sales.

21. The Liquidation Sales have been progressing well to date and gross recoveries have exceeded projections. In particular, retail sales for the five week period ending April 12, 2019 were approximately \$3.7 million as compared to the projection for the same period of \$2.5 million. I understand that additional information regarding the Liquidation Sales will be provided in the Second Report to be filed in connection with the within motion.

#### **Lease Disclaimers and Store Closures**

22. As set out above, at the commencement of the Proposal Proceedings, the Applicants operated 29 retail locations across Ontario. Although GEEP operates all of the retail locations, seven of the 29 leases are in the name of GESL.

23. Currently, Liquidations Sales are ongoing at all 29 retail locations.

24. Since the commencement of the Proposal Proceedings, the Applicants have issued 21 notices of lease disclaimer, five have been issued by GESL and 16 have been issued by GEEP. I am advised by the Applicants' counsel that in each case, in accordance with BIA, the requisite Form 45 *Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant* was sent to the relevant landlord.

25. The Applicants have staggered issuance of the lease disclaimer and therefore the timing of the store closures. The first three lease disclaimers become effective as of April 29, 2019.

26. In accordance with the Liquidation Process Order, upon issuing a notice of lease disclaimer, the Applicants have paid rent to the effective date of the lease disclaimer.

27. As at the date of swearing this affidavit, no counterparty to a disclaimed lease has disputed the Applicants' disclaimer or termination of the relevant agreement.

28. It is currently anticipated that the Applicants will issue the remaining notices of lease disclaimer in the next two weeks, which would result in the Applicants concluding the Liquidation Sales in or around the end of May, 2019.

## **EMPLOYEES**

### **Employee Terminations**

29. As at the date of the commencement of the Proposal Proceedings, GEEP employed approximately 202 individuals across its retail store locations, 179 on a part-time basis and GESL employed 13 full-time head office and warehouse employees. All employees are non-unionized.

30. I am advised by the Applicants' counsel, that in accordance with the requirements of the *Employment Standards Act, 2000*, on March 28, 2019, the Applicants filed a Notice of Termination of Employment (the "**Notice of Termination**") with the Ministry of Labour notifying the Ministry that it was terminating more than 50 employees in the same four-week period. The Notice of Termination was posted at each of the 29 retail locations and the head office/warehouse distribution centre.

31. In addition, individual letters of termination were provided to the employees of GEEP and GESL. Since providing the original letters of termination, the Applicants have issued revised letters of termination to certain employees where the Applicants will be closing the store where those employees are employed prior to the date in the original letter of termination.

32. As at the date of this affidavit, approximately 35 employees have resigned or been terminated by either GEEP or GESL. All employees whose employment has ended have been paid or will be paid their wages and accrued vacation pay to the date of termination.

### **KERA**

33. Given the short timeframe of the retail operations wind-down, it was and remains imperative that the Applicants are able to maintain certain key office employees to assist with the orderly wind down of the operations and the Liquidation Sales. As stated above, in an attempt to ensure the continued participation of employees identified as key office employees during the Proposal Proceedings, the Applicants obtained court approval for a KERA and secured the amounts to be paid under the KERA with a KERA Charge.

34. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax

advisors or as required by law); or (b) at any time on or before the date any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

35. Following commencement of the Proposal Proceedings, one employee that was offered a KERA has resigned and therefore is not be eligible for the KERA. To date, the Applicants have not paid out any money under the KERA as no moneys are yet payable under the KERA. The Applicants anticipate distributing the KERA payments in accordance with the terms of each individual's KERA, either at termination of the employee or at certain milestones during the winding down of the business.

#### **Stay Bonus and Incentive Program**

36. As set out in my march 4<sup>th</sup> Affidavit, the Applicants worked with the CRA, the Consultant and the Proposal Trustee to structure a stay bonus program for certain store employees. The total estimated value of these incentive programs is between \$80,000 and \$120,000 and it is based in part on the performance of the liquidation process at the store level. This information was provided to the court as part of the confidential appendix to the First Report that addressed the KERA.

37. Given the strong sales results to date, nearly all store level employees that are eligible to participate in the stay bonus program will be eligible to receive payments thereunder.

#### **REAL PROPERTY MARKETING PROCESS**

38. As set out my March 4<sup>th</sup> Affidavit, given the financial difficulties facing the Applicants' business, in December 2018, GESL entered into a Listing Agreement with CBRE Limited, as Brokerage (collectively, the "**Listing Agreement**") to market and sell the Real Property at a listing price of \$6,500,000.

39. CBRE has provided one formal update since the commencement of the Proposal Proceedings.

40. There has been interest in the Real Property, however, to date no offers or letters of intent have been received in respect of the Real Property. The Applicants are working with the CRA

and CBRE to determine next steps regarding the listing and marketing process for the Real Property.

#### **BANK ACCOUNTS**

41. As set out in my March 4<sup>th</sup> Affidavit, given GEEP's retail business it maintains bank accounts in Ontario with Royal Bank of Canada ("RBC"), Scotiabank, Bank of Montreal, TD Canada Trust, CIBC and Kawartha Credit Union and GESL maintains bank accounts in Ontario with the RBC and Your Neighbourhood Credit Union.

42. In accordance with the Administration Order, the Applicants notified their banks that a representative of the CRA was to be added as a required signatory to the GESL and GEEP bank accounts and be required to authorize any transaction over \$5,000.

43. In addition, the Applicants have established GICs at RBC to earn additional interest from the money that has been generated from the sales to date.

#### **STAY EXTENSION**

44. As set out above, the Proposal Period was extended pursuant to the Administration Order to May 3, 2019.

45. The Applicants are now seeking a 45-day extension of the Proposal Period, which will extend the Proposal Period to June 17, 2019.

46. As set out in my March 4<sup>th</sup> Affidavit, it has been contemplated since the commencement of the Proposal Proceedings that the requested further extension of the Proposal Period would be required to complete the Liquidation Sales.

47. Since March 7, 2019, the Applicants have been working with the CRA, the Consultant, the Proposal Trustee and their advisors to carry out the Liquidation Sales, address any issues that have arisen and otherwise advance the Proposal Proceedings.

48. During the extended Proposal Period, the Applicants, the Consultant, CRA, the Proposal Trustee and their advisors will continue working together to complete the Liquidation Sales, deal

with employees, suppliers, customers and other stakeholder issues, and otherwise advance the Proposal Proceedings.

49. Although, the Liquidation Process Order contemplates the Liquidation Sales would be completed by June 30, 2019. The Applicants are currently expecting the Liquidation Sales to be completed in or around the end of May, 2019.

50. A 45-day extension of the Proposal Period would give the Applicants the time needed to complete the Liquidation Sales and consider next steps in these Proposal Proceedings having the benefit of the results from the completed Liquidation Sales. It will also allow the Applicants time to continue marketing the Real Property, seek buyers for remaining equipment and fixtures at the head office/distribution centre and allow for final payroll to be paid including most KERA and store level stay bonus amounts to employees.

51. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to June 17, 2019.

52. The cashflow projections prepared by the Applicants with the assistance of the CRA and the Proposal Trustee shows that the Applicants will have sufficient liquidity to carry out the liquidations and Proposal Proceedings during the requested extension of the Proposal Period. I understand that the cashflow projections will be an appendix to the Second Report.

## CONCLUSION

53. I swear this affidavit in support of the Order sought in the Proposal Proceedings and for no improper purpose.

SWORNBEFORE ME at the City of London, in  
the Province of Ontario this 18<sup>th</sup> day of April,  
2019.



A Commissioner for taking Affidavits



MATTHEW MCBRIDE

Adam David Kelner, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 12, 2020.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF MATTHEW MCBRIDE  
(Sworn April 18, 2019)**

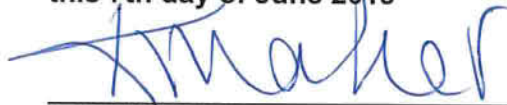
**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**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

**This is Exhibit "C" referred to in the affidavit  
of MATTHEW MCBRIDE, SWORN BEFORE ME  
this 7th day of June 2019**

A handwritten signature in blue ink, appearing to read "A. Maher", written over a horizontal line.

**A COMMISSIONER FOR TAKING AFFIDAVITS**

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

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

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.

#### **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).

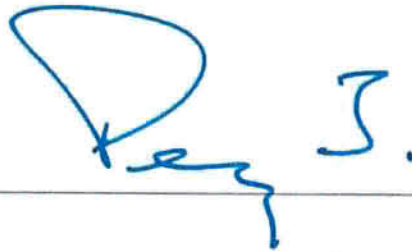
#### **GENERAL**

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.



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

MAR 07 2019

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  
Estate/Court File No.: 31-2481649

**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