

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

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**THIRD REPORT OF THE RECEIVER**

**FEBRUARY 8, 2015**

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Confidential Appendix “A” Appraisals done by the Companies before the NOI litigation

Confidential Appendix “B” Receiver’s analysis of the value of the assets being sold under the Stalking Horse Offer as compared to the value of the purchase price under that offer

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**THIRD REPORT OF THE RECEIVER**

**February 8, 2015**

A. FARBER & PARTNERS INC. in its capacity as the Court-appointed Receiver (the “**Receiver**”) of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”) hereby reports to the Court as follows:

**INTRODUCTION**

1. On November 14, 2014, Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”) each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).
2. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of the Companies and (iii) to substitute A. Farber &

Partners Inc. as bankruptcy trustee of the Companies. At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.

3. On November 21, 2014, A. Farber & Partners Inc. was appointed Interim Receiver of certain of the Companies pursuant to section 47.1 of the BIA to preserve and protect the assets, undertakings and properties of those Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Interim Order**”). A copy of the Interim Order is attached at **Appendix “A”**. A copy of the endorsement dated November 21, 2014 is attached at **Appendix “B”**.

4. On December 8, 2014, The Honourable Mr. Justice Newbould terminated the NOI proceedings of the Companies and appointed A. Farber & Partners Inc. as Receiver and also as trustee in bankruptcy (the “**Trustee**”) of the Companies. A copy of the Order of that date is attached as **Appendix “C”**, and a copy of the handwritten Endorsement of that date is attached as **Appendix “D”**.

5. On December 12, 2014, the Receiver and Trustee brought a motion to correct a typographical error in the Order dated December 8, 2014 and for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief. The First Report of the Receiver and Trustee in that regard is attached (without appendices) as **Appendix “E”**. The Honourable Justice Newbould issued an Amended Order dated December 8, 2014 (the “**Appointment Order**”) and also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief, copies of which are attached as **Appendix “F”** and **Appendix “G”**, respectively.

6. On December 23, 2014, the Receiver and Trustee brought a motion to (i) approve the Second and Third Report of the Interim Receiver and the activities of the Interim Receiver set out therein; (ii) approve the fees of the Interim Receiver and its counsel; (iii) discharge A. Farber & Partners Inc. as Interim Receiver; (iv) increase the borrowing power of the Receiver; and (v) establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. The Second Report of the Receiver and Trustee in that regard is attached (without appendices) as **Appendix “H”**. On December 23,

2014, the Honourable Justice Penny issued Orders discharging the Interim Receiver, increasing the Receiver's borrowing power and approving a property claims procedure process. These orders are attached as **Appendix "I"**, **"J"** and **"K"**, respectively. A copy of the endorsement dated December 23, 2014 is attached as **Appendix "L"**.

## **PURPOSE OF THIS REPORT**

7. This is the third report of the Receiver (the **"Third Report"**). Its purpose is to seek an order:
- a) approving the First, Second and Third Reports of the Receiver and the activities of the Receiver described therein;
  - b) approving the agreement of purchase and sale dated February 8, 2015 entered into between the Receiver and 2450902 Ontario Limited (the **"Stalking Horse Offer"**) for the purpose of conducting the sales process described herein; and
  - c) approving the Sales Process described in this Report, the Sales Process Terms (as defined below) and in the draft Order sought.

## **LIMITATION OF REVIEW**

8. A. Farber & Partners Inc. in its capacity as Receiver has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not, except as specifically noted in this Third Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Third Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) OVERVIEW OF THE ASSETS AND BUSINESS OF THE COMPANIES**

9. In order to better convey the activities of the Receiver and the considerations in favour of the Stalking Horse Offer, an explanation of the assets and business of the Companies is

required.

### **Marina business**

10. The principal business of the Companies had been the operation of marinas at multiple locations, at which boats were stored (both in slips in the water and on land in the winter), maintained and serviced, and also bought and sold. To the knowledge of the Receiver, the sole operating entity among the Companies was Crate Marine Sales Limited (“CMS”). Some of the boat sales operations were done by CMS as purchaser or vendor (and in many cases in both capacities due to trade-ins of boats being accepted from purchasers), and in other cases CMS acted like a broker in selling or purchasing boats on behalf of third parties.

11. The corporate relationships among the Companies are set out in the organizational chart prepared by the Companies prior to these proceedings, a copy of which is attached as **Appendix “M”**. The Companies other than CMS either owned land used in the marina operations (primarily at Keswick), or owned other of the Companies as set out in the organization chart attached as Appendix “M”.

### **Marina locations**

12. The locations of the marina operations of the Companies prior to these proceedings were the following:

- a) Keswick, Ontario, on Lake Simcoe;
- b) Willow Beach, Ontario, on Lake Simcoe;
- c) Lagoon City, Ontario, on Lake Simcoe;
- d) Port McNicholl, Ontario, on Georgian Bay;
- e) Port Credit, Ontario, on Lake Ontario; and
- f) Saint.-Paul-de-L’Ile-aux-Noix, Quebec, on the Richelieu River north of Lake Champlain.

13. The marina locations other than at Keswick are leased.

14. The Port McNicholl location appears to have been abandoned prior to the appointment of the Receiver. There is no active business there, and the only significant asset of note is a



travellift, which appears to be leased. A property proof of claim in the amount of \$324,000 has been filed by the equipment lessor. The Receiver believes that there is no equity in the equipment lease. The state of the lease with the landlord is not known.

15. The Willow Beach location is leased from 2192422 Ontario Inc. (“**219**”), which is a company that is owned 50% by 1382416 Ontario Ltd. (one of the Companies) and 50% by Dwight Powell Investments Inc. (“**DPII**”), who along with Dwight Powell is a creditor of the Companies. That lease appears to be in good standing as of the appointment of the Receiver.

16. The Lagoon City location is leased from 2124915 Ontario Inc., which is an arm’s length landlord under the management of Talisker Corporation. It appears that there were long-standing arrears of rent at this location prior to the appointment of the Receiver. The lease expires by its terms on April 30, 2015, and the landlord has advised that it has leased the premises to a third party (Pride Marine Group) commencing May 1.

17. The premises used for the Keswick marina operations are owned by a combination of the Companies and individuals related to the Companies. Attached as **Appendix “N”** is a chart listing the lands by municipal address, Land Titles PIN, and registered owner. Attached as **Appendix “O”** is a map that graphically depicts the information set out in the chart, with the colours corresponding to the colours also listed in the chart.

### **Non-marina business**

18. In addition to the marina business and landholdings as noted above, the Receiver has identified that the Companies had interests in other businesses or ventures, as follows:

- a) CMS appears to have provided all funds necessary to acquire and service the lands registered in the names of members of the Crate family in the vicinity of the Keswick marina location, as depicted in Appendices “N” and “O” (the “**Adjacent Properties**”), which funds were recorded on the books of CMS as either expenses against income or notional advances to shareholders;
- b) CMS appears to have similarly provided all funds necessary to acquire and service the property at 14 Highland Ave. in Belleville, apparently as a residence for Ryan Crate who was managing the marina at Belleville that was owned by Crate Belleville Inc., and in whose name that property is registered;

- c) CMS appears to have loaned funds to Crate Belleville Inc. to start up and operate a marina at Belleville, Ontario; and
- d) CMS appears to have provided funds in respect of loans or equity contributed by 1800239 Ontario Limited, which appears to be owned by Steven Crate, Greg Crate and Lynn Marko, for the franchise, land and construction of the Boston Pizza restaurant on the Queensway in Keswick, the full particulars of which are not yet known.

## **B) THE RECEIVER'S ACTIVITIES SINCE APPOINTMENT**

### **Taking Possession**

19. After the issuance of the Appointment Order, the Receiver took possession of the various Crate properties in Ontario (Keswick, Lagoon City, Willow Beach and Port Credit) and Quebec (Saint- Paul de- L'Ile-aux-Noix) and secured ongoing utility, insurance and other services in the Receiver's name. The Receiver retained certain staff to assist in the ongoing security of the Keswick Facility.

20. The Receiver contacted the insurer to arrange ongoing coverage, review the adequacy of the pre-existing coverage, and have the Receiver added as a named insured.

21. The Receiver contacted the Quebec landlord for the off-site storage facility where a number of the Quebec boats are stored. The Receiver also contacted Balsdon's Trucking in Pickering, Ontario, which is storing the 50' Marquis boat which is subject to litigation in the receivership. The Receiver has asked Balsdon's Trucking to retain this boat, which the Receiver intends to continue doing pending either agreement by the competing secured creditors or adjudication by the court as to entitlement to the boat or its proceeds.

22. The Receiver entered into discussions with the landlords of the Willow Beach and Lagoon City properties regarding issues and possible arrangements or agreements that may be reached to enhance administration of the estates of the Companies. As noted above, the Lagoon City landlord has leased that location to a new tenant when the current lease ends on April 30, 2015. The attempted negotiations with this landlord were ultimately unsuccessful as the landlord proceeded to enter into that new lease before continuing suggested discussions with the Receiver. Discussions with this landlord are ongoing regarding the resolution of outstanding issues as between the landlord and the Receiver on behalf of the Companies.

### **Third Party Property**

23. The Companies were storing approximately 700 customer-owned boats and about 40 boats owned by CMS. The Receiver retained certain staff to prepare listings of the boats. The process has been difficult as the Companies' records did not include a comprehensive list of boats in storage. Further, the boats had been shrink-wrapped for winter storage so tracing a boat in the yard to an entry on the boat listings has been difficult. These boats are discussed in more detail below.

### **Employees**

24. Subject to claims under s. 81.4 of the BIA, the Receiver paid the employees' arrears and arranged for final T4's and records of employment for all the employees

25. The Receiver prepared and submitted the employee data to Service Canada and the employees to facilitate the employee claims under the *Wage Earners' Protection Program Act*.

26. The Receiver retained certain staff to assist with, among other matters: (i) the statutory reporting duties of the Receiver, (ii) updating accounting records to provide updated accounts needed for the realization of the accounts receivable, (iii) dealing with customer calls on ongoing receivership issues and collection efforts for accounts receivable, (iv) winterization of the final boats not yet winterized as at December 8, 2014, (v) preparing listings of the Companies' boats and customers' boats, and (vi) invoices customers for unbilled items as of the date of the Appointment Order as well as for matters arising after the Appointment Order.

### **Communications**

27. The Receiver issued its Notice of Receivership and Receiver's Statement pursuant to s. 245(1) and s. 246(1) of the BIA.

28. The Receiver posted notice of its appointment on the doors of the premises occupied by the Companies. As well notices of the appointment and copies of the various materials filed with the Court and the Court orders were posted on the Receiver's website. The Receiver also posted its information circular addressing common questions from the various

stakeholders and boat owners. The Receiver continues to maintain the website and update it with ongoing documents and information updates on the receivership and bankruptcy proceedings.

29. The Receiver has spent considerable time speaking, corresponding and emailing with the boat owners on numerous topics including the status of the receivership, the bankruptcy, the status and winterization of their boats in storage, the impact on owners who pre-paid 2015 slip rentals, insurance, the Proof of Property Claim Process (as defined below), and the likelihood of operations next season.

## **Company Assets**

### Cash on Hand

30. CMS had seven bank accounts with three different banks. The Receiver contacted the various banks to close the accounts and arrange for the funds on hand to be transferred to the Receiver's account. The accounts, except for CMS' main chequing account at Bank of Montreal with a nominal value, have been closed. The Receiver received \$45,832.00 net of the refunded \$2,000.00 deposit which was received after the appointment of the Proposal Trustee and was still on hand as at the date of the receivership and bankruptcy.

31. The Receiver considered leaving the accounts open so customers could pay accounts receivable by credit card; however, the Receiver was concerned about potential chargebacks by Moneris Inc., the credit card processor, if customers filed claims for refunds of prepaid 2015 slip rentals and other potential payments. As of January 23, 2015 Moneris Inc. advised that they have over \$350,000.00 of chargebacks and will be amending their unsecured proof of claim accordingly.

### Accounts Receivable

32. The Interim Receiver's Supplementary Report to its Second Report reported on the difficulties in reconciling and assessing the accounts receivable. The Interim Receiver's estimated re-stated accounts receivable were approximately \$889,000.00 of which \$586,648.00 were estimated as collectible. The Receiver has sent letters to all the customers and retained former CMS staff to follow up on the outstanding balances. To February 4,

2015, only \$40,263.00 has been collected, which means that all other funding required to administer the Companies and the receiverships and estates in bankruptcy has come from Receiver's borrowing.

33. Many customers are claiming offsets for the amounts they prepaid for 2015 slip rentals and other reasons. In addition, many customers are having pre-filing amounts paid by credit card reversed. Some of the reversals relate to post-filing services such as 2015 slip rentals; however, other reversals are for services provided by CMS (i.e. service and winterization) and/or provided by the Receiver (i.e. winter storage). The Receiver is adjusting accounts receivable balances accordingly for chargeback amounts reported by Moneris Inc. The Receiver anticipates that, to the extent that the amounts in the accounts received are legitimate, payment may be enhanced when the 2015 boating season starts, which will be the time when customers require further services from the marinas or seek to retrieve their boats or other property.

#### Boat Inventory owned by CMS

34. In the Supplementary Report to the Second Report of the Interim Receiver dated December 4, 2014, the Interim Receiver reported at that time that it was unable to ascertain with certainty where each boat owned by CMS was located. While the shrink wrapping around the boats still poses challenges in identifying boats since serial numbers are in most instances covered, the Receiver has obtained maps of each of the marina properties in Keswick, Willow Beach and Lagoon City from staff of CMS along with the customer name, brand and location of each boat on the respective properties. . Boats owned by CMS are included on these maps and the Receiver has now had CMS staff verify where each specific inventory boat is located.

#### Parts Inventory

35. The Receiver has engaged former employees to update the accounting for the actual parts on-hand. The Receiver is advised that the parts and retail store inventory were physically counted on October 31, 2014 in anticipation of finalizing the year-end financial statements. The Receiver was advised that the inventory count sheets for certain of the parts

inventory went missing, reportedly just prior to the Receiver's appointment. The Receiver has arranged for its staff to recount the affected areas.

### Equipment

36. The Receiver has compiled a list of the machinery, equipment and vehicles used in the various locations.

37. The Receiver is also tracking the location of equipment that was not on the premises, including a truck and trailer that were in Florida at the time of the receivership. The truck and trailer had been sent to Florida to pick up new boats in October 2014, but the supplier would not release the boats until they had been paid for. Ultimately, the boats were not paid for and the truck and trailer remain secured in the suppliers' yard in Florida pending further instructions from the Receiver.

38. The Receiver has also obtained an appraisal of the equipment, parts and boat inventories noted above from Hilco Asset Sales Canada ("**Hilco**") and Services FL ("**SFL**").

### **Books and Records**

39. The Receiver has gone through the relevant portions of the information available in the Companies' books and records in order to fulfil its duties and obligations under the Appointment Order. The books and records were poorly maintained, and were stored on old computer hardware using old software making it difficult to manage and retrieve data. There were undisclosed (and hence unprocessed) transactions and it appears that certain books and records were removed just prior to the appointment of the Receiver.

40. Examples of undisclosed transactions include:

- i) the redirection of a \$42,000.00 commission due to CMS on the sale of a brokered boat to Mr. Steven Crate personally as described in the Third Report of the Interim Receiver;
- ii) the receipt of \$5,500.00 cash by Mr. Greg Crate from a customer for 2015 slip rental which was not recorded in the books and records; and
- iii) an offset granted to a customer with a large accounts receivable balance due to the Companies. The offset being claimed by the customer was

allegedly in exchange for a pool installed on a property held in the name of Mr. Greg Crate.

41. In addition, there appear to have been significant payments from the Companies' accounts for the benefit of related parties, the bases of which do not appear fully documented.

42. The Receiver is also reviewing the 2014 boat sales (sales from inventory and brokered boat sales) given the boat and payment issues identified in the various Interim Receiver's reports.

43. The Receiver and the Trustee continue their investigations into the affairs of the Companies, including contacting various accountants, consultants and lawyers that previously provided services to the Companies.

### **Adjacent Properties**

44. The Receiver's review of the books and records indicated that CMS had financed most, if not all, of the purchase and maintenance of the Adjacent Properties. However, the properties were held in the name of the principals of the Companies and related parties. The Receiver also became aware that certain of these Adjacent Properties had been put up for sale by the registered owners.

45. On January 13, 2015, the Receiver filed a Notice of Application seeking various relief including certificates of pending litigation against the Adjacent Properties and an order vesting title to the Adjacent Properties in the Receiver. On January 14, 2015, the Receiver brought a motion to obtain a certificate of pending litigation against the Adjacent Properties, which was granted by the Honourable Mr. Justice Newbould that day. The Receiver had the certificate of pending litigation registered on title to the Adjacent Properties.

46. A copy of the Receiver's Notice of Application for the Adjacent Properties is attached as **Appendix "P"**. A copy of the Order of January 14, 2015 is attached as **Appendix "Q"**. A copy of the registered certificate of pending litigation is attached as **Appendix "R"**.

### **Belleville Property Registered in the Name of Ryan Gregory Crate**

47. Upon a further review of the Companies' books and records, the Receiver discovered

a property at 14 Highland Ave. in Belleville, Ontario registered in the name of Ryan Gregory Crate, the son of one of the directors of the Companies, which also appears to have been financed by CMS. The property is listed for sale.

48. On January 30, 2015, the Receiver issued an application seeking various relief including a certificate of pending litigation against this property and an order vesting title to it in the Receiver. That day, the Receiver brought a motion for a certificate of pending litigation against the Belleville property, which was granted by the Honourable Mr. Justice Newbould. The Receiver has filed a certificate of pending litigation against the Belleville property.

49. A copy of the Receiver's Notice of Application in respect of this property is attached as **Appendix "S"**. A copy of the Order of January 30, 2015 is attached as **Appendix "T"**. A copy of the registered certificate of pending litigation is attached as **Appendix "U"**.

#### **Possible amounts owing by former management**

50. The Receiver continues to review the books and records of the Companies to determine whether there are amounts that may be owing by Steven Crate, Greg Crate and/or Lynn Marko as former management and directors of the Companies.

51. The Receiver has identified that loans of approximately \$1.8 million in total are outstanding to the estate of Lloyd Crate (deceased), Steven Crate, Greg Crate and Lynn Marko on the books of 1382415 Ontario Ltd., which appears to have been for certain amounts paid by CMS for the benefit of those individuals.

52. The Receiver is also reviewing allegations of cash or other payments made by third parties to individuals including Steven Crate, Greg Crate and Lynn Marko for services or materials acquired from CMS.

#### **Third Party Assets**

53. The Receiver reviewed the available books and records and, as set out in the Interim Receiver Reports and the Receiver's Second Report, the potential ownership claims of certain boats and other tangible personal property were uncertain. As a result, the Receiver and Trustee sought relief for a proposed property claims process as described in the Second Report



(the “**Proof of Property Process**”). The Proof of Property Process was approved by the order of the Honourable Mr. Justice Penny dated December 23, 2014 (the “**Property Claims Procedure Order**”). As noted above, a copy of the Property Claims Procedure Order is attached as Appendix “K”.

54. The Receiver complied with paragraph 8 (a) of the Property Claims Procedure Order by posting a proof of property claim document package on its website and sending a copy to each of the Known Claimants (as defined in the Property Claims Procedure Order) for which it had addresses.

55. Paragraph 8(b) of the Property Claims Procedure Order directed the Receiver to cause to be published, on two separate days on or before January 9, 2015, a notice of the claims process in each of a local Keswick newspaper and a Canadian national newspaper. The Receiver had the required notices published in the Globe & Mail on January 7 and January 9, 2015. The local papers were only published weekly, so the Receiver had the required notices published in the Georgina Advocate (Keswick), the Innisfil Journal, the Barrie Advance and Orillia Today on January 8 and 15, 2015.

56. The Receiver sent numerous proof of property packages to additional parties as the Receiver became aware of them or as additional addresses were located prior to January 30, 2015. Some further proof of property packages are still being requested and supplied. The majority of the Receiver’s communications with property claimants at this point are for updates on the process.

57. As of January 30, 2015, the Receiver has received approximately 700 claims. The deadline to submit a claim for the Proof of Property Process was January 30, 2015. The Receiver is conducting a detailed review of claims received prior to the deadline to assess which boats and other property may or may not have competing claims. The Receiver will provide in a subsequent report additional information on the status of the Proof of Property Process.

## **Sales Options**

58. The Receiver reviewed the composition of the assets that were available for sale and

determined that the best realizations were likely from a sale of the business as an operating marina.

59. Furthermore, the value of the customer base to a potential operator would be more likely to be maintained if a sales process demonstrated that a new operator would soon be in place. This would give customers some comfort that an operator would run the marina business next season, and accordingly, the customers would be more likely to keep their business at the Companies' former premises. The value would be more likely maintained as well if the marina operations were sold early enough in 2015 so a new operator could contact customers before the boats started being taken out of winter storage in anticipation of the 2015 boating season. It is not clear that it would be financially or operationally prudent for the Receiver to attempt to operate the marina business itself in the 2015 boating season.

60. It is also possible that the Companies' real estate in the Keswick area (along with the interest, if any, of the Companies in the Adjacent Properties) will be of interest to real estate developers and the Receiver therefore intends as part of the Sales Process to make the purchase opportunity known to certain real estate developers.

61. The Receiver spent considerable time negotiating the Stalking Horse Offer (as described more fully below). This was a complicated process due to a number of factors including (i) there are multiple Companies with different real estate holdings and multiple cross-collateralized mortgages (ii) the uncertainty of potential claims on the CMS-owned boats (iii) the state of the books and records and (iv) the issues identified by the Receiver related to properties adjacent to the Keswick facility and other business activities of the Companies, as outlined above.

62. The Receiver was ultimately successful in obtaining the Stalking Horse Offer and has now finalized its proposed sales and marketing process to seek potential higher offers for the purchased assets in that agreement. The Sales Process and Stalking Horse Offer are discussed in more detail below.

### **Security review**

63. Counsel for the Receiver has provided several security opinions to the Receiver, as

follows:

- a) a restated opinion subject to the normal assumptions and qualifications regarding the validity and enforceability of the charges registered against the lands owned by the Companies, including those granted to Crawmet, DPII and Dwight Powell and which would be assumed by the Purchaser under the Stalking Horse Offer discussed below, a copy of which is attached as **Appendix “V”**;
- b) a restated opinion subject to the normal assumptions and qualifications regarding the validity and enforceability of the charges registered against the Adjacent Properties, a copy of which is attached as **Appendix “W”**. Counsel has advised that in respect of 292 Wynhurst (one of the Adjacent Properties), which is registered in the name of Lynn Marko, the charge registered as instrument no. YR1670154 in the face amount of \$1,000,000.00 in favour of Romith Investments Limited does not create or convey any interest in such property as a result of a *Planning Act* contravention, and the same consideration may mean that this charge might not create convey any interest in respect of 200 Wynhurst;
- c) a restated opinion subject to the normal assumptions and qualifications and certain variances referred to regarding the validity, enforceability and perfection of the general security agreement granted by CMS in favour of Crawmet, a copy of which is attached as **Appendix “X”**; and
- d) an opinion subject to the normal assumptions and qualifications regarding the validity, enforceability and perfection of the security agreement granted by CMS in favour of Marquis Yachts, LLC a copy of which is attached as **Appendix “Y”**.

64. Insofar as there is a motion by Marquis Yachts, LLC and Northpoint Commercial Finance, LLC, as the assignee of its interest, regarding the 50’ yacht presently being held by Balsdon’s Trucking, and given that the Receiver has determined that both the personal property security granted in favour of Marquis Yachts and also in favour of Crawmet are valid and enforceable as against the Receiver (subject to the normal assumptions and qualifications), the Receiver takes no position on that motion. The Receiver notes, however, that Crawmet has recently filed materials suggesting that the boat may have been sold outright to CMS rather than financed, which, if established, could affect the Receiver’s position. As the priority issue between Marquis/Northpoint and Crawmet has already been brought before the Court, the Receiver has not reviewed that matter and expresses no opinion in that regard.

65. As noted in the opinion regarding the general security agreement granted by CMS in

favour of Crawmet, based on advice from Quebec counsel it would appear that since Crawmet has not effected a moveable security registration in Quebec, this general security agreement would not be effective against the Receiver and Trustee as far as the assets located in Quebec are concerned. Such assets in Quebec are, however, of modest value relative to the Purchase Price in the Stalking Horse Offer discussed below. In considering the Stalking Horse Offer, the Receiver has made an allowance for such non-effectiveness regarding the Quebec assets.

## **Other**

### Funding

66. The Receiver has issued two Receiver's Certificates to Crawmet for a total of \$1,000,000.00, as permitted by the December 23, 2014 Borrowing Order. The funds obtained were used for the ongoing costs of the receivership and the fees and expenses of the Interim Receiver and its counsel as approved in the December 23, 2014 Interim Receiver Discharge Order. Funds were also used for certain fees and disbursements of the Receiver and its counsel between the Appointment Order and December 31, 2014.

### Bankruptcy

67. The Trustee has been administering the bankruptcy estates, including chairing the first meetings of creditors and first meetings of inspectors on January 20, 2015. The activities of the Trustee will be reported on separately as provided for in the BIA.

## **C) STALKING HORSE OFFER**

68. The Stalking Horse Offer that has been negotiated and signed by the Receiver, subject to approval by this Court, is attached at **Appendix "Z"**.

69. The purchaser under the Stalking Horse Offer is 2450902 Ontario Limited (the "**Purchaser**"). The principals of the Purchaser are Benn-jay Spiegel and Dwight Powell, who are respectively principals of Crawmet and DPII, who are secured creditors of the Companies as described in the opinions of the Receiver's counsel referred to above and attached to this Third Report.

## **What is to be sold**

70. The Stalking Horse Offer is for substantially all of the assets of the Companies. There are three main exclusions from the assets of the Companies that would be conveyed under the Stalking Horse Offer:

- a) cash on hand at closing;
- b) boats in the possession of the Companies for which there are, or were, boat slip leases or other bailment arrangements (the Receiver will bring a separate motion to the Court to deal with such boats after the Proof of Property Process has gone further); and
- c) anything that the Purchaser may choose to exclude from the assets that would otherwise be subject to the Stalking Horse Offer (but if so there are no adjustments to the purchase price) .

71. In addition to the assets of the Companies relating to the business they operated, the assets that will be sold under the Stalking Horse Offer include claims that the Companies, the Receiver or the Trustee may have, including the applications that the Receiver and Trustee have commenced regarding the Adjacent Properties and the property at 14 Highland Ave. in Belleville. Also included will be any claims that CMS or other of the Companies have in respect of the funds paid by CMS for the interest of 1800239 Ontario Limited in the Boston Pizza business, the amounts owing by Crate Belleville Inc. as well as any amounts that may be owing by individuals including the estate of Lloyd Crate, Steven Crate, Greg Crate and Lynn Marko, for reasons including the shareholder loans listed as outstanding to 1382415 Ontario Ltd..

72. The Trustee will bring its own motion for approval to sign the Stalking Horse Offer and will file a separate report in that regard.

## **The Purchase Price**

73. The Purchase Price under the Stalking Horse Offer is set out in section 2.2 of the Stalking Horse Offer, but is essentially comprised of:

- a) the amounts owing under the mortgages granted to Crawmet, DPII and Dwight Powell, and all but \$1,000,000.00 of the amounts secured under the general security agreement and owing in favour of Crawmet, as more fully

set out in Schedule “E” to the Stalking Horse Offer (the “**Assumed Secured Debt**”), which the Purchaser will assume;

- b) cash for any and all amounts secured by the Receiver’s Charge and the Receiver’s Borrowings Charge at Closing;
- c) cash in an amount that the Receiver will estimate for the aggregate of the fees, expenses, and disbursements of the Receiver and the Trustee, and of their counsel for the period after Closing until their discharge, but if the amount of such fees, expenses and disbursements are less than the estimated amount then the Purchaser shall be paid the surplus;
- d) cash payments in the amounts of:
  - (i) Five Hundred and Fifty Thousand (\$550,000) Dollars in respect of the portion of the Lands, as defined in the Stalking Horse Offer, municipally known as 7 and 8 Mac Ave., Keswick and legally described in PIN 03475-0135 (LT) (in addition to the assumption by the Purchaser of the Assumed Secured Debt registered against title thereto), and
  - (ii) Seven Hundred and Ten Thousand (\$710,000) Dollars in respect of the portion of the Lands, as defined in the Stalking Horse Offer, municipally known as 210 Wynhurst Ave., Keswick and legally described in PINs 03475-1967 (LT) and 03475-1972 (LT);
- e) any and all other amounts and claims on account of realty tax arrears, utility arrears and source deductions, if any, which rank in priority to the mortgages in favour of Crawmet, DPII and Dwight Powell, or the Crawmet GSA or against the assets being purchased; and
- f) There are to be no adjustments to the Purchase Price in respect of any matter whatsoever.

74. The Receiver estimates that the Purchase Price as at March 31, 2015, assuming that is the Closing Date, will be approximately \$25,951,784.00, made up as follows:

Description	Price
Assumed Secured Debt	\$22,973,033.00
Cash for the Receiver’s Borrowings Charge at Closing, inclusive of 12% interest	\$1,0029,752.00
Cash for Receiver’s Charge at Closing	\$1,000,000.00

Estimated fees, disbursements and expenses of the Receiver and Trustee and their counsel from Closing to discharge	\$300,000.00
Payment for 7/8 Mac Ave.	\$550,000.00
Payment for 210 Wynhurst Ave.	\$710,000.00
amounts and claims on account of realty tax arrears, utility arrears and source deductions ranking in priority to the Assumed Secured Debt	\$389,000.00
<b>Total</b>	<b>\$25,951.784</b>

75. The Receiver has been advised the Purchaser will provide the \$250,000.00 deposit within one business day of the acceptance by the Receiver of the Stalking Horse Offer as required by its terms. If that does not take place, the Receiver will provide a further report to the Court and the Service List prior to the return of the Receiver’s motion.

**Review of the credit bid portions of the purchase price**

76. Since the Stalking Horse Offer is in large part comprised of a credit bid through the Assumed Secured Debt, the details of which are set out in Schedule “E” to the Stalking Horse Offer, the Receiver with the assistance of its counsel has conducted various due diligence to attempt to verify the amount of the Assumed Secured Debt in order to consider whether the credit at issue qualifies to make up part of the consideration of the Stalking Horse Offer and whether that offer is reasonable in comparison with the value of the assets to be sold.

77. As noted above, counsel for the Receiver has provided opinions subject to the normal assumptions and qualifications that the charges registered in favour of Crawmet, DPII and Dwight Powell are valid and enforceable as against the Receiver, as is the general security agreement in favour of Crawmet (except respecting assets in Quebec). The priority of the charges is addressed in the opinions, and the Receiver is not aware of any other secured creditor with a general security agreement.

78. The Receiver has reviewed the amount of the Assumed Secured Debt claimed by DPPII, Dwight Powell and Crawmet. Based upon a review of information and documentation provided by DPPII, Dwight Powell and Crawmet, the affidavits filed in the NOI proceedings, and also through a review of the books and records of the Companies, the Receiver has verified that, in the circumstances and subject to a number of discrepancies that the Receiver does not believe are material, those amounts are reasonably supportable.

79. In respect of facility “D” of Crawmet (see Schedule “E” to the Stalking Horse Offer), as was noted in the affidavit of Benn-Jay Spiegel sworn November 20, 2014, the advances under this facility were initially personally extended by Mr. Spiegel to CMS. The loans for the amounts so advanced were assigned by Mr. Spiegel to Crawmet by an assignment dated November 3, 2014. The Receiver believes that these amounts are supportable as part of the Assumed Secured Debt in reliance on the following:

- a) The definition of “obligations” in the general security agreement in favour of Crawmet includes all obligations, debts and liabilities of CMS to Crawmet, wheresoever and howsoever incurred and, among other things, “whether arising from dealings between [Crawmet] and [CMS] or from other dealings or proceedings by which [Crawmet] may be or become in any manner whatever a creditor, obligee or promisee of [CMS]”; and
- b) It appears that it was the contemporaneous intention of CMS and Crawmet that Crawmet loan these amounts. The general counsel of Crawmet, Allan Lyons, has provided the Receiver with an affidavit in which he stated that, among other things, CMS requested these loans from Crawmet on a basis that was stated to be urgent, and Crawmet agreed to provide them, but Mr. Spiegel temporarily issued personal cheques to CMS since the other signing officers of Crawmet were not available to sign cheques at the time that the advances were made.

### **Evaluation of the prudence of proceeding with the Stalking Horse Offer**

80. The Receiver considers that value of the assets of the Companies is enhanced because the Stalking Horse Agreement (i) allows a mechanism to attempt to obtain *en bloc* offers and encourage further bids (without a break fee or payment of expenses of the Purchaser), and also (ii) provides assurances to customers of the Companies that there will likely be an operator in place for the marina locations in time for the 2015 boating season.

81. Since it is not known whether any Superior Bids, as defined in the Stalking Horse



Offer, will be made, the Receiver has considered the value being offered in the Stalking Horse Offer and concludes that it is appropriate value for the assets being purchased taking into account:

- a) the value of the properties owned by the Companies as set out in the appraisals conducted by the Companies before the NOI litigation and for the stated purpose of financing, which was sealed in the NOI litigation and is attached as **Confidential Appendix “A”**;
- b) the value of the properties referred to in (a) were likely optimistic and also reflect (by their terms) an orderly sales process rather than a distressed or forced sales process of the sort that the Receiver would implement but for the Stalking Horse Offer;
- c) there would be sale costs consisting of real estate commissions estimated to be in the range of 5% commission and lawyers’ fees and other closing costs for the properties referred to in (a);
- d) the value of inventory (boats), parts, vehicles and equipment on the books and records of CMS is overstated as compared to liquidation estimates provided by Hilco and SFL;
- e) there is likely modest value for goodwill at best, given the adverse publicity and repeated instances of funds not being kept in trust and customers of the Companies having lost funds due to the actions of prior management;
- f) there is likely some value to the claims in respect of the Adjacent Properties and 14 Highland Ave. in Belleville, and the valuation of the Adjacent Properties was also included in Confidential Appendix “A” by the Companies when they commissioned it, but discounts are likely warranted for some litigation risk, expense of litigation and also the factors noted in items (b) and (c) above regarding adjustments as against appraised value (note that the valuation at Confidential Appendix “A” does not include 262 Queensway, which is one of the Adjacent Properties, but that was purchased on September 29, 2014 so the Receiver has considered its purchase price as an indication of value subject to adjustment);
- g) there is a wide range of potential value in respect of possible claims that CMS may have in respect of the funds it paid for 1800239 Ontario Limited’s interests in the Boston Pizza business, but this is subject to greater litigation risk given that the Receiver’s investigation is not yet complete, subject to adjustment for the cost of any proceeding, and subject to adjustment because the recovery of any debt owing or equity held is also not guaranteed;
- h) there is a wide range of potential value in respect of possible claims that the Companies may have against individuals, including the estate of Lloyd

Crate, Steven Crate, Greg Crate and Lynn Marko, for matters including the approximate \$1.8 million listed as owing to 1382415 Ontario Ltd., but this is again subject to greater litigation risk given that the Receiver's investigation is not yet complete, subject to adjustment for the cost of any proceeding, and subject to adjustment because the recovery of any debt owing or equity held is also not guaranteed (particularly in light of the stated intent of several creditors, including the registrations on title by Canada Revenue Agency to pursue the assets of Messrs. Crate and Ms. Marko); and

- i) there would be greater ongoing costs of the receivership if the Receiver were to sell the assets under an alternative forced sales process.

82. The Receiver has prepared a detailed analysis of the estimated ranges of the value of the assets being sold under the Stalking Horse Offer as compared to the value of the estimated Purchase Price under that offer, and has concluded that the Purchase Price in the Stalking Horse Offer is superior to the estimated ranges of recoverable value of the assets in a disposition through an alternative forced liquidation sales process. A copy of this analysis is attached as **Confidential Appendix "B"**.

#### **Commentary on allocation of purchase price**

83. The Receiver is cognizant that the allocation of the purchase price in the Stalking Horse Offer to the properties municipally known as 7/8 Mac Ave. and 210 Wynhurst Ave. in Keswick is likely to provide for less value than the charges registered against those properties by Cesaroni Management Limited ("**Cesaroni**"), Romith Investments Limited ("**Romith**") and Uplands Charitable Foundation ("**Uplands**").

84. The Receiver has been advised by the Purchaser that its investigations into the market value for those properties is considerably less than the value of the amounts owing under the charges in favour of Cesaroni, Romith and Uplands, and that the amounts allocated are what the Purchaser is prepared to pay in order to acquire those properties. The amounts offered are different than the appraisal information available to the Receiver as set out in Confidential Appendix "A".

85. The Receiver has reviewed the consideration being offered in the Stalking Horse Offer and the benefit of a mechanism to coherently market the assets being conveyed in it in a bidding process, and has concluded that the interests of the creditors and stakeholders of the

Companies on the whole is best served by accepting the Stalking Horse Offer.

86. Part of the Receiver's considerations in that regard are that it is the Receiver's understanding that the amounts owing by the Companies to Cesaroni and Romith are also secured against some or all of the lands municipally known as 200 and 292 Wynhurst and registered in the name of Lynn Marko, such that the likelihood of repayment of those amounts is reasonable having regard to the values given to those lands in Confidential Appendix "A".

87. The position of Cesaroni, Romith and Uplands on the Stalking Horse Offer and the Receiver's motion is not yet known, but will be developed in discussions among counsel prior to the return of the motion.

88. The Receiver is also cognizant that the allocation of the Purchase Price in the Stalking Horse Offer will yield no recovery allocable to the Quebec assets of the Companies, yet the Assumed Secured Debt appears to have no enforceable security against those assets. The Receiver believes that the Stalking Horse Offer nonetheless is supportable and commercially reasonable having regard to:

- a) the relative value of the Quebec assets (as set out in Confidential Appendix "B"), both in terms of cost value on the books and records of the Companies, and also in terms of fair market and forced sale values as reported by Hilco and SFL, as compared to the overall consideration offered in the Stalking Horse Offer; and
- b) the realizable value of the Quebec assets is likely minimal (or even negative) having regard to the priority amounts payable such as the portion of the Receiver's Charge and Receiver's Borrowing Charge allocable to those assets.

#### **D) PROPOSED SALES PROCESS**

89. The sales process timeline that the Receiver has proposed has been designed to attempt to ensure that the process will be complete and a buyer of the assets in place for as soon as possible following the end of March. The Receiver has done so because the value in the assets would be more likely maintained if the marina operations were sold early enough in 2015 so that a new operator can contact customers before the boats start being taken out of

winter storage in anticipation of the 2015 boating season. It is not clear that it would be financially or operationally prudent for the Receiver to attempt to operate the marina business itself in the 2105 boating season

90. The proposed sales process is set out more fully in the draft Order attached as Schedule “A” to the Receiver’s Notice of Motion, including the sales process terms attached as Schedule “A” to that Order (collectively the “**Sales Process**”), but the following is a summary the Sales Process:

Description	Date
Order re: Stalking Horse and Sales Process	February 13, 2015
Receiver sends teaser letter to parties in the same industry as the Companies and to other potential purchasers identified by the Receiver	As soon as possible after February 13, 2015
Ads in the Globe & Mail (national edition)	February 23, 2015
Ads in in the Georgina Advocate, Barrie Advance, Innisfil Journal and Orillia Today	March 2, 2015
Superior Bids must be submitted to the Receiver	March 18, 2015 at 5:00pm (Toronto time)
If no Superior Bids	
motion for an Approval and Vesting Order for the Stalking Horse Offer	By March 27, 2015
Closing of the Stalking Horse Offer	By March 31, 2015
If one or more Superior Bids	
Receiver to send invitations to the Auction to all persons submitting Superior Bids and to the Stalking Horse Bidder	By March 20, 2015 at 3:00pm (Toronto time)
Auction at the offices of the Receiver	March 23, 2015 at 10:00 am (Toronto time)
motion for an Approval and Vesting Order for the Winning Bid	By April 1, 2015
Closing of the Winning Bid	By April 8, 2015

If the Winning Bid fails to close: Motion for Approval and Vesting Order for the Back-up Winning Bid and Closing of the Back-up Winning Bid	By April 20, 2015
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**E) SEALING ORDER**

91. The release of the information at Confidential Appendices “A” and “B” would be detrimental to the interests of the stakeholders of the Companies prior to the closing of a transaction under the Sales Process Terms. The release of that that information would also be prejudicial to the prosecution of the claims that the Companies may have as described in the Third Report, either by the Receiver or by a purchaser. The Receiver accordingly requests that these documents be sealed until further Order of the Court.

**F) CONCLUSION**

92. A. Farber & Partners Inc. in its capacities as Receiver and Trustee accordingly seeks the Order attached as Schedule “A” to its Notice of Motion.

All of which is respectfully submitted this 8<sup>th</sup> day of February, 2015.

**A. FARBER & PARTNERS INC.**

**COURT-APPOINTED RECEIVER OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**



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Per: Stuart Mitchell  
Senior Vice President

TAB A



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

Court File No. 31-1932502

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932534

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
F.S. CRATE & SONS LIMITED**

Court File No. 31-1932548

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
1330732 ONTARIO LIMITED**

Court File No. 31-1932557

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF 1328559 ONTARIO LIMITED**

Court File No. 31-1932540

**B E T W E E N:**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
1282648 ONTARIO LIMITED**

**ORDER  
(Appointing Interim Receiver)**

**THIS MOTION** made by Crawmet Corp. (“Crawmet”) for an Order, *inter alia*, terminating the proposal proceedings of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited and 1282648 Ontario Limited (collectively,

the “Debtors”) and appointing A. Farber & Partners Inc. (“Farber”) as receiver of all of the assets, properties and undertakings of the Debtors (the “Crawmet Motion”).

ON READING the affidavit of Benn-Jay Spiegel sworn November 20, 2014 and the Exhibits thereto, on hearing the submissions of counsel for Crawmet and the Debtors and on being advised by counsel for the Debtors of their request for an adjournment of the Crawmet Motion.

#### ADJOURNMENT

1. THIS COURT ORDERS that the hearing of the Crawmet Motion is adjourned to Monday December 1, 2014, on the terms set out herein.

#### FILING

2. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
3. THIS COURT ORDERS that the service and filing by Crawmet of a consolidated Notice of Motion and Motion Record is hereby validated and directs that the Motion Record be filed solely in Court File No. 31-1932502.

#### APPOINTMENT ON AN INTERIM RECEIVER

4. THIS COURT ORDERS that pursuant to section 47.1 of the BIA, A. Farber & Partners Inc. is hereby appointed interim receiver (the “Interim Receiver”), without security, of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “Property”) with the powers provided for herein.

#### INTERIM RECEIVER’S POWERS

5. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and



authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable; and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Debtors and/or the Interim Receiver shall not make any payments to any party related to the Debtors or Steven Crate, whether directly or indirectly, without the written consent of Crawmet or further order of the Court.

7. **THIS COURT ORDERS** that any disbursements in excess of the disbursements required to maintain the Property in an idle state shall not be paid by the Debtors without the approval of the Interim Receiver and Crawmet or further order of the Court.

*Debtors are entitled to withhold reasonable legal fees and ordinary business expenses.* **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER** *and*

8. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the

Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

11. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

#### **NO INTERFERENCE WITH THE INTERIM RECEIVER**

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE INTERIM RECEIVER'S LIABILITY**

14. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER'S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

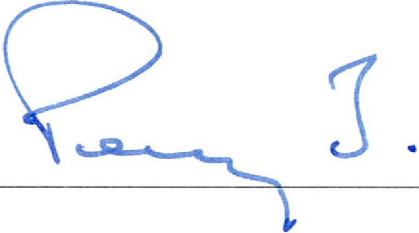
#### **GENERAL**

18. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver of the Debtors pursuant to section 243(1) of the BIA or a trustee in bankruptcy of the Debtors.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE MARINE SALES LIMITED, ET. AL.**

Court File No. 31-1932502

**ONTARIO  
SUPERIOR COURT OF ONTARIO  
IN BANKRUPTCY**

Proceedings commenced at TORONTO

**INTERIM RECEIVER ORDER**

**CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak (LSUC #54100A)**  
Tel: (416) 218-1161  
Fax: (416) 218-1844

**Lawyers for Crawmet Corp.**

**TAB B**

*Nov 21 14*

*November 21, 2014  
H. Chaiton } For Crawlmet Corp.  
M. Poliak }*

*J.D. Marshall for Douglas Products LLC*

*A. Filchenko for Dedeich London*

*K.D. Kraft as agent for Re  
Dedton*

*This is a request for the  
appointment of a receiver  
and Re termination of  
a NOI and Proposal Trustee.*

ONTARIO  
SUPERIOR COURT OF ONTARIO  
IN BANKRUPTCY

Proceedings commenced at TORONTO

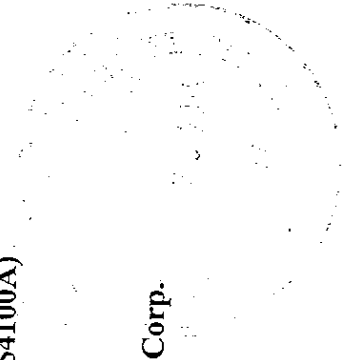
MOTION RECORD  
(RETURNABLE NOVEMBER 21, 2014)

CHAITONS LLP  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)  
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Tel: (416) 218-1161  
Fax: (416) 218-1844

Lawyers for Crawlmet Corp.





It is fought on that which because of certain revelations that the Debtors have not been dealing forthrightly with the Applicant.

These allegations are denied.

The Debtors seek an adjournment for one week to file material.

As a term of an adjournment, the Debtors will agree to a term that no material transactions will take place and that the Debtors' Proposed Trustee will have authority to monitor and have enhanced powers to secure the assets.

The real problem with this proposal is that secured creditors representing \$20M of \$30M of indebtedness, represented by Mr.

Chantor say they will, under no circumstances, support any proposal by the Debtor and its principals. They so feel they have been led to and have lost all faith and trust. They also say point to the fact that although some time has gone by, there is no hint of a proposal from the Debtor in any event.

In the circumstances, I am prepared to grant an adjournment but only on the basis that an interim receiver be appointed. There are serious allegations, before the Court requiring the assets be be secured to prevent self-help and dissipation.

I am unable to accept that  
the most efficient interim receiver  
would be the current Proposal Trustee.  
In the circumstances, I ~~will~~  
appoint Fisher as the interim  
receiver ~~to~~ effective  
immediately.

Adjourned to ~~Monday, Dec~~

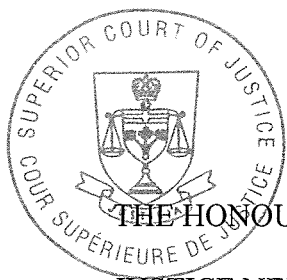
~~Friday, November 28, 2014~~

Monday Dec. 1, 2014

I return order to issue in  
the form signed by me this day.

  
Fisher J.

T A B C



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

THE HONOURABLE MR. )

JUSTICE NEWBOULD )

MONDAY, THE 8<sup>TH</sup> DAY

OF DECEMBER, 2014

Court File No. 31-1932502

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932534

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
F.S. CRATE & SONS LIMITED**

Court File No. 31-1932548

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
1330732 ONTARIO LIMITED**

Court File No. 31-1932557

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
1328559 ONTARIO LIMITED**

Court File No. 31-1932540

BETWEEN:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
1282648 ONTARIO LTD.**

**ORDER**

**(Terminating the Proposal Debtors' Proposal Proceedings and Appointing a Receiver)**

**THIS MOTION** made by Crawmet Corp. ("**Crawmet**") for an Order:

1. validating the service and filing of the consolidated reply motion record, factum and brief of authorities of Crawmet be filed solely in court file number 31-1932502;
2. pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3 (the "**BIA**"), declaring that the period for filing a proposal by Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1282638 Ontario Ltd., 1328559 Ontario Limited and 1330732 Ontario Limited (collectively, the "**Debtors**") be terminated;
3. pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing A. Farber & Partners Inc. ("**Farber**") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario; and
4. substituting Farber as bankruptcy trustee (the "**Trustee**") of the Debtors and 1382415 Ontario Ltd. and 1382416 Ontario Ltd. (together with the Debtors, the "**Proposal Debtors**").

**ON READING** the affidavit of Benn-Jay Spiegel sworn November 20, 2014, the supplementary affidavit of Benn-Jay Spiegel sworn November 30, 2014, the Report of Dodick Landau Inc., in its capacity as Proposal Trustee of the Debtors (the "**Proposal Trustee**"), the Affidavits of Steven Crate each sworn November 28, 2014, the First Report of Farber in its capacity as Interim Receiver of the Debtors (the "**Interim Receiver**"), the Second Report of the Interim Receiver, the Supplementary Report to the Second Report of the Interim Receiver, the Second Report of the Proposal Trustee, the Affidavit of Steven Crate sworn December 5, 2014, the Affidavit of Benn-Jay Spiegel sworn December 7, 2014 and the Third Report of the Interim Receiver, on hearing the submissions of counsel for Crawmet, counsel for the Debtors, counsel

for the Proposal Trustee, counsel for the Interim Receiver and such other counsel as are present, and on reading the consents of Farber to act as the Receiver and the Trustee,

## **FILING**

1. **THIS COURT ORDERS** that the service and filing by Crawmet, the Proposal Trustee, the Interim Receiver and the Debtors of consolidated materials be hereby validated and directs that these materials be filed solely in Court File No. 31-1932502.

## **TERMINATION OF THE PROPOSAL PROCEEDINGS**

2. **THIS COURT ORDERS AND DECLARES** that, pursuant to section 50.4(11) of the BIA, the period for filing a proposal by each of the Proposal Debtors in their respective proceedings be and hereby is terminated and that A. Farber & Partners Inc. be and hereby is substituted as the bankruptcy trustee of the Proposal Debtors.

## **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Proposal Debtors acquired for, or used in relation to a business carried on by the Proposal Debtors, including all proceeds thereof (the "**Property**").

## **RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Proposal Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Proposal Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Proposal Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Proposal Debtors and to exercise all remedies of the Proposal Debtors in collecting such monies, including, without limitation, to enforce any security held by the Proposal Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Proposal Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Proposal Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter



instituted with respect to the Proposal Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Proposal Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Proposal Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Proposal Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Proposal Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Proposal Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Proposal Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Proposal Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

## **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE PROPOSAL DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Proposal Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Proposal Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. **THIS COURT ORDERS** that all rights and remedies against the Proposal Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Proposal Debtors to carry on any business which the Proposal Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Proposal Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Proposal Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Proposal Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services,

centralized banking services, payroll services, insurance, transportation services, utility or other services to the Proposal Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Proposal Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Proposal Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Proposal Debtors shall remain the employees of the Proposal Debtors until such time as the Receiver, on the Proposal Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Proposal Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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 ‘<<http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al>>’.

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

#### **GENERAL**

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

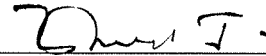
28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to read "D. J.", is written above a horizontal line.

---

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE MARINE SALES LIMITED, ET. AL.**

Court File No. 31-1932502

**ONTARIO  
SUPERIOR COURT OF ONTARIO  
IN BANKRUPTCY**

Proceedings commenced at TORONTO

**ORDER**

**CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak (LSUC #54100A)**  
Tel: (416) 218-1161  
Fax: (416) 218-1844

**Lawyers for Crawmet Corp.**

TAB D

Court File Number: 31-1932502

Superior Court of Justice 31-1932534  
Commercial List 31-1932548

31-1932557  
**FILE/DIRECTION/ORDER** 31-1932540  
31-1932553  
31-1932555

No Credit Macaw Sales Ltd et al  
Plaintiff(s)

AND

\_\_\_\_\_  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

March 8, 2014

The motion by Crawford is to terminate the NOI proceedings and to appoint a receiver under its securities.

Certain of the debtors move to approve interim DIP facilities of \$200,000 with a priority charge, ~~and~~ to permit annual the NOIs of two of the debtors 7 S. Hrdco and West Hrdco, and to extend Section 50.4(1) of the BIA.

\_\_\_\_\_  
Date Judge's Signature

Additional Pages 1576

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

the stay of proceedings to January 26, 2015.

Section 50.4(9) of the BIA permits an extension of a stay if the court is satisfied that (a) the insolvent person has acted in good faith and due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditors would be materially prejudiced by the extension.

Section 50.4(11) of the BIA permits a stay to be terminated if the court is satisfied that the converse of (a), (b) & (c) in section 50.4(9) is the case.

I am satisfied that the NOI proceedings should be terminated. The motion brought today by the debtors is audacious but honestly misconceived.

The debtors have not been acting in good faith. As disclosed in the second report of



Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

The interim receiver, Gede Maine has issued cheques in excess of available cash, it has not paid out filing fees & deductions and it has made disbursements without prior approval of the Personal Trustee and the interim receiver, contrary to the protocol established by the interim receiver. The debtors have not attempted to explain why this occurred.

The debtors are not likely to be able to make a viable proposal. They recently disclosed to Casmost personnel that they have suffered large losses since 2010, have not filed proper tax returns & have lied to the tax authorities by filing false returns. They now say that they realize that one of the Gede family should be involved in running the business and that a new operator should be found. Raising money in their circumstances seems hopeless in any reasonable ~~time~~ foreseeable time.

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

Cawmet and Powell hold 1st, 2nd & 3rd mortgage securities on the lands used by the Cape Marine business. They Cawmet has made it clear that it is not prepared to support any proposal of the debtors and Powell supports Cawmet. ~~As in~~ In some circumstances assertions of non-support for a future proposal or arrangement are taken with a grain of salt as negotiating positions. In light of the evidence disclosed, I do not so take the positions of Cawmet and Powell. They have legitimate reasons to want to see the properties now taken care of under the auspices of a receiver.

~~As proposed trustee~~. Without the support of Cawmet and Powell, any proposal would not bind them and they would be free to deal with their securities.

The proposal ~~has~~ has acknowledged in its third report that if Cawmet and Powell

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

maintain their positions, the contemplated proposal in the affair of M. Gato is unlikely to succeed.

Splitting the Keswick Maine properties and having the debtors retain the part of the Maine with the largest number of boat slips + other common facilities would clearly diminish Gawnnet's security. The notion that the debtors could operate any maine business is fanciful and would be to the detriment of all stakeholders, including employees. The Keswick maine business should be maintained as a whole.

The bids for appointing a receiver are well settled. See Bank of Montreal v. Carnival bearing Ltd, 2011, 74 C.B.R. (5th) 300. Gawnnet is not entitled to the appointment of a receiver as requested.

Mr. Wetmore raises an issue on behalf of 2124915 Oatman Inc re the Lagoon City maine and ~~states~~ takes the position that it should be carved out of the properties under receivership.

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

I think the receiver, Counsel and the #d co should have a little time to consider this and perhaps some agreement can be reached. If not, the matter may be brought back on.

Mr. Prophet on behalf of Upland's Charitable Foundation and Kowit Investments Ltd opposes the receiver's charge to ranking prior to his clients' 1 million first mortgages. I think a discussion with the receiver and Counsel should also take place on this issue and if agreement cannot be reached, the matter may be brought back on.

The notices of intention to file proposals of the seven debtors are furnished. A. Fisher & Partners Inc is appointed receiver of the assets of the seven debtors without security and is appointed trustee in bankruptcy of the seven debtors.

J. Doe

# T A B L E

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

Court File No. 31-1932502  
Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540

**B E T W E E N:**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

**FIRST REPORT OF THE RECEIVER AND TRUSTE**

**DECEMBER 11, 2014**

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C) ADMINISTRATIVE CONSOLIDATION OF 6 DEBTOR ESTATES .....	4
D) CONCLUSION .....	5

## **LIST OF APPENDICES**

- “A” Appointment Order dated November 21, 2014 of the Honourable Mr. Justice Penny
- “B” Endorsement of the Honourable Mr. Justice Penny dated November 21, 2014
- “C” Endorsement of the Honourable Mr. Justice Penny dated December 1, 2014  
(handwritten and typed version)
- “D” Endorsement of the Honourable Mr. Justice Newbould dated December 4, 2014  
(handwritten and typed version)
- “E” Order of the Honourable Mr. Justice Newbould dated December 8, 2014
- “F” Handwritten endorsement of the Honourable Mr. Justice Newbould dated December 8, 2014



Court File No. 31-1932502  
Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**FIRST REPORT OF THE RECEIVER AND TRUSTEE**

**December 11, 2014**

**A. Farber & Partners Inc.**, in its capacities as the Court appointed Receiver (the “**Receiver**”) and as the trustee in bankruptcy (the “**Trustee**”) of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited (collectively the “**Companies**”), 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (together with the Companies, the “**Debtors**”) hereby reports to the Court as follows:

**INTRODUCTION**

1. On November 14, 2014, the Debtors each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and named Dodick Landau Inc. as proposal trustee (“**Proposal Trustee**”).
2. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of the Companies and (iii) to substitute A. Farber &

Partners Inc. as bankruptcy trustee of the Companies (the “**Crawmet Motion**”). At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.

3. At the November 21, 2014 hearing, A. Farber & Partners Inc. was appointed Interim Receiver pursuant to section 47.1 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) of the Companies (the “**Interim Receiver**”) to preserve and protect the assets, undertakings and properties of the Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Appointment Order**”). A copy of the Appointment Order is attached at **Appendix “A”**. A copy of the endorsement dated November 21, 2014 is attached at **Appendix “B”**.

4. At a December 1, 2014 hearing, the powers of the Interim Receiver were expanded and the Court made certain directions regarding the business and financial affairs of the Companies pending the next hearing on December 9, 2014. The Crawmet Motion was also adjourned to that date. A copy of the endorsement of Mr. Justice Penny of that date, along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “C”**.

5. The Interim Receiver served and filed its Second Report and Supplementary Report to the Second Report on December 3 and 4, respectively, regarding certain facts and matters that had been recently discovered by the Interim Receiver, and which the Interim Receiver believed were of an urgent and material nature such that they required immediate disclosure in advance of the scheduled hearing on December 9, 2014. The Proposal Trustee also served and filed its Second Report on similar issues, which it reported constituted material adverse changes.

6. A hearing was held at the request of Crawmet on December 4, 2014 to renew the Crawmet Motion. The Honourable Justice Newbould directed the Interim Receiver to notify all banks holding accounts of Crate Marine Sales Ltd. that no disbursements were to be made without the prior written authorization of the Interim Receiver and further directed that the hearing that had been previously scheduled for December 9 instead proceed on December 8, 2014 before His Honour. A copy of the endorsement of Mr. Justice Newbould of that date,

along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “D”**.

7. On December 8, 2014, The Honourable Justice Newbould ruled in favour of the Crawmet Motion and appointed A. Faber & Partners Inc. as Receiver and Trustee of the Debtors, and terminated the proposals of the Debtors. A copy of the Order of that date is attached as **Appendix “E”**, and a copy of the handwritten Endorsement of that date is attached as **Appendix “F”**.

## **PURPOSE OF THIS REPORT**

8. This is the first report of the Receiver and Trustee (the **“First Report”**). Its purpose is to seek certain relief regarding administrative matters pertaining to the management of the receivership and bankruptcy estates of the Debtors.

9. The Receiver has not yet completed a review of the form necessary to respond to the concerns of certain stakeholders such as Marquis Yachts, 2124915 Ontario Inc. as landlord of the Lagoon City location operated by the Debtors, or Uplands Charitable Foundation and Romith Investments Limited. The Receiver and Trustee will report on those and other issues in a subsequent report.

## **LIMITATION OF REVIEW**

10. A. Farber & Partners Inc. in its capacities as Receiver and Trustee has relied upon the financial records and information provided by the Debtors, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not independently reviewed or verified such information. It has prepared this First Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) TYPOGRAPHICAL ERROR IN THE DECEMBER 8, 2014 ORDER**

11. The motion materials filed by all parties for the hearing on December 8, 2014 described one of the Debtors as 1282648 Ontario Limited.

12. The Order dated December 8, 2014 appointing the Receiver contains a typographical error in that this company is misdescribed as 1282638 Ontario Limited.

13. In order to ensure that A. Farber & Partners Inc. in its capacities as Receiver and Trustee is properly empowered to carry out its duties, it seeks an amendment to the Order to correct this error.

#### **B) NEW RECEIVERSHIP COURT FILE**

14. The proceedings to date have all been under the bankruptcy estates in respect of Notices of Intention filed by the Debtors.

15. The parties will need to bring motions in respect of each of the bankruptcy estates and the receivership.

#### **C) ADMINISTRATIVE CONSOLIDATION OF 6 DEBTOR ESTATES**

16. The bankruptcy estates of the Debtors are comprised of Crate Marine Sales Ltd. (“**Crate Marine**”) and F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Holdcos**”).

17. The information available to the Trustee to-date indicates that Crate Marine was and is the only entity among the Debtors that actively carried on business, and that the Holdcos either owned real property used in the business of Crate Marine, or owned certain of the other Holdcos and/or Crate Marine.

18. Unless directed differently by the Court, the Trustee would be obliged under the *Bankruptcy and Insolvency Act* (the “**BIA**”) to take certain statutory steps in respect of each of the 6 Holdcos, including:

- a) separate notifications to creditors;

- b) separate meetings of creditors and appointment of boards of inspectors; and
- c) filing separate reports with the Office of Superintendent of Bankruptcy and otherwise.

19. The steps outlined in paragraph 18, above, can be more economically and efficiently managed on a joint basis for the Holdcos through administrative consolidation, which will lessen the cost and impact on creditors and stakeholders and will not prejudice any party.

20. The statutory deadline for the Trustee to mail the notices required by the BIA is Monday December 15, 2014, so the Trustee accordingly seeks direction from the Court on an urgent basis so that, if appropriate, the administrative consolidation sought can be obtained before that notice is delivered.

21. The Trustee has not yet completed its review of the financial affairs of the Debtors, such that the Trustee is not in a position at this time to make a determination as to whether substantive consolidation of the estates of some or all of the Debtors might be appropriate, and the Trustee therefore requests that the administrative consolidation be without prejudice to the rights of any party to seek or oppose substantive consolidation of any/all of the Debtors' estates at a later time.

#### **D) CONCLUSION**

22. A. Farber & Partners Inc. in its capacities as Receiver and Trustee accordingly seeks the Orders attached as Schedules "A" and "B" to its Notice of Motion.

All of which is respectfully submitted this 11<sup>th</sup> day of December, 2014.

**A. FARBER & PARTNERS INC.**

**COURT-APPOINTED RECEIVER AND TRUSTEE OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

A handwritten signature in black ink that reads "Stuart Mitchell". The signature is written in a cursive style with a horizontal line through the middle of the letters.

---

Per: Stuart Mitchell  
Senior Vice President

**T A B F**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. )

JUSTICE NEWBOULD )

MONDAY, THE 8<sup>TH</sup> DAY

OF DECEMBER, 2014

BETWEEN:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE  
MARINE SALES LIMITED

Court File No. 31-1932502

BETWEEN:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF F.S.  
CRATE & SONS LIMITED

Court File No. 31-1932534

BETWEEN:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1330732  
ONTARIO LIMITED

Court File No. 31-1932548

BETWEEN:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1328559  
ONTARIO LIMITED

Court File No. 31-1932557

BETWEEN:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1282648  
ONTARIO LTD.

Court File No. 31-1932540

**AMENDED ORDER**

(Terminating the Proposal Debtors' Proposal Proceedings and Appointing a Receiver)

**THIS MOTION** made by Crawmet Corp. ("Crawmet") for an Order:

1. validating the service and filing of the consolidated reply motion record, factum and brief of authorities of Crawmet be filed solely in court file number 31-1932502;
2. pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3 (the "BIA"), declaring that the period for filing a proposal by Crate Marine



Sales Limited, F.S. Crate & Sons Limited, 1282648 Ontario Ltd., 1328559 Ontario Limited and 1330732 Ontario Limited (collectively, the "**Debtors**") be terminated;

3. pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing A. Farber & Partners Inc. ("**Farber**") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario; and
4. substituting Farber as bankruptcy trustee (the "**Trustee**") of the Debtors and 1382415 Ontario Ltd. and 1382416 Ontario Ltd. (together with the Debtors, the "**Proposal Debtors**").

**ON READING** the affidavit of Benn-Jay Spiegel sworn November 20, 2014, the supplementary affidavit of Benn-Jay Spiegel sworn November 30, 2014, the Report of Dodick Landau Inc., in its capacity as Proposal Trustee of the Debtors (the "**Proposal Trustee**"), the Affidavits of Steven Crate each sworn November 28, 2014, the First Report of Farber in its capacity as Interim Receiver of the Debtors (the "**Interim Receiver**"), the Second Report of the Interim Receiver, the Supplementary Report to the Second Report of the Interim Receiver, the Second Report of the Proposal Trustee, the Affidavit of Steven Crate sworn December 5, 2014, the Affidavit of Benn-Jay Spiegel sworn December 7, 2014 and the Third Report of the Interim Receiver, on hearing the submissions of counsel for Crawmet, counsel for the Debtors, counsel for the Proposal Trustee, counsel for the Interim Receiver and such other counsel as are present, and on reading the consents of Farber to act as the Receiver and the Trustee,

#### **FILING**

1. **THIS COURT ORDERS** that the service and filing by Crawmet, the Proposal Trustee, the Interim Receiver and the Debtors of consolidated materials be hereby validated and directs that these materials be filed solely in Court File No. 31-1932502.

#### **TERMINATION OF THE PROPOSAL PROCEEDINGS**

2. **THIS COURT ORDERS AND DECLARES** that, pursuant to section 50.4(11) of the BIA, the period for filing a proposal by each of the Proposal Debtors in their respective proceedings be and hereby is terminated and that A. Farber & Partners Inc. be and hereby is substituted as the bankruptcy trustee of the Proposal Debtors.

#### **APPOINTMENT**

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Proposal Debtors acquired for, or used in relation to a business carried on by the Proposal Debtors, including all proceeds thereof (the "**Property**").

#### **RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Proposal Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Proposal Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on

whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Proposal Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Proposal Debtors and to exercise all remedies of the Proposal Debtors in collecting such monies, including, without limitation, to enforce any security held by the Proposal Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Proposal Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Proposal Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Proposal Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Proposal Debtors;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Proposal Debtors, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Proposal Debtors;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Proposal Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Proposal Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Proposal Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Proposal Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE PROPOSAL DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Proposal Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Proposal Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. **THIS COURT ORDERS** that all rights and remedies against the Proposal Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written

consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Proposal Debtors to carry on any business which the Proposal Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Proposal Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Proposal Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Proposal Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Proposal Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Proposal Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Proposal Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the

collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Proposal Debtors shall remain the employees of the Proposal Debtors until such time as the Receiver, on the Proposal Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Proposal Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.



### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in

priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

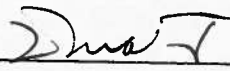
### **SERVICE AND NOTICE**

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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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 '<http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al>'.

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

**GENERAL**

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE MARINE SALES LIMITED, ET. AL.**

Court File No. 31-1932502

**ONTARIO  
SUPERIOR COURT OF ONTARIO  
IN BANKRUPTCY**

Proceedings commenced at TORONTO

**ORDER**

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Barristers and Solicitors  
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**Lawyers for Crawmet Corp.**

TAB G





Court File No. 31-1932502  
Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540

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

THE HONOURABLE *AL.*

JUSTICE *NEWBOLD*

)  
)  
)

FRIDAY, THE 12<sup>TH</sup> DAY

OF DECEMBER, 2014

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**ORDER**

**THIS MOTION** made by A. Farber & Partners Inc. in its capacities as the Court appointed Receiver (the "**Receiver**") and as the trustee in bankruptcy (the "**Trustee**") of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively, the "**Debtors**") for an Order:

- a) directing the Commercial List Office to open a new Commercial List Court File number for the receiverships of the Debtors, to be managed on a consolidated basis;
- b) directing that the bankruptcy estates of F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the "**Holdcos**") be procedurally consolidated, without prejudice to the rights of any party to seek or oppose substantive consolidation;

was heard this day at 330 University Avenue, Toronto.

**ON READING** the First Report of the Receiver and Trustee, and on hearing the submissions of counsel for the Receiver and Trustee,

1. **THIS COURT ORDERS** that the time for service of the Receiver and Trustee's Motion Record dated December 11, 2014 be and hereby is abridged and validated so that this motion is properly returnable today and hereby dispenses with any further requirement for service.

1. **THIS COURT ORDERS** that the receivership proceedings in respect of the Debtors be dealt with in a new Commercial List Court File under the following title of proceeding:

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

2. **THIS COURT ORDERS** that, without prejudice to the right of any party to seek or oppose substantive consolidation in respect of any or all of the Debtors, the bankruptcy estates of the Holdcos shall be procedurally consolidated and the Trustee be and hereby is authorized to administer the estates of the Holdcos on a consolidated basis for all purposes in carrying out the Trustee's administrative duties and other responsibilities as Trustee under the *Bankruptcy and Insolvency Act*, including, without limitation, the following:

- a) sending notices to creditors of the Holdcos pursuant to one consolidated notice;
- b) calling and conducting any meetings of creditors of the Holdcos pursuant to one combined advertisement and one meeting;
- c) seeking the appointment of one consolidated board of inspectors for the Holdcos;
- d) issuing consolidated reports in respect of the estates of the Holdcos;
- e) preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the estates of the Holdcos on a consolidated basis;  
and

f) bring motions to this Honourable Court on a consolidated basis.

\_\_\_\_\_ 

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF CRATE MARINE  
SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LTD., 1328559 ONTARIO LTD.,  
1282648 ONTARIO LTD. 1382416 ONTARIO LTD. and 1382415 ONTARIO LTD.

Court File No.: 31-193502  
Court File No.: 31-193534  
Court File No.: 31-193548  
Court File No.: 31-193557  
Court File No.: 31-193540  
Court File No.: 31-193555  
Court File No.: 31-193553

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

Proceeding commenced at TORONTO

**ORDER**

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Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Lawyers for A. Farber & Partners Inc. in its capacities  
as the Court appointed Receiver and as the trustee in  
bankruptcy of Crate Marine Sales Limited, F.S. Crate &  
Sons Limited, 1330732 Ontario Limited, 1328559  
Ontario Limited 1282648 Ontario Limited, 1382415  
Ontario Ltd., and 1382416 Ontario Ltd.

**TAB H**

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

Commercial List File No. 14-CV-10798-00CL

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**SECOND REPORT OF THE RECEIVER AND TRUSTE**

**DECEMBER 19, 2014**

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## **LIST OF APPENDICES**

- “A” Appointment Order dated November 21, 2014 of the Honourable Mr. Justice Penny
- “B” Endorsement of the Honourable Mr. Justice Penny dated November 21, 2014
- “C” Endorsement of the Honourable Mr. Justice Penny dated December 1, 2014 (handwritten and typed version)
- “D” Endorsement of the Honourable Mr. Justice Newbould dated December 4, 2014 (handwritten and typed version)
- “E” Order of the Honourable Mr. Justice Newbould dated December 8, 2014
- “F” Handwritten endorsement of the Honourable Mr. Justice Newbould dated December 8, 2014
- “G” Amended Order dated December 8, 2014
- “H” Consolidation Order dated December 12, 2014 of the Honourable Mr. Justice Newbould
- “I” Second Report of the Interim Receiver (without appendices)
- “J” Supplementary Report to the Second Report of the Interim Receiver (without appendices)
- “K” Third Report of the Interim Receiver (without appendices)
- “L” Fee affidavit of John Hendriks sworn December 19, 2014
- “M” Fee affidavit of Brendan Bissell sworn December 19, 2014



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

Commercial List File No. 14-CV-10798-00CL

IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**SECOND REPORT OF THE RECEIVER AND TRUSTEE**

**December 19, 2014**

**A. Farber & Partners Inc.**, in its capacities as the Court appointed Receiver (the “**Receiver**”) and as the trustee in bankruptcy (the “**Trustee**”) of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited (the “**Companies**”) 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively with the Companies, the “**Debtors**”) hereby reports to the Court as follows:

## INTRODUCTION

1. On November 14, 2014, the Debtors each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and named Dodick Landau Inc. as proposal trustee (“**Proposal Trustee**”).
2. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of the Companies and (iii) to substitute A. Farber & Partners Inc. as bankruptcy trustee of the Companies (the “**Crawmet Motion**”). At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.
3. At the November 21, 2014 hearing, A. Farber & Partners Inc. was appointed Interim Receiver pursuant to section 47.1 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) of the Companies (the “**Interim Receiver**”) to preserve and protect the assets, undertakings and properties of the Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Appointment Order**”). A copy of the Appointment Order is attached at **Appendix “A”**. A copy of the endorsement dated November 21, 2014 is attached at **Appendix “B”**.
4. At a December 1, 2014 hearing, the powers of the Interim Receiver were expanded and the Court made certain directions regarding the business and financial affairs of the Companies pending the next hearing on December 9, 2014. The Crawmet Motion was also adjourned to that date. A copy of the endorsement of Mr. Justice Penny of that date, along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “C”**.
5. The Interim Receiver served and filed its Second Report and Supplementary Report to the Second Report on December 3 and 4, respectively, regarding certain facts and matters that had been recently discovered by the Interim Receiver, and which the Interim Receiver believed were of an urgent and material nature such that they required immediate disclosure

in advance of the scheduled hearing on December 9, 2014. The Proposal Trustee also served and filed its Second Report on similar issues, which it reported constituted material adverse changes.

6. A hearing was held at the request of Crawmet on December 4, 2014 to renew the Crawmet Motion. The Honourable Justice Newbould directed the Interim Receiver to notify all banks holding accounts of Crate Marine Sales Ltd. that no disbursements were to be made without the prior written authorization of the Interim Receiver and further directed that the hearing that had been previously scheduled for December 9 instead proceed on December 8, 2014 before His Honour. A copy of the endorsement of Mr. Justice Newbould of that date, along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “D”**.

7. On December 8, 2014, The Honourable Justice Newbould ruled in favour of the Crawmet Motion and appointed A. Faber & Partners Inc. as Receiver and Trustee of the Debtors, and terminated the proposals of the Debtors. A copy of the Order of that date is attached as **Appendix “E”**, and a copy of the handwritten Endorsement of that date is attached as **Appendix “F”**.

8. On December 12, 2014, the Receiver brought a motion to correct a typographical error in the Order dated December 8, 2014 and for procedural consolidation of certain of the bankruptcy estates of the Debtors and other administrative relief. The Honourable Justice Newbould issued an Amended Order dated December 8, 2014 and also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief, copies of which are attached as **Appendix “G”** and **Appendix “H”**, respectively.

## **PURPOSE OF THIS REPORT**

9. This is the second report of the Receiver and Trustee (the **“Second Report”**). Its purpose is to seek certain relief (i) regarding a proposed property claims process pertaining to the management of the receivership and bankruptcy estates of the Debtors and (ii) regarding increased borrowing power.

10. The Receiver has not yet completed the review necessary to respond to the concerns of certain stakeholders such as Marquis Yachts, 2124915 Ontario Inc. as landlord of the Lagoon City location operated by the Debtors, or Uplands Charitable Foundation and Romith Investments Limited. The Receiver and Trustee will report on those and other issues in a subsequent report, which will also address a proposed sales process.

## **LIMITATION OF REVIEW**

11. A. Farber & Partners Inc. in its capacities as Receiver and Trustee has relied upon the financial records and information provided by the Debtors, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not independently reviewed or verified such information. It has prepared this Second Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) OVERVIEW OF RECEIVER'S ACTIVITIES SINCE APPOINTMENT**

12. The Receiver will report more fully in a subsequent report, at which time it will also seek formal approval of its conduct. In order to provide an overview of its activities to the Court and the stakeholders of the Debtors, the Receiver will set out below a summary of its activities since December 8, 2014:

- Taking possession of the various properties in Ontario and Quebec including securing ongoing utility, insurance, and other premises services in the Court-appointed Receiver's name
- Ongoing coordinating with former staff regarding their termination as a result of the bankruptcy including payment of their secured claim under s. 81.4 of the BIA and arranging T4's and records of employment
- Retention of certain staff to assist in (i) the ongoing security of the Property (ii) the statutory reporting duties of the Receiver, (iii) updating accounting records to provide updated accounts needed for the realization of the accounts receivable, (iv) dealing with customer calls on ongoing receivership issues and collection efforts for accounts receivable; and (v) winterization of the final boats not yet winterized as at December 8, 2014, etc;

- Numerous calls, letters and emails from creditors and customers enquiring about the status of the receivership, the bankruptcy, the impact on boat owners who paid for winter storage, impact on owners that paid 2015 slip rentals, anticipated realization process and impact on marina operations for 2015, etc.
- Preparation and mailing of the Receiver's Information Circular addressing key concerns of creditors and boat owners and post the Receiver's Information Circular to the Receiver's web site. Maintenance of the Receiver's web site for background documents of the NOI and interim receivership proceedings as well as ongoing documents and information updates on the receivership and bankruptcy proceedings
- Preliminary review on the removal of certain assets and certain accounting records of the Debtors prior to the filing of the NOI and follow up of same;
- Further investigations into the disputed ownership of various of the boats leading to discussions and correspondence with counsel regarding the preparation of this Second Report and the relief being sought to establish a Court-supervised process to resolve potential competing property claims for boats owned by the Debtors as well as owned by customer-owned boats still on the Debtors' premises in storage, or otherwise.
- Engaged in discussions with certain stakeholders, such as the landlord of the Lagoon City location, Dwight Powell Investments Inc., Crawmet, and Marquis boats regarding issues and possible arrangements or agreements that may be reached to enhance administration of the estates of the Debtors;
- Monitoring and dealing with the Debtors' 7 bank accounts at 3 different banks to preserve funds on hand, freeze outflows, manage ongoing deposits, etc.

## **B) APPROVAL OF THE ACTIVITIES AND REPORTS OF THE INTERIM RECEIVER**

13. A. Farber & Partners Inc. was appointed Interim Receiver of the Debtors on November 21, 2014 and Receiver of the Debtors on December 8, 2014.

14. The Second Report, Supplemental to the Second Report, and Third Report and the activities of the Interim Receiver and the activities, decisions, and conduct of the Interim Receiver and its counsel as set out in those reports has not yet been submitted for approval. Copies of those reports, without appendices, are attached as **Appendices "I", "J" and "K"**, respectively.

15. A. Farber & Partners Inc. as Interim Receiver accordingly respectfully requests approval of those reports and the activities, decisions, and conduct of the Interim Receiver and its counsel as set out in those reports and then that the Interim Receiver be formally discharged.

### **C) APPROVAL OF THE FEES OF THE INTERIM RECEIVER AND ITS COUNSEL**

16. Attached as **Appendix “L”** is an affidavit of the Interim Receiver setting out its fees and disbursements. The Interim Receiver’s detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is \$290,883.71.

17. Attached as **Appendix “M”** is an affidavit of counsel to the Interim Receiver setting out its fees and disbursements. The Interim Receiver’s detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is \$106,286.76.

### **D) INCREASED BORROWINGS CHARGE**

18. The Appointment Order limits borrowing by the Receiver to \$500,000.00. However, the activities of the A. Farber & Partners Inc. in its capacities as Interim Receiver and Receiver of the Debtors has exhausted the borrowings charge.

19. The Receiver has evaluated the existing and expected future expenses for the steps necessary to administer the estates of the Debtors, and has projected that, although the amount will vary with the intermittent collection of accounts receivable on behalf of the Debtors, the anticipated borrowings beyond the assets available to the Debtors will be in amounts that range up to approximately \$678,000, which is itself \$178,000 more than the current borrowing authority, by January 30, 2015. That amount does not include any provision to the payment on account ongoing retention of Debtor staff assisting in the ongoing security and realizing of the Property, the out-of-pocket expenses of an anticipated Court-approved sale

process (to be the matter of a separate report) or the fees and disbursements of the Trustee, the Receiver and its counsel (although it does for the Interim Receiver and its counsel).

20. The Receiver believes that an increased borrowing limit of \$1,000,000.00 is in the interests of the stakeholders of the Debtors, as it will allow the Receiver to continue the exercise of the powers and duties conferred upon it, and will also allow access to funds for any unanticipated expenses as the extent and nature of steps necessary to administer the estates of the Debtors is ascertained and discussed with stakeholders.

## **E) PROPOSED CLAIMS PROCESS**

21. In the process of developing a plan to attempt to realize on the assets of the Debtors, the Receiver has encountered a recurring problem that there is substantial uncertainty about the nature and extent of the interest of the Debtors in the chattels that are in their possession, or in the possession of others on their behalf.

22. In a similar manner, the Receiver has encountered difficulties in ascertaining the nature and extent of the interest of third parties to the chattels that are in the possession of the Debtors, or in the possession of others on their behalf.

23. These problems are exemplified in the reports previously made by the Interim Receiver of the Companies. To summarize the issues that have been identified by the Interim Receiver as set out in those reports:

- a) boats in the possession of the Debtors appear to have been sold without discharging loans against them owing by prior owners when sold to the Debtors, or by the Debtors (acting as broker or intermediary) to third parties (see paragraphs 42(a), (f) and (g) of the Interim Receiver's First Report);
- b) boats in the possession of the Debtors were apparently financed by third parties, or pledged as security for amounts owing by the Debtors to third parties, on the basis of the third parties holding title documentation to those boats, yet those boats appear to have been nonetheless further sold by the

Debtors in several instances (see paragraphs 33-35 and 42(a) of the Interim Receiver's First Report and paragraph 26(a) of the Interim Receiver's Third Report);

- c) boats previously owned by a vendor were sold to a purchaser by the Debtors acting as broker or intermediary without payment to the vendor, and the boat remains in the possession of the Debtors with now competing claims to the boat by vendor and purchaser (see paragraphs 42(b), (c), (d), (e) and (g) of the Interim Receiver's First Report; and
- d) boats in the possession of the Debtors appear to be under contract for sale to purchasers where the purchasers have already paid some or all of the purchase price for the boats, but the transactions have not yet been completed (see paragraph 26(b) of the Interim Receiver's Third Report).

24. The books and records of the Debtors do not record all of these transactions and similar ones that have been identified by the Receiver, and where there are such records they are not always accurate as to the nature or quantum of the transaction as recounted by third parties.

25. The Receiver is accordingly concerned that, in developing a sales and marketing plan for the assets of the Debtors, the Receiver is unable to have sufficient certainty about what chattels (principally, but not limited to, boats) in the Debtors' possession or held on their behalf by others are in fact owned by the Debtors and can be used to generate proceeds of sale for the creditors of the Debtors. Such uncertainty will have a detrimental impact on the integrity and outcome of a sales and marketing process. The Receiver intends to come back to Court shortly for a sales process to take place early in 2015 in order to attempt to be in a position to sell the business of the Debtors as a going concern in time for the beginning of the boating season in 2015.

26. Similarly, the Receiver is also concerned that it could face competing claims from third parties to boats or other chattels in its possession even though there may be no financial interest to the Debtors' estates when the competing claims are resolved. Not only would such



claims create difficulties for the Receiver in determining proper ownership and acting fairly for all stakeholders, but such claims would cause uncertainty about the customer base that makes up a marina operation for boats to be stored over winter and then housed in slip facilities in boating season. The Receiver expects that a substantial component of the value of the business of the Debtors as a going concern will be the degree of boating traffic that a purchaser will be able to expect to obtain, including historical customers of the Debtors. Accordingly, having certainty about boats owned by customers will also aid in the success of the receivership in that regard as well.

27. The Receiver has considered whether the process available in section 81 of the BIA might be suitable to address these concerns, but has concluded it cannot do so. The principal reason for this is that there is no particular deadline for submission or review of such claims in a bankruptcy, whereas the Receiver wishes to ensure that all claims are made by a deadline after publication and notices that are typical in a claims process have taken place.

28. The Receiver has accordingly prepared, with the assistance of its counsel, a proposed Property Claims Procedure Order in the form attached as Schedule “C” to the Notice of Motion. In preparing that proposed order, the Receiver has considered that it is not necessary or desirable to include unsecured claims, nor real property matters. Secured claims on chattels that are registered pursuant to the *Personal Property Security Act* are also not included in the proposed Order, because the Receiver can ascertain those claims based on the registrations and, if necessary, in further direct communication with the registered secured parties.

29. The Receiver is already in possession of some claims of a propriety nature, including two formal s. 81 claims. If the proposed Property Claims Procedure Order is granted, the Receiver proposes to administer claims already in its possession as if those claims were made pursuant to the Order, which is authorized by paragraph 12(a) of the draft order.

**F) CONCLUSION**

30. A. Farber & Partners Inc. in its capacities as Receiver and Trustee accordingly seeks the Orders attached as Schedules “A”, “B” and “C” to its Notice of Motion.

All of which is respectfully submitted this 19<sup>th</sup> day of December, 2014.

**A. FARBER & PARTNERS INC.  
COURT-APPOINTED RECEIVER AND TRUSTEE OF CRATE MARINE SALES  
LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and  
1382416 ONTARIO LTD.**

A handwritten signature in black ink that reads "Stuart Mitchell". The signature is written in a cursive style with a large initial 'S' and 'M'.

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Per: Stuart Mitchell  
Senior Vice President

# T A B I

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

THE HONOURABLE MR. ) TUESDAY, THE 23<sup>RD</sup>  
JUSTICE PENNY ) DAY OF DECEMBER, 2014



Court File No. 31-1932502

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE  
MARINE SALES LIMITED**

Court File No. 31-1932534

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF F.S. CRATE &  
SONS LIMITED**

Court File No. 31-1932548

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1330732  
ONTARIO LIMITED**

Court File No. 31-1932557

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1328559  
ONTARIO LIMITED**

Court File No. 31-1932540

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1282648  
ONTARIO LIMITED**

**DISCHARGE ORDER**

**THIS MOTION**, made by A. FARBER & PARTNERS INC. in its capacity as the Court-appointed Interim Receiver (the "Interim Receiver") of the undertaking, property and assets of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited,

1328559 Ontario Limited, and 1282648 Ontario Limited (collectively the "Debtors"), for an order:

1. approving the activities of the Interim Receiver as set out in the Second Report dated December 3, 2014 (including Supplement dated December 4, 2014) and Third Report dated December 7, 2014 of the Interim Receiver (respectively the "Second and Third Reports");
2. approving the fees and disbursements of the Interim Receiver and its counsel; and
3. discharging A. Farber & Partners Inc. as Interim Receiver of the undertaking, property and assets of the Debtors;

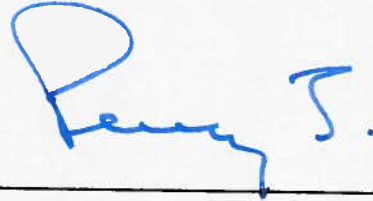
was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second and Third Reports, the affidavits of the Interim Receiver and its counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Interim Receiver, and the other counsel listed on the counsel slip;

1. **THIS COURT ORDERS** that the time for service of the Interim Receiver's Motion Record dated December 19, 2014 be and hereby is abridged and validated so that this motion is properly returnable today and hereby dispenses with any further requirement for service.
2. **THIS COURT ORDERS** that the activities of the Interim Receiver and its counsel, as set out in the Second and Third Reports, be and hereby are approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and its counsel, as set out in the Report and the Fee Affidavits, be and hereby are approved.
4. **THIS COURT ORDERS** that the Interim Receiver be and hereby is discharged as Interim Receiver of the undertaking, property and assets of the Debtors.
5. **THIS COURT ORDERS AND DECLARES** that A. Farber & Partners Inc. is hereby released and discharged from any and all liability that A. Farber & Partners Inc.

now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of A. Farber & Partners Inc. while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Without limiting the generality of the foregoing, A. Farber & Partners Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within interim receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

6. **THIS COURT ORDERS AND DECLARES** that the terms of this Order are without prejudice to the position of Marquis Yachts LLC and Northpoint Commercial Finance LLC (collectively "Marquis") as to the propriety of, and/or quantum of fees associated with, the conduct of the Interim Receiver for any future allocation order for priority charges with respect to the Marquis yacht.



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LE / DANS LE REGISTRE NO. 10101

DEC 24 2014



IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A  
PROPOSAL OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS  
LIMITED, 1330732 ONTARIO LTD., 1328559 ONTARIO LTD., 1282648  
ONTARIO LTD. 1382416 ONTARIO LTD. and 1382415 ONTARIO LTD.

Court File No.: 31-193502  
Court File No.: 31-193534  
Court File No.: 31-193548  
Court File No.: 31-193557  
Court File No.: 31-193540  
Court File No.: 31-193555  
Court File No.: 31-193553

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY  
(COMMERCIAL LIST)**

**Proceeding commenced at TORONTO**

**DISCHARGE ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2  
Fax: 416-597-3370

**Michael B. Rotsztain (LSUC #: 17086M)**  
Tel: 416-597-7870  
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**R. Brendan Bissell (LSUC #: 40354V)**  
Tel: 416-597-6489  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Lawyers for A. Farber & Partners Inc. in its  
capacities as the Court appointed Receiver and as the  
trustee in bankruptcy of Crate Marine Sales Limited,  
F.S. Crate & Sons Limited, 1330732 Ontario  
Limited, 1328559 Ontario Limited 1282648 Ontario  
Limited, 1382415 Ontario Ltd., and 1382416 Ontario  
Ltd.

**TAB J**



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

Court File No. 14-CV-10798-00CL

THE HONOURABLE MR.

)

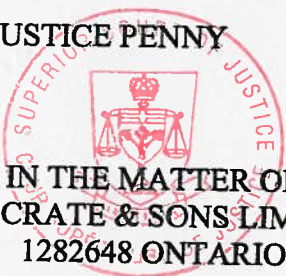
TUESDAY, THE 23<sup>RD</sup>

)

JUSTICE PENNY

)

DAY OF DECEMBER, 2014



IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED, F.S.  
CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

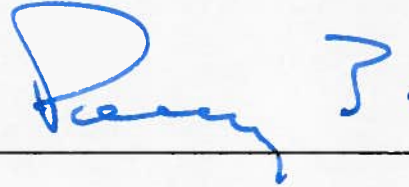
**ORDER**

**THIS MOTION**, made by A. FARBER & PARTNERS INC. in its capacity as the Court-appointed Receiver (the "Receiver") of the undertaking, property and assets of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (the "Debtors"), for an order Amending paragraph 21 of the Order dated December 8, 2014 (the "Appointment Order") to provide that the Receiver may borrow up to \$1,000,000 through the Receiver's Borrowings Charge described in that Order was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Receiver's Second Report dated December 19, 2014, and on hearing the submissions of counsel for the Receiver, and the other counsel listed on the counsel slip;

1. **THIS COURT ORDERS** that the Appointment Order be and hereby is amended by striking out the term "\$500,000" in paragraph 21 thereof, and substituting the term "\$1,000,000". All other terms of the Appointment Order are unaffected.
  
2. **THIS COURT ORDERS** the terms of this Order are without prejudice to the position or possible objections of Cesaroni Management Limited and/or Marquis Yachts LLC and Northpoint Commercial Finance LLC to the allocation and priority,

if any, of the charge for the Receiver's borrowings, fees and disbursements to their collateral.

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

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DEC 24 2014

**IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED, F.S.  
CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Court File No. 14-CV-10798-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY  
(COMMERCIAL LIST)**  
Proceedings commenced at  
Toronto

**ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2  
Fax: 416-597-3370

**Michael B. Rotsztain (LSUC #: 17086M)**  
Tel: 416-597-7870  
Email: [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com)

**R. Brendan Bissell (LSUC #: 40354V)**  
Tel: 416-597-6489  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Lawyers for A. Farber & Partners Inc. in its capacities as the  
Court appointed Receiver and as the trustee in bankruptcy of  
Crate Marine Sales Limited, F.S. Crate & Sons Limited,  
1330732 Ontario Limited, 1328559 Ontario Limited  
1282648 Ontario Limited, 1382415 Ontario Ltd., and  
1382416 Ontario Ltd.

TAB K

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

THE HONOURABLE MR.  
JUSTICE PENNY

) TUESDAY, THE 23<sup>RD</sup>  
)  
) DAY OF DECEMBER, 2014

Commercial List File No. 14-CV-10798-00CL



IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**PROPERTY CLAIMS PROCEDURE ORDER**

THIS MOTION, made by A. Farber & Partners Inc. in its capacities as the Court appointed Receiver (the "Receiver"), and trustee in bankruptcy (the "Trustee") of Crate Marine

Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the "Debtors") for an Order substantially in the form included in the Receiver and Trustee's Motion Record was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Receiver and Trustee's Notice of Motion, the Second Report of the Receiver dated December 19, 2014 (the "**Second Report**"), and on hearing the submissions of counsel for the Receiver and Trustee, and those other parties present as noted in the counsel slip, no one appearing for the other parties served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of R. Brendan Bissell worn December 22, 2014, filed:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record filed by the Receiver and Trustee, and the Second Report, be and hereby is abridged and validated such that the Motion is properly returnable today.

#### **DEFINITIONS**

2. The following terms shall have the following meanings ascribed thereto:
  - (a) "**Appointment Order**" means the Amended Order of this Court dated December 8, 2014 by which the Receiver was appointed, as such Order has been or may be supplemented, amended or varied from time to time;
  - (b) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;

- (c) "**BIA**" means *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (d) "**Court**" means the Ontario Superior Court of Justice (Commercial List);
- (e) "**Claimant**" means any Person having a Property Claim;
- (f) "**Debtors**" means Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. or any one or more of them;
- (g) "**Dispute Notice**" means a written notice to the Receiver, in substantially the form attached as Schedule "E" hereto, delivered to the Receiver by a Claimant who has received a Notice of Disallowance, of its intention to dispute such Notice of Disallowance;
- (h) "**Excluded Claim**" means:
  - (A) claims secured by any of the charges created in the Appointment Order or in the Order of this Court dated November 21, 2014 appointing A. Farber & Partners Inc. as interim receiver over certain of the Debtors;
  - (B) any interest in real property owned or leased by, or in the possession of, the Debtors;
  - (C) any unsecured claim that is a claim provable in bankruptcy within the meaning of the BIA against the Debtors;
- (i) "**Filing Date**" means the date of the Appointment Order;

- (j) **"Instruction Letter"** means the instruction letter to Claimants, in substantially the form attached as Schedule "B" hereto;
- (k) **"Known Claimants"** means those Claimants which, to the knowledge of the Receiver, had a Property Claim against the Debtors as of the Filing Date according to the books and records of the Debtors or otherwise;
- (l) **"Notice of Disallowance"** means a notice, in substantially the form attached as Schedule "D" hereto, advising a Claimant that the Receiver has revised or disallowed all or part of the Property Claim set out in the Claimant's Proof of Property Claim;
- (m) **"Notice for Publication"** means the notice to Claimants for publication in substantially the form attached as Schedule "A" hereto;
- (n) **"Person"** includes any individual, partnership, joint venture, trust, corporation, unlimited liability company, unincorporated organization, government body or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- (o) **"Proof of Property Claim"** means the form of Proof of Property Claim in substantially the form attached as Schedule "C" hereto;
- (p) **"Proof of Property Claim Document Package"** means a document package that includes a copy of the Instruction Letter, a Proof of Property Claim, and such other materials as the Receiver may consider appropriate or desirable;



- (q) **"Property"** means a boat or other tangible personal property in the possession of the Debtors or of any Person on behalf of the Debtors on or after the Filing Date;
- (r) **"Property Claim"** means any right or interest of any Person in connection with, arising out of, or in relation to Property, including, without limiting the generality of the foregoing:
  - (A) a proprietary claim of any Person to Property, or
  - (B) a Secured Claim of any Person to Property,provided, however, that "Property Claim" shall not include an Excluded Claim;
- (s) **"Property Claims Bar Date"** means 4:00 p.m. (Eastern Standard Time) on January 30, 2015, or such later date as may be ordered by the Court;
- (t) **"Property Claims Officer"** means the person or persons so designated by the Receiver and approved by the Court, or designated by the Court, as the case may be;
- (u) **"PPSA"** means the *Personal Property Security Act*, R.S.O. 1990, c. P.10 as amended;
- (v) **"Proven Property Claim"** has the meaning ascribed to that term in paragraph 6 of this Order;
- (w) **"Receiver"** means A. Farber & Partners Inc. in its capacity as the Court appointed receiver of the Debtors pursuant to the Appointment Order;

- (x) **"Secured Claim"** means any claim or portion thereof that is secured by a security interest, pledge, mortgage, lien, hypothec or charge, or any claim of a "secured creditor" as defined in the BIA; and
- (y) **"Trustee"** means A. Farber & Partners Inc. in its capacity as the trustee in bankruptcy of the estates of the Debtors pursuant to the Appointment Order.

### **RECEIVER'S ROLE**

3. THIS COURT ORDERS that the Receiver, in addition to its prescribed rights and obligations pursuant to the BIA and under the Appointment Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order, and that in taking such other actions and in fulfilling such other roles, the Receiver shall have the protections given to it in the Appointment Order and this Order, including without limitation the protections provided in paragraph 28 of this Order.
4. THIS COURT ORDERS that the procedures and deadlines in this Order shall apply in lieu of the procedures and deadlines set out in the BIA in respect of Property Claims and that the Trustee and Claimants shall not be required to comply with such procedures and deadlines but shall instead comply with the procedures and deadlines in this Order.
5. THIS COURT ORDERS that, for greater certainty, no claim provable in bankruptcy within the meaning of the BIA shall be subject to the claims procedure in this Order, and that such claims shall instead be subject to the procedure set out in the BIA.

### **DETERMINATION OF PROVEN PROPERTY CLAIM**

6. THIS COURT ORDERS that the amount and status of every Property Claim of a Claimant as finally determined in accordance with the forms and procedures authorized in this

Order, including any determination as to the nature, priority or validity, or, to the extent that such Property Claim concerns any interest, liability or obligation in relation to a monetary amount, the amount or value, of any Property Claim, (each such Property Claim, when finally determined, a "Proven Property Claim"), shall be final and binding for all purposes in these proceedings and in the bankruptcy estates of the Debtors.

7. THIS COURT ORDERS that the terms of this Order are without prejudice to the position or objections of 2124915 Ontario Inc. and to whether such order should apply to any claim it may have for chattels at the Lagoon City facility, and also without prejudice to the motion by Marquis Yachts LLC and Northpoint Commercial Finance LLC (collectively "Marquis") to carve the Marquis yacht out of these proceedings.

#### NOTICE TO CLAIMANTS

8. THIS COURT ORDERS that:

- (a) the Receiver shall no later than December 31, 2014, post a copy of the Proof of Property Claim Document Package on its website, and send on behalf of the Debtors to each of the Known Claimants (for which it has an address) a copy of the Proof of Property Claim Document Package;
- (b) the Receiver shall cause to be published, on two (2) separate days on or before January 9, 2015, the Notice for Publication in each of a local newspaper published in the area of Keswick, Ontario, and also in a Canadian national newspaper; and
- (c) the Receiver shall, provided such request is received by the Receiver prior to the Property Claims Bar Date, deliver as soon as reasonably possible following

receipt of a request therefor a copy of the Proof of Property Claim Document Package to any Person claiming to be a Claimant and requesting such material.

9. THIS COURT ORDERS that the Receiver is under no obligation to give notice to or deal with any Person other than the Claimant holding a Property Claim, and without limitation shall have no obligation to give notice to or deal with any Person having a security interest in such Property Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of such Property Claim), and such Persons shall be bound by any notices given to the Claimant and any steps taken in respect of such Property Claim in accordance with this Order.

#### **PROPERTY CLAIMS**

10. THIS COURT ORDERS that Proofs of Property Claim shall be filed in accordance with this Order with the Receiver and that any Claimant that does not:

- (a) file a Proof of Property Claim as provided for herein such that such Proof of Property Claim is received by the Receiver on or before the Property Claims Bar Date, or
- (b) having filed a Property Proof of Claim has that Property Proof of Claim finally disallowed after exhausting all the dispute and appeal rights pursuant to this Order,

shall be and is hereby:

- (i) forever barred from making or enforcing any Property Claim against the Debtors and the Property, and

- (ii) declared to be not entitled to any further notice in, and shall not be entitled to participate as a Claimant in these proceedings.

11. THIS COURT ORDERS that the Receiver may deal in accordance with the Appointment Order and any subsequent Orders of this Court with any Property that is not subject to a Property Claim without regard to any Property Claim of any Person.

12. THIS COURT ORDERS that insurers of the Debtors shall not be entitled to rely on the barring of Property Claims provided for in paragraph 10 of this Order.

#### **PROOFS OF PROPERTY CLAIM**

13. THIS COURT ORDERS that:

- (a) the Receiver may, where it is satisfied that a Property Claim has been adequately filed, waive strict compliance with the requirements of this Order as to completion and execution of Proofs of Property Claim; and
- (b) if any Property Claim relates to any indebtedness, liability or obligation in a currency other than Canadian dollars, then the Claimant making the Property Claim shall complete its Proof of Property Claim indicating the amount of the Property Claim in such currency, rather than in Canadian dollars or any other currency. The Receiver shall subsequently calculate the amount of such Property Claim in Canadian dollars, using the Bank of Canada noon spot rate on the Filing Date.

## **REVIEW OF PROOFS OF PROPERTY CLAIM**

14. THIS COURT ORDERS that the Receiver shall review all Proofs of Property Claims that are filed on or before the Property Claims Bar Date and shall accept or disallow (in whole or in part) the status, and, to the extent that such Property Claim relates to any indebtedness, liability or obligation, the amount or value of such Property Claim. At any time, the Receiver may (i) request additional information from a Claimant with respect to a Property Claim, (ii) request that the Claimant file a revised Proof of Property Claim, or (iii) attempt to resolve and settle any issue arising in respect of a Property Claim.
15. THIS COURT ORDERS that where a Property Claim as filed in a Proof of Property Claim has been accepted in writing by the Receiver, such Property Claim shall constitute such Claimant's Proven Property Claim for all purposes, including for the purposes of this proceeding and for the bankruptcy estates of the Debtors or any of them.
16. THIS COURT ORDERS that where a Property Claim as filed in a Proof of Property Claim is disallowed (in whole or in part) by the Receiver, the Receiver shall deliver to the Claimant a Notice of Disallowance, attaching the form of Dispute Notice.
17. THIS COURT ORDERS that where a Property Claim as filed in a Proof of Property Claim has been disallowed (in whole or in part), the disallowed Property Claim (or disallowed portion thereof) shall not be a Proven Property Claim unless the Claimant has disputed the disallowance and proven the disallowed Property Claim (or disallowed portion thereof) in accordance with paragraphs 22 to 24 of this Order.
18. THIS COURT ORDERS that where, in the opinion of the Receiver, there are conflicting Property Proofs of Claim to Property that it cannot resolve, the Receiver may seek determination

of such conflicting claims in accordance with paragraphs 22 to 24 of this Order without the necessity of delivering any Notice of Dispute, and in such case notice in accordance with paragraph 31 of this Order shall be given to the Claimants at issue and any Persons affected by such Claims.

### **DISPUTE NOTICE**

19. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance shall file a Dispute Notice with the Receiver as soon as reasonably possible but in any event such Dispute Notice shall be received by the Receiver on or before 4:00 p.m. (Eastern Standard Time) on the day that is fourteen (14) days after the Claimant is deemed to have received the Notice of Disallowance in accordance with paragraph 31 of this Order. The filing of a Dispute Notice with the Receiver within the fourteen (14) day period specified in this paragraph shall constitute an application to have the amount or status of such Property Claim determined as set out in paragraphs 21 to 24 hereof.

20. THIS COURT ORDERS that where a Claimant that receives a Notice of Disallowance fails to file a Dispute Notice with the Receiver within the period provided therefor in paragraph 19 above, the status of such Claimant's Property Claim, and, to the extent that such Property Claim relates to any indebtedness, liability or obligation, the amount or value of such Property Claim, shall be deemed to be as set out in the Notice of Disallowance and such status and amount, if any, shall constitute such Claimant's Proven Property Claim.

### **RESOLUTION OF PROPERTY CLAIMS**

21. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Receiver, the Receiver, in consultation with any Person affected by the Claimant's Property Claim, shall attempt to resolve and settle the Claimant's Property Claim.

22. THIS COURT ORDERS that in the event that a dispute raised in the Claimant's Dispute Notice is not settled within a time period or in a manner satisfactory to the Receiver, the Receiver may refer the dispute to a Property Claims Officer, if chosen by the Receiver and approved by this Court, for determination, or in the alternative may bring the dispute before the Court by way of Notice of Motion for determination. If the Receiver refers the dispute to a Property Claims Officer for determination, then (i) the Property Claims Officer shall determine the manner, if any, in which evidence may be brought before the Property Claims Officer by the parties and any Person affected by the Property Claim as well as any other matters, procedural or substantive, which may arise in respect of the Property Claim Officer's determination of a Claimant's Property Claim, and (ii) the provisions of paragraphs 22 to 24 of this Order shall apply to the determination of the Property Claims Officer. For greater certainty, the Property Claims Officer may require written submissions, and may limit submissions to written submissions, at the Property Claims Officer's discretion.

23. THIS COURT ORDERS that the Property Claims Officer shall as soon as is practicable, and in any event by no later than (i) thirty (30) days from the closing of submissions (whether written or oral or both), or (ii) such other date as the Property Claims Officer and the Receiver may agree, notify the Claimant, the Receiver and any Persons affected by the Property Claim in writing of the Property Claims Officer's determination of the amount and status of such Property Claim.

24. THIS COURT ORDERS that the Property Claims Officer's determination of any Claimant's Proven Property Claim shall be final and binding, unless within ten (10) days of the delivery of the Property Claims Officer's determination, the Receiver, the Claimant or any



Person affected by the Claimant's Property Claim has filed with this Court an appeal, by way of Notice of Motion, of the Property Claims Officer's determination.

### **NOTICE OF TRANSFEREES**

25. THIS COURT ORDERS that neither the Debtors nor the Receiver shall be obligated to give notice to or to otherwise deal with a transferee or assignee of a Property Claim as the Claimant in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Receiver, and (ii) the Receiver shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Claimant" in respect of such Property Claim. Any such transferee or assignee of a Property Claim, and such Property Claim, shall be bound by any notices given or steps taken in respect of such Property Claim in accordance with this Order prior to the written acknowledgment by the Receiver of such transfer or assignment.
26. THIS COURT ORDERS that if the holder of a Property Claim has transferred or assigned the whole of such Property Claim to more than one Person or part of such Property Claim to another Person or Persons, such transfer or assignment shall not create a separate Property Claim or Property Claims and such Property Claim shall continue to constitute and be dealt with as a single Property Claim notwithstanding such transfer or assignment, and the Receiver shall in each such case not be bound to acknowledge or recognize any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Property Claim only as a whole and then only to and with the Person last holding such Property Claim in whole as the Claimant in respect of such Property Claim. Provided that a transfer or assignment of the Property Claim has taken place in accordance with paragraph 25 of this Order and the

Receiver has acknowledged in writing such transfer or assignment, the Person last holding such Property Claim in whole as the Claimant in respect of such Property Claim may by notice in writing to the Receiver direct that subsequent dealings in respect of such Property Claim, but only as a whole, shall be with a specified Person and in such event, such Claimant, such transferee or assignee of the Property Claim and the whole of such Property Claim shall be bound by any notices given or steps taken in respect of such Property Claim by or with respect to such Person in accordance with this Order.

27. THIS COURT ORDERS that the transferee or assignee of any Property Claim (i) shall take the Property Claim subject to the rights and obligations of the transferor/assignor of the Property Claim, and subject to the rights of the Debtors against any such transferor or assignor, including any rights of set-off which the Debtors had against such transferor or assignor, and (ii) cannot use any transferred or assigned Property Claim to reduce any amount owing by the transferee or assignee to the Debtors, whether by way of set off, application, merger, consolidation or otherwise.

28. THIS COURT ORDERS that nothing in this Order is intended to or shall be deemed to permit, enable or authorize the transfer or assignment of a Property Claim or to in any way affect the validity or invalidity of any such transfer or assignment.

#### **PROTECTIONS FOR RECEIVER**

29. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Receiver shall have all of the protections given to it by the BIA and the Appointment Order or as an officer of this Court, including without limitation the stay of proceedings in its favour, (ii) the Receiver shall incur no liability or obligation as a result of the carrying out of the provisions of

this Order, except for its own wilful misconduct or gross negligence, (iii) the Receiver shall be entitled to rely on the books and records of the Debtors, and any information provided by the Debtors, all without independent investigation, and (iv) the Receiver shall not be liable for any claims or damages resulting from any errors or omissions in such books, records and information.

### **DIRECTIONS**

30. THIS COURT ORDERS that the Receiver may, at any time, and with such notice as this Court may require, seek directions from the Court with respect to this Order and the Property Claims process set out herein, including the forms attached as Schedules hereto.

### **SERVICE AND NOTICE**

31. THIS COURT ORDERS that any notice or other communication to be given under this Order by the Receiver to a Claimant or other interested Persons, shall be in writing and may be given by sending true copies thereof by prepaid ordinary mail, registered mail, courier, personal delivery or electronic or digital transmission to such Persons (i) at the address shown on the Proof of Property Claim filed by that Person, or (ii) if a Proof of Property Claim has not been filed by that Person or does not contain a valid address, then at the address as last shown on the records of the Debtors, and that any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to be received on the next Business Day following the date of forwarding thereof, or if sent by prepaid ordinary mail or by registered mail, on the fourth Business Day after mailing. Notwithstanding anything to the contrary in this paragraph 30, Notices of Disallowance shall be sent only by (i) facsimile to a number that has been provided in writing by the Claimant, (ii) registered mail, or (iii) courier.

32. THIS COURT ORDERS that any notice or other communication to be given under this Order by a Claimant to the Receiver shall be in writing and will be sufficiently given only if sent by prepaid ordinary mail, registered mail, courier, personal delivery or electronic or digital transmission addressed to:

A. Farber & Partners Inc.  
Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Address: 150 York Street, Suite 1600  
Toronto, ON M5H 3S5

Attention: Gena Lowe  
Telephone: (416) 496-3762  
E-mail: [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)  
Fax: (416) 496-3839

Any such notice or other communication by a Claimant shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day. Where the communication is to be by way of a form attached as a Schedule to this Order, such communication shall be in substantially the form of the attached Schedule.

#### MISCELLANEOUS

33. THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

 DEC 24 2014





**SCHEDULE "A"**

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**NOTICE TO PROPERTY CLAIMANTS  
of CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.  
(hereinafter referred to as the "Debtors")**

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**RE: NOTICE OF PROPERTY CLAIMS PROCEDURE FOR THE DEBTORS**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made on December 23, 2014 (the "Order"). The known property claimants should have received Proof of Property Claim packages by mail, if the Debtors have a current address. Property Claimants may obtain details about what claims are included in this Property Claims process, as well as obtain a copy of the Order and a Proof of Property Claim package from the website of A. Farber & Partners Inc., Court-appointed Receiver of the Debtors, at [www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al](http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al), or by contacting the Receiver by telephone (416) 496-3762.

Proofs of Property Claim must be submitted to the Receiver for any Property Claim as defined in the Order and described in the Instruction Letter for them available on the Receiver's website, listed above.

**Completed Proofs of Property Claim must be received by the Receiver by 4:00 p.m. (Eastern Standard Time) on January 30, 2015 (the "Claims Bar Date"). It is your responsibility to ensure that the Receiver receives your Proof of Property Claim by the above-noted time and date.**

**PROPERTY CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

**DATED** at Toronto this \_\_\_\_\_ day of 2014.

## SCHEDULE "B"

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**INSTRUCTION LETTER FOR THE PROPERTY CLAIMS PROCEDURE  
OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**  
(hereinafter referred to as the "Debtors")

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### A. PROPERTY CLAIMS PROCEDURE

By Order of the Superior Court of Justice of Ontario made December 23, 2014, A. Farber & Partners Inc. ("Farber") in its capacity as the Court appointed receiver (the "Receiver") of the Debtors has been authorized to conduct a property claims procedure (the "Property Claims Procedure").

The Property Claims Procedure is intended for any Person with any Property Claim as defined in the Property Claims Procedure Order and described in the Instruction Letter, which is available on the Court-appointed Receiver's website at [www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al](http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al).

Property Claims do **not** include, among other things:

- claims provable in bankruptcy (unsecured claims), which should be filed with Farber, in its capacity as trustee in bankruptcy of the Debtor, following the procedures under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- any interest in real property (land or buildings), whether in the nature of a proprietary interest, or as a secured claim against land or otherwise; or
- any claim in connection with boat slip rentals or accommodations for boats, including any mooring/licence agreement with the Debtors.

Property Claims **may** include:

- a proprietary claim (ownership, lease or otherwise) to any tangible personal property (chattels) in the possession of the Debtors;
- a secured claim of any Person to any tangible personal property (chattels) in the possession of the Debtors;
- a claim of any Person that tangible personal property was sold to the Debtors, or by the Debtors as intermediary or broker, without full payment to that Person and that such claim attaches to tangible personal property (chattels) in the possession of the Debtors other than money or proceeds;
- a claim of any Person that tangible personal property in the possession of the Debtors or any of them was sold to the Debtors, or by the Debtors as intermediary or broker, without

full repayment by the Debtors or any of them of a loan in relation to or secured against that tangible personal property and that such claim attaches to tangible personal property (chattels) in the possession of the Debtors other than money or proceeds; or

- a claim that any Person has paid some or all of the purchase price of Property and a transaction to purchase that Property has not been completed and that such claim attaches to tangible personal property (chattels) in the possession of the Debtors other than money or proceeds.

If you have any questions regarding the Property Claims Procedure, please consult the website of the Court-appointed Receiver, listed above, or contact the Receiver at the address provided below.

All notices and enquiries with respect to the Property Claims Procedure should be addressed to:

A. FARBER & PARTNERS INC.

Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Address: 150 York Street, Suite 1600  
Toronto, ON M5H 3S5  
Canada

Attention: Gena Lowe  
Telephone: (416) 496-3774  
E-mail: [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)  
Fax: (416) 496-3839

#### **B. FOR CLAIMANTS SUBMITTING A PROOF OF PROPERTY CLAIM**

If you believe that you have a Property Claim against the Debtors, you will have to file a Proof of Property Claim with the Receiver. **The Proof of Property Claim must be received by 4:00 p.m. (Eastern Standard Time) on January 30, 2015, the Claims Bar Date.**

Additional Proof of Property Claim forms and other information, including a copy of the Order creating the Property Claims Procedure, can be obtained from the Receiver's website at [www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al.](http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al.), or by contacting the Receiver at the telephone and fax numbers indicated above and providing particulars as to your name, address and facsimile number.

**It is your responsibility to ensure that the Receiver receives your Proof of Property Claim by the above-noted time and date.**



**SCHEDULE "C"**

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**PROOF OF PROPERTY CLAIM RELATING TO CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

(hereinafter referred to as the "Debtors")

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Please read carefully the enclosed Instruction Letter for completing this Proof of Property Claim.

**A. PARTICULARS OF CLAIMANT:**

1. Full Legal Name of Claimant:

\_\_\_\_\_

(the "Claimant"). (Full legal name should be the name of the original Claimant of the Debtors, notwithstanding whether an assignment of a Property Claim, or a portion thereof, has occurred following December 8, 2014).

2. Full Mailing Address of the Claimant (the original Claimant not the Assignee):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-Mail Address: \_\_\_\_\_

5. Facsimile Number: \_\_\_\_\_

6. Attention (Contact Person): \_\_\_\_\_

7. Has the Property Claim been sold or assigned by the Claimant to another party [check (✓) one]?

Yes:  No:

If "Yes" is checked, please complete Section B. If "No" is checked, please skip section B.

**B. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

(If Property Claim has been assigned, insert full legal name of assignee(s) of Property Claim . If there is more than one assignee, please attach a separate sheet with the required information.)

8. Full Legal Name of Assignee(s):

\_\_\_\_\_

9. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Telephone Number of Assignee(s): \_\_\_\_\_

11. E-Mail Address: \_\_\_\_\_

12. Facsimile Number: \_\_\_\_\_

13. Attention (Contact Person): \_\_\_\_\_

**C. PROOF OF PROPERTY CLAIM:**

I, \_\_\_\_\_  
[name of Claimant or Representative of the Claimant], of

\_\_\_\_\_ do hereby certify:  
(city and province)

(a) that I [check (✓) one]

am the Claimant of the Debtor; **OR**

am \_\_\_\_\_ (state position or title) of

\_\_\_\_\_  
(name of claimant)

(b) that I have knowledge of all the circumstances connected with the Property Claim referred to below.

**D. NATURE OF PROPERTY CLAIM**

Details of the Property subject to this Property Claim (include all available description, such as serial or registration numbers, product name or code, or other identifying marks):

\_\_\_\_\_  
\_\_\_\_\_

Details of the basis for the Property Claim (attach a separate sheet if more space is required):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Details of the amount of any indebtedness, liability or obligation related to the Property Claim:

TOTAL PROPERTY CLAIM ARISING ON OR PRIOR TO DECEMBER 8, 2014:

\_\_\_\_\_ [insert amount of Property Claim in the currency in which it arose].

(Property Claims are to be filed in the currency in which they arose. The Receiver will convert such Property Claims to Canadian Dollars at the Bank of Canada noon spot rate as at December 8, 2014].

**E. PARTICULARS OF PROPERTY CLAIM:**

Other than as already set out herein, the particulars of the undersigned's total Property Claim are attached.

(Provide all particulars of the Property Claim and supporting documentation, including description of transaction(s) or agreement(s) giving rise to the Property Claim, name of any guarantor which has guaranteed the claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Debtors to the Claimant and estimated value of such security.)

**This Proof of Property Claim must be received by the Receiver by no later than 4:00 p.m. (Eastern Standard Time) on January 30, 2015 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic or digital transmission to the following address:**

**A. FARBER & PARTNERS INC.**

Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Address: 150 York Street, Suite 1600  
Toronto, Ontario M5H 3S5

Attention: Gena Lowe  
Telephone: (416) 496-3762  
E-mail: [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)  
Fax: (416) 496-3839

**F. FILING OF PROPERTY CLAIM**

**Failure to file your proof of Property Claim as directed by 4:00 p.m. (Eastern Standard time), on January 30, 2015 will result in your Property Claim being barred and in you being prevented from making or enforcing a Property Claim against the Debtors. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a claimant in these proceedings.**

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 201●.

\_\_\_\_\_  
Signature of Claimant

**SCHEDULE "D"**

**REFERENCE NUMBER [●]**

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**NOTICE OF DISALLOWANCE**

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RE: In the matter of the Property Claim dated [DATE] filed by you against Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively, the "Debtors")

Property Claim Reference Number:

TO:

\_\_\_\_\_  
*(Name of Claimant)*

Capitalized terms not defined in this Notice of Disallowance have the meanings ascribed to those terms in the Order of the Ontario Superior Court of Justice dated December 23, 2014 (the "Property Claims Procedure Order"). All dollar values contained herein are in Canadian dollars unless otherwise noted.

Pursuant to paragraph 16 of the Property Claims Procedure Order, A. Farber & Partners Inc., in its capacity as Court-appointed Receiver of the Debtors, hereby gives you notice that it has reviewed your Proof of Property Claim and has disallowed all or part of your Property Claim. Subject to the terms of the Property Claims Procedure Order, including any further dispute by you in accordance with such Order, your Property Claim will be allowed as follows:

Basis of Property Claim:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Amount of any indebtedness, liability or obligation related to the Property Claim:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Reasons for Disallowance:**

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**SERVICE OF DISPUTE NOTICES**

If you intend to dispute this Notice of Disallowance, you must, no later than 4:00 pm (prevailing time in Toronto, Ontario) on the day that is fourteen (14) days after this Notice of Disallowance is deemed to have been received by you (in accordance with paragraph 31 of the Property Claims Procedure Order), deliver a Notice of Dispute to the Receiver by prepaid ordinary mail, registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Property Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Receiver during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day. The form of Dispute Notice is enclosed and can also be accessed on the Receiver's website at [www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al](http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al).

**A. FARBER & PARTNERS INC.**

Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Address: 150 York Street, Suite 1600  
Toronto Ontario M5H 3S5

Attention: Gena Lowe

Telephone:(416) 496-3762

E-mail [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)

Fax: (416) 496-3839

**IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE FOURTEEN DAY PERIOD REFERRED TO ABOVE, THIS NOTICE OF DISALLOWANCE WILL BE BINDING UPON YOU.**

**DATED** at Toronto, this      day of      , 20●.

**A. FARBER & PARTNERS INC.**

Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

**SCHEDULE "E"**

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**DISPUTE NOTICE**

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RE: In the matter of the Property Claim dated \_\_\_\_\_ filed by \_\_\_\_\_ against Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Property Claim Reference Number: \_\_\_\_\_

**1. Particulars of Claimant:**

Full Legal Name of Claimant (include trade name, if different):

\_\_\_\_\_  
\_\_\_\_\_  
*(the "Claimant").*

Full Mailing Address of the Claimant:

Other Contact Information of the Claimant:

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

**2. Particulars of original Claimant from whom you acquired the Property Claim, if applicable:**

Have you acquired this Claim by assignment?

Yes:  No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): \_\_\_\_\_

**3. Dispute of Disallowance of Property Claim:**

The Claimant hereby disagrees with the value of its Property Claim as set out in the Notice of Disallowance and asserts a Property Claim as follows:

Details of the Property subject to this claim (include all available description, such as serial or registration numbers, product name or code, or other identifying marks):

\_\_\_\_\_  
\_\_\_\_\_

Details of the basis for the Property Claim (attach a separate sheet if more space is required):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Details of the amount of any indebtedness, liability or obligation related to the Property Claim:

TOTAL PROPERTY CLAIM ARISING ON OR PRIOR TO DECEMBER 8, 2014:

\_\_\_\_\_ [insert amount of property claim in the currency in which it arose].

(Property Claims are to be filed in the currency in which they arose. The Receiver will convert such claims to Canadian Dollars at the Bank of Canada noon spot rate as at December 8, 2014].



**REASON(S) FOR THE DISPUTE:**

*[You must include a list of reasons as to why you are disputing your Property Claim as set out in the Notice of Disallowance. Reasons must be provided for each type of Property Claim being asserted].*

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**SERVICE OF DISPUTE NOTICES**

**If you intend to dispute the Notice of Disallowance, you must by no later than the date that is fourteen (14) days after the Notice of Disallowance is deemed to have been received by you (in accordance with paragraph 30 of the Property Claims Procedure Order) deliver to the Receiver this Dispute Notice by prepaid ordinary mail, registered mail, courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Property Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Receiver during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.**

**A. FARBER & PARTNERS INC.**

**Court-appointed Receiver of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.**

**Address: 150 York Street, Suite 1600  
Toronto Ontario M5H 3S5**

**Attention: Gena Lowe  
Telephone: (416) 496-3762  
E-mail cratemarine@farberfinancial.com  
Fax: (416) 496-3839**

**DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201●.**

**Name of Claimant: \_\_\_\_\_**

**Witness**

**Per: \_\_\_\_\_**

**Name:  
Title:**

**IN THE MATTER OF THE RECEIVERSHIP OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Commercial List File No. 14-CV-10798-00CL

**IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932502

**IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED, F.S. CRATE  
& SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648  
ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Court File No.: 31-193502  
Court File No.: 31-193534  
Court File No.: 31-193548  
Court File No.: 31-193557  
Court File No.: 31-193540  
Court File No.: 31-193555  
Court File No.: 31-193553

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceedings commenced at  
Toronto**

**PROPERTY CLAIMS PROCEDURE ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2  
Fax: 416-597-3370

**Michael B. Rotsztain (LSUC #: 17086M)**  
Tel: 416-597-7870  
Email: [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com)

**R. Brendan Bissell (LSUC #: 40354V)**  
Tel: 416-597-6489  
Email: [bissell@gsnh.com](mailto:bissell@gsnh.com)

Lawyers for A. Farber & Partners Inc. in its capacities as the Court  
appointed Receiver and as the trustee in bankruptcy of Crate Marine  
Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited,  
1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario  
Ltd., and 1382416 Ontario Ltd.

T A B L

IN THE MATTER OF THE BANKRUPTCIES OF F.S. CRATE & SON'S LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LTD., 1282648 ONTARIO LTD. 1382416 ONT., RIO LTD. and 1382415 ONTARIO LTD.

Commercial List File No.: 14-CV-10798-00CL

*Dec 23/14*

Court File No.: 31-193502  
Court File No.: 31-193534  
Court File No.: 31-193548  
Court File No.: 31-193557  
Court File No.: 31-193540  
Court File No.: 31-193555  
Court File No.: 31-193553

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY  
(COMMERCIAL LIST)

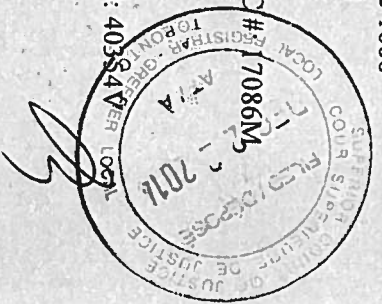
Proceeding commenced at TORONTO

MOTION RECORD OF THE RECEIVER  
AND TRUSTEE  
(Motion Returnable December 23, 2014)

GOLDMAN SLOAN NASH & HABER LLP  
480 University Avenue, Suite 1600  
TORONTO, ON M5G 1V2  
Fax: 416-597-3370

Michael B. Rotsztein, LSUC # 7086M  
Tel: 416-597-7870  
Email: rotsztein@gsnh.com

R. Brendan Bissell, LSUC # 40384V  
Tel: 416-597-6489  
Email: bissell@gsnh.com



Lawyers for A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1323559 Ontario Limited and 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

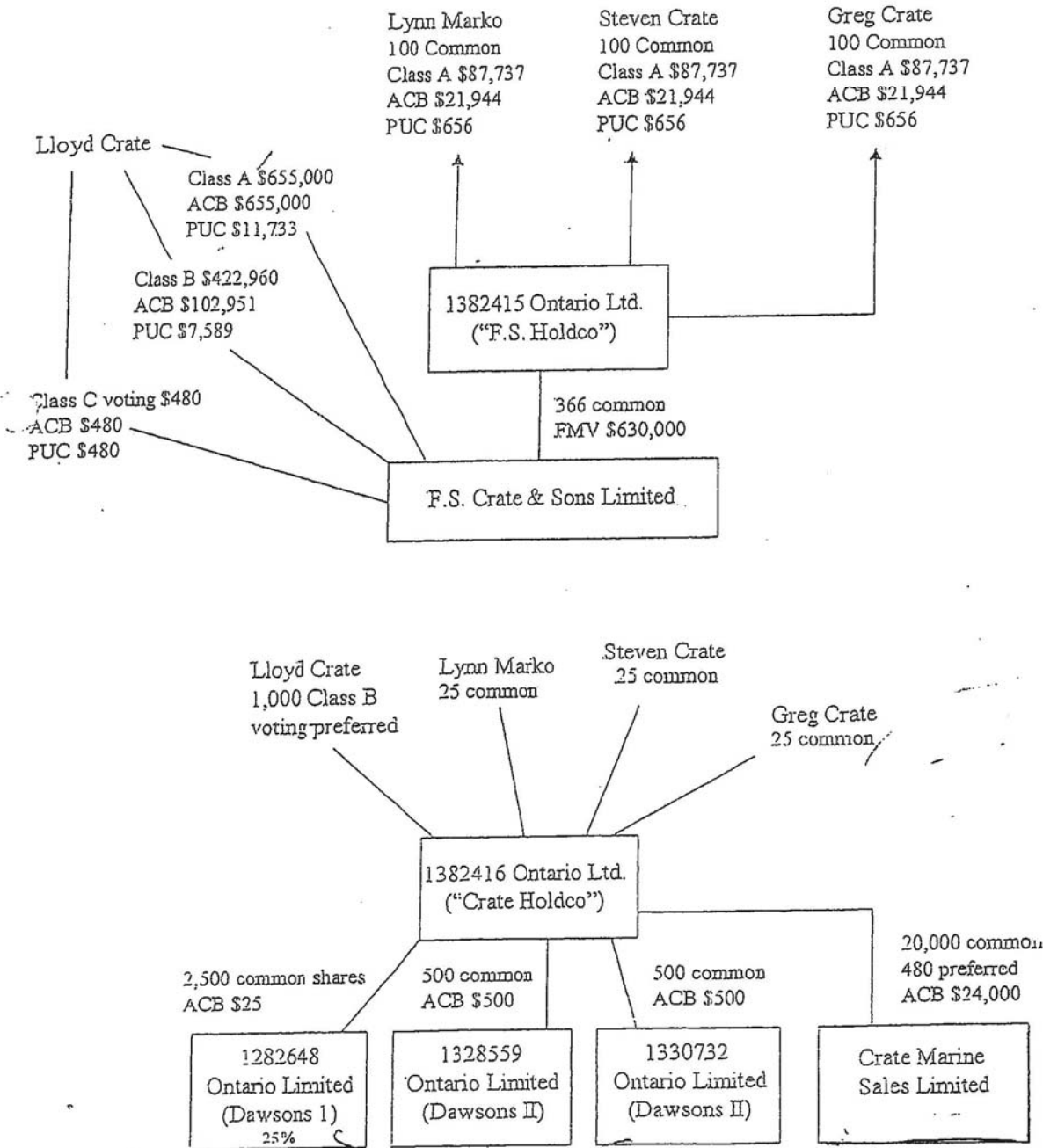
*December 23, 2014  
Orders to show in Re Farber  
Agreed by me (Brendan Bissell)  
Re Receiver in Sd A attached*

TAB M

# F.S. Crate & Sons Limited

## Corporate Structure

October 31, 2011



TAB N

<b>PIN</b>	<b>Registered Owner</b>	<b>Address</b>	<b>Note</b>	<b>Colour</b>
03475-0135	Crates Marine Sale Limited	8 Mac Avenue	PIN	Yellow
03475-0140	F.S. Crate & Sons Limited	282 The Queensway	PIN	Orange
03475-0147	F.S. Crate & Sons Limited	290 The Queensway	PIN	
03475-0150	1330732 Ontario Limited	294 The Queensway	PIN	Purple
03475-0901	1328559 Ontario Limited		PIN	Blue
03475-0902	1328559 Ontario Limited		PIN	
03475-0923	1328559 Ontario Limited		PIN	
03475-1967	1328559 Ontario Limited			
03475-1972	1328559 Ontario Limited			
03475-0146	1282648 Ontario Ltd.		PIN	Pink
03475-0898	1282648 Ontario Ltd.		PIN	
03475-0899	1282648 Ontario Ltd.		PIN	
03475-0900	1282648 Ontario Ltd.		PIN	
03475-0924	1282648 Ontario Ltd.		PIN	
03475-0925	1282648 Ontario Ltd.		PIN	



PIN	Registered Owner	Address	Note	Colour
03475-0163	Steven Crate and Robin Ann Crate	176 Wynhurst Road	PIN	
03475-0164	Steven Crate	306 The Queensway	PIN	
03475-0165	Steven Crate	274 The Queensway		
03475-1960	Greg Crate	208 Wynhurst Road	PIN	
03475-0136	Ryan Gregory Crate	12 Mac Avenue	PIN	
03475-0137	2192422 Ontario Inc.	10 Mac Avenue	PIN	
03475-0155	Lynn Joanne Marko	292 Wynhurst Road	PIN	
03475-1907	Lynn Joanne Marko	200 Wynhurst Road	PIN	
03475-1908	Lynn Joanne Marko	292 Wynhurst Road	PIN	
03475-1969	Lynn Joanne Marko			
03475-0134	Robin Price	262 The Queensway	PIN	

### Additional Properties in the Area

PIN	Registered Owner	Address	Note	Colour
03475-0133	Jean O'Shell	260 The Queensway	PIN	White
03475-0132	Jinling Fan, Robert Herring, Peng Fei Zhou	256 The Queensway	PIN	White
03475-0130	Pioneer Energy Management Inc.	248 The Queensway	PIN	White
03475-0145	E. & G. Gogou Investments Limited	270 The Queensway	PIN	White
03475-0142	Jurgen Werner Pazourek	1 Mac Avenue	PIN	White
03475-0141	Ming Ling Zhou	3 Mac Avenue	PIN	White
03475-0138	Walter A. Hirst		PIN	White
03475-0139	Gordon Kenneth Day, Hans Peter Tobien. Tamara Bruce, John Davis	11 Mac Avenue	PIN	White
03475-0154	Allen Littleford	204 Wynhurst Road	PIN	White

**Properties Owned by Parties not in the Vicinity**

<b>PIN</b>	<b>Registered Owner</b>	<b>Address</b>
03513-0170	Steve Crate and Robin Crate	39 Huntley, Willow Beach
03475-1025	Steve Lloyd Crate	212 South Channel Road, Keswick
03483-0047	Gregory John Crate and Karen Lee Ann Crate	41 Fontaine Drive, Kweswick
03497-1025	Gregory John Crate and Karen Lee Ann Crate	3 Wolford, Keswick
03486-0088	Ryan Crate	158 Queensway, Keswick
03473-0209	Ryan Gregory Crate	322 Miami, Kewick
03508-0057	2192422 Ontario Inc.	1 Neon Lane, Keswick
03508-0138	2192422 Ontario Inc.	
03508-0628	2192422 Ontario Inc.	
03515-1009	Lynn Marko	22 Woda Avenue, Jackson Point
40465-0022 (LRO 21)	Ryan Gregory Crate	14 Highland Avenue, Belleville

TAB O

PRINTED ON 30 DEC, 2014 AT 16:29:17  
FOR ANDREAR1



## PROPERTY INDEX MAP

YORK REGION (No. 65)

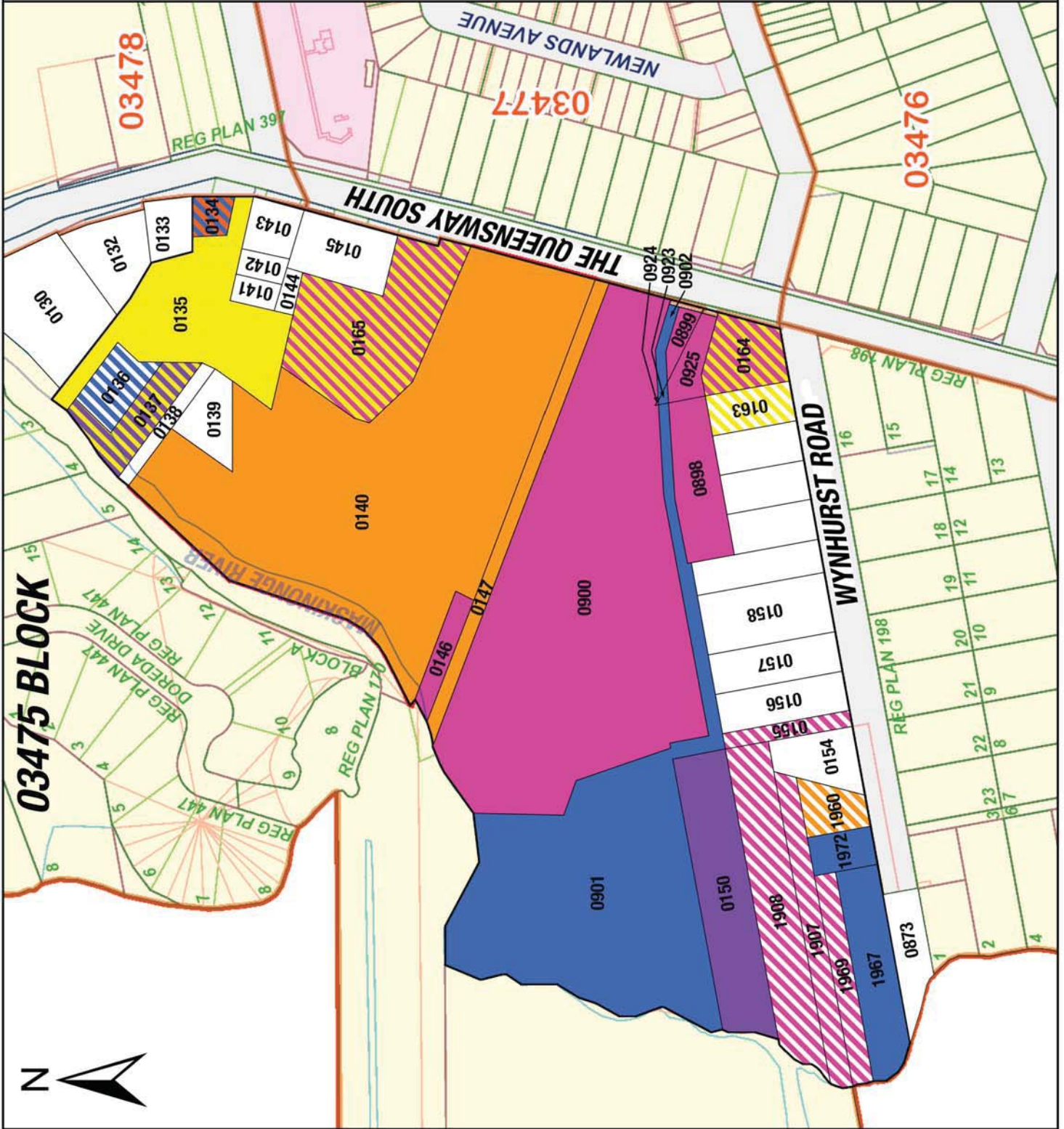
### LEGEND

- FREEHOLD PROPERTY
  - LEASEHOLD PROPERTY
  - LIMITED INTEREST PROPERTY
  - CONDOMINIUM PROPERTY
  - RETIRED PIN (MAP UPDATE PENDING)
  - PROPERTY NUMBER
  - BLOCK NUMBER
  - GEOGRAPHIC FABRIC
  - EASEMENT
- 0449  
08050

**THIS IS NOT A PLAN OF SURVEY**

### NOTES

- REVIEW THE TITLE RECORDS FOR COMPLETE PROPERTY INFORMATION AS THIS MAP MAY NOT REFLECT RECENT REGISTRATIONS
- THIS MAP WAS COMPILED FROM PLANS AND DOCUMENTS RECORDED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY
- FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE RECORDED PLANS AND DOCUMENTS
- ONLY MAJOR EASEMENTS ARE SHOWN
- REFERENCE PLANS UNDERLYING MORE RECENT REFERENCE PLANS ARE NOT ILLUSTRATED



T A B P



Court File No.:

CV-15-10830-00CL

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

**A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.**

**Applicant**

**-and-**

**STEVEN L. CRATE, ROBIN ANN CRATE a.k.a. ROBIN PRICE,  
GREGORY J. CRATE, LYNN J. MARKO, and RYAN G. CRATE**

**Respondents**

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge on a date to be set by a judge of the Commercial List at 10:00 a.m. time or as soon after that time as the application can be heard at 330 University Avenue, Toronto, Ontario.


**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyers or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: January 13<sup>th</sup>, 2015

Issued by :

  
Local Registrar  
Superior Court of Justice  
(Commercial List)  
330 University Avenue  
Toronto, ON M5G 1R7

Natasha Brown  
Registrar

**TO:** STEVEN L. CRATE  
39 Huntley Drive, Box 601  
Willow Beach, Ontario

**AND TO:** ROBIN ANN CRATE a.k.a. ROBIN PRICE  
39 Huntley Drive, Box 601  
Willow Beach, Ontario

**AND TO:** GREGORY J. CRATE  
3 Woford Court  
Keswick, ON L4P 0B1

**AND TO:** LYNN J. MARKO  
8 Amber View Drive  
Keswick, ON L4P 3X6

**AND TO:** RYAN G. CRATE  
14 Highland Avenue  
Belleville, Ontario K8P 3P9



**APPLICATION**

1. **THE APPLICANT**, A. Farber & Partners Inc. in its capacities as the Court appointed Receiver (the “**Receiver**”) and as the trustee in bankruptcy (the “**Trustee**”) of Crate Marine Sales Limited (“**CMS**”), F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively with CMS the “**Companies**”), **MAKES APPLICATION FOR:**

- a) if necessary, an Order abridging the time for service of this Application, validating the manner of service and declaring that this Application is properly returnable before the Court;
- b) an Order declaring that the premises listed in Schedule “A” (the “**Properties**”) are the property of CMS, such that they are Property within the control of the Applicant within the meaning of the Amended Order of this Court dated December 8, 2014 appointing the Applicant as Receiver and Trustee, and vesting title in the Properties in in the name of CMS;
- c) in the alternative, an Order declaring that the arrangements by which the Respondents are listed as the owners on title to the Properties are void as a sham and of no force and effect as against the Applicant, and vesting title in the Properties in in the name of CMS;

- d) in the alternative, an Order declaring that the Respondents hold title to the Properties as the alter egos and on behalf of CMS, and vesting title in the Properties in in the name of CMS;
- e) in the alternative, an Order declaring that the Respondents hold the Properties in trust for CMS, and vesting title in the Properties in in the name of CMS;
- f) in the alternative an Order:
  - i) declaring that the Applicant is a complainant within the meaning of section 245 of the *Business Corporations Act*, R.S.O 1990, c. B.16 (the "OBCA"),
  - ii) declaring that the affairs of the Companies with respect to the Properties as described below have been carried on by the Respondents in a fashion that is oppressive to, unfairly prejudicial to, or unfairly disregards the interests of the Applicant as the representative of the creditors of the Companies within the meaning of section 248(2) of the OBCA, and
  - iii) vesting title to the Properties in CMS or such further interim or final order as the Court may direct pursuant to section 248(3) of the OBCA;
- g) in the alternative, an Order:
  - i) declaring that the transfers of title to the Properties to the Respondents are void as against the Trustee within the meaning of section 96(1) of the

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “BIA”), or

- ii) that the Respondents pay to the Applicant an amount equal to the fair market value of the Properties plus the amounts expended by the Companies for carrying costs and other expenses associated with the Properties;
- h) in the alternative, judgment against the Respondents for the amounts expended by CMS in connection with the Properties and for the amounts purportedly loaned by CMS to the Respondents in connection with the Properties as set out below, and the appointment of the Applicant as receiver pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the “CJA”), or as an equitable receiver, to take possession of and realize upon the Properties;
- i) certificates of pending litigation against the Properties;
- j) costs of this Application, inclusive of HST; and
- k) Such further and other relief as counsel may advise and this Honourable Court deems just.

**2. THE GROUNDS FOR THE APPLICATION ARE:**

**The Receiver and Trustee**

- a) the Receiver and Trustee were appointed by the Amended Order of this Court dated December 8, 2014 following the termination by this Court of proceedings

brought by the Companies under notices of intention to make a proposal (“NOI”) pursuant to the BIA;

- b) this proceeding is being brought by the Applicant in its dual capacities as Receiver and Trustee, but the allocation of any proceeds of this proceeding, or of proceeds of sale in a sales process, will depend on the basis for recovery as adjudicated by the Court and may therefore require directions from this Court in the receivership and bankruptcy proceedings;

**The Companies and their conduct prior to appointment of the Applicant**

- c) the Companies were all related in the operation of marinas in Keswick and elsewhere, and in ownership of land for the Keswick marina;
- d) CMS was the main or sole operating company for the marina operations, and had lost approximately \$19.7 million in aggregate in its fiscal years 2011 to 2014;
- e) the Applicant has filed Reports with this Court (both as Receiver and in a prior capacity as Interim Receiver of certain of the Companies), to advise of circumstances that it has been made aware of in which CMS appears to have:
  - i) sold boats on behalf of customers as agent or broker, without remitting the proceeds of sale to the customer or without paying off a loan by the customer from the proceeds of sale,

- ii) sold boats that had been purchased by CMS though funds borrowed from lenders without repaying those loans, including in circumstances where the lenders were given what purported to be title documents to the boats but the boats were sold nonetheless,
- iii) used funds received from the sale of boats on behalf of customers, or used funds received as a deposit for purchase of a boat, without putting those funds in trust as required by agreements with the customer or purchaser,
- iv) used funds received from customers in 2014 on account of deposits for boat slip rentals in the 2015 boating season for general corporate purposes,
- v) disbursed funds without the interim receiver's approval in contravention of the interim receivership orders of this Court,
- vi) failed to remit the payroll source deductions that arose after the filing of the NOI's, and
- vii) sold at least one boat on behalf of a third party with \$145,000 in payments from the purchaser being directed \$103,000 to CMS and \$42,000 to "S. Crate",

none of which has been explained in affidavits that have been filed by Steven Crate in the NOI proceedings, or otherwise;

### **The Respondents**

- f) the Respondents are all relatives in the Crate family;
- g) the Respondents, Steven L. Crate (“Steven”), Gregory J. Crate (“Greg”) and Lynn J. Marko (“Lynn”) are siblings of each other and are all officers and/or directors of each of the Companies and were employees of CMS;
- h) Steven, Greg and Lynn were the directing minds of the Companies prior to the appointment of the Applicant;
- i) Steven, Greg and Lynn, along with Lloyd Crate (now deceased), are the direct or indirect owners of all the Companies;
- j) the Respondent, Robin Anne Crate (“Robin”), is the spouse of Steven;
- k) the Respondent, Robin Price, is the registered owner of one of the Properties at 262 The Queensway South in Keswick;
- l) Robin Price has the same birth date and same residence (as indicated in the address for service on the transfer registered on title) as Steven and Robin Anne Crate, and is accordingly the same person as Robin Anne Crate and is therefore an alias used by her;
- m) the Respondent, Ryan G. Crate (“Ryan”), is the son of Greg;
- n) the Respondents are listed on title as the respective registered owners of the Properties as set out in Schedule “A”;

**The purpose of acquiring the Properties**

- o) the Properties are all adjacent to lands owned by the Companies;
- p) the Properties were all acquired to enable the Companies to:
  - i) when necessary expand the marina business carried on by the Companies, and in some cases customer boats or other goods owned or held by the Companies were stored on the Properties, and
  - ii) undertake in the future the development of residential or leisure accommodations near the marina;

**The payment of funds by CMS in respect of the Properties**

- q) CMS made all the payments required to buy and carry the Properties, including:
  - i) CMS paid for all down payments for acquiring the Properties;
  - ii) CMS paid for all expenses in connection with the Properties, such as utilities, insurance, municipal taxes and upkeep; and
  - iii) CMS made all mortgage payments for the charges registered against the Properties;

**CMS received all income derived from the Properties**

- r) where any income was received from the Properties, for example rent by a tenant, that was paid to CMS;

**The accounting treatment by CMS of funds in respect of the Properties**

- s) CMS expensed the payments made for carrying costs and for the mortgage interest for the Properties against its income, and did so in separate expense accounts maintained for each of the Properties;
- t) CMS recorded as income any rents or other income received in respect of the Properties as a negative expense on the expense accounts for the Properties;
- u) CMS accounted for the down payments and for any principal portion of mortgage payments as notional shareholder loans to Steven, Greg, or Lynn (and where Robin or Ryan was an owner of one of the Properties, the notional shareholder loan was to Steven) and did so with separate accounts on its books and records for each of the Properties (the **"Property Shareholder Accounts"**);
- v) each of Steven, Greg and Lynn also had more conventional shareholder loan accounts in which, among other things, CMS would book amounts that it paid on their behalf or that they loaned to CMS (the **"True Shareholder Accounts"**);
- w) the True Shareholder Accounts did not carry balances payable by Steven, Greg and Lynn after each fiscal year into the next year, and instead CMS and the Companies at the end of each fiscal year made further entries on their books and records to reallocate the amounts in the True Shareholder Accounts such that Steven, Greg and Lynn then notionally owed those funds to 1382415 Ontario Ltd., which then owed the funds to F.S. Crate & Sons Limited, which then owed the funds to CMS;



- x) unlike the True Shareholder Accounts, the Property Shareholder Accounts did carry balances notionally payable by Steven, Greg or Lynn for each of the Properties over from one year to the other;
- y) the compensation payable to Steven, Greg and Lynn as employees of CMS was the same both before and after CMS funded the acquisition of one of the Properties in the name of a Respondent and when CMS paid the carrying costs of the Properties;
- z) in its fiscal year ending October 31, 2014, CMS paid \$319,919.38 (net of any income received) in respect of the Properties held in the name of the Respondents, which was at a time when the losses being incurred by CMS over the three fiscal years 2011 to 2014 were approximately \$19.7 million in aggregate;
- aa) the full details of the Properties are not known to the Applicant, because Steven, Greg and/or Lynn removed files relating to the Properties that had been kept in the premises of CMS prior to the appointment of the Applicant, and they have refused the Applicant's request to return those files;

**Why the Respondents hold title to the Properties**

- bb) the Respondents hold title to the Properties, rather than any of the Companies, for two reasons:
  - i) the Companies and the Respondents did not want any part lots that were acquired to merge with the other lots held by the Companies under the

*Planning Act*, so that flexibility to later sell those part lots could be maintained, and

- ii) the Companies were, due to their financial position, not able to themselves obtain mortgage financing, such that having the Respondents own the Properties would allow the Properties to be mortgaged both for purposes of acquisition and also for purposes of borrowing funds for use in the business of the Companies;
- cc) it was accordingly at all times the intention of the Companies and the Respondents that the Properties were being acquired for the current and future business of the Companies, and that putting title to the Properties in the name of the Respondents would allow that to happen while avoiding the consequences of actually having the Companies be the registered owners;
- dd) at no time prior to the commencement of the insolvency proceedings have the Respondents or any of them acted as if they were the true owners of the Properties;

**Sham, alter ego and trust**

- ee) the arrangements by which the Respondents were registered on title to the Properties, when CMS was paying for all costs associated with acquiring and carrying the Properties, were a sham intended to avoid the true state of affairs for

*Planning Act* and for mortgage lending purposes and should be disregarded by this Court;

- ff) similarly, those arrangements show that the Respondents are nothing more than the alter ego of CMS as the registered owners of the Properties;
- gg) in addition, the intent of the Respondents and CMS (under the direction and control of Steven, Greg and Lynn) was that the Respondents were not the true owners of the Properties and instead that the Respondents held the Properties in Trust for CMS;
- hh) in the alternative, the payment by CMS of all costs associated with acquiring and carrying the Properties, and use by the Companies of the Properties for their business purposes, including using all income from the Properties, means that the Respondents hold the Properties in trust for CMS by virtue of a constructive trust and resulting trust;

### **Oppression**

- ii) as legal representative of the creditors of CMS, the Applicant is a complainant for purposes of section 245 of the OBCA;
- jj) allowing the Properties to remain in the name of the Respondents would effect a result that is oppressive to, unfairly prejudicial to, or unfairly disregards the interests of the creditors of CMS by enriching Steven, Greg and Lynn and the

other Respondents as their family members to the detriment of the creditors of CMS;

- kk) the affairs of CMS were carried on by Steven, Greg and Lynn such that it spent \$319,919.38 in its 2014 fiscal year, and unknown amounts in prior years, on properties that, if not remedied by this Court, will accrue solely to the benefit of Steven, Greg and Lynn and their family, when CMS was otherwise losing millions of dollars each year;

**Transfer under value**

- ll) the Trustee states that the registrations of title to the Properties in the names of the Respondents were transfers for which no consideration has been given within the meaning of subsections 96(1) and 96(2) of the BIA;
- mm) accordingly, the registrations of title in the name of the Respondents rather than in the name of CMS is void as against the Trustee;
- nn) in the alternative, the Respondents should be liable to pay to the Applicant an amount equal to the fair market value of the Properties plus the amounts expended by the Companies for carrying costs and other expenses associated with the Properties

**Judgment for amounts paid by CMS and appointment of a CJA or equitable receiver**

- oo) in the alternative, the Respondents are indebted to CMS or others of the Companies for:
  - i) the amounts recorded in the Property Shareholder Loans as loans due and payable, and
  - ii) the amounts paid by CMS in connection with the carrying costs for the Properties as amounts that have unjustly enriched the Properties at the expense of CMS and its creditors;
- pp) the full details of the amounts owing for the Property Shareholder Loans and the carrying costs paid by CMS are not yet known to the Applicant, in part because of the failure or refusal by Steven, Greg and Lynn to return the files for the Properties to the premises of CMS despite demand, but will be provided prior to the hearing of this Application;
- qq) in the alternative, it is in the interests of justice to appoint the Applicant over the Properties in order to ensure the proper repayment of the amounts owing to CMS, particularly in circumstances where:
  - i) Steven, Greg and Lynn have demonstrated in their management of the Companies both prior to the appointment of the Applicant and Trustee, and during the interim receivership, that they were prepared to sell things that did not belong to CMS and appropriate the funds for CMS, or incur

debts for CMS to acquire a boat and then not discharge those debts upon sale of the boat, or otherwise ignore restrictions imposed by this Court,

- ii) Steven, Greg and Lynn have removed records pertaining to the Properties from CMS and have failed or refused to return those records despite request by the Applicant,
- iii) the purchase of 262 The Queensway South in Keswick by the spouse of Steven was obscured by the registration of title in the name of Robin Price rather than Robin Anne Crate, and
- iv) certain of the Properties have been listed for sale since the appointment of the Applicant and Trustee;

**Statutory and regulatory provisions relied on in this Application**

- rr) the provisions of the OBCA, including sections 245 and 248;
- ss) the provisions of the BIA, including section 96;
- tt) the provisions of the CJA, including section 101;
- uu) Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended; and
- vv) Such further and other grounds as counsel may advise and this Honourable Court accepts.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION;**

- a) The Affidavit or Report of the Applicant and the exhibits thereto;
- b) such further and other documentary evidence as counsel may provide and this Honourable Court accepts.

Dated: January 13, 2015

**GOLDMAN, SLOAN, NASH & HABER LLP**  
Barristers and Solicitors  
Suite 1600  
480 University Avenue  
Toronto, ON M5G 1V6

**Michael B. Rotsztain (LSUC No.: 17086M)**  
**R. Brendan Bissell (LSUC No.: 40354V)**  
**Robert J. Drake (LSUC No.: 57083G)**

Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the  
Court appointed Receiver and as the trustee in  
bankruptcy of Crate Marine Sales Limited, F.S.  
Crate & Sons Limited, 1330732 Ontario Limited,  
1328559 Ontario Limited 1282648 Ontario Limited,  
1382415 Ontario Ltd., and 1382416 Ontario Ltd.

**SCHEDULE "A"**

**PIN 03475-0163 (LT)**

Registered Owner: Steven Crate and Robin Ann Crate  
Municipal Address: 176 Wynhurst Road, Georgina  
Legal Description: PT LT 39 PL 224 N GWILLIMBURY AS IN R681463 T/W R681463 ;  
GEORGINA

**PIN 03475-0164 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 306 The Queensway South, Keswick  
Legal Description: PT LT 40 PL 224 NORTH GWILLIMBURY PT 1, 65R2443;  
GEORGINA

**PIN 03475-0165 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 274 The Queensway South, Keswick  
Legal Description: PT BLK E PL 224 N GWILLIMBURY PT 2 65R13692, GEORGINA

**PIN 03475-1960 (LT)**

Registered Owner: Greg Crate  
Municipal Address: 208 Wynhurst Road, Georgina  
Legal Description: PT LOT 8 CON 3 PT 2, 65R25043; GEORGINA (NG)

**PIN 03475-0136 (LT)**

Registered Owner: Ryan Gregory Crate  
Municipal Address: 12 Mac Avenue, Georgina  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY AS IN R690189,T/W RIGHT IF  
ANY IN R690189 ; GEORGINA

**PIN 03475-0155 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: LT 33 PL 224 N GWILLIMBURY ; GEORGINA



**PIN 03475-1907 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, PT 2 65R22164, NORTH GWILLIMBURY;  
GEORGINA.

**PIN 03475-1908 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, AS IN R649949 EXCEPT PT 2 65R22164, NORTH  
GWILLIMBURY, GEORGINA;

**PIN 03475-1969 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LOT 8 CON 3 PT 1, 65R25043; EXCEPT PT 1, 65R27407; NG;  
GEORGINA

**PIN 03475-0134 (LT)**

Registered Owner: Robin Price  
Municipal Address: 262 The Queensway South, Keswick  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY; PT LT 1 W/S QUEEN ST PL 245  
N GWILLIMBURY PT 5 65R3745 ; GEORGINA

**A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY  
OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS  
LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.**

Applicant

- and **STEVEN L. CRATE, ROBIN ANN CRATE a.k.a.  
ROBIN PRICE, GREGORY J. CRATE, LYNN J.  
MARKO, and RYAN G. CRATE**

Respondents

Commercial List File No.:

CV-15-10830-00CL

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

**Proceedings commenced at Toronto**

**NOTICE OF APPLICATION**

**GOLDMAN SLOAN NASH & HABER LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

**Michael B. Rotsztain [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]  
Tel: (416) 597-9922  
Fax: (416) 597-3370**

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the Court  
appointed Receiver and as the trustee in bankruptcy of Crate  
Marine Sales Limited, F.S. Crate & Sons Limited, 1330732  
Ontario Limited, 1328559 Ontario Limited 1282648 Ontario  
Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

TAB Q

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 14<sup>TH</sup>  
JUSTICE *Newbold* )  
DAY OF JANUARY, 2015



A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.

Applicant

-and-

STEVEN L. CRATE, ROBIN ANN CRATE a.k.a. ROBIN PRICE,  
GREGORY J. CRATE, LYNN J. MARKO, and RYAN G. CRATE

Respondents

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O, 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

---

**ORDER**

---

**THIS MOTION**, made without notice by A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. for an order for a Certificate of Pending Litigation in respect of the premises set out in Schedule "A", was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Andy Fisher sworn January 12, 2015, filed, and on hearing counsel for moving party:

1. **THIS COURT ORDERS** that that the Registrar issue a Certificate of Pending Litigation in respect of the premises set out in Schedule "A".

REGISTERED  
ON 14 JAN 2015  
LE...  
JAN 14 2015



James J.

**SCHEDULE "A"**

**PIN 03475-0163 (LT)**

Registered Owner: Steven Crate and Robin Ann Crate  
Municipal Address: 176 Wynhurst Road, Georgina  
Legal Description: PT LT 39 PL 224 N GWILLIMBURY AS IN R681463 T/W R681463 ;  
GEORGINA

**PIN 03475-0164 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 306 The Queensway South, Keswick  
Legal Description: PT LT 40 PL 224 NORTH GWILLIMBURY PT 1, 65R2443; GEORGINA

**PIN 03475-0165 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 274 The Queensway South, Keswick  
Legal Description: PT BLK E PL 224 N GWILLIMBURY PT 2 65R13692, GEORGINA

**PIN 03475-1960 (LT)**

Registered Owner: Greg Crate  
Municipal Address: 208 Wynhurst Road, Georgina  
Legal Description: PT LOT 8 CON 3 PT 2, 65R25043; GEORGINA (NG)

**PIN 03475-0136 (LT)**

Registered Owner: Ryan Gregory Crate  
Municipal Address: 12 Mac Avenue, Georgina  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY AS IN R690189,T/W RIGHT IF ANY IN  
R690189 ; GEORGINA

**PIN 03475-0155 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: LT 33 PL 224 N GWILLIMBURY ; GEORGINA

**PIN 03475-1907 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, PT 2 65R22164, NORTH GWILLIMBURY; GEORGINA.

**PIN 03475-1908 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, AS IN R649949 EXCEPT PT 2 65R22164, NORTH  
GWILLIMBURY, GEORGINA;

**PIN 03475-1969 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LOT 8 CON 3 PT 1, 65R25043; EXCEPT PT 1, 65R27407; NG;  
GEORGINA

**PIN 03475-0134 (LT)**

Registered Owner: Robin Price  
Municipal Address: 262 The Queensway South, Keswick  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY; PT LT 1 W/S QUEEN ST PL 245 N  
GWILLIMBURY PT 5 65R3745 ; GEORGINA

A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Applicant

- and STEVEN I. CRATE, ROBIN ANN CRATE a.k.a. ROBIN PRICE, GREGORY J. CRATE, LYNN J. MARKO, and RYAN G. CRATE

Respondents

Commercial List File No.: CV-15-10830-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Michael B. Rotsztein [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]  
Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.



TAB R

<b>Properties</b>
-------------------

<i>PIN</i>	03475 - 0163 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 39 PL 224 N GWILLIMBURY AS IN R681463 T/W R681463 ; GEORGINA		
<i>Address</i>	176 WYNHURST ROAD KESWICK		
<i>PIN</i>	03475 - 0164 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 40 PL 224 NORTH GWILLIMBURY PT 1, 65R2443; GEORGINA		
<i>Address</i>	306 THE QUEENSWAY SOUTH KESWICK		
<i>PIN</i>	03475 - 0165 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT BLK E PL 224 N GWILLIMBURY PT 2 65R13692, GEORGINA		
<i>Address</i>	274 THE QUEENSWAY SOUTH KESWICK		
<i>PIN</i>	03475 - 1960 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LOT 8 CON 3 PT 2, 65R25043; GEORGINA (NG)		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0136 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 9 CON 3 N GWILLIMBURY AS IN R690189,T/W RIGHT IF ANY IN R690189 ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0155 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 33 PL 224 N GWILLIMBURY ; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 1907 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8, CON 3, PT 2 65R22164, NORTH GWILLIMBURY; GEORGINA.		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 1908 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 8, CON 3, AS IN R649949 EXCEPT PT 2 65R22164, NORTH GWILLIMBURY,GEORGINA;		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 1969 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LOT 8 CON 3 PT 1, 65R25043; EXCEPT PT 1, 65R27407; NG; GEORGINA		
<i>Address</i>	KESWICK		
<i>PIN</i>	03475 - 0134 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 9 CON 3 N GWILLIMBURY; PT LT 1 W/S QUEEN ST PL 245 N GWILLIMBURY PT 5 65R3745 ; GEORGINA		
<i>Address</i>	262 THE QUEENSWAY SOUTH KESWICK		

<b>Party From(s)</b>
----------------------

<i>Name</i>	SUPERIOR COURT OF JUSTICE
<i>Address for Service</i>	Superior Court of Justice 330 University Avenue Toronto, ON M5G 1R7

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 7

<b>Applicant(s)</b>	<b>Capacity</b>	<b>Share</b>
---------------------	-----------------	--------------

Name A. FARBER & PARTNERS INC.  
 Address for Service 480 University Ave, Suite 1600  
 Toronto, ON M5G 1V2

<b>Statements</b>
-------------------

The applicant applies to register the following order See Schedules. The order is still in full force and effect

Schedule: A. Farber & Partners Inc., acting in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

<b>Signed By</b>
------------------

Andrea Christine Rossanese	480 University Ave, # 1600 Toronto M5G 1V2	acting for Applicant(s)	Signed	2015 01 14
Tel	416-597-9922			
Fax	416-597-3370			

I have the authority to sign and register the document on behalf of the Applicant(s).

<b>Submitted By</b>
---------------------

GOLDMAN SLOAN NASH & HABER LLP	480 University Ave, # 1600 Toronto M5G 1V2	2015 01 14
Tel	416-597-9922	
Fax	416-597-3370	

<b>Fees/Taxes/Payment</b>
---------------------------

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 14<sup>TH</sup>

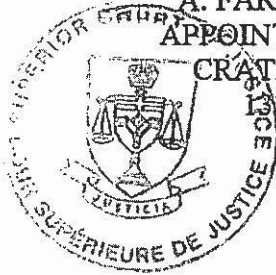
JUSTICE

*NEWBOLD*

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DAY OF JANUARY, 2015



A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.

Applicant

-and-

STEVEN L. CRATE, ROBIN ANN CRATE a.k.a. ROBIN PRICE,  
GREGORY J. CRATE, LYNN J. MARKO, and RYAN G. CRATE

Respondents

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

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ORDER

---

**THIS MOTION**, made without notice by A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. for an order for a Certificate of Pending Litigation in respect of the premises set out in Schedule "A", was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Andy Fisher sworn January 12, 2015, filed, and on hearing counsel for moving party:

1. **THIS COURT ORDERS** that that the Registrar issue a Certificate of Pending Litigation in respect of the premises set out in Schedule "A".

FILED  
COURT  
LE  
JAN 14 2015

James J.

**SCHEDULE "A"**

**PIN 03475-0163 (LT)**

Registered Owner: Steven Crate and Robin Ann Crate  
Municipal Address: 176 Wynhurst Road, Georgina  
Legal Description: PT LT 39 PL 224 N GWILLIMBURY AS IN R681463 T/W R681463 ;  
GEORGINA

**PIN 03475-0164 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 306 The Queensway South, Keswick  
Legal Description: PT LT 40 PL 224 NORTH GWILLIMBURY PT 1, 65R2443; GEORGINA

**PIN 03475-0165 (LT)**

Registered Owner: Steven Crate  
Municipal Address: 274 The Queensway South, Keswick  
Legal Description: PT BLK E PL 224 N GWILLIMBURY PT 2 65R13692, GEORGINA

**PIN 03475-1960 (LT)**

Registered Owner: Greg Crate  
Municipal Address: 208 Wynhurst Road, Georgina  
Legal Description: PT LOT 8 CON 3 PT 2, 65R25043; GEORGINA (NG)

**PIN 03475-0136 (LT)**

Registered Owner: Ryan Gregory Crate  
Municipal Address: 12 Mac Avenue, Georgina  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY AS IN R690189, T/W RIGHT IF ANY IN  
R690189 ; GEORGINA

**PIN 03475-0155 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: LT 33 PL 224 N GWILLIMBURY ; GEORGINA

**PIN 03475-1907 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, PT 2 65R22164, NORTH GWILLIMBURY; GEORGINA.

**PIN 03475-1908 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 292 Wynhurst Rd.  
Legal Description: PT LT 8, CON 3, AS IN R649949 EXCEPT PT 2 65R22164, NORTH  
GWILLIMBURY, GEORGINA;

**PIN 03475-1969 (LT)**

Registered Owner: Lynn Joanne Marko  
Municipal Address: 200 Wynhurst Rd.  
Legal Description: PT LOT 8 CON 3 PT 1, 65R25043; EXCEPT PT 1, 65R27407; NG;  
GEORGINA

**PIN 03475-0134 (LT)**

Registered Owner: Robin Price  
Municipal Address: 262 The Queensway South, Keswick  
Legal Description: PT LT 9 CON 3 N GWILLIMBURY; PT LT 1 W/S QUEEN ST PL 245 N  
GWILLIMBURY PT 5 65R3745 ; GEORGINA

A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732  
ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO  
LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Applicant

- and STEVEN L. CRATE, ROBIN ANN CRATE a.k.a. ROBIN  
PRICE, GREGORY J. CRATE, LYNN J. MARKO, and  
RYAN G. CRATE

Respondents

Commercial List File No.: CV-15-10830-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Michael B. Rotsztein [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]  
Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the Court appointed  
Receiver and as the trustee in bankruptcy of Crate Marine Sales  
Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited,  
1328559 Ontario Limited 1282648 Ontario Limited, 1382415  
Ontario Ltd, and 1382416 Ontario Ltd.



TAB S



Court File No.: CV-15-10849-006

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

**A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.**

**Applicant**

**-and-**

**RYAN GREGORY CRATE**

**Respondent**

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge on a date to be set by a judge of the Commercial List at 10:00 a.m. time or as soon after that time as the application can be heard at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES**


**ON THE APPLICATION**, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyers or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: January 30<sup>th</sup>, 2015

Issued by :

**Natasha Brown**  
**Registrar**

  
\_\_\_\_\_  
Local Registrar  
Superior Court of Justice  
(Commercial List)  
330 University Avenue  
Toronto, ON M5G 1R7

**TO:** RYAN GREGORY CRATE  
25 Dundas St. W.  
Belleville, ON  
K8P 3M7

**APPLICATION**

1. **THE APPLICANT, A. Farber & Partners Inc. in its capacities as the Court appointed Receiver (the “Receiver”) and as the trustee in bankruptcy (the “Trustee”) of Crate Marine Sales Limited (“CMS”), F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively with CMS the “Companies”), MAKES APPLICATION FOR:**

- a) if necessary, an Order abridging the time for service of this Application, validating the manner of service and declaring that this Application is properly returnable before the Court;
- b) an Order declaring that the premises listed in Schedule “A” (the “Property”) is the property of CMS, such that it is Property within the control of the Applicant within the meaning of the Amended Order of this Court dated December 8, 2014 appointing the Applicant as Receiver and Trustee, and vesting title in the Property in in the name of CMS;
- c) in the alternative, an Order declaring that the arrangements by which the Respondent is listed as the owners on title to the Property is void as a sham and of no force and effect as against the Applicant, and vesting title in the Property in in the name of CMS;

- d) in the alternative, an Order declaring that the Respondent holds title to the Property as the alter ego and on behalf of CMS, and vesting title of the Property in in the name of CMS;
- e) in the alternative, an Order declaring that the Respondent holds the Property in trust for CMS, and vesting title of the Property in in the name of CMS;
- f) in the alternative an Order:
  - i) declaring that the Applicant is a complainant within the meaning of section 245 of the *Business Corporations Act*, R.S.O 1990, c. B.16 (the “OBCA”),
  - ii) declaring that the affairs of the Companies with respect to the Property as described below have been carried on by the Respondent in a fashion that is oppressive to, unfairly prejudicial to, or unfairly disregards the interests of the Applicant as the representative of the creditors of the Companies within the meaning of section 248(2) of the OBCA, and
  - iii) vesting title of the Property in CMS or such further interim or final order as the Court may direct pursuant to section 248(3) of the OBCA;
- g) in the alternative, an Order:
  - i) declaring that the transfer of title to the Property to the Respondent is void as against the Trustee within the meaning of section 96(1) of the

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “BIA”), or

- ii) that the Respondent pay to the Applicant an amount equal to the fair market value of the Property plus the amounts expended by the Companies for carrying costs and other expenses associated with the Property;
  
- h) in the alternative, judgment against the Respondent for the amounts expended by CMS in connection with the Property and for the amounts purportedly loaned by CMS to the Respondent in connection with the Property as set out below, and the appointment of the Applicant as receiver pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the “CJA”), or as an equitable receiver, to take possession of and realize upon the Property;
  
- i) certificates of pending litigation against the Property;
  
- j) costs of this Application, inclusive of HST; and
  
- k) Such further and other relief as counsel may advise and this Honourable Court deems just.

**2. THE GROUNDS FOR THE APPLICATION ARE:**

**The Receiver and Trustee**

- a) the Receiver and Trustee were appointed by the Amended Order of this Court dated December 8, 2014 following the termination by this Court of proceedings

brought by the Companies under notices of intention to make a proposal (“NOI”) pursuant to the BIA;

- b) this proceeding is being brought by the Applicant in its dual capacities as Receiver and Trustee, but the allocation of any proceeds of this proceeding, or of proceeds of sale in a sales process, will depend on the basis for recovery as adjudicated by the Court and may therefore require directions from this Court in the receivership and bankruptcy proceedings;

**The Companies and their conduct prior to appointment of the Applicant**

- c) the Companies were all related in the operation of marinas in Keswick and elsewhere, and in ownership of land for the Keswick marina;
- d) CMS was the main or sole operating company for the marina operations, and had lost approximately \$19.7 million in aggregate in its fiscal years 2011 to 2014;
- e) the Applicant has filed Reports with this Court (both as Receiver and in a prior capacity as Interim Receiver of certain of the Companies), to advise of circumstances that it has been made aware of in which CMS appears to have:
  - i) sold boats on behalf of customers as agent or broker, without remitting the proceeds of sale to the customer or without paying off a loan by the customer from the proceeds of sale,

- ii) sold boats that had been purchased by CMS though funds borrowed from lenders without repaying those loans, including in circumstances where the lenders were given what purported to be title documents to the boats but the boats were sold nonetheless,
- iii) used funds received from the sale of boats on behalf of customers, or used funds received as a deposit for purchase of a boat, without putting those funds in trust as required by agreements with the customer or purchaser,
- iv) used funds received from customers in 2014 on account of deposits for boat slip rentals in the 2015 boating season for general corporate purposes,
- v) disbursed funds without the interim receiver's approval in contravention of the interim receivership orders of this Court,
- vi) failed to remit the payroll source deductions that arose after the filing of the NOI's, and
- vii) sold at least one boat on behalf of a third party with \$145,000 in payments from the purchaser being directed \$103,000 to CMS and \$42,000 to "S. Crate",

none of which has been explained in affidavits that have been filed in the NOI proceedings, or otherwise;

**The Respondent**



- a) the Respondent, Ryan G. Crate (“**Ryan**”), is the son of Gregory J. Crate (“**Greg**”) and the nephew of Steven L. Crate (“**Steven**”), and Lynn J. Marko (“**Lynn**”);
- b) Greg, Steven, and Lynn are siblings of each other and are all officers and/or directors of each of the Companies and were employees of CMS;
- c) Steven, Greg and Lynn were the directing minds of the Companies prior to the appointment of the Applicant;
- d) Steven, Greg and Lynn, along with Lloyd Crate (now deceased), are the direct or indirect owners of all the Companies;
- e) the Respondent is listed on title as the registered owner of the Property as set out in Schedule “A”;

**The payment of funds by CMS in respect of the Property**

- f) CMS made all the payments required to buy and carry the Property, including:
  - i) CMS paid for all down payments for acquiring the Property;
  - ii) CMS paid for all expenses in connection with the Property, such as utilities, insurance, municipal taxes and upkeep; and
  - iii) CMS made all mortgage payments for the charges registered against the Property;

**The accounting treatment by CMS of funds in respect of the Property**

- g) CMS expensed the payments made for carrying costs and for the mortgage interest for the Property against its income, and did so in a separate expense account maintained for the Property;
- h) CMS accounted for the down payment and for any principal portion of mortgage payment as notional shareholder loans to the Respondent and did so with a separate account on its books and records for the Property (the “**Property Loan Account**”);
- i) each of Steven, Greg and Lynn also had more conventional shareholder loan accounts in which, among other things, CMS would book amounts that it paid on their behalf or that they loaned to CMS (the “**True Shareholder Accounts**”);
- j) the True Shareholder Accounts did not carry balances payable by Steven, Greg and Lynn after each fiscal year into the next year, and instead CMS and the Companies at the end of each fiscal year made further entries on their books and records to reallocate the amounts in the True Shareholder Accounts such that Steven, Greg and Lynn then notionally owed those funds to 1382415 Ontario Ltd., which then owed the funds to F.S. Crate & Sons Limited, which then owed the funds to CMS;
- k) unlike the True Shareholder Accounts, the Property Loan Account did carry balances notionally payable by the Respondent for the Property over from one year to the other;

- l) the compensation payable to the Respondent as an employee of CMS was the same both before and after CMS funded the acquisition of the Property in the name of the Respondent and when CMS paid the carrying costs of the Property;
- m) the full details of the Property are not known to the Applicant, because Steven, Greg and/or Lynn removed files relating to the Property that had been kept in the premises of CMS prior to the appointment of the Applicant, and they have refused the Applicant's request to return those files;

**Sham, alter ego and trust**

- n) the arrangements by which the Respondent was registered on title to the Property, when CMS was paying for all costs associated with acquiring and carrying the Property, were a sham intended to avoid the true state of affairs for mortgage lending purposes and should be disregarded by this Court;
- o) similarly, those arrangements show that the Respondent is nothing more than the alter ego of CMS as the registered owner of the Property;
- p) in addition, the intent of the Respondent and CMS (under the direction and control of Steven, Greg and Lynn) was that the Respondent was not the true owner of the Property and instead that the Respondent held the Property in Trust for CMS;

- q) in the alternative, the payment by CMS of all costs associated with acquiring and carrying the Property means that the Respondent holds the Property in trust for CMS by virtue of a constructive trust and resulting trust;

**Oppression**

- r) as legal representative of the creditors of CMS, the Applicant is a complainant for purposes of section 245 of the OBCA;
- s) allowing the Property to remain the in name of the Respondent would effect a result that is oppressive to, unfairly prejudicial to, or unfairly disregards the interests of the creditors of CMS by enriching the Respondent and Steven, Greg and Lynn as his family members, to the detriment of the creditors of CMS;
- t) the affairs of CMS were carried on by Steven, Greg and Lynn such that it spent funds on the Property that, if not remedied by this Court, will accrue solely to the benefit of Steven, Greg and Lynn and their family, when CMS was otherwise losing millions of dollars each year;

**Transfer under value**

- u) the Trustee states that the registration of title to the Property in the name of the Respondent was a transfer for which no consideration has been given within the meaning of subsections 96(1) and 96(2) of the BIA;

- v) accordingly, the registration of title in the name of the Respondent rather than in the name of CMS is void as against the Trustee;
- w) in the alternative, the Respondent should be liable to pay to the Applicant an amount equal to the fair market value of the Property plus the amounts expended by the Companies for carrying costs and other expenses associated with the Property;

**Judgment for amounts paid by CMS and appointment of a CJA or equitable receiver**

- x) in the alternative, the Respondent is indebted to CMS or others of the Companies for:
  - i) the amounts recorded in the Property Shareholder Loan as loans due and payable, and
  - ii) the amounts paid by CMS in connection with the carrying costs for the Property as amounts that have unjustly enriched the Property at the expense of CMS and its creditors;
- y) the full details of the amounts owing for the Property Shareholder Loan and the carrying costs paid by CMS are not yet known to the Applicant, in part because of the failure or refusal by Steven, Greg and Lynn to return the files for the Property to the premises of CMS despite demand, but will be provided prior to the hearing of this Application;

- z) in the alternative, it is in the interests of justice to appoint the Applicant over the Property in order to ensure the proper repayment of the amounts owing to CMS, particularly in circumstances where:
- i) Steven, Greg and Lynn have demonstrated in their management of the Companies both prior to the appointment of the Applicant and Trustee, and during the interim receivership, that they were prepared to sell things that did not belong to CMS and appropriate the funds for CMS, or incur debts for CMS to acquire a boat and then not discharge those debts upon sale of the boat, or otherwise ignore restrictions imposed by this Court,
  - ii) Steven, Greg and Lynn have removed records pertaining to the Property from CMS and have failed or refused to return those records despite request by the Applicant, and
  - iii) the Property have been listed for sale since the appointment of the Applicant and Trustee;

**Statutory and regulatory provisions relied on in this Application**

- aa) the provisions of the OBCA, including sections 245 and 248;
- bb) the provisions of the BIA, including section 96;
- cc) the provisions of the CJA, including section 101;

- dd) Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended; and
- ee) Such further and other grounds as counsel may advise and this Honourable Court accepts.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION;**

- a) The Affidavit or Report of the Applicant and the exhibits thereto;
- b) such further and other documentary evidence as counsel may provide and this Honourable Court accepts.

Dated: January 28, 2015

**GOLDMAN, SLOAN, NASH & HABER LLP**  
Barristers and Solicitors  
Suite 1600  
480 University Avenue  
Toronto, ON M5G 1V6

**Michael B. Rotsztain (LSUC No.: 17086M)**  
**R. Brendan Bissell (LSUC No.: 40354V)**  
**Robert J. Drake (LSUC No.: 57083G)**

Tel: (416) 597-9922

Fax: (416) 597-3370

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

**SCHEDULE "A"**

**PIN 40465 – 0022 (LT)**

Registered Owner: Ryan Gregory Crate  
Municipal Address: 14 Highland Ave., Belleville, Ontario  
Legal Description: PT LT 33 PL 9 THURLOW AS IN QR299054; BELLEVILLE ;  
COUNTY OF HASTINGS



**A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Applicant

- and **RYAN GREGORY CRATE**

Respondent

Commercial List File No.: *CV-15-10849-0001*

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

Proceedings commenced at Toronto

**NOTICE OF APPLICATION**

**GOLDMAN SLOAN NASH & HABER LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

**Michael B. Rotsztein [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]  
Tel: (416) 597-9922  
Fax: (416) 597-3370**

Lawyers for the Applicant,  
A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

TAB T



Court File No.: CV-15-10849-00LL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

FRIDAY, THE 30<sup>TH</sup>

JUSTICE

NEWBOULD

)

)

DAY OF JANUARY, 2015

A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.

Applicant

-and-

RYAN GREGORY CRATE

Respondent

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O., 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

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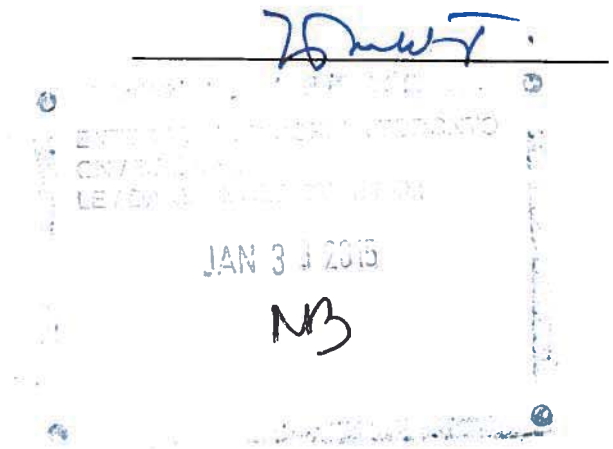
ORDER

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**THIS MOTION**, made by A. Farber & Partners Inc. in its capacities as the Court appointed Receiver and as the trustee in bankruptcy of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. for an order for a Certificate of Pending Litigation in respect of the premises set out in Schedule "A", was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Andy Fisher sworn January 12, 2015, filed, and on hearing counsel for moving party, the respondent taking no position on the motion:

1. **THIS COURT ORDERS** that that the Registrar issue a Certificate of Pending Litigation in respect of the premises set out in Schedule "A".



**SCHEDULE "A"**

**PIN 40465 – 0022 (LT)**

Registered Owner: Ryan Gregory Crate  
Municipal Address: 14 Highland Ave., Belleville, Ontario  
Legal Description: PT LT 33 PL 9 THURLOW AS IN QR299054; BELLEVILLE ; COUNTY OF  
HASTINGS

A. FARBER & PARTNERS INC. IN ITS CAPACITIES  
AS THE COURT APPOINTED RECEIVER AND AS  
THE TRUSTEE IN BANKRUPTCY OF CRATE  
MARINE SALES LIMITED, F.S. CRATE & SONS  
LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

Applicant

- and -

RYAN GREGORY CRATE

Respondent

File No.: *CV-15-10844-00CL*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**

Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario  
MSG 1V2

Michael B. Rotsztain [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]  
Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Applicant

TAB U

**Properties**

PIN 40465 - 0022 LT  
Description PT LT 33 PL 9 THURLOW AS IN QR299054; BELLEVILLE : COUNTY OF HASTINGS  
Address 14 HIGHLAND AVE  
BELLEVILLE

**Applicant(s)**

Name A. FARBER & PARTNERS INC.  
Address for Service c/o GSNH LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
I, Stuart Mitchell, have the authority to bind the corporation.  
This document is not authorized under Power of Attorney by this party.

**Statements**

Schedule: See Schedules

**Signed By**

Andrea Christine Rossanese  
480 University Ave, # 1600  
Toronto  
M5G 1V2  
acting for Applicant(s)  
Signed 2015 01 30  
Tel 416-597-9922  
Fax 416-597-3370  
I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

GOLDMAN SLOAN NASH & HABER LLP  
480 University Ave, # 1600  
Toronto  
M5G 1V2  
Tel 416-597-9922  
Fax 416-597-3370

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00  
Total Paid \$60.00





ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Court File No.: CV-15-10844-00CL

A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT  
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF  
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,  
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,  
and 1382416 ONTARIO LTD.

Applicant

-and-

RYAN GREGORY CRATE

Respondent

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

CERTIFICATE OF PENDING LITIGATION

I CERTIFY that in this proceeding an interest in the land set out in Schedule "A" is in question.

This certificate is issued under an order of the court made on January 30, 2015.

Date: January 30, 2015

Issued by:

Natasha Brown  
Registrar

Local Registrar  
Superior Court of Justice  
(Commercial List)  
330 University Avenue  
Toronto, ON M5G 1R7

JAN 31 2015  
RECEIVED  
COMMERCIAL LIST  
COURT OF JUSTICE  
TORONTO  
M5G 1R7

MB

PIN 40465 - 0022 (LT)

Registered Owner: Ryan Gregory Crate  
Municipal Address: 14 Highland Ave., Belleville, Ontario  
Legal Description: PT LT 33 PL 9 THURLOW AS IN QR299054; BELLEVILLE;  
COUNTY OF HASTINGS

SCHEDULE "A"

**A. FARBER & PARTNERS INC. IN ITS CAPACITIES  
AS THE COURT APPOINTED RECEIVER AND AS  
THE TRUSTEE IN BANKRUPTCY OF CRATE  
MARINE SALES LIMITED, F.S. CRATE & SONS  
LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

Applicant

**RYAN GREGORY CRATE**

- and -

Respondent

File No.: CV-15-10849 - 00CL

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

Proceedings commenced at Toronto

**CERTIFICATE OF PENDING LITIGATION**

**GOLDMAN SLOAN NASH & HABER LLP**

Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario  
M5G 1V2

**Michael B. Rotsztein [LSUC No.: 17086M]  
R. Brendan Bissell [LSUC No. 40354V]  
Robert J. Drake [LSUC No. 57083G]**

Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Applicant

TAB V

We have reviewed the Security Documents to determine their validity and enforceability against the Debtors, and their priority to such liens, charges, mortgages and other security documents registered in the Land Titles Office against title to the Premises. We have not confirmed the legal descriptions or the boundaries for any of the lands comprising the Premises, and have assumed that the thumbnail legal descriptions are accurate and complete as set forth in the parcel registers identified by their respective property identification numbers ("PINs").

The specific security documents for which we are to opine (the "Security Documents") are those documents listed in Schedule "A", in respect of which the Premises stand as security for satisfaction or payment of the liabilities or obligations incurred by the respective Debtors.

The Debtors are the registered owners of, among other things, real property located in the Town of Georgina (Keswick) in Land Registry Office for the Land Titles Division of York Region No. 65 (the "Land Titles Office"), all as described in Schedule "A" (the "Premises").

This opinion revises, replaces and re-states our earlier opinion of January 15, 2015.

In connection with your acting as Receiver and as Trustee in Bankruptcy with respect to Crate Marine Sales Limited pursuant to the Bankruptcy and Insolvency Act (Canada) and the Amended Order of Justice Newbould of the Ontario Superior Court of Justice (Commercial List) dated December 8, 2014 terminating the bankruptcy proposal proceedings, you have requested our opinion concerning certain security over real property granted by the Debtors.

**Re: Review of certain security granted by Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, and 1282648 Ontario Ltd. (the "Debtors")**

Dear Sirs:

**Attention: Stuart Mitchell, Senior Vice-President**

A. Farber & Partners Inc.  
 150 York Street  
 Suite 1600  
 Toronto, Ontario  
 M5H 3S5

February 6, 2015

*dedicated to your success*

GOLDMAN SLOAN NASH & HABER LLP  
 BARRISTERS & SOLICITORS



RODNEY A. IKEDA  
 Direct Dial 416-597-3389  
 Email ikeda@gsnh.com  
 Our File No.: 143089

This is not an opinion as to the title of the Debtors, and the Premises may be subject to agreements, notices, easements, by-laws, spousal and other rights, and other instruments as may be but not necessarily disclosed by the parcel registers.

### Opinion

Subject to the assumptions and qualifications noted in this letter and in Schedule "B" attached, we are of the opinion that:

As at February 6, 2015, except as outlined below, the Security Documents have been duly registered under the Land Titles Act and are valid and enforceable against the Receiver to the extent of all monies advanced by or indebtedness or liability incurred in favour of the respective lender, lien claimant, or chargee as the case may be in the priority and order ascribed to them as set forth in Schedule "A".

The Charge registered as Instrument Number YR1670154 in the York Region Land Registry Office in favour of Romith Investments Limited is registered on title to PINs 03475 - 1972 and 03475 - 1967 owned by 1328559 Ontario Limited and on title to PINs 03475 - 1907, 03475 - 1969, and 03475 - 1908 owned by Lynn Joanne Marko. Consents to Sever the parcels of land were obtained in relation to PINs 03475 - 1907 and 03475 - 1969.

PIN 03475 - 0155, however, adjoins PIN 03475 - 1908 and both were owned by Lynn Joanne Marko at the time the Charge was registered. The Charge is not registered on title to PIN 03475 - 0155. Under subsection 50(3) of the Planning Act, R.S.O. 1990, c. P.13 (the "Act"), a party shall not grant an interest in land while retaining the fee in any abutting land. Lynn Joanne Marko granted the Charge to Romith Investments Limited over 03475 - 1908 while retaining a fee in the abutting PIN 03475 - 0155 contrary to the Act. Pursuant to subsection 50(22), if an interest in mortgage is granted in contravention of the Act, the mortgage does not create an interest in the land.

Consequently, it is our opinion that the Charge does not create an interest in land of PIN 03475 - 1908. Further, the Charge might not create an interest in PINs 03475 - 1969 and 03475 - 1907.

We would recommend that Romith Investments Limited prove that the Charge creates an interest in land in the remaining PINs being 03475 - 1969 and 03475 - 1907.

We trust that you find the foregoing satisfactory, and if you have any questions, we would be pleased to hear from you.

Yours truly,

*Colleen Sloan  
Wood & Haber LLP*

**SCHEDULE "A"**

**LEGAL DESCRIPTIONS OF THE PREMISES,  
REGISTERED OWNERS, AND  
PRIORITY OF SECURITY DOCUMENTS**

**AS AT JANUARY 15, 2015**

**Re: Review of certain security granted by Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, and 1282648 Ontario Ltd. (the "Debtors")**

**PIN 03475-0135 (LT)**

**Registered Owner:** Crate Marine Sales Limited

**Municipal Address:** 7 and 9 Mac Avenue, Keswick, Ontario

**Legal Description:** Part Lot 1, 2, 3 East Side Matilda Street Plan 245 North Gwillimbury; Part Lot 1 West Side Queen Street Plan 245 North Gwillimbury; Part Block F Plan 224 North Gwillimbury; Part Lot 9 Concession 3 North Gwillimbury Parts 1, 2, 3 65R3745; Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1267358 registered December 15, 2008 is a Charge/Mortgage in favour of Uplands Charitable Foundation in the amount of \$1,000,000.00.

2. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

Executions are clear against Crate Marine Sales Limited.

**PIN 03475-0140 (LT)**

**Registered Owner:** F.S. Crate & Sons Limited

**Municipal Address:** 282 The Queensway South, Keswick, Ontario

**Legal Description:** Lots 44, 45, 46, 47 and 48 Plan 224 North Gwillimbury; Part Block D, E and F Plan 224 North Gwillimbury; Part Lot 9 Concession 3 North Gwillimbury as in A38709A, A64512A; Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. R616567 is a Notice of Lease registered April 16, 1993 in respect of a lease between F.S. Crate & Sons Limited as landlord and Crate Marine Sales Limited as



tenant. The lease is for a term expiring December 31, 1995, and provides for an option to renew for two periods of three years upon notice in writing given to the landlord.

2. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.
3. Instrument No. YR1763076 registered December 22, 2011 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$2,000,000.00.
4. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

Executions are clear against F. S. Crate & Sons Limited.

Note: Instrument No. R616569 is a General Assignment of Leases and Rents registered April 16, 1993 (the "Assignment"), from F.S. Crate & Sons Limited in favour of Roynat Inc. The Assignment was given as addition security for a debenture registered as Instrument No. 616568 (the "Debenture"), which Debenture has been discharged, and provides that a discharge of the Debenture shall operate as a re-assignment of the Assignment without the requirement of any additional conveyance. An application should be made to delete the Assignment from title.

PIN 03475-0147 (LT)

Registered Owner: F.S. Crate & Sons Limited

Municipal Address: 290 The Queensway South, Keswick

Legal Description: Block C Plan 224 North Gwillimbury; Part Block D Plan 224 North Gwillimbury Part 6 65R19902; Georgia

#### Priority of Charges/Security Documents:

1. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.
2. Instrument No. YR1763076 registered December 22, 2011 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$2,000,000.00.
3. Instrument No. YR2077239 registered December 20, 2013 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

Executions are clear against F. S. Crate & Sons Limited.

Note: Instrument No. R616569 is a General Assignment of Leases and Rents registered April 16, 1993 (the "Assignment"), from F.S. Crate & Sons Limited in favour of Roynat Inc. The Assignment was given as addition security for a debenture registered as Instrument No. 616568 (the "Debenture"), which Debenture has been discharged, and provides that a discharge of the

Debenture shall operate as a re-assignment of the Assignment without the requirement of any additional conveyance. An application should be made to delete the Assignment from title.

**PIN 03475-0150 (LT)**

Registered Owner: 1330732 Ontario Limited

Municipal Address: 294 The Queensway South, Keswick

Legal Description: Parcel 8-1 Section C224; Part Lot 8 Concession 3 (GN); Part of the Bed of Lake Simcoe Part 1 65R2527; Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1330732 Ontario Limited.

**PIN 03475-1967 (LT)**

Registered Owner: 1328559 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 8 Concession 3 Part 4, 65R22164 except Part 2, 65R27407, NG; Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1315819 registered May 12, 2009 is a Charge/Mortgage in favour of Cesaroni Management Limited in the amount of \$1,000,000.00. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1969, 03475-1908 and 03475-1907, and payment under said mortgage is payment under within Charge/Mortgage.

2. Instrument No. YR1455537 registered March 23, 2010 is a Notice amending the charge terms related to Instrument No. YR1315819.

3. Instrument No. YR1613456 registered February 23, 2011 is a Notice amending the charge terms related to Instrument No. YR1315819.

4. Instrument No. YR1670154 registered June 28, 2011 is a Charge/Mortgage in favour of Romith Investments Limited in the amount of \$1,000,000.00.  
Instrument No. YR1793762 registered March 12, 2012 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537 and YR1613456.

5. Instrument No. YR1965077 registered April 12, 2013 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537, YR1613456 and YR1793762.

6. Instrument No. YR2106283 registered March 18, 2014 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537, YR1613456, YR1793762 and YR1965077.

Executions are clear against 1328559 Ontario Limited.

PIN 03475-1972 (LT)

Registered Owner: 1328559 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 8, Concession 3 (NG) Parts 1 and 2, 65R27407; Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1315819 registered May 12, 2009 is a Charge/Mortgage in favour of Casaroni Management Limited in the amount of \$1,000,000.00. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1969, 03475-1908 and 03475-0155, and payment under said mortgage is payment under within Charge/Mortgage.

2. Instrument No. YR1455537 registered March 23, 2010 is a Notice amending charge terms related to Instrument No. YR1315819.

3. Instrument No. YR1613456 registered February 23, 2011 is a Notice amending charge terms related to Instrument No. YR1315819.

4. Instrument No. YR1670154 registered June 28, 2011 is a Charge/Mortgage in favour of Romith Investments Limited in the amount of \$1,000,000.00.

5. Instrument No. YR1793762 registered March 12, 2012 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537 and YR1613456.

6. Instrument No. YR1965077 registered April 12, 2013 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537, YR1613456 and YR1793762.

7. Instrument No. YR2106283 registered March 18, 2014 is a Notice amending the charge terms related to Instrument Nos. YR1315819, YR1455537, YR1613456, YR1793762 and YR1965077.

Executions are clear against 1328559 Ontario Limited.

PIN 03475-0901 (LT)

Registered Owner: 1328559 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 8 & 9 Concession 3 (GN) Part Bed of Lake Simcoe lying in front of Lots 8 & 9 and Part Lots 35, 36, 37, 38 & 39 Plan 224, Parts 8, 9, 10, 11, 12, 13, 14, 22, 23 & 24 65R19902, Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1328559 Ontario Limited.

PIN 03475-0902 (LT)

Registered Owner: 1328559 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 41 Plan 224, Part 19 65R19902, Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1328559 Ontario Limited.

PIN 03475-0924 (LT)

Registered Owner: 1282648 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 40 Plan 224 North Gwillimbury Part 2 65R19902, Georgia

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1282648 Ontario Limited.

PIN 03475-0925 (LT)

Registered Owner: 1282648 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 40 Plan 224 North Gwillimbury Parts 4 & 5 65R19902, Georgia

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1282648 Ontario Limited.

PIN 03475-0923 (LT)

Registered Owner: 1328559 Ontario Limited

Municipal Address: unknown

Legal Description: Part Lot 40 Plan 224 North Gwillimbury Part 3 65R19902, Georgina

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1328559 Ontario Limited.

PIN 03475-0146 (LT)

Registered Owner: 1282648 Ontario Limited

Municipal Address: unknown

Legal Description: Part Block D Plan 224 North Gwillimbury Part 7 65R19902, Georgina

**Priority of Charges/Security Documents:**

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.

2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.

3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

Executions are clear against 1282648 Ontario Limited.

PIN 03475-0898 (LT)

Registered Owner: 1282648 Ontario Limited

**Priority of Charges/Security Documents:**

Registered Owner: 1282648 Ontario Limited  
Municipal Address: unknown  
Legal Description: Part Lot 8 and Part of the Bed of Lake Simcoe lying in front of Lots 8 & 9 Concession 3, all of Lots 42 & 43 and Part Lots 35, 36, 37, 38m 39, 41 and Part Block D Plan 224, Parts 20 & 21 65R19902, Georgia

**PIN 03475-0900 (LT)**

Executions are clear against 1282648 Ontario Limited.

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.
2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.
3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

**Priority of Charges/Security Documents:**

Registered Owner: 1282648 Ontario Limited  
Municipal Address: unknown  
Legal Description: Part Lot 41 Plan 224, Parts 17 & 18 65R19902, Georgia

**PIN 03475-0899 (LT)**

Executions are clear against 1282648 Ontario Limited.

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.
2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.
3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crawmet Corp. in the amount of \$7,000,000.00.

**Priority of Charges/Security Documents:**

Municipal Address: unknown  
Legal Description: Part Lots 37, 38 & 39 Plan 224, Parts 15 & 16 65R19902, Georgia

1. Instrument No. YR1011208 registered July 3, 2007 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00.
  2. Instrument No. YR1347517 registered July 23, 2009 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$550,000.00.
  3. Instrument No. YR2077245 registered December 20, 2013 is a Charge/Mortgage in favour of Crammet Corp. in the amount of \$7,000,000.00.
- Executions are clear against 1282648 Ontario Limited.



## SCHEDULE "B"

### Assumptions and Qualifications

The following are the assumptions and qualifications in connection with this opinion:

1. We are qualified to render opinions only as to the laws of the Province of Ontario, including relevant Federal laws of Canada, and accordingly we express no opinion as to the laws of any other jurisdiction. Our opinions are not to be taken as relating to any property or assets while the same are located outside the Province of Ontario, or as to the validity of any of the security documents insofar as they relate to any such property.

2. In rendering our opinion, we assume the following:

(a) That each corporate Debtor was a duly incorporated and validly subsisting corporation at the time that the Security Documents were authorized, executed and delivered, and that each corporate Debtor has continued to be duly incorporated and validly existing since that time;

(b) The genuineness of all signatures on all documents examined by us, the authenticity of all documents submitted to us, the legal capacity of natural persons and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photocopy versions and the truth of the factual statements contained in all documents submitted to us;

(c) The accuracy and currency of the indices and filing systems maintained in the public offices where we have searched or inquired;

(d) The due execution, authorization and delivery, pursuant to and under strict capacity and authorization, of the Security Documents referred to in this letter by all corporate parties and that as of the date of this opinion no steps or actions have been taken to revoke, rescind or modify any such authorizations;

(e) That none of the Debtors has a legal defence against any of its secured parties for, without limitation, absence of legal capacity, fraud, buyout to the knowledge of any secured parties, misrepresentation, undue influence or duress.

3. We express no opinion as to the enforceability of any provision that could be construed as a "penalty" as opposed to liquidated damages. If a contractual term requiring payment or specified performance in the event of breach or default is characterized as a "penalty" as opposed to liquidated damages, the same would not be enforceable upon public policy grounds. As the determination of this issue is subjective and factual in nature, we are unable to express an opinion as to same.

4. We express no opinion as to the enforceability of these provisions of the security documentation that purport to allow the severance of invalid, illegal or unenforceable

provisions or restrict their effect, however, the foregoing does not in any way limit our opinion with respect to enforceability of any other provision of the security documentation.

5. We express no opinion as to whether any of the Security Documents constitutes a fraudulent preference or other attackable or reviewable transaction pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) or any applicable provincial legislation.

6. All opinions with regard to the binding and enforceable nature of the obligations evidenced by any agreement or document, which are the subject of this letter, are subject to the following qualifications:

- (a) Enforcement of an agreement may be restricted by any laws affecting or limiting the right of creditors to enforce any remedies available to them;
- (b) Enforcement of an agreement may be affected or limited by any collateral agreements or arrangements relating to them and entered among the parties of which we may not be aware;

(c) No opinion is given with respect to the availability of any particular remedy, equitable or otherwise. Without limiting the generality of that statement, no opinion is given to any particular provision of any of the agreements or documents noted in this letter and the enforceability of a party's obligations under those documents will be subject to the general principles of equity regarding whether such enforceability is considered as a matter of common law or equity;

(d) Provisions providing for recovery of fees and expenses may be restricted by a court to a reasonable amount and counsel fees are subject to taxation;

(e) No opinion is expressed as to the enforceability of any provision that purports to provide for a higher rate of interest after default than before;

(f) No opinion is expressed as to the enforceability of a provision of any of the Security Documents that provides that the provisions of another document govern in the event of any conflict or inconsistency between the provisions of the other document and such Loan Documents;

(g) No opinion is expressed as to the enforceability of any provision that contemplates or provides for agreement at a later date;

(h) No opinion is expressed as to the enforceability of any provision that purports to relieve any party thereto, or its agents, from liability for its own acts;

(i) No opinion is expressed as to the enforceability of any provision that purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security Documents;

(j) Enforcement of an agreement may be limited by any applicable bankruptcy, reorganization, or insolvency, moratorium, or other law, including the Bankruptcy and Insolvency Act (Canada) thereby affecting the enforcement of creditors' rights generally from time to time; and

(k) Since specific performance and injunctive relief are equitable remedies and may be only granted in the discretion of a Court of competent jurisdiction, such remedies may not be available where damages are considered adequate.

7. The Security Documents are only enforceable to the extent that monies have been advanced properly by secured parties and/or other obligations or liabilities owed by the Debtor to the secured parties have been incurred.

8. In connection with this opinion, no review has been made of any of the transactions, agreements, indentures or other instruments of the Debtors for the purposes of identifying matters described in this opinion, other than a review of the parcel registers for the respective PINs in the applicable land registry office and the instruments as registered on such PINs. Furthermore, no review of the minute books of any of the corporate debtors has been undertaken by our firm.

9. The opinions expressed in this letter are provided to and are for the sole use of A. Farber & Partners Inc. in its capacity as Receiver and may not be used for any other purpose.

TAB W

The specific security documents for which we are to opine (the "Security Documents") are those documents listed in Schedule "A", in respect of which the Premises stand as security for satisfaction or payment of the liabilities or obligations incurred by the respective Parties. We have reviewed the Security Documents to determine their validity and enforceability against the Parties, and their priority to such liens, charges, mortgages and other security documents registered in the Land Titles Office against title to the Premises. We have not confirmed the legal descriptions or the boundaries for any of the lands comprising the Premises, and have assumed that the thumbnail legal descriptions are accurate and

The Parties are the registered owners of, among other things, real property located in the Town of Georgina (Keswick) in Land Registry Office for the Land Titles Division of York Region No. 65 (the "Land Titles Office"), all as described in Schedule "A" (the "Premises"). The Premises are properties that are adjacent to properties that are owned by the Debtors named in the Proceedings.

This opinion revises, replaces and re-states our earlier opinion of January 15, 2015. The Parties are the registered owners of, among other things, real property located in the Town of Georgina (Keswick) in Land Registry Office for the Land Titles Division of York Region No. 65 (the "Land Titles Office"), all as described in Schedule "A" (the "Premises"). The Premises are properties that are adjacent to properties that are owned by the Debtors named in the Proceedings.

**Re: Review of certain security granted by Steven Crate, Robin Ann Crate, Greg Crate, Ryan Gregory Crate, 2192422 Ontario Inc., Lynn Joanne Marko, and Robin Price (the "Parties")**

Dear Sirs:

**Attention: Stuart Mitchell, Senior Vice-President**

A. Farber & Partners Inc.  
150 York Street  
Suite 1600  
Toronto, Ontario  
M5H 3S5

February 6, 2015

*dedicated to your success*

GOLDMAN SLOAN NASH & HABER LLP  
BARRISTERS & SOLICITORS



RODNEY A. IKEDA  
Direct Dial 416-597-3389  
Email ikeda@gsnh.com  
Our File No.: 143089

complete as set forth in the parcel registers identified by their respective property identification numbers ("PINs").

This is not an opinion as to the title of the Parties, and the Premises may be subject to agreements, notices, easements, by-laws, spousal and other rights, and other instruments as may be but not necessarily disclosed by the parcel registers.

## Opinion

Subject to the assumptions and qualifications noted in this letter and in Schedule "B" attached, we are of the opinion that:

As at February 6, 2015, except as outlined below, the Security Documents have been duly registered under the Land Titles Act and are valid and enforceable against the Receiver to the extent of all monies advanced by or indebtedness or liability incurred in favour of the respective lender, lien claimant, or chargee as the case may be in the priority and order ascribed to them as set forth in Schedule "A".

The Charge registered as Instrument Number YR1670154 in the York Region Land Registry Office in favour of Romith Investments Limited is registered on title to PINs 03475 – 1972 and 03475 – 1967 owned by 1328559 Ontario Limited and on title to PINs 03475 – 1907, 03475 – 1969, and 03475 – 1908 owned by Lynn Joanne Marko. Consents to Sever the parcels of land were obtained in relation to PINs 03475 – 1907 and 03475 – 1969.

PIN 03475 – 0155, however, adjoins PIN 03475 – 1908 and both were owned by Lynn Joanne Marko at the time the Charge was registered. The Charge is not registered on title to PIN 03475 – 0155. Under subsection 50(3) of the Planning Act, R.S.O. 1990, c. P.13 (the "Act"), a party shall not grant an interest in land while retaining the fee in any abutting land. Lynn Joanne Marko granted the Charge to Romith Investments Limited over 03475 – 1908 while retaining a fee in the abutting PIN 03475 – 0155 contrary to the Act. Pursuant to subsection 50(22), if an interest in mortgage is granted in contravention of the Act, the mortgage does not create an interest in the land.

Consequently, it is our opinion that the Charge does not create an interest in land of PIN 03475 – 1908. Further, the Charge might not create an interest in PINs 03475 – 1969 and 03475 – 1907.

We would recommend that Romith Investments Limited prove that the Charge creates an interest in land in the remaining PINs being 03475 – 1969 and 03475 – 1907.

We trust that you find the foregoing satisfactory, and if you have any questions, we would be pleased to hear from you.

Yours truly,

Godman Slean Mack & Hilar LLP

**SCHEDULE "A"**

**LEGAL DESCRIPTIONS OF THE PREMISES,  
REGISTERED OWNERS (NON-PARTIES), AND  
PRIORITY OF SECURITY DOCUMENTS**

**AS AT JANUARY 15, 2015**

**Re: Review of certain security granted by Steven Crate, Robin Ann Crate, Greg Crate, Ryan Gregory Crate, 2192422 Ontario Inc., Lynn Joanne Marko, and Robin Price**

**(the "Parties")**

**PIN 03475-1907 (LT)**

**Registered Owner: Lynn Joanne Marko**

**Municipal Address: unknown**

**Legal Description: Part Lot 8, Concession 3, Part 2 65R22164, North Gwillimbury, Georgia**

**Priority of Charges/Security Documents:**

1. Instrument No. YR1315820 registered May 12, 2009 is a Charge/Mortgage in favour of Cesaroni Management Limited in the amount of \$1,000,000.00. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Spousal statement that the property is not ordinarily occupied as a family residence. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1972, and 03475-1967, and payment under said mortgage is payment under within Charge/Mortgage.
2. Instrument No. YR1455536 registered March 23, 2010 is a Notice amending charge terms for Instrument No. YR1315820.
3. Instrument No. YR1613457 registered February 23, 2011 is a Notice amending charge terms for Instrument No. YR1315820.
4. Instrument No. YR1670154 registered June 28, 2011 is a Charge/Mortgage in favour of Romith Investments Limited in the amount of \$1,000,000.00. Spousal statement that Chagor is separated from her spouse and that at the time of separation the property was not ordinarily occupied as a family residence.
5. Instrument No. YR1793763 registered March 12, 2012 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536 and YR1613457.



1. Instrument No. YR1315820 registered May 12, 2009 is a Charge/Mortgage in favour of Cesaroni Management Limited in the amount of \$1,000,000.00. Spousal statement that the property is not ordinarily occupied as a family residence. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1972, and 03475-1967, and payment under said mortgage is payment under within Charge/Mortgage.
2. Instrument No. YR1455536 registered March 23, 2010 is a Notice amending charge terms related to Instrument No. YR1315820.
3. Instrument No. YR1613457 registered February 23, 2011 is a Notice amending charge terms related to Instrument No. YR1315820.
4. Instrument No. YR1670154 registered June 28, 2011 is a Charge/Mortgage in favour of Romith Investments Limited in the amount of \$1,000,000.00. Spousal statement that Chargor is separated from her spouse and that at the time of separation the property was not ordinarily occupied as a family residence.
5. Instrument No. YR1793763 registered March 12, 2012 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536 and YR1613457.

**Priority of Charges/Security Documents:**

Executions are clear against Lynn Joanne Marko.

Registered Owner: Lynn Joanne Marko  
Municipal Address: unknown  
Legal Description: Part Lot 8, Concession 3, Part 1 65R25043 except Part 1 65R27407, NG; Georgia

**PIN 03475-1969 (LT)**

Executions are clear against Lynn Joanne Marko.

6. Instrument No. YR1965078 registered April 12, 2013 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457 and YR1793763.
7. Instrument No. YR2106284 registered March 18, 2014 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457, YR1793763 and YR1965078.

6. Instrument No. YR1965078 registered April 12, 2013 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457 and YR1793763.
7. Instrument No. YR2106284 registered March 18, 2014 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457, YR1793763 and YR1965078.

**PIN 03475-1908 (LT)**

Registered Owner: Lynn Joanne Marko

Municipal Address: unknown

Legal Description: Part Lot 8, Concession 3 as in R649949 except Part 2 65R22164; North Gwillimbury, Georgia

**Priority of Charges/Security Documents:**

8. Instrument No. YR1315820 registered May 12, 2009 is a Charge/Mortgage in favour of Cesaroni Management Limited in the amount of \$1,000,000.00. Spousal statement that the property is not ordinarily occupied as a family residence. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1972, and 03475-1967, and payment under said mortgage is payment under within Charge/Mortgage.
9. Instrument No. YR1455536 registered March 23, 2010 is a Notice amending charge terms related to Instrument No. YR1315820.
10. Instrument No. YR1613457 registered February 23, 2011 is a Notice amending charge terms related to Instrument No. YR1315820.
11. Instrument No. YR1670154 registered June 28, 2011 is a Charge/Mortgage in favour of Romith Investments Limited in the amount of \$1,000,000.00. Spousal statement that Chargor is separated from her spouse and that at the time of separation the property was not ordinarily occupied as a family residence.
12. Instrument No. YR1793763 registered March 12, 2012 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536 and YR1613457.
13. Instrument No. YR1965078 registered April 12, 2013 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457 and YR1793763.

14. Instrument No. YR2106284 registered March 18, 2014 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457, YR1793763 and YR1965078.
15. Instrument No. YR2227670 registered December 8, 2014 is a Charge/Mortgage in favour of Dickinson Wright LLP in the amount of \$270,000.00. Spousal statement that the property is not ordinarily occupied as a family residence.

Executions are clear against Lynn Joanne Marko.

**PIN 03475-0155 (LT)**

Registered Owner: Lynn Joanne Marko

Municipal Address: unknown

Legal Description: Lot 33 Plan 224 North Gwillimbury, Georgia

**Priority of Charges/Security Documents:**

16. Instrument No. YR1315820 registered May 12, 2009 is a Charge/Mortgage in favour of Cesaroni Management Limited in the amount of \$1,000,000.00. Spousal statement that the property is not ordinarily occupied as a family residence. Charge/Mortgage is collateral to a Promissory Note of even date between the parties. Charge/Mortgage is collateral to a mortgage of even date registered against property on PINs 03475-1972, and 03475-1967, and payment under said mortgage is payment under within Charge/Mortgage
17. Instrument No. YR1455536 registered March 23, 2010 is a Notice amending charge terms related to Instrument No. YR1315820.
18. Instrument No. YR1613457 registered February 23, 2011 is a Notice amending charge terms related to Instrument No. YR1315820.
19. Instrument No. YR1793763 registered March 12, 2012 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536 and YR1613457.
20. Instrument No. YR1965078 registered April 12, 2013 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457 and YR1793763.
21. Instrument No. YR2106284 registered March 18, 2014 is a Notice amending charge terms related to Instrument Nos. YR1315820, YR1455536, YR1613457, YR1793763 and YR1965078.

22. Instrument No. YR2227670 registered December 8, 2014 is a Charge/Mortgage in favour of Dickinson Wright LLP in the amount of \$270,000.00. Spousal statement that the property is not ordinarily occupied as a family residence.

Executions are clear against Lynn Joanne Marko.

**PIN 03475-0163 (LT)**

Registered Owner: Steven Crate and Robin Ann Crate

Municipal Address: 176 Wynnhurst Road, Georgia

Legal Description: Part Lot 39 Plan 224 North Gwillimbury as in R681463, Georgia

**Priority of Charges/Security Documents:**

23. Instrument No. YR2037391 registered September 24, 2013 is a Notice of Tax Lien against Steven Crate also known as Steven Lloyd Crate by Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue in the amount of \$386,531.62.

24. Instrument No. YR1431011 registered January 19, 2010 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$300,000.00. Spousal statement that spouses of one another.

Executions are clear against Steven Crate and Robin Ann Crate.

**PIN 03475-0164 (LT)**

Registered Owner: Steven Crate

Municipal Address: 306 The Queensway South, Keswick

Legal Description: Part Lot 40 Plan 224 North Gwillimbury Part 1 65R2443, Georgia

**Priority of Charges/Security Documents:**

25. Instrument No. YR2037416 registered September 24, 2013 is a Notice of Tax Lien against Steven Crate also known as Steven Lloyd Crate by Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue in the amount of \$386,531.62.

26. Instrument No. YR1948606 registered February 25, 2013 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$465,000.00. Spousal statement that property is not ordinarily occupied as a family residence.

27. Instrument No. R753277 registered January 6, 2009 is a Charge/Mortgage in favour of Dwight Powell Investments Inc. in the amount of \$7,500,000.00. Spousal statement that the property was not ordinarily occupied as a matrimonial home.

28. Instrument No. YR1948607 registered February 25, 2013 is a Notice of Assignment of Rents-General in favour of Dwight Powell. The Notice may be deleted when Instrument YR1948606 is deleted.

29. Instrument No. YR1948608 registered February 25, 2013 is a Postponement of Interest postponing R753277 to YR1948606.

30. Instrument No. YR2227671 registered December 8, 2014 is a Charge/Mortgage in favour of Dickinson Wright LLP in the amount of \$270,000.00. Spousal statement that property is not ordinarily occupied as a family residence.

Executions are clear against Steven Crate.

PIN 03475-1960 (LT)

Registered Owner: Greg Crate

Municipal Address: 208 Wynchurst Road, Georgia

Legal Description: Part Lot 8 Concession 3 Part 2 65R25043, Georgia

**Priority of Charges/Security Documents:**

31. Instrument No. YR2057144 registered November 6, 2013 is a Notice of Tax Lien against Greg Crate by Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue in the amount of \$301,048.09.

32. Instrument No. YR1078187 registered October 29, 2007 is a Charge/Mortgage in favour of The Toronto-Dominion Bank in the amount of \$294,375.00. Spousal statement that property is not ordinarily occupied as a family residence.

Executions are clear against Greg Crate.

PIN 03475-0136 (LT)

Registered Owner: Ryan Gregory Crate

Municipal Address: 12 Mac Avenue, Georgia

Legal Description: Part Lot 9 Concession 3 North Cwillimbury as in R690189, Georgia

**Priority of Charges/Security Documents:**

33. Instrument No. YR1004079 registered June 21, 2007 is a Charge/Mortgage in favour of CIBC Mortgages Inc. in the amount of \$167,000.00. Spousal statement that not a spouse.
34. Instrument No. YR1945315 registered February 14, 2013 is a Charge/Mortgage in favour of Canadian Imperial Bank of Commerce in the amount of \$146,042.00. Spousal statement that not a spouse.

Executions are clear against Ryan Gregory Crate.

**PIN 03475-0137 (LT)**

Registered Owner: 2192422 Ontario Inc.

Municipal Address: 10 Mac Avenue, Georgia

Legal Description: Part Lot 9 Concession 3 North Gwillimbury; Part Block F Plan 224 North Gwillimbury as in B3788B, except R690189, Georgia

**Priority of Charges/Security Documents:**

35. Instrument No. YR1998627 registered July 2, 2013 is a Charge/Mortgage in favour of Dwight Powell in the amount of \$329,000.00.

36. Instrument No. YR1999629 registered July 4, 2013 is a Notice of Assignment of Rents – General in favour of Dwight Powell.

Executions are clear against 2192422 Ontario Inc.

**PIN 03475-0134 (LT)**

Registered Owner: Robin Price

Municipal Address: 262 The Queensway South, Keswick

Legal Description: Part Lot 9 Concession 3 North Gwillimbury; Part Lot 1 West Side Queen Street Plan 245 North Gwillimbury Part 5 65R3745, Georgia

**Priority of Charges/Security Documents:**

37. Instrument No. YR2193574 registered September 29, 2014 is a Charge/Mortgage in favour of Robert Nijse in the amount of \$200,000.00. Spousal statement that property is not ordinarily occupied as a family residence.

38. Instrument No. YR2193575 registered September 29, 2014 is a Notice of Assignment of Rents – General in favour of Robert Nijse.

Executions are clear against Robin Price.

PIN 03475-0165 (LT)

Registered Owner: Steven Crate

Municipal Address: 274 The Queensway South, Keswick

Legal Description: Part Block E Plan 224 North Gwillimbury Part 2 65R13692, Georgina

**Priority of Charges/Security Documents:**

39. Instrument No. YR2037444 registered September 24, 2013 is an Income Tax Lien by Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue in the amount of \$386,531.62.

40. Instrument No. YR1428703 registered January 13, 2010 is a Charge/Mortgage in favour of Brenda Whiting in the amount of \$202,089.93. Spousal statement that property is not ordinarily occupied as a family residence.

41. Instrument No. YR1921654 registered December 7, 2012 is a Notice amending the Charge YR1428703 by extending the term of the loan to December 1, 2015.

42. Instrument No. YR2227672 registered December 8, 2014 is a Charge/Mortgage in favour of Dickinson Wright LLP in the amount of \$270,000.00. Collateral security for indebtedness and liabilities owed to Dickinson Wright LLP. Spousal statement that property is not ordinarily occupied as a family residence.

Executions are clear against Steven Crate.

## SCHEDULE "B"

### Assumptions and Qualifications

The following are the assumptions and qualifications in connection with this opinion:

1. We are qualified to render opinions only as to the laws of the Province of Ontario, including relevant Federal laws of Canada, and accordingly we express no opinion as to the laws of any other jurisdiction. Our opinions are not to be taken as relating to any property or assets while the same are located outside the Province of Ontario, or as to the validity of any of the security documents insofar as they relate to any such property.
2. In rendering our opinion, we assume the following:
  - (a) That each corporate Party was a duly incorporated and validly subsisting corporation at the time that the Security Documents were authorized, executed and delivered, and that each corporate Party has continued to be duly incorporated and validly existing since that time;
  - (b) The genuineness of all signatures on all documents examined by us, the authenticity of all documents submitted to us, the legal capacity of natural persons and the conformity of all documents submitted to us as certified, conformed or photocopied original documents and the truth of the factual statements contained in all documents submitted to us;
  - (c) The accuracy and currency of the indices and filing systems maintained in the public offices where we have searched or inquired;
  - (d) The due execution, authorization and delivery, pursuant to and under strict capacity and authorization, of the Security Documents referred to in this letter by all corporate parties and that as of the date of this opinion no steps or actions have been taken to revoke, rescind or modify any such authorizations;
  - (e) That none of the Parties has a legal defence against any of its secured parties for, without limitation, absence of legal capacity, fraud, buyout to the knowledge of any secured parties, misrepresentation, undue influence or duress.

3. We express no opinion as to the enforceability of any provision that could be construed as a "penalty" as opposed to liquidated damages. If a contractual term requiring payment or specified performance in the event of breach or default is characterized as a "penalty" as opposed to liquidated damages, the same would not be enforceable upon public policy grounds. As the determination of this issue is subjective and factual in nature, we are unable to express an opinion as to same.
4. We express no opinion as to the enforceability of these provisions of the security documentation that purport to allow the severance of invalid, illegal or unenforceable



- provisions or restrict their effect, however, the foregoing does not in any way limit our opinion with respect to enforceability of any other provision of the security documentation.
5. We express no opinion as to whether any of the Security Documents constitutes a fraudulent preference or other attackable or reviewable transaction pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) or any applicable provincial legislation.
6. All opinions with regard to the binding and enforceable nature of the obligations evidenced by any agreement or document, which are the subject of this letter, are subject to the following qualifications:
- (a) Enforcement of an agreement may be restricted by any laws affecting or limiting the right of creditors to enforce any remedies available to them;
- (b) Enforcement of an agreement may be affected or limited by any collateral agreements or arrangements relating to them and entered among the parties of which we may not be aware;
- (c) No opinion is given with respect to the availability of any particular remedy, equitable or otherwise. Without limiting the generality of that statement, no opinion is given to any particular provision of any of the agreements or documents noted in this letter and the enforceability of a party's obligations under those documents will be subject to the general principles of equity regarding whether such enforceability is considered as a matter of common law or equity;
- (d) Provisions providing for recovery of fees and expenses may be restricted by a court to a reasonable amount and counsel fees are subject to taxation;
- (e) No opinion is expressed as to the enforceability of any provision that purports to provide for a higher rate of interest after default than before;
- (f) No opinion is expressed as to the enforceability of a provision of any of the Security Documents that provides that the provisions of another document govern in the event of any conflict or inconsistency between the provisions of the other document and such Loan Documents;
- (g) No opinion is expressed as to the enforceability of any provision that contemplates or provides for agreement at a later date;
- (h) No opinion is expressed as to the enforceability of any provision that purports to relieve any party thereto, or its agents, from liability for its own acts;
- (i) No opinion is expressed as to the enforceability of any provision that purports to bind or affect, or confer a benefit upon, persons who are not parties to the Security Documents;

- (j) Enforcement of an agreement may be limited by any applicable bankruptcy, reorganization, or insolvency, moratorium, or other law, including the Bankruptcy and Insolvency Act (Canada) thereby affecting the enforcement of creditors' rights generally from time to time; and
- (k) Since specific performance and injunctive relief are equitable remedies and may be only granted in the discretion of a Court of competent jurisdiction, such remedies may not be available where damages are considered adequate.
7. The Security Documents are only enforceable to the extent that monies have been advanced properly by secured parties and/or other obligations or liabilities owed by the Party to the secured parties have been incurred.
8. In connection with this opinion, no review has been made of any of the transactions, agreements, indentures or other instruments of the parties for the purposes of identifying matters described in this opinion, other than a review of the parcel registers for the respective PINs in the applicable land registry office and the instruments as registered on such PINs. Furthermore, no review of the minute books of any of the corporate Parties has been undertaken by our firm.
9. The opinions expressed in this letter are provided to and are for the sole use of A. Farber & Partners Inc. in its capacity as Receiver and may not be used for any other purpose.

**TAB X**

January 28, 2015

A. Farber & Partners Inc.  
150 York Street  
Suite 1600  
Toronto, Ontario  
M5H 3S5

**Attention: Stuart Mitchell, Senior Vice-President**

Dear Sir:

**Re: Review of certain security granted by Crate Marine Sales Limited (“Crate Marine”) in favour of Crawmet Corp. (“Crawmet”)**

In connection with your acting as Receiver and as Trustee in Bankruptcy with respect to Crate Marine pursuant to the *Bankruptcy and Insolvency Act* (Canada) and the Amended Order of Justice Newbould of the Ontario Superior Court of Justice (Commercial List) dated December 8, 2014 terminating the bankruptcy proposal proceedings, you have asked us to provide our views in respect of the Loan Documents (as defined below).

In light of additional documentation which has recently been provided by counsel for Crawmet, this opinion revises, replaces and re-states our earlier opinion of January 15, 2015.

This opinion is provided to you in your capacity as Receiver and as Trustee in Bankruptcy and is limited to our review of copies of the following documents entered into by Crate Marine:

- (a) a letter loan agreement dated December 22, 2011, made between Crawmet, as lender, and Crate Marine, as borrower, extending a revolving loan to the borrower in the maximum principal amount of \$2,000,000.00, at an interest rate of 10% per annum calculated and compounded monthly (the “**Loan Agreement**”);

- (b) a general security agreement dated as of December 22, 2011, granted by Crate Marine, as debtor, in favour of Crawmet, as secured party (the "**GSA**");<sup>1</sup>
- (c) a revised and re-stated letter loan agreement dated December 19, 2012, made between Crawmet, as lender, and Crate Marine, as borrower, replacing and re-stating the Loan Agreement, extending a term loan to the borrower in the maximum principal amount of \$2,085,244.24 at an interest rate of 10% percent per annum calculated and payable monthly, maturing and repayable in full on the earlier of a change in control of the borrower and January 1, 2018 (the "**Restated Loan Agreement**");
- (d) a loan agreement dated June 1, 2014, made between "Crawmet" [sic], as lender, and "Crate Marine" [sic], as borrower, extending a term loan to the borrower in the principal amount of \$318,440.00 at an interest rate of 10% percent per annum calculated monthly, maturing and repayable in full on June 1, 2015 (the "**Facility "B" Loan Agreement**");<sup>2 3 4</sup>
- (e) a promissory note dated June 3, 2014, given by "Crate Marine Sales" [sic] in favour of "Crawmet" [sic] in the amount of \$318,440.00 bearing interest at 10% per annum, calculated yearly not in advance, maturing and being repayable in full on June 1, 2015 (the "**Promissory Note**"); and,<sup>5</sup>
- (f) an assignment agreement dated as of November 3, 2014 given by Benn Spiegel, as assignor, and Crawmet, as assignee, as debtor, pertaining to the assignment of the Indebtedness (as defined therein) (the "**Assignment Agreement**").

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<sup>1</sup> The GSA provides that it secures all obligations, debts and liabilities of the debtor, whether present or future, which language is sufficient to secure the obligations under the Loan Agreement as well as the obligations under the later Restated Loan Agreement. As well, the Restated Loan Agreement specifically provides that the "Security for the revolving boat loan shall be the same as given for the original revolving boat loan dated 22 December 2011..." which is in itself a form of reconfirmation. The reference to "revolving boat loan" in section 5 of the Restated Loan Agreement is likely an error as the loan agreement otherwise evidences that the earlier provided revolving provisions were removed and that a maturity dated had been inserted.

<sup>2</sup> The Facility "B" Loan Agreement appears to the "Facility B" loan referred to in paragraph 27 of the Affidavit.

<sup>3</sup> Although the Facility "B" Loan Agreement is given by "Crawmet" [sic] to "Crate Marine" [sic], we were provided with a copy of an uncanceled cheque bearing number 1681 and dated 03/06/2014, issued by Crawmet Corporation to Crate Marine Sales Limited in the amount of \$318,440.00, as evidence of the actual parties to the Facility "B" Loan Agreement. Assuming the advance of funds can be established by bank statement or cancelled cheque, then the loan amount would be secured by the GSA as a "debt and liability" of the debtor.

<sup>4</sup> The Facility "B" Loan Agreement provides in Section 9 that the loan is secured by a "Carver C40 Motor Yacht, Twin Cummin QSB 6.7 Diesels, Serial # CVRC7006L314 (the "Security"), and further that the lender will "...retain a security interest in the Security until payment of the full amount of the Loan is made by the Borrower.". No specific security agreement pertaining to the Security has been provided.

<sup>5</sup> The description of the calculation of the interest rate in the Promissory Note varies with the description of the calculation of the interest rate in the Facility "B" Loan Agreement;

The documents in (b), (c), (d) and (e) above are, collectively, referred to herein as the "**Loan Documents**".

We note that:

- (a) the Loan Agreement applies to a revolving loan facility in the maximum principal amount of \$2,000,000.00. Benn-Jay Speigel, the general manager of Crawmet, has deposed in an affidavit filed in the proceedings and sworn on November 20, 2014 (the "Affidavit") that this facility, "...did not ultimately operate as a revolving loan. For ease of administration, Facility "A" was subsequently converted by Crawmet to a term loan with an interest rate of 10% per annum payable in 60 monthly blended principal and interest payments of \$22,408.15.";
- (b) It appears that the Restated Loan Agreement was intended to document the conversion of the loan to a non-revolving term loan and to provide for an increase in the principal amount of the loan. The Restated Loan Agreement specifically provides that it replaces all of the terms of the Loan Agreement with effect as of January 1, 2013; and,
- (c) Crawmet has not provided any agreements with respect to the loan facility described as Facility "C" in paragraph 27 of the Affidavit, which is said to be secured by the GSA, or with respect to the various personal loans (subsequently assigned to Crawmet as noted above) which are described in paragraph 30 of the Affidavit.

In conducting our review and for the purposes of the opinions given herein, we have made the assumptions contained herein and as set out in Schedule "A" attached hereto (collectively, the "**Assumptions**"). Additionally, our opinions herein are subject to the qualifications and limitations contained herein and as set out in Schedule "B" attached hereto (collectively, the "**Qualifications**"). We confirm that the restrictions and limitations on this report, as herein contained, are satisfactory to you.

The undertaking, business, property, assets, interests, and rights of Crate Marine in which Crawmet has been granted a security interest pursuant to the terms of the GSA are collectively referred to herein as the "**Charged Property**". In summary, the Charged Property consists of the property more particularly set forth in Schedule 1 to this Opinion.

We have made no investigation of the laws of any jurisdiction other than, and the opinions hereinafter expressed are restricted to, the laws of the Province of Ontario and the federal laws of Canada applicable therein as of the date hereof and, insofar as the laws of other jurisdictions are relevant, we express no opinion thereon. Without limiting the foregoing, we express no opinion with respect to:

- (a) the laws of any other jurisdiction (other than the laws of Ontario and the federal laws of Canada) to the extent such laws may govern any aspect of the Loan Documents or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests created thereunder as a result of the application of the conflict of laws rules of Ontario, including, without limitation, Sections 5 to 8.1 of the *Personal Property Security Act* (Ontario) (the "**PPSA**") and Section 7 of the *Canada Shipping Act, 2001* (Canada) (the "**CSA**");
- (b) whether, pursuant to the conflict of laws rules of any jurisdiction other than Ontario and other than the federal laws of Canada, that the laws of Ontario would govern the validity, the perfection, the effect of perfection or non-perfection, or enforcement of any security interests created by the GSA; or,
- (c) the application of conflict of laws rules or principles of paramountcy as between the PPSA and the CSA.

While we understand that most of the Charged Property is located in the province of Ontario, you have indicated to us that there is certain Charged Property in the province of Quebec. Although our opinion does not extend to the laws of Quebec, and without derogating from the disclaimer in the immediately preceding paragraphs, as instructed by you, we engaged a Quebec agent, BCF LLP ("BCF"), to conduct a personal property security search in Quebec (i.e., a search of movable property) against Crate Marine, the results of which are more particularly set forth in in Schedule 3 to this Opinion. Without expressing a formal opinion, BCF advised by email of January 6, 2015 that since Crawmet has not effected a movable security registration in Quebec (i.e., a hypothec registration), Crawmet's GSA, "...would not be opposable to [i.e., effective against] the Trustee/Receiver as far as the assets located in Quebec are concerned. Furthermore, the registered secured party's interest in the assets located in Quebec would have priority over [Crawmet's] GSA.". In a supplemental email BCF further advised that even if the personal property located in Quebec was transferred from Ontario to Quebec "...the answer would be the same unless the transfer was in the last 30 days."

In connection with this opinion, no review has been made of any of the transactions, agreements, indentures or other instruments of the Crate Marine for the purposes of identifying matters described in this opinion, other than a review of the Loan Documents. Furthermore, no review of the minute books of Crate Marine has been undertaken by our firm.

We have considered such questions of law as we have considered relevant and necessary as a basis for the opinions hereinafter expressed.

## OPINIONS

Subject to the assumptions, qualifications and comments we have made herein and in the Schedules attached hereto, and the Discussion contained below, we are of the opinion that:

1. Subject only to the variance in the names of the parties in the Facility "B" Loan Agreement and the Promissory Note as set out above, each of the Loan Documents constitutes a valid and binding obligation of Crate Marine, each enforceable against Crate Marine in accordance with its terms;
2. Subject only to the variance in the names of the parties in the Facility "B" Loan Agreement and the Promissory Note as set out above, Crate Marine has duly executed and delivered the Loan Documents;
3. The GSA creates in favour of Crawmet, a valid security interest in the Charged Property identified therein to which the PPSA applies; and,
4. The GSA has been registered, filed or recorded in all public offices where the registration, filing or recording thereof is required under the laws of the Province of Ontario to perfect the security interest created by the GSA in the applicable Charged Property to which the PPSA applies.

## RELIANCE

All opinions expressed herein are provided to you and are for the sole purpose of the performance of the duties of the Trustee and the Receiver in respect of its appointment by the Court, and including any future appointment in respect of Crate Marine, and may not be relied on by any other person, firm, corporation or entity without the prior written consent of Goldman, Sloan, Nash & Haber LLP. This opinion is given as of the date hereof and we do not undertake, and hereby expressly disclaim, any obligation to advise you of any change in any matters set forth herein.

## SEARCHES CONDUCTED

We have conducted, or have caused to be conducted, such public registration searches for filings or registrations made in Ontario, or federally in Canada, in the applicable offices of public record, against Crate Marine as we have deemed appropriate. These searches include corporate profile searches, PPSA searches and CSA searches, all as more specifically set out in **Schedule "C"** attached hereto. The searches were conducted in respect of the current legal name of Crate Marine, in each case as of the dates set forth in **Schedule "C"**. We note that given the specific mandate to assess the GSA and the fact that Crawmet is not a Schedule I or II bank within the meaning of the *Bank Act* (Canada), we have not conducted searches relating to the *Bank Act* (Canada) or registered judgments or writs of execution, or other searches typically conducted in the context of a broad security review of all security interests asserted against a debtor.



We confirm your advice that our review based upon these searches, and our reliance upon such searches in giving the opinions set out herein, is satisfactory for your purposes at this time

We trust that the foregoing is satisfactory. Should you have any questions or comments, please do not hesitate to contact us.

Yours truly,

Goldman, Sloan, Nash & Haber LLP

GOLDMAN, SLOAN, NASH & HABER LLP

**SCHEDULE "A"****ASSUMPTIONS****A. Authenticity and Accuracy**

We have assumed the genuineness of all signatures and the authenticity and completeness of all documents submitted to us as copies thereof. We have also assumed the accuracy and currency of: (i) all indices, filing and registration systems maintained at the public offices where we have searched or inquired or have caused searches or inquiries to be conducted, as set forth herein; (ii) all search results obtained by electronic transmission; and (iii) the results of any printed or computer search of any office of public record.

The online Vessel Registration Query System ("VRQS") under the CSA only generates an uncertified response with respect to an "owner" query. We have therefore assumed that the online information provided by the VRQS system with respect to an "owner" query, is identical to the information which would be provided by the VRQS system for an "owner" query, if such system was a certified system of registrations.

**B. Authority**

We have assumed that:

- (a) Crate Marine was a duly incorporated and validly existing corporation at the time that each of the Loan Documents was authorized, executed and delivered, and that Crate Marine has continued to be duly incorporated and validly existing since that time;
- (b) Crate Marine had the requisite corporate power, capacity and authority to enter into and perform its obligations under each of the Loan Documents at the time each of the Loan Documents was authorized, executed and delivered;

- (c) all necessary corporate action and proceedings had been taken by Crate Marine to authorize the execution, delivery and performance of each of the Loan Documents<sup>6 7 8 9</sup>; and
- (d) with respect to each party to the Loan Documents other than Crate Marine, all necessary corporate actions or proceedings were taken to authorize the execution and delivery of the Loan Documents and that all of the Loan Documents have been duly and validly executed and delivered on behalf of the party executing or delivering such documentation, by an authorized signing officer or officers of such party, and each such document comprising the Loan Documents is enforceable in accordance with its terms.

### **C. Loan Documents**

We have assumed that none of the Loan Documents has been assigned, released, discharged or otherwise impaired, either in whole or in part, and there are no agreements that are relevant to the matters discussed in this letter than those identified herein.

### **D. Existence of Debt and Security Matters**

We have assumed that:

- (a) valuable consideration has been given to Crate Marine, and payment and other obligations remain outstanding by Crate Marine under the agreements identified herein;
- (b) advances of funds to Crate Marine, the quantum thereof, and the amount or repayment to date are as set forth in the Affidavit;

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<sup>6</sup> There is an authorizing resolution in respect of the Loan Agreement; however, it is limited to the initial loan of \$2,000,000.

<sup>7</sup> The authorizing resolution for the Loan Agreement dated December 22, 2011 provides that the security for the \$2,000,000 loan is "used boats on the terms and conditions as set out in the said Agreement". In contrast, the Loan Agreement states that the, "Security for the revolving boat loan shall be comprised of a general assignment by the Borrower of security interest in inventory, equipment, accounts, motor vehicles and other assets...".

<sup>8</sup> The authorizing resolution for the Restated Loan Agreement dated December 19, 2012 contains an error in the loan amount which is stated as \$2,000,000.00 rather than \$2,085,244.24. This is likely a mechanical error sourcing from the earlier authorizing resolution which is similar in text.

<sup>9</sup> The authorizing resolution for the Restated Loan Agreement contains the same variance noted above, i.e., it provides that the security for the \$2,000,000 loan is "used boats on the terms and conditions as set out in the said Agreement" whereas the Restated Loan Agreement states that the, "Security for the revolving boat loan shall be the same as given for the original revolving boat loan dated 22 December 2011 and comprised of a general assignment by the Borrower of security interest in inventory, equipment, accounts, motor vehicles and other assets...".

- (c) the terms of the indebtedness, including but not limited to the applicable interest rate and maturity date are as provided in the Affidavit and have not subsequently been varied <sup>10</sup>;
- (d) each of the Loan Documents was duly executed and delivered by Crate Marine;
- (e) all of the conditions precedent contained in each of the Loan Documents, if any, were satisfied or waived;
- (f) attachment of the security interests created by the GSA has occurred within the meaning of the PPSA;
- (g) Crate Marine has an interest in its collateral expressed to be subject to the GSA; and,
- (h) insofar as any obligation under any of the Loan Documents is to be performed in any jurisdiction other than Ontario and other than pursuant to the federal laws of Canada, its performance will not be illegal or unenforceable by virtue of the laws of that other jurisdiction.

#### **E. Factual Matters**

We have assumed that no fact exists, or has existed, that would entitle Crate Marine to assert or obtain a remedy at law or in equity (such as, without limitation, rectification, rescission or release from a contract through frustration) affecting the validity, legality, binding effect or enforceability of any of the Loan Documents.

#### **F. Entire Agreement**

We have assumed that there is no written or oral agreement or other facts or understanding and there is no trade usage or course of conduct or prior dealing, that would vary the interpretation, application or enforceability of any term or condition of any of the Loan Documents, and that except as expressly noted herein, there have been no amendments, restatements, deletions or other modifications to any of the Loan Documents.

#### **G. Choice of law**

We have assumed that the choice of the law of the Province of Ontario as the governing law of the Loan Documents will be given effect to in any legal proceedings.

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<sup>10</sup> Regarding assumptions (a), (b) and (c) we recommend that you review the relevant books and records of request Crate Marine to attempt to verify same.

**H. Marine Law**

We have assumed that any vessels owned by Crate Marine are pleasure crafts as defined in the CSA.

Based on the current provisions of the CSA and the assumption in the immediately preceding paragraph, we have assumed that there is no requirement to register notice of the GSA in the VRQS system, except on a voluntary basis.

**SCHEDULE "B"**  
**QUALIFICATIONS**

1. **Title:** We express no opinion concerning:
  - (a) title to any property that is purportedly subject to any security interest created by the GSA and such title has been assumed to the full extent necessary to express the opinions contained herein; and,
  - (b) the effectiveness of the GSA as security, where effectiveness depends on title or description of the property purported to be charged or assigned, as the case may be.
  
2. **Enforceability:** All opinions that expressly or by necessity relate to the enforceability of each of the Loan Documents (which, as used in this Schedule and as the context may require, includes validity, legality and binding effect) are subject to:
  - (a) applicable bankruptcy, insolvency, winding up, arrangement, liquidation, fraudulent preference and conveyance, reorganization, moratorium and realization laws and other similar laws (including, without limitation and notwithstanding any specific references herein, provisions of the PPSA or the CSA affecting the rights and remedies of creditors generally);
  - (b) equitable limitations on, and defences against, the availability of remedies and equitable principles of application to particular proceedings at law or in equity, and no opinion is expressed regarding the availability of any equitable remedy (including those of specific performance and injunction), which remedies are only available in the discretion of a court of competent jurisdiction;
  - (c) the power of a court to grant relief from forfeiture;
  - (d) applicable laws regarding limitations of action;
  - (e) the court's powers to stay proceedings and execution of judgments;
  - (f) the court's discretion to decline to hear any action or give effect to an obligation if to do so would be contrary to public policy or if it is not the proper forum to hear such action;
  - (g) limitations that may be imposed by law or equity on the effectiveness of terms exculpating a party from a liability or limiting the liability of a party;
  - (h) limitations upon the right of a creditor to receive immediate payment of amounts stated to be or which may become payable on demand;

- (i) limitations upon the right of a party to enforce a provision based upon a minor or non-substantive default;
- (j) implied obligations requiring good faith, fair-dealing and reasonableness in performance and enforcement of a contract; and,
- (k) the following limitations:
  - (i) provisions that purport to establish evidentiary standards, such as provisions stating that certain calculations or certificates will be conclusive and binding, may not be enforceable or may be limited in application;
  - (ii) the *Courts of Justice Act* (Ontario) limits interest on a judgment debt arising under the judgment of a court of competent jurisdiction located in Ontario to rates prescribed by regulation from time to time;
  - (iii) the *Currency Act* (Canada) precludes a court in Canada from rendering a judgment in any currency other than Canadian currency.
  - (iv) rights of indemnity may be limited by applicable law;
  - (v) determinations or demands made in exercise of a discretion may be unenforceable if made in an unreasonable or arbitrary fashion;
  - (vi) provisions providing for recovery of fees and expenses may be restricted by a court to a reasonable amount and counsel fees are subject to taxation;
  - (vii) no opinion is expressed as to the enforceability of any provision that purports to provide for a higher rate of interest after default than before;
  - (viii) no opinion is expressed as to the enforceability of a provision of any of the Loan Documents that provides that the provisions of another document govern in the event of any conflict or inconsistency between the provisions of the other document and such Loan Documents;
  - (ix) the validity and enforceability of provisions that purport to sever from the Loan Documents any provision that is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the agreement or instrument may be subject to the discretion of a court of competent jurisdiction;
  - (x) no opinion is expressed as to the enforceability of any provision purporting to exclude unwritten variations, amendments, waivers or consents;

- (xi) no opinion is expressed as to the enforceability of any provision that purports to restrict the access to, or waive the benefit of, legal or equitable rights, remedies or defences, including any right to receive notice (including notice of enforcement) or that purport to consent in advance to the taking of any action or the exercise of any right, remedy or defence;
- (xii) no opinion is expressed as to the enforceability of any power of attorney or non-judicial remedies provided for in any of the Loan Documents;
- (xiii) no opinion is expressed as to any licences, permits or approvals that may be required in connection with the enforcement or performance of each of the Loan Documents, or by Crate Marine, as applicable, or by any person on their behalf, whether such enforcement involves the operation of the business of Crate Marine or a sale, transfer or disposition of any of its property or assets;
- (xiv) no opinion is expressed as to the enforceability of any provision in any of the Loan Documents that purports to constitute a receiver or receiver and manager thereunder as agent of Crate Marine or absolve a receiver or receiver and manager of responsibility for its acts;
- (xv) no opinion is expressed as to the enforceability of any provision in the GSA that purports to grant a security interest or hypothec in federal Crown debts to which the *Financial Administration Act* (Canada) applies;
- (xvi) no opinion is expressed as to the enforceability of any provision that contemplates or provides for agreement at a later date;
- (xvii) no opinion is expressed as to the enforceability of any provision that purports to relieve any party thereto, or its agents, from liability for its own acts;
- (xviii) no opinion is expressed as to the enforceability of any provision that purports to bind or affect, or confer a benefit upon, persons who are not parties to the Loan Documents; and,
- (xix) remedies exercisable upon default in any of the Loan Documents must be exercised in good faith and in a commercially reasonable manner.

3. **Searches:** We have only conducted those searches described in Schedule "C" hereto. Except as set forth therein, we have not conducted any land titles office or other searches with respect to encumbrances against real or immovable property or any interests therein or any statutory lien, court registry or other searches, except as set



out in Schedule "C" hereto. We have only searched against the names set out in Schedule "C" hereto.

4. **Priority:** No opinion is expressed as to the rank or priority, or as to the effect of perfection or opposability to third parties on the rank or priority, of any security interest created by any of the GSA.
5. **Reviewable Transactions:** No opinion is given as to whether any security interest given under GSA constitutes a fraudulent preference or other attackable or reviewable transaction pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) or any applicable provincial legislation.
6. **Security Interests and Registrations:** We express no opinion:
  - (a) as to the validity, enforceability, creation, attachment or perfection of a security interest in:
    - (i) property consisting of a receivable, licence, approval, privilege, contractual right, franchise, permit or lease (collectively, "**Special Property**") to the extent that the terms of the Special Property, any applicable law or the nature of the business of Crate Marine prohibit its charging, assignment or hypothecation or require, as a condition of its charging, assignability or hypothecation, a consent, approval or other authorization or registration that has not been made or given;
    - (ii) any collateral to the extent that security agreements, hypothecs or assignments with respect to such collateral are governed by the laws of the Parliament of Canada, including, without limitation, any rolling stock and any trademark, trade name, copyright, patent, industrial design or other intellectual property right;
    - (iii) permits, quotas, licences, privileges, governmental authorizations or other property that are not personal property and that are held by or issued to or in favour of Crate Marine;
    - (iv) any interest in a right to damages in tort or at law;
    - (v) any interest in deposits/deposit accounts;
    - (vi) property for which, pursuant to applicable conflicts rules (including, without limitation, the conflicts rules of the PPSA, CSA and the *Securities Transfer Act* (Ontario)), the validity, perfection and the effect of perfection or non-perfection or enforcement are governed by the laws of a jurisdiction other than Ontario and other than in respect of the federal laws of Canada;

- (vii) property that is now or hereafter becomes a fixture, crop, timber, minerals, petroleum, natural gas or other deposits located therein or thereon, or any right of payment that arises in connection with an interest in land;
  - (viii) property or rights of a nature listed in section 4(1) of the PPSA; or
  - (ix) property that is Consumer Goods or a Security (as each is defined in the PPSA).
- (b) as to any registrations or filings by way of fixtures notice, floating charge on land or otherwise in any land title office in the Province of Ontario; and
  - (c) regarding the creation, validity, enforceability, attachment or perfection of any mortgage, charge, hypothec, security interest or other interest expressed to be created by or under the GSA with respect to any property of Crate Marine or any proceeds of such property that are not identifiable or traceable.
7. **Specific Collateral:** Any security interests created by the GSA in any equipment that is a Motor Vehicle (as defined in the PPSA) situate in the Province of Ontario have not been perfected or rendered opposable to third parties by registration against serial numbers or Vehicle Identification Numbers, as the case may be, as required thereunder. None of the GSA have been registered so as to protect and preserve any security interest, mortgage or charge thereof against nor have we searched for any encumbrances created by Crate Marine as against any coal, mineral, placer, mining or petroleum and natural gas lease, license or claim, owned or which may be acquired by Crate Marine. Accordingly, any hypothecs, security interests and mortgages on such property will be subject to the rights of third parties who at any time acquire and perfect or render opposable to third parties an interest in those assets.
8. **Maintaining Perfection:** We express no opinion with respect to maintaining perfection of any security interest created by any of the GSA.
9. **Maritime Collateral:** We have not conducted any investigations as to the existence of, and therefore can provide no assurances with respect to, any of the following maritime interests which could affect vessels owned by Crate Marine:
- (a) Maritime liens, such as but not limited to, salvage liens, damage liens, seamen's and master's wages liens, master's disbursement liens and pilotage liens;
  - (b) Statutory rights in rem, such as but not limited to, possessory liens, necessities liens, repairmen's liens, stevedore's liens, towage liens, cargo damage liens, charterer's liens, marine insurance premium claims or general average liens;
  - (c) Disbursements of the Admiralty Marshal;

- (d) Costs of the same, including the costs of the plaintiff in action for arrest, appraisal and sale; or,
  - (e) Possessory liens.
10. **Marine Mortgages:** Ownership registrations effected against pleasure craft vessels pursuant to the VRQS system are effect on a voluntary basis. Mortgage registrations under the VRQS system can only be effected in respect of a pleasure craft vessel, if the vessel has previously been registered to an owner under the VRQS system. We express no opinion on any equitable marine mortgage in respect of a pleasure craft vessel which has not been previously been registered under the VRQS system.
11. **Legal Opinions:** We were not provided with, and have not considered for the purposes of this opinion, copies of any opinion letters given by legal counsel in connection with the Loan Documents, the security interests created therein, or the perfection of such security interests.

**SCHEDULE "C"****LIST OF SEARCHES COMPLETED FOR CRATE MARINE****I. CORPORATION SEARCH**

A corporation profile report (the "Profile Report") dated December 8, 2014 was obtained for Crate Marine from the Ontario Ministry of Government Services. The Profile Report confirmed that Crate Marine is a corporation amalgamated in Ontario, is an "active" corporation, and the registered office address of the corporation is 290 The Queensway South, Keswick, Ontario L4P 2B3.

**II. PPSA SEARCH**

We have obtained a PPSA search against Crate Marine from the registry maintained by the Ontario Ministry of Government Services in order to determine whether registrations or filings have been made in connection with the relevant the GSA.

This search, with a file currency date of December 8, 2014, has disclosed the registrations set forth in detail in Schedule 2 which follows.<sup>11</sup>

**III. CSA SEARCH**

We have obtained an online uncertified VRQS owners search against Crate Marine from the registry maintained by Transport Canada, in order to determine whether registrations or encumbrances have been notified in connection with any pleasure craft owned by Crate Marine.

This search, with a file currency date of December 15, 2014, has disclosed one registration which is detailed in Schedule 2 which follows.<sup>12</sup>

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<sup>11</sup> The PPSA search revealed a debenture carried forward to the PPSA from the registration system for the *Corporation Securities Registration Act* (Ontario), since repealed, in favour of The Bank of Nova Scotia ("BNS"). While this registration could conceivably have priority over the GSA and Crawmet's registered financing statement under the PPSA, it seems unlikely that anything is owed since there has been no mention to date of a BNS claim and it has not asserted a secured claim. We suggest that the Receiver review Crate Marine's the books and records with respect to this matter. We also note that BNS would be subject to the limitations set forth in the *Limitations Act, 2002* (Ontario) in respect of the underlying debt, if any.

<sup>12</sup> This registration is in respect of the Simone II owned by Crate Marine Quebec. There is no indication as to whether Crate Marine Quebec is a separate entity or a division of Crate Marine.

**SCHEDULE 1**

**DESCRIPTION OF COLLATERAL IN GSA**

The "Collateral" described in Section 2 of the GSA includes all of the following collateral, hereinafter enumerated in brief:

- (a) goods;
- (b) equipment;
- (c) fixtures;
- (d) chattel paper;
- (e) documents of title;
- (f) instruments;
- (g) security;
- (h) money, accounts, debts and claims;
- (i) intellectual property;
- (j) leases;
- (k) intangibles;

Together with all substitutions and replacements thereof, improvements, increases, additions and accessions;

Indemnity or compensation for loss of or damage to such property or proceeds therefrom;

Books and records pertaining to the above.

**SCHEDULE 2**

(Particulars of PPSA Filings – Ontario)

1.	File Number	702052353		
	Registered Under	RSLA		
	Registration Number	20141203 1317 1793 0768		
	Registration Period	3 years		
	Debtor Name	Crate Marine Sales Ltd.		
	Secured Party	Prosser's Garage Inc.		
	Collateral Classification	motor vehicle		
	Amount	6000		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	2004	
		Make	Fleetwood Pace	
		Model	Arrow Motor Home	
		V.I.N.	5B4MP67G943389895	
	General Collateral Description	Motorhome – Unit was repaired as per customer's request. Lien is for amount owing on cost of repairs.		
Expiry date	Original expiry date: 2017 12 03			
Amendments	-			
Renewals	-			

2.	File Number	701912727		
	Registered Under	PPSA		
	Registration Number	20141128 1041 1590 4875		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Donald Rogers		
	Collateral Classification	Inventory, equipment, other		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	2007 Carver 446, Serial # CDRD0174C607 2010 Regal 44, Serial # RGMKE014E910		
Expiry date	Original expiry date: 2019 11 28			
Amendments	-			
Renewals	-			

3. -	File Number	700355052		
	Registered Under	PPSA		
	Registration Number	20141002 1152 1750 0007		
	Registration Period	1 year		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Irwin Jacobs		
	Collateral Classification	Inventory, <u>other</u>		
	Amount	200,000		
	Date of Maturity	02 October 2015		
	No fixed Maturity Date			
	Motor Vehicle	Year	2011	
		Make	Cruisers	
		Model	35	
		V.I.N.	CDSFDA14G809	
	General Collateral Description	<del>Pleasure Craft</del>		
Expiry date	Original expiry date: 2015 10 02			
Amendments	20141128 1154 1862 6050 To amend registration in order to (I) amend the collateral classification listed on line 10, (II) delete reference to the collateral listed on line 11, and (III) delete reference to the collateral listed on line 13 of the general collateral description			
Renewals	-			



4.	File Number	700359939	
	Registered Under	PPSA	
	Registration Number	20141002 1306 1750 0008	
	Registration Period	1 year	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Irwin Jacobs	
	Collateral Classification	Inventory, <u>other</u>	
	Amount	<del>150,000</del>	
	Date of Maturity	<del>02 October 2015</del>	
	No Fixed Maturity Date	-	
	Motor Vehicle	Year	<del>2011</del>
		Make	<del>Four Winns</del>
		Model	<del>305</del>
		V.I.N.	<del>PFWCJ003K011</del>
	General Collateral Description	<del>Pleasure Craft</del>	
Expiry date	Original expiry date: 2015 10 02		
Amendments	20141128 1155 1862 6051 To amend registration in order to (I) amend the address of the secured party listed on line 09, (II) amend the collateral classification listed on line 10, (III) delete reference to the collateral listed on line 11, and, (IV) delete reference to the collateral listed on line 13 of the general collateral description		
Renewals	-		

5.	File Number	700359957
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Registered Under	PPSA	
Registration Number	20141002 1311 1750 0009	
Registration Period	1 year	
Debtor Name	Crate Marine Sales <u>Limited</u>	
Secured Party	Irwin Jacobs	
Collateral Classification	Inventory, <u>other</u>	
Amount	200,000	
Date of Maturity	<del>02 October 2015</del>	
No Fixed Maturity Date	-	
Motor Vehicle	Year	2004
	Make	Searay
	Model	39
	V.I.N.	SERF0144E404
General Collateral Description	-	
Expiry date	Original expiry date: 2015 10 02	
Amendments	20141128 1155 1862 6051 To amend registration in order to (I) amend the debtor's name listed on line 3, (II) amend the collateral classification listed on line 10, and (III) delete reference to the collateral listed on line 11	
Renewals	-	

6.	File Number	700360101		
	Registered Under	PPSA		
	Registration Number	20141002 1316 1750 0010		
	Registration Period	1 year		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Irwin Jacobs		
	Collateral Classification	Inventory, <u>other</u>		
	Amount	75,000		
	Date of Maturity	<del>02 October 2015</del>		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	2014	
		Make	<del>Regal</del>	
		Model	25	
		V.I.N.	RGMM0242D414	
	General Collateral Description			
Expiry date	Original expiry date: 2015 10 02			
Amendments	20141128 1156 1862 6053 To amend registration in order to (I) amend the collateral classification listed on line 10, and (II) delete reference to the collateral listed on line 11			
Renewals	-			

7.	File Number	699133779		
	Registered Under	PPSA		
	Registration Number	20140821 1424 6083 7447		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Structform Central Corp.		
	Collateral Classification	Other		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	2012 Cruisers Yachts 380 Express, Serial No. CRSEE 1160212 Volvo Penta 172440 172441		
Expiry date	Original expiry date: 2019 08 21			
Amendments	-			
Renewals	-			

8.	File Number	6989776655	
	Registered Under	PPSA	
	Registration Number	20140815 1702 1462 5510	
	Registration Period	4 years	
	Debtor Name	Crate Marine Sales Ltd.	
	Secured Party	ED Learn Ford Lincoln	
	Collateral Classification	Inventory, motor vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	-	
	Motor Vehicle	Year	2015
		Make	GMC
		Model	Yukon
		V.I.N.	1GKS2HKC1FR122108
	General Collateral Description	vehicle	
Expiry date	Original expiry date: 2019 08 15		
Amendments	-		
Renewals	-		

9.	File Number	698026644		
	Registered Under	PPSA		
	Registration Number	20140715 1529 6083 6660		
	Registration Period	1 year		
	Debtor Name	Crate Marine Sales Ltd.		
	Secured Party	MP Accounting Services Inc.		
	Collateral Classification	Other		
	Amount	491,550		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	Carver 57 PH Yacht CDRNA123H203 Port 1101059471 STB 11001060124		
Expiry date	Original expiry date: 2019 07 15			
Amendments	-			
Renewals	-			

10.	File Number	692546652	
	Registered Under	PPSA	
	Registration Number	20131212 1039 1529 9347	
	Registration Period	5 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Ford Credit Canada Limited	
	Collateral Classification	Equipment, other, motor vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2013
		Make	Ford
		Model	F150
		V.I.N.	1FTFW1EF6DFD29252
	General Collateral Description	-	
Expiry date	Original expiry date: 2018 12 12		
Amendments	-		
Renewals	-		

11.	File Number	692556759		
	Registered Under	PPSA		
	Registration Number	20131212 1257 5064 4331		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Marquis Yachts, LLC		
	Collateral Classification	Inventory, equipment, accounts, other		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	-		
	Expiry date	Original expiry date: 2018 12 12		
Amendments	20140122 1612 5064 5492 Assignment by Marquis Yachts, LLC to Northpoint Commercial Finance LLC			
Renewals	-			



12.	File Number	692303742	
	Registered Under	PPSA	
	Registration Number	20131203 1030 1529 1650	
	Registration Period	5 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Ford Credit Canada Limited	
	Collateral Classification	Equipment, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2013
		Make	Ford
		Model	F150
		V.I.N.	1FTFW1EF6DKF88072
	General Collateral Description		
	Expiry date	Original expiry date: 2018 12 03	
Amendments	-		
Renewals	-		

13.	File Number	691143624		
	Registered Under	PPSA		
	Registration Number	20131017 1444 1793 8328		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Ltd.		
	Secured Party	Plaza Kia of Thornhill		
	Collateral Classification	Consumer Goods, Motor Vehicle		
	Amount	150,000		
	Date of Maturity	-		
	No Fixed Maturity Date	X		
	Motor Vehicle	Year	2011	
		Make	Formula 310SS	
		Model	Volvo 8.1	
		V.I.N.	F1VRDB007V011	
	General Collateral Description			
Expiry date	Original expiry date: 2018 10 17			
Amendments	-			
Renewals	-			

14.	File Number	688420764		
	Registered Under	PPSA		
	Registration Number	20130708 1229 1793 3722		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Structform Central Corp.		
	Collateral Classification	Other		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	2007 Carver 466 – Serial Number CDRDO178J607 Motor Volvo D97009127313 D97009127167		
Expiry date	Original expiry date: 2018 07 08			
Amendments	-			
Renewals	-			

15.	File Number	688218948		
	Registered Under	PPSA		
	Registration Number	20130702 0933 7036 8792		
	Registration Period	1 year		
	Debtor Name	Crate Marine Sales Ltd., Steve Crate		
	Secured Party	Leeway Auto Sales Ltd.		
	Collateral Classification	Equipment		
	Amount	200,000		
	Date of Maturity	-		
	No Fixed Maturity Date	X		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	2007 Carver 466MY Boat Motor Yacht CDRD0179C607		
Expiry date	Original expiry date: 2015 07 02			
Amendments	-			
Renewals	20140630 1643 7036 4394 Renewed 1 year			

16.	File Number	684553905		
	Registered Under	PPSA		
	Registration Number	20130206 0957 6005 5554		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	National Leasing Group Inc.		
	Collateral Classification	Equipment, Motor Vehicle		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	2013	
		Make	Conolift	
		Model	YH-915 Marine	
		V.I.N.	2C9BE3263DP050003	
	General Collateral Description	All trailer of every nature or kind described in lease number 2611466 between Mayo and Associates Ltd., as original lessor and the debtor, as lessee, which lease was assigned by the original lessor to the secured party, as amended from time to time, together with all attachments, accessories and substitutions.		
Expiry date	Original expiry date: 2018 02 06			
Amendments	-			
Renewals	-			

17.	File Number	682211898	
	Registered Under	PPSA	
	Registration Number	20121017 1043 1529 1752	
	Registration Period	5 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Ford Credit Canada Limited	
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2010
		Make	Ford
		Model	F150
		V.I.N.	1FTFW1EV2AFB89848
	General Collateral Description	-	
	Expiry date	Original expiry date: 2017 10 17	
	Amendments	-	
Renewals	-		

18.	File Number	681222375		
	Registered Under	PPSA		
	Registration Number	20120905 1948 1531 4730		
	Registration Period	3 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	KCS International, Inc.		
	Collateral Classification	Inventory, Accounts		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	One Cruisers Yachts Yacht, Model 380 Express, hull identification No. CRSEE129E113, Port Side Engine S/N A174910, Starboard Side Engine S/N A174909, Port Side Drive Train S/N A168492, Starboard Side Drive Train S/N A168493, and one Cruisers Yachts Yacht, Model 310 Express, Hull Identification No. CRSEA111J113, Port Side Engine S/N A190388, Starboard Side Engine S/N A190387, Port Side Drive Train S/N A190842, Starboard Side Drive Train S/N A190843, and the proceeds of the foregoing		
Expiry date	Original expiry date: 2015 09 05			
Amendments	-			
Renewals	-			

19.	File Number	677540457		
	Registered Under	PPSA		
	Registration Number	20120412 1450 1530 2649		
	Registration Period	3 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Marquis Yachts, LLC		
	Collateral Classification	Inventory, <del>Equipment</del> , Accounts, Other, Motor Vehicle		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	-		
Expiry date	Original expiry date: 2015 04 12			
Amendments	2120522 1947 1531 6157 To amend the collateral classification to indicate inventory, accounts, other			
Renewals	-			



20.	File Number	676878993		
	Registered Under	PPSA		
	Registration Number	20120316 1049 1529 4169		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Ford Credit Canada Limited		
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	X		
	Motor Vehicle	Year	2012	
		Make	Ford	
		Model	F350	
		V.I.N.	1FT8W3BT8CEA30753	
	General Collateral Description	-		
	Expiry date	Original expiry date: 2015 03 16		
Amendments	-			
Renewals	-			

21.	File Number	675240831		
	Registered Under	PPSA		
	Registration Number	20111222 1142 1902 7358		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Crawmet Corp.		
	Collateral Classification	Inventory, Equipment, Accounts, Other		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	General Security Agreement		
	Expiry date	Original expiry date: 2016 12 22		
Amendments	-			
Renewals	-			

22.	File Number	675122661		
	Registered Under	PPSA		
	Registration Number	20111216 1451 1530 4078		
	Registration Period	3 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	KCS International, Inc.		
	Collateral Classification	Inventory, Accounts		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
V.I.N.		-		
General Collateral Description	<p>One Cruisers Yachts Yacht, Model 310 Express, Hull Identification No. US-CRSEA104G122, Port Side Engine S/N A179972, Starboard Side Engine S/N A179973, Port Side Drive Train S/N A180795, Starboard Side Drive Train S/N A18796.</p> <p>One Cruisers Yachts Yacht, Model 350 Express, Hull Identification No. US-CRSEC111H112, Port Side Engine S/N A182743, Starboard Side Engine S/N A182744, Port Side Drive Train S/N A182473, Starboard Side Drive Train S/N A182474.</p> <p>One Cruisers Yachts Yacht, Model 380 Express, Hull Identification No. US-CRSEE109H112, Port Side Engine S/N</p>			

		<p>A183271, Starboard Side Engine S/N  A183270, Port Side Drive Train S/N  A181953, Starboard Side Drive Train  S/N A181954.</p> <p>One Cruisers Yachts Yacht, Model 41  Cantius, Hull Identification No. US-  CRSXF103H112, Port Side Engine S/N  A187358, Starboard Side Engine S/N  A187359, Port Side Drive Train S/N  3194012674, Starboard Side Drive Train  S/N 3194012675.</p> <p>And the proceeds of the foregoing.</p>
	Expiry date	Original expiry date: 2014 12 16
	Amendments	-
	Renewals	-

23.	File Number	673696071		
	Registered Under	PPSA		
	Registration Number	20111017 1947 1531 3887		
	Registration Period	4 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Financialinx Corporation		
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle		
	Amount	88,942		
	Date of Maturity	11 October 2015		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	2011	
		Make	Cadillac	
		Model	Escalade AWD	
		V.I.N.	1GYS4CEF6BR190052	
	General Collateral Description	-		
	Expiry date	Original expiry date: 2015 10 17		
	Amendments	-		
Renewals	-			

24.	File Number	671768019	
	Registered Under	PPSA	
	Registration Number	20110727 1456 1530 6363	
	Registration Period	5 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Ford Credit Canada Limited	
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2011
		Make	Ford
		Model	F350
		V.I.N.	1FT8W3BTXBEC59367
	General Collateral Description	-	
	Expiry date	Original expiry date: 2016 07 27	
Amendments	Discharged by 20141120 1038 1529 3619		
Renewals	-		

25.	File Number	670226562		
	Registered Under	PPSA		
	Registration Number	20110530 1146 1590 2453		
	Registration Period	10 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	1728259 Ontario Inc.		
	Collateral Classification	Equipment, Other		
	Amount	469,906		
	Date of Maturity	01 May 2021		
	No Fixed Maturity Date	-		
	Motor Vehicle	Year	-	
		Make	-	
		Model	-	
		V.I.N.	-	
	General Collateral Description	75 Tonne Marine Travelift Bearing Serial #3480-0910		
Expiry date	Original expiry date: 2016 05 30			
Amendments	-			
Renewals	-			

26.	File Number	661282434	
	Registered Under	PPSA	
	Registration Number	20100511 1444 8077 1064	
	Registration Period	6 years	
	Debtor Name	Crate Marine Sales Limited, Lloyd Crate, Lloyd F. Crate, Greg Crate, Gregory Crate, Greg J. Crate, Gregory J. Crate	
	Secured Party	VFS Canada Inc.	
	Collateral Classification	Equipment, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2010
		Make	Mack
		Model	CXU613
		V.I.N.	1M1AW07Y7AN009782
	General Collateral Description	-	
	Expiry date	Original expiry date: 2016 05 11	
	Amendments	-	
Renewals	-		



27.	File Number	658824723	
	Registered Under	PPSA	
	Registration Number	20100120 1420 5064 3733	
	Registration Period	6 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	General Electric Canada Equipment Finance G.P.	
	Collateral Classification	Inventory, Equipment, Accounts, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2009
		Make	Conolift
		Model	YH-152OXD
		V.I.N.	2C9BXS2X9P050029
	General Collateral Description	-	
	Expiry date	Original expiry date: 2016 01 20	
Amendments	-		
Renewals	-		

28.	File Number	658691082	
	Registered Under	PPSA	
	Registration Number	20100112 1454 1530 2286	
	Registration Period	5 years	
	Debtor Name	Crate Marine Sales Limited	
	Secured Party	Ford Credit Canada Limited	
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle	
	Amount	-	
	Date of Maturity	-	
	No Fixed Maturity Date	X	
	Motor Vehicle	Year	2010
		Make	Ford
		Model	F150
		V.I.N.	1FTFW1EVXAF39034
	General Collateral Description	-	
	Expiry date	Original expiry date: 2015 01 12	
	Amendments	-	
Renewals	-		

29.	File Number	658691091		
	Registered Under	PPSA		
	Registration Number	20100112 1454 1530 2287		
	Registration Period	5 years		
	Debtor Name	Crate Marine Sales Limited		
	Secured Party	Ford Credit Canada Limited		
	Collateral Classification	Consumer Goods, Equipment, Other, Motor Vehicle		
	Amount	-		
	Date of Maturity	-		
	No Fixed Maturity Date	X		
	Motor Vehicle	Year	2010	
		Make	Ford	
		Model	F150	
		V.I.N.	1FTFW1EV6AFA80468	
	General Collateral Description	-		
	Expiry date	Original expiry date: 2015 01 12		
	Amendments	-		
Renewals	-			

30.	File Number	900793782
	Registered Under	CSRA
	Registration Number	CSRA No. 079378
	Registration Period	-
	Debtor Name	Crate Marine Sales Limited
	Secured Party	The Bank of Nova Scotia
	Security	Debenture
	Amount	\$4,000,000, payable on demand
	Maturity Date	None
	Interest Rate	20% per annum, calculated and payable monthly

SCHEDULE 2(CSA - VRQS Owner Query)<sup>13</sup>

1.	Official Number	833890
	Owner Name	Crate Marine Quebec
	Vessel Name	Simone II
	Vessel Type	Pleasure Craft
	Year Built	2008
	Builder Name	Cruisers Yachts
	Port of Registry	Montreal
	Status	Registered
	Registry Date	2012-10-29
	Certificate Expires	2015-11-30
	Number of Encumbrances	1
	Mortgage Particulars	Amount: \$400,000 Date: 2013-02-01 Mortgagee: Andre Gagne

<sup>13</sup> The above vessel registration is one of several vessel registrations noted in the VQRS system; however, it is the only registration for which particulars of a mortgage were also noted.

SCHEDULE 3

(Search of Register of Personal and Movable Rights – Quebec)

[See following pages]

TAB Y



GOLDMAN SLOAN NASH & HABER LLP  
BARRISTERS & SOLICITORS

*dedicated to your success*

January 15, 2015

A. Farber & Partners Inc.  
150 York Street  
Suite 1600  
Toronto, Ontario  
M5H 3S5

**Attention: Stuart Mitchell, Senior Vice-President**

Dear Sir:

**Re: Review of certain security granted by Crate Marine Sales Limited ("Crate Marine")  
in favour of Marquis Yachts, LLC ("Marquis")**

In connection with your acting as Receiver and as Trustee in Bankruptcy with respect to Crate Marine pursuant to the *Bankruptcy and Insolvency Act* (Canada) and the Amended Order of Justice Newbould of the Ontario Superior Court of Justice (Commercial List) dated December 8, 2014 terminating the bankruptcy proposal proceedings, you have asked us to provide our views in respect of the Financing Documents (as defined below).

This opinion is provided to you in your capacity as Receiver and as Trustee in Bankruptcy and is limited to our review of copies of the following documents entered into by Crate Marine:

- (a) an inventory finance program agreement dated May 14, 2012 made between Marquis, as lender, and Crate Marine, as dealer, (the "**Inventory Program Agreement**");<sup>1</sup>
- (b) an inventory finance and security agreement dated May 15, 2012, granted by Crate Marine, as dealer, in favour of Marquis, as lender (the "**Inventory Finance and Security Agreement**");<sup>2</sup>

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<sup>1</sup> We note that the default rate of interest of "18% per annum compounded monthly" specified in this agreement is contrary to Section 8(1) of the *Interest Act* (Canada) which prohibits an increase in the interest rate following default.

<sup>2</sup> We note that section 15 of this agreement provides that, "Dealer acknowledges that all legal and beneficial ownership and title to all goods sold to Dealer by Lender from time to time remain in Lender until the full purchase price in those goods and all interest (including service charges, if any) have been paid in full."



- (c) an assignment and acceptance agreement dated as of December 13, 2014, made between Marquis, as assignor, and Northpoint Commercial Finance LLC ("**Northpoint**"), as assignee, assigning all rights and obligations under the Inventory Finance and Security Agreement and under all promissory notes, guaranties, PPSA financing statements, notices of purchase money security interest, mortgages, deeds of trust, insurance policies, evidence of insurance, letters of credit, cash collateral agreements (and the cash held pursuant thereto), subordination agreements, intercreditor agreements, invoices for the sale of inventory currently financed under the Inventory Finance and Security Agreement, manufacturer's certificate/statement or origin for inventory currently financed under the Inventory Finance and Security Agreement, program letters, and any other instruments or documents related to the Inventory Finance and Security Agreement (the "**Assignment and Acceptance Agreement**");<sup>3</sup>

The documents in (a) and (b) above are, collectively, referred to herein as the "**Financing Documents**".

We have also reviewed the following additional documents provided by Marquis to substantiate its claim that it has a valid purchase money security interest ("**PMSI**") pursuant to the *Personal Property Security Act* (Ontario) ("**PPSA**") ranking in priority to the interests of other secured creditors over Crate Marine's assets (an issue on which we do not opine herein):

- (d) a pro forma invoice dated 11/22/2013 in respect of a Marquis 500 Sport Bridge, model 5057 (the "**Yacht**"), bearing hull serial number MQYE5048L314 and engine numbers A240987, A238123 and A237008 (the "**Pro Forma Invoice**");
- (e) an eManifest Portal Lead Sheet for cargo control number 7SBU0255 date stamped January 3, 2014 by Canada Border Services Agency (the "**Manifest**");
- (f) a uniform bill of lading, undated, by the delivering carrier "Crates Marine" in respect of a Marquis 500 Sport Bridge, model 5057, bearing hull serial number MQYE5048L314 and engine numbers A240987, A238123 and A237008 (the "**Bill of Lading**");
- (g) a Canada Customs Invoice dates December 19, 2013, by Carver Yachts, LLC, as vendor, and Crate Marine, as consignee, evidencing transportation by Mendelssohn Event Logistics, Chicago, Illinois, in respect of serial number

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<sup>3</sup> We note that Marquis has two registered PPSA financing statements, only one of which was assigned to Northpoint. We believe this to be an inadvertent error. It would be prudent to seek evidence from Marquis that it has no claims against Crate Marine other than those which were assigned to Northpoint.

CVRC7006L314 and serial number MQYE5048L314 (the "**Customs Invoice**");

- (h) an order form dated December 18, 2013 by Crate Marine, as exhibitor, engaging Mendelsohn Event Logistics for customs clearance services in respect of a shipment dated December 19, 2013 and carrier Drew Marine Trans. Pertaining to "5 pieces, Bridge, Hardtop, IPS x 3, weight 5,000 lbs" (the "**Order Form**");
- (i) a notification dated April 23, 2012 by Marquis, by its agents Pallett Valo LLP to Crawmet Corp., notifying the recipient that Marquis "has or expects to acquire a purchase-money security interest in certain inventory of Crate Marine Sales Limited and in the proceeds of such inventory, including but not limited to proceeds in the form of cash, trade-ins, accounts, chattel paper and instruments" and more particularly in "Marine Products, including but not limited to outboard and inboard motors and engines, Marquis- and Carver- branded new and used yachts and boats (the "**PMSI Notice**)";
- (i) a registration receipt by Canada Post dated April 23, 2012, evidencing delivery to Crawmet Corp. of registered domestic mail (the "**Registration Receipt**").

In conducting our review and for the purposes of the opinions given herein, we have made the assumptions contained in our opinion to the Receiver and Trustee dated January 15, 2015 in respect of the Crawmet Corp. Financing Documents (the "**Crawmet Opinion**"), which are incorporated herein by reference, *mutatis mutandis* (collectively, the "**Assumptions**"). Additionally, our opinions herein are subject to the qualifications and limitations contained in the Crawmet Opinion which are also incorporated herein by reference, *mutatis mutandis* (collectively, the "**Qualifications**"). We confirm that the restrictions and limitations on this report, as herein contained, are satisfactory to you.

The undertaking, business, property, assets, interests, and rights of Crate Marine in which Crawmet has been granted a security interest pursuant to the terms of the Inventory Finance and Security Agreement are collectively referred to herein as the "**Charged Property**". In summary, the Charged Property consists of the property more particularly set forth in Schedule 1 to this Opinion.

We note that in paragraph 60 of the affidavit of Steven Crate sworn November 28, 2014 (the "Crate Affidavit") that it is stated that a "50-foot Marquis boat", which we believe is the same vessel as the Yacht, is "...owned by Carver-Marquis and was delivered to Crate [Marine] by Carver-Marquis on December 10, 2013, pursuant to a consignment arrangement, along with two other Carver boats, in order to allow Crate [Marine] to display and sell those boats at the Toronto International Boat Show in January 2014. Carver-Marquis retained title and possession of the Title Documents in respect of the Marquis.". If

this statement is correct, there may be additional documents such as a consignment agreement creating rights or interests in the Yacht in favour of Marquis or any assignee.

We have made no investigation of the laws of any jurisdiction other than, and the opinions hereinafter expressed are restricted to, the laws of the Province of Ontario and the federal laws of Canada applicable therein as of the date hereof and, insofar as the laws of other jurisdictions are relevant, we express no opinion thereon. Without limiting the foregoing, we express no opinion with respect to:

- (a) the laws of any other jurisdiction (other than the laws of Ontario and the federal laws of Canada) to the extent such laws may govern any aspect of the Financing Documents or govern the validity, the perfection, the effect of perfection or non-perfection, or the enforcement of any Security Interests created thereunder as a result of the application of the conflict of laws rules of Ontario, including, without limitation, Sections 5 to 8.1 of the PPSA and Section 7 of the *Canada Shipping Act* (Canada) (the "CSA");
- (b) whether, pursuant to the conflict of laws rules of any jurisdiction other than Ontario and other than the federal laws of Canada, that the laws of Ontario would govern the validity, the perfection, the effect of perfection or non-perfection, or enforcement of any security interests created by the Inventory Finance and Security Agreement; or,
- (c) the application of conflict of laws rules or principles of paramountcy as between the PPSA and the CSA.

In connection with this opinion, no review has been made of any of the transactions, agreements, indentures or other instruments of the Crate Marine for the purposes of identifying matters described in this opinion, other than a review of the Financing Documents. Furthermore, no review of the minute books of Crate Marine has been undertaken by our firm.

We have considered such questions of law as we have considered relevant and necessary as a basis for the opinions hereinafter expressed.

## **OPINIONS**

Subject to the assumptions, qualifications and comments we have made herein and in the Schedules attached hereto, and the Discussion contained below, we are of the opinion that:

1. Each of the Financing Documents constitutes a valid and binding obligation of Crate Marine, each enforceable against Crate Marine in accordance with its terms;
2. Crate Marine has duly executed and delivered the Financing Documents;

3. The Inventory Finance and Security Agreement creates in favour of Marquis, a valid security interest in the Charged Property identified therein to which the PPSA applies;<sup>4</sup>and,
4. The Inventory Finance and Security Agreement has been registered, filed or recorded in all public offices where the registration, filing or recording thereof is required under the laws of the Province of Ontario to perfect the security interest created by the Inventory Finance and Security Agreement in the applicable Charged Property to which the PPSA applies.

## RELIANCE

All opinions expressed herein are provided to you and are for the sole purpose of the performance of the duties of the Trustee and the Receiver in respect of its appointment by the Court, and including any future appointment in respect of Crate Marine, and may not be relied on by any other person, firm, corporation or entity without the prior written consent of Goldman, Sloan, Nash & Haber LLP. This opinion is given as of the date hereof and we do not undertake, and hereby expressly disclaim, any obligation to advise you of any change in any matters set forth herein.

## SEARCHES CONDUCTED

We have conducted, or have caused to be conducted, such public registration searches for filings or registrations made in Ontario, or federally in Canada, in the applicable offices of public record, against Crate Marine as we have deemed appropriate. These searches include corporate profile searches, PPSA searches and CSA searches, all as more specifically set out in Schedule "A" of the Crawmet Opinion. The searches were conducted in respect of the current legal name of Crate Marine, in each case as of the dates set forth in the Crawmet Opinion. We note that given the specific mandate to assess the Inventory Finance and Security Agreement and the fact that Marquis is not a Schedule I or II bank within the meaning of the *Bank Act* (Canada), we have not conducted searches relating to the *Bank Act* (Canada) or registered judgments or writs of execution, or other searches typically conducted in the context of a broad security review of all security interests asserted against a debtor.

We confirm your advice that our review based upon these searches, and our reliance upon such searches in giving the opinions set out herein, is satisfactory for your purposes at this time.

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<sup>4</sup> It would appear from the Assignment and Acceptance Agreement that Northpoint is now the assignee of Marquis' security interests in the Charged Property.

We trust that the foregoing is satisfactory. Should you have any questions or comments, please do not hesitate to contact us.

Yours truly,

Goldman, Sloan, Nash & Haber LLP

GOLDMAN, SLOAN, NASH & HABER LLP

**SCHEDULE 1**  
**DESCRIPTION OF COLLATERAL IN**  
**INVENTORY FINANCE AND SECURITY AGREEMENT**

The term "Purchased Inventory" is described as "...new inventory, equipment or other items from Lender or its affiliates...".

The Lender has taken a security interest (the "Security Interest") in all of the following assets of the Dealer, whether now owned or subsequently owned or acquired by or on behalf of the Dealer and wherever situate (the "Collateral"):

*[following described in brief]*

- (a) all Purchased Inventory for sale or lease;
- (b) all trade-ins;
- (c) all monetary obligations;
- (d) renewals, accretions, substitutions; and,
- (e) proceeds.

"Without limiting the generality of the foregoing, the Security Interest is intended to be a purchase-money security interest in respect of Collateral to the extent available under applicable law."

TAB Z

## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** is made as of the 8th day of February, 2015.

**BETWEEN:**

**A. FARBER & PARTNERS INC.**  
in its capacity as Court-Appointed Receiver of  
Crate Marine Sales Limited,  
F. S. Crate & Sons Limited,  
1330732 Ontario Limited,  
1328559 Ontario Limited,  
1282648 Ontario Limited,  
1382415 Ontario Ltd., and  
1382416 Ontario Ltd.,  
and not in its personal capacity  
(the “**Vendor**”)

- and -

**2450902 ONTARIO LIMITED**  
(the “**Purchaser**”)

**WHEREAS:**

- A. Until December 8, 2014, Crate Marine Sales Limited (“**Crate Marine**”) operated the Business at the Locations (as such terms are hereinafter defined);
- B. On November 14, 2014, Crate Marine, F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively, the “**Debtors**”) filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3;
- C. On December 8, 2014, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an order (such order, as amended, the “**Appointment Order**”), *inter alia*: (i) appointing A. Farber & Partners Inc. (“**Farber**”) receiver (the “**Receiver**”) over the assets, undertakings and properties of the Debtors, acquired for, or used in relation to the Business, including all proceeds thereof; and (ii) appointing Farber as trustee in bankruptcy of the Debtors (the “**Trustee**”);
- D. The Vendor will bring a motion for the Sales Process Order (as hereinafter defined) to authorize the Vendor to enter into this Agreement and conduct a sales process with respect to the Purchased Assets (as hereinafter defined); and
- E. The Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, the respective right, title and interest of the Debtors in and to the Purchased Assets on the terms and conditions set out herein.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Two (\$2.00) Dollars now paid by each of the Vendor and Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties hereto covenant and agree as follows:

### ARTICLE 1 – DEFINITIONS

**1.1 Definitions.** The following terms will have the following meanings:

- (a) “**138**” means 1382416 Ontario Ltd.;
- (b) “**219**” means 2192422 Ontario Ltd.;
- (c) “**Acceptance Date**” means the date that this Agreement is executed by each of the parties hereto;



- (d) “**Additional Excluded Assets**” has the meaning ascribed thereto in Section 2.6 hereof;
- (e) “**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate;
- (f) “**Agreement**” means this agreement, as it may be supplemented, amended, restated or replaced from time to time by written agreement between the parties;
- (g) “**Assumed Contracts**” has the meaning ascribed thereto in Section 2.9 hereof;
- (h) “**Assumed Leases**” has the meaning ascribed thereto in Section 2.9 hereof;
- (i) “**Assumed Locations**” means those Locations described in Sections 1.1(II)(i)-(iii), inclusive, subject to the provisions of Sections 2.6 and/or 2.9 hereof;
- (j) “**Assumed Secured Debt**” has the meaning ascribed thereto in Section 2.2(a) hereof;
- (k) “**Auction**” has the meaning ascribed thereto in Section 6.1(b) hereof;
- (l) “**Authority**” means any governmental authority, body, agency, commission, board, bureau, or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Lands, and “**Authorities**” means all such authorities, bodies, agencies, commissions, bureaus, departments and boards;
- (m) “**Bid Deadline**” has the meaning set out in Schedule “A” to the Sales Process Order;
- (n) “**Boat Slips**” means the boat slips forming part of the Locations;
- (o) “**Boat Slip Leases**” means the right, title and interest of the respective Debtors to all rental agreements, leases, agreements to lease, subleases, license agreements and occupancy or other agreements relating to the use of the Boat Slips;
- (p) “**Books and Records**” means all books, records, files and papers Related to the Business in the Vendor’s possession or control;
- (q) “**Business**” means the operation collectively by the Debtors of a used and new boat and yacht dealership and the marinas from the Locations, including, without limitation, (i) lease of the Boat Slips, and (ii) provision of various services and facilities relating to the storage, servicing and maintenance of boats and yachts;
- (r) “**Business Day**” means any day that is not a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (s) “**Claims**” means the right, title and interest of the (i) respective Debtors to and in all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on such basis as may be ordered by a court and other professional fees and disbursements, interest, demands, causes of action and actions of any nature or any kind whatsoever; (ii) respective Debtors, the Vendor and the Trustee to and in the proceeding commenced by the Vendor under Court File No. CV-15-10830-00CL; and (iii) respective Debtors, the Vendor and the Trustee to and in the proceeding commenced by the Vendor under Court File NO. CV-15-10849-00CL; and
- (t) “**Contracts**” means the right, title and interest of the respective Debtors to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which any of the Debtors or any of the Purchased Assets or Business is bound or affected, other than the Leases;

- (u) “**Closing Date**” or “**Closing**” means the date which is three (3) Business Days immediately following the date upon which the Vesting Order is granted or such other date as the Vendor and the Purchaser shall mutually agree upon, but in no event later than March 31, 2015;
- (v) “**Crawmet Charges**” means collectively, the charges/mortgages of land as further described in Schedule “D” attached hereto;
- (w) “**Crawmet GSA**” means the general security agreement made by Crate Marine in favour of Crawmet Corp. dated as of the 22<sup>nd</sup> day of December, 2011;
- (x) “**Customer Boats**” means all boats in the possession of the Debtors or the Receiver that are or were subject to Boat Slip Leases or other bailment arrangements;
- (y) “**Deposit**” shall have the meaning ascribed thereto in Section 2.3(a) hereof;
- (z) “**DPII**” means Dwight Powell Investments Inc.;
- (aa) “**Ereg**” shall have the meaning ascribed thereto in Section 8.5 hereof;
- (bb) “**ETA**” means the *Excise Tax Act* (Canada);
- (cc) “**Equipment**” means the right, title and interest of the respective Debtors to all furniture, furnishings, equipment, chattels, vehicles and other tangible personal property of every nature and kind, which are owned by any Debtor and incorporated in, situate upon and/or used in connection with the Lands and/or the operation of the Business, including, without limitation, those items more particularly described on Schedule “B” attached hereto;
- (dd) “**Excluded Assets**” means collectively, the following:
  - (i) all cash on hand, certificates of deposit or similar instruments, including those in banks or other depositories in an account of the Vendor; and
  - (ii) any Additional Excluded Assets;
- (ee) “**HST**” means any harmonized sales tax or value added tax exigible or applicable in Ontario pursuant to the ETA as it may relate to the subject transaction;
- (ff) “**Intellectual Property**” means the right, title and interest of the respective Debtors in the following items Related to the Business:
  - (i) the business and trade names;
  - (ii) all copyrights and trade-marks (whether used with wares or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights; and
  - (iii) all rights and interests in and to all telephone numbers, websites, e-mail addresses and business styles;
- (gg) “**Inventory**” means the right, title and interest of the respective Debtors to all goods and supplies that are held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, Related to the Business, as of midnight on the night immediately prior to the Closing Date including without limitation those boats more particularly described in Schedule “F” attached hereto but, for greater certainty, shall not include Customer Boats;
- (hh) “**ITA**” means the *Income Tax Act* (Canada);

- (ii) “**Lands**” means the right, title and interest of the respective Debtors in those lands and premises more particularly described on Schedule “A” attached hereto;
- (jj) “**Leases**” means collectively, the Personal Property Leases, Boat Slip Leases and Real Property Leases;
- (kk) “**Licenses**” means the respective right, title and interest of the Debtors to all licenses, permits, filings, authorizations, approvals or indicia of authority Related to the Business or necessary for the conduct of the Business;
- (ll) “**Locations**” means collectively, the marinas and dealerships, to the extent applicable, operated by the Debtors at the following locations:
  - (i) 290 The Queensway South, Keswick, Ontario L4P 2B3;
  - (ii) 150 Laguna Parkway, Brechin, Ontario L0K 1B0;
  - (iii) 1354 Metro Road North, Willow Beach, Ontario L0E 1F0;
  - (iv) 1 Port St. East, Mississauga, Ontario L5G 4N1; and
  - (v) 951A Rue Principale, St.-Paul-Ile-Aux-Noix, Quebec J0J 1G0;
- (mm) “**Permitted Encumbrances**” means the encumbrances and other documents affecting title to the Lands, as described in Schedule “C” attached hereto, together with any valid and enforceable “purchase-money security interests” (as such term is defined in the *Personal Property Security Act* (Ontario)) and true leases in and to the Equipment and the Inventory having priority to the Crawmet GSA, other than any of the foregoing which have been barred pursuant to the Property Claims Procedure Order;
- (nn) “**Person**” is to be broadly interpreted and includes any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Authority or other entity however designated or constituted;
- (oo) “**Personal Property Leases**” means the right, title and interest of the respective Debtors to all chattel leases, equipment leases, rental agreements, conditional sales contracts and other similar agreements Related to the Business;
- (pp) “**Powell Charges**” means collectively, the charges/mortgages of land as further described in Schedule “D” attached hereto;
- (qq) “**Property Claims Procedure Order**” means the Order made by the Court on December 23, 2014 establishing a claims procedure for proprietary and secured claims in a boat or other tangible personal property in the possession of the Debtors or any other Person on behalf of the Debtors on or after the date of the Appointment Order;
- (rr) “**Purchase Price**” means the consideration payable by the Purchaser for the transfer of the respective right, title and interest of the Debtors to the Purchased Assets in accordance with Section 2.2 hereof;
- (ss) “**Purchased Assets**” means collectively, all assets, undertakings and properties of the Debtors, acquired for, or used in relation to the Business, including, without limitation, the following:
  - (i) the Lands;
  - (ii) the Equipment;
  - (iii) the Assumed Contracts, to the extent transferrable;

- (iv) the Assumed Leases, to the extent transferrable;
- (v) the Licenses, to the extent transferrable;
- (vi) the Inventory;
- (vii) the Books and Records;
- (viii) the Receivables;
- (ix) the Intellectual Property, to the extent transferrable;
- (x) the goodwill attaching to the Business, to the extent transferrable;
- (xi) all warranties and guarantees Related to the Business, to the extent transferrable;
- (xii) all riparian rights as may be required to permit access to and use of the Boat Slips and any gas docks forming part of the Assumed Locations;
- (xiii) the Securities; and
- (xiv) the Claims;

but excluding the Excluded Assets;

- (tt) **“Purchaser’s Solicitors”** means the firm of Chaitons LLP, Barristers and Solicitors, 5000 Yonge Street, 10<sup>th</sup> Floor, Toronto, Ontario M2N 7E9 (Attention: Harvey Chaiton) Telephone No. (416) 218-1129, Telecopier No. (416) 218-1849;
- (uu) **“Real Property Leases”** means the right, title and interest of the respective Debtors to all leases, agreements, contracts and other similar agreements directly or indirectly, used in, arising from, or relating in any manner to the occupation by any of the Debtors of the Assumed Locations;
- (vv) **“Receivables”** means the right, title and interest of the respective Debtors to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, loans made by any of the Debtors to any of their respective shareholders and/or any other Person(s), and choses-in-action, now or hereafter due or owing to any of the Debtors, Related to the Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;
- (ww) **“Receiver’s Certificate”** has the meaning ascribed thereto in Section 8.2 hereof;
- (xx) **“Receiver’s Charge”** has the meaning set out in the Appointment Order;
- (yy) **“Receiver’s Borrowings Charge”** has the meaning set out in the Appointment Order;
- (zz) **“Related to the Business”** means, directly or indirectly, used in, arising from, or relating in any manner to the Business and/or the Purchased Assets;
- (aaa) **“Requisition Period”** has the meaning ascribed thereto in Section 3.5 hereof;
- (bbb) **“Rights”** has the meaning ascribed thereto in Section 9.12 hereof;
- (ccc) **“Sales Process Order”** means an order to be sought from the Court upon terms acceptable to the parties hereto, each acting reasonably, that alone or in combination, among other things authorizes the Vendor to enter into this Agreement and to conduct a sales process for the right, title and interest of the respective Debtors to the Purchased Assets and Excluded Assets;

- (ddd) “**Secured Debt**” means any and all amounts secured by the Crawmet Charges, the Crawmet GSA and the Powell Charges, including any and all principal, interest, fees and other amounts as set out in Schedule “E” herein;
- (eee) “**Securities**” means all shares and securities held by any of the Debtors in the capital of any other corporations, including, without limitation, the shares owned by 138 in 219, as further described in Section 5.4(k) hereof and specifically excluding the shares held by any of the Debtors in the capital of any other of the Debtors;
- (fff) “**Stalking Horse Bid**” has the meaning ascribed thereto in Section 6.1(a) hereof;
- (ggg) “**Superior Bid(s)**” shall mean an all cash offer or offers by any Person(s) other than the Purchaser or its Affiliates to purchase all or any of the right, title and interest of the respective Debtors to the Purchased Assets, which has or in the aggregate have cash consideration at least Five Hundred Thousand (\$500,000) Dollars higher than the Purchase Price in this Stalking Horse Bid as determined pursuant to the Sales Process Order, provided that no offer(s) shall qualify as a Superior Bid unless it meets, among other things, the following minimum criteria:
- (i) the offer(s) must be accompanied by a cash deposit which is at least equal to five (5%) percent of the purchase price or aggregate purchase prices offered therein;
  - (ii) the offer(s) must provide for the payout in full in cash of the Assumed Secured Debt on Closing;
  - (iii) the offer(s) must be irrevocable until April 10, 2015 and specify that the Closing shall take place prior to April 20, 2015;
  - (iv) the offer(s) must be on terms in the aggregate no less favourable and no more burdensome or conditional than the Stalking Horse Bid;
  - (v) except as provided in sub-clause (ii) above, the offer(s) must be substantially in the form of the Stalking Horse Bid, with any changes to the offer(s) black-lined against the Stalking Horse Bid;
  - (vi) the offer(s) must be supported by evidence in writing of (a) liquidity, or (b) committed financing from a lender and on terms and conditions (if any) satisfactory to the Vendor, in its sole discretion, in each case sufficient, in the sole discretion of the Vendor, to close a transaction within the timelines detailed in the Sales Process Order.
- (hhh) “**Taxes**” means all taxes, charges, fees, levies, imposts and other assessments, including all income, goods and services, value added, capital, capital gains, withholding, excise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax and any interest, fines and penalties, imposed by any Authority and whether disputed or not;
- (iii) “**Vendor’s Deliveries**” shall have the meaning ascribed thereto in Section 2.8 hereof;
- (jjj) “**Vendor’s Knowledge**” means to the best of the knowledge, information and belief of the Vendor, its officers, directors, employees, agents and representatives, in all instances, without independent verification;
- (kkk) “**Vendor’s Solicitors**” means the firm of Goldman Sloan Nash & Haber LLP, Barristers and Solicitors, 480 University Avenue, Suite 1600, Toronto, Ontario M5G 1V2 (Attention: Michael B. Rotsztain) Telephone No. (416) 597-7870, Telecopier No. (416) 597-3370;
- (lll) “**Vesting Order**” means an order to be sought from the Court vesting the Trustee’s and the Debtors’ respective right, title and interest in the Purchased Assets in the Purchaser or its permitted assignee; and
- (mmm) “**Winning Bidder**” has the meaning ascribed thereto in Section 6.1(b) hereof.

**1.2 Schedules.** The following are the Schedules attached to this Agreement:

Schedule "A":	Description of the Lands
Schedule "B":	Equipment
Schedule "C":	Permitted Encumbrances
Schedule "D":	Description of the Crawmet Charges and the Powell Charges
Schedule "E":	Secured Debt
Schedule "F":	Inventory of Boats

**1.3 Interpretation.** In and for the purpose of this Agreement, except as otherwise expressly provided:

- (a) "this Agreement" means this agreement as may from time to time be supplemented or amended, and includes the Schedules;
- (b) all references in this Agreement to designated Articles, Sections, subsections, paragraphs, clauses or Schedules are to the designated Articles, Sections, subsections, paragraphs, clauses or Schedules of or attached to this Agreement;
- (c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, subsection, paragraph or clause;
- (d) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (e) the singular of any term includes the plural, and vice versa, the use of any term is generally applicable to any gender and where applicable, a body corporate, the word "or" is not exclusive and the word "including" is not limiting (whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto); and
- (f) all dollar amounts referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by cash, certified cheque, wire transfer or any other method that provides immediately available funds.

**1.4 Governing Law.** This Agreement will be governed by and interpreted, and the rights and remedies of the parties hereto determined, in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereto hereby agree and attorn to the jurisdiction of the Court.

**ARTICLE 2 – TRANSFER, PURCHASE PRICE AND PAYMENT**

**2.1 Agreement.** The Purchaser hereby agrees to purchase the Purchased Assets from the Vendor and the Vendor hereby agrees to sell the Purchased Assets to the Purchaser, subject to the terms and conditions set forth herein.

**2.2 Purchase Price.** The purchase price payable by the Purchaser to the Vendor (or as it may otherwise direct) for the Purchased Assets shall be equal to the aggregate of the following (the "**Purchase Price**"), which amounts shall be adjusted as of the Closing Date in accordance with the provisions hereof:

- (a) the Secured Debt less the sum of One Million (\$1,000,000) Dollars in respect of amounts secured by the Crawmet GSA (the "**Assumed Secured Debt**");
- (b) any and all amounts secured by the Receiver's Charge and the Receiver's Borrowings Charge at Closing;
- (c) the amount estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver and the Trustee, and of their Counsel, including without limitation the fees, disbursements and expenses for the matters described in Section 2.11(e), for the period from and after Closing to the discharges of the Receiver and the Trustee respectively. Should the aggregate of such fee and disbursements be less than the amount so paid, any surplus shall be refunded to the

Purchaser no later than thirty (30) days after the later of the date of discharge of the Receiver and the date of the discharge of the Trustee.

- (d) the additional sum of (i) Five Hundred and Fifty Thousand (\$550,000) Dollars in respect of the portion of the Lands legally described in PIN 03475-0135 (LT) (in addition to the assumption by the Purchaser of the Assumed Secured Debt registered against title thereto), and (ii) Seven Hundred and Ten Thousand (\$710,000) Dollars in respect of the portion of the Lands legally described in PINs 03475-1967 (LT) and 03475-1972 (LT); and
- (e) any and all other amounts and claims on account of realty tax arrears, utility arrears and source deductions, if any, which rank in priority to the Crawmet Charges, the Crawmet GSA and/or the Powell Charges on or against the Purchased Assets.

**2.3 Payment of Purchase Price.** The Purchaser shall satisfy the Purchase Price as follows:

- (a) by payment to the Vendor, in Trust, within one (1) Business Day following the Acceptance Date, a sum equal to Two Hundred and Fifty Thousand (\$250,000) Dollars in lawful money of Canada (the "**Deposit**") by way of a certified cheque drawn on a solicitor's trust account from a Canadian chartered bank (a "**Bank**") listed in Schedule 1 to the Bank Act (Canada) (a "**Certified Cheque**"), wire transfer using the Large Value Transfer System administered by the Canadian Payments Association (a "**Wire Transfer**"), or bank draft drawn on a Bank purchased by the Purchaser's solicitor (a "**Bank Draft**"), to be credited against the Purchase Price on Closing;
- (b) by the assumption of the Assumed Secured Debt on Closing, to be credited against the Purchase Price, accompanied by releases and discharges from Crawmet Corp., DPII, and Dwight Powell of the Debtors of and from the Assumed Secured Debt; and
- (c) the balance of the Purchase Price for the Purchased Assets by payment of such amount to the Vendor or as the Vendor may direct on the Closing Date by Certified Cheque, Wire Transfer or Bank Draft.

**2.4 Allocation of Purchase Price.** The Vendor and the Purchaser hereby acknowledge and agree that the Purchase Price shall be allocated amongst the Purchased Assets as the parties hereto may mutually agree prior to Closing, each acting reasonably, failing which, such determination shall be made by the Court or as otherwise may be directed by the Court, as submitted by either party hereto. The Purchaser and the Vendor shall follow such allocations in determining and reporting their liabilities for any Taxes and without limitation, shall file their respective income tax returns prepared in accordance with such allocations. Provided that nothing herein shall require the Vendor or the Trustee to file any income tax returns that it is not otherwise required to file.

**2.5 Deposit.** The Deposit shall be held by the Vendor without interest and shall be:

- (a) credited to the Purchaser against the Purchase Price on the Closing Date if the purchase and sale of the Purchased Assets is completed pursuant to this Agreement; or
- (b) refunded to the Purchaser without deduction if the purchase and sale of the Purchased Assets is not completed pursuant to this Agreement, provided that the Purchaser is not in default under this Agreement, which refund shall be accepted by the Purchaser in full satisfaction of all damages, losses, costs and expenses incurred by the Purchaser as a result of such non-completion; or
- (c) retained by the Vendor as liquidated damages, if the purchase and sale of the Purchased Assets is otherwise not completed pursuant to this Agreement, as a result of the Purchaser's breach hereunder, without prejudice to any other rights and remedies it may have under this Agreement or at law or in equity as a result of such non-completion.

**2.6 Additional Excluded Assets.** Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets (the "**Additional Excluded Assets**") from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Vendor, whereupon such Additional Excluded Assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

**2.7 Capacity of Vendor.** The Vendor is entering into this Agreement solely in its capacity as receiver of the assets, undertakings and properties of Debtors and not in its personal or any other capacity and the Vendor and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its said capacity as receiver of the assets, undertakings and properties of the Debtors and shall not apply to its personal property and assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets. Provided that notwithstanding the foregoing and/or anything contained herein to the contrary, the Vendor hereby acknowledges and agrees that in the event that the Trustee's participation and/or assistance is required in order to fulfil the obligations of the Vendor hereunder and/or otherwise transfer any of the Purchased Assets to the Purchaser in accordance with the terms and conditions hereof, the Trustee shall provide such participation and/or assistance to the extent required, subject to obtaining such inspector and/or Court approval as may be required, and provided that the Purchaser shall first fund all costs and expenses and all payments to third parties and other amounts required to be paid or expended in connection with such participation and/or assistance.

**2.8 Deliveries.** The Vendor hereby covenants and agrees, commencing five (5) Business Days following the Acceptance Date, to provide access to the Purchaser during regular business hours on Business Days, to such of the following materials (collectively, the "**Vendor's Deliveries**") as may be in its possession, for the purposes of review by the Purchaser and, if desired, making photocopies or scanned copies at the Purchaser's expense:

- (a) **Survey:** copy of any plans of survey of the Lands, whether or not showing the location of all buildings situate thereon and easements;
- (b) **Contracts:** copies of the Contracts;
- (c) **Leases:** copies of the Leases;
- (d) **Licenses:** copies of the Licenses;
- (e) **Authorizations:** signed authorizations for off-title investigations, provided that such authorizations expressly prohibit any inspections to be conducted by any Authority in respect of the Purchased Assets;
- (f) **Other:** any other documentation and/or information in the possession of the Vendor pertaining to the Purchased Assets and/or the Business which the Purchaser may reasonably request.

The Purchaser acknowledges that the Vendor makes no representation and/or warranty as to the accuracy, completeness, correctness, fitness for purpose or comprehensiveness of the Vendor's Deliveries, and any information contained therein, or as to the Purchaser's entitlement to use or rely on same, and that the Purchaser shall be required to make its own investigations to satisfy itself in this regard.

**2.9 Assumed Contracts and Assumed Leases.** Save and except as hereinafter set out, the Purchaser shall give notice to the Vendor in writing, at least five (5) Business Days prior to the Closing Date, of those Contracts and Leases that it elects to assume on Closing (which Contracts and Leases shall be referred to as the "**Assumed Contracts**" and the "**Assumed Leases**", respectively). This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract and/or Lease contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract and/or Lease, in which event, the provisions of Section 9.12 hereof shall govern.

**2.10 Assumed Obligations.** On Closing, the Purchaser shall assume and become liable for, and shall pay, satisfy, assume, discharge, observe, perform and fulfill, as applicable, the Assumed Secured Debt, together with all obligations under the Assumed Contracts, the Assumed Leases and the Licenses to the extent attributable to the period from and after Closing. Save and except as hereinbefore set out in this Section 2.10 and as provided in Sections 2.2 (b) and (c), the Purchaser shall not assume or be obligated or responsible to pay, perform, satisfy or otherwise discharge any liabilities of the Vendor, or the Business, whether incurred prior to or subsequent to the Closing Date.



**2.11 Property Claims Procedure Order Matters.** The following provisions shall apply to the Customer Boats, Equipment and Inventory, which are subject to the Property Claims Procedure Order:

- (a) capitalized terms not otherwise defined in this Section shall have the meanings ascribed thereto in the Property Claims Procedure Order;
- (b) the Purchaser acknowledges that the Vendor has continuing duties, responsibilities, actions and roles under the Property Claims Procedure Order and that on Closing there may be (i) Customer Boats remaining at the Assumed Locations as a result of, among other things, Property Claims not having been asserted against such Customer Boats or final entitlement thereto not having been determined pursuant to the provisions of the Property Claims Procedure Order (collectively, the “Remaining Customer Boats”), (ii) Equipment and Inventory with respect to which Property Claims have not been barred pursuant to the provisions of the Property Claims Procedure Order (collectively the “Disputed Equipment and Inventory”);
- (c) on Closing, the Vendor shall provide the Purchaser with listings of the Remaining Customer Boats and of the Disputed Equipment and Inventory, respectively;
- (d) there shall be no reduction of the Purchase Price in respect of any Disputed Equipment and Inventory;
- (e) after Closing, and for as long as is necessary for the Vendor to (i) complete the duties, responsibilities, actions and roles required of it by the Property Claims Procedure Order and by any other applicable order of the Court, and (ii) release or remove or arrange for the release or removal from the Assumed Locations of Remaining Customer Boats, the Purchaser shall at its expense cooperate with the Vendor in respect of, and facilitate, the foregoing. Without limiting the generality of the foregoing, for so long as is necessary as provided above, the Purchaser shall, at no charge to or consideration from the Vendor, but at the Vendor’s risk, (aa) permit the Remaining Customer Boats to continue to remain at the Assumed Locations, (bb) permit the Vendor and its duly authorized agents to have access to the Assumed Locations to comply with the Property Claims Procedure Order and any other applicable order of the Court and to take all necessary actions to preserve, protect and insure the Remaining Customer Boats as would a prudent owner thereof, and (cc) permit the Remaining Customer Boats to be removed from the Assumed Locations by the Vendor and its duly authorized agents or by Persons who pursuant to the Property Claims Procedure Order and or any other applicable order of the Court are finally determined to be entitled thereto (collectively, the “Entitled Persons”), at times mutually acceptable to the Purchaser and to the Vendor or the Entitled Persons, as the case may be.

### **ARTICLE 3– COMPLETION, POSSESSION AND ADJUSTMENTS**

**3.1 Completion.** The completion of the transaction contemplated by this Agreement will occur on the Closing Date, or such other date as may be agreed to in writing by the Vendor and the Purchaser, and the place of Closing will be the offices of the Vendor’s Solicitors, or such other location as the parties may mutually agree upon.

**3.2 Possession.** The Purchaser may enter upon the Lands and take possession of the Purchased Assets immediately following Closing.

**3.3 No Adjustments.** There shall be no adjustments to the Purchase Price in respect of any matter whatsoever.

**3.4 Risk.** The Purchased Assets will be at the Vendor's risk until the Vendor's certificate (as contemplated by the Vesting Order) is delivered to the Purchaser's Solicitors on the Closing Date and thereafter at the Purchaser's risk. Pending completion, the Vendor will hold all insurance policies and any proceeds derived therefrom in trust for the parties as their respective interests may appear and in the event of loss or damage to the Purchased Assets occurring before such time by reason of fire, tempest, lightning, earthquake, flood or other act of God, explosion, riot, civil commotion, insurrection, war or otherwise howsoever, the amount of such insurance proceeds paid or payable to the Vendor with respect thereto will be applied in reduction of the Purchase Price and the transfer of the Purchased Assets to the Purchaser will proceed in the manner described herein and without any reduction or adjustment to the Purchase Price or any other change in the terms of this Agreement.

**3.5 Requisition Period and Title Matters.** Purchaser shall be allowed until 6:00 p.m. on the 27<sup>th</sup> day of February, 2015 (the "**Requisition Period**") to examine the title to the Lands at the Purchaser's own expense. Provided that the title to the Lands is good and free from all registered restrictions, charges, liens, and encumbrances except those to be removed from the Lands by the Vesting Order and except for the Permitted Encumbrances. If, on or before the expiration of the Requisition Period any valid objection to title is made in writing to the Vendor and which the Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and the Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted Vendor's title to the Lands.

#### **ARTICLE 4 – VENDOR'S REPRESENTATIONS AND WARRANTIES**

**4.1 Vendor's Representations and Warranties.** The Vendor represents and warrants to the Purchaser as follows:

- (a) the Vendor is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation, and subject to the Vendor obtaining Sales Process Order and the Vesting Order, it has full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein; and
- (b) the Vendor is not a "non-resident" for the purposes of the ITA.

**4.2 Survival of Representations and Warranties.** The representations and warranties contained in Section 4.1 hereof or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing and, notwithstanding the Closing, shall continue in full force and effect for the benefit of the Purchaser, until the earlier of (i) the date of the Vendor's discharge as Receiver; and (ii) the expiry of a period of twelve (12) months from the Closing Date, after which time the Vendor shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Purchaser in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

#### **ARTICLE 5 – PURCHASER'S COVENANTS, REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS**

**5.1 Purchaser's Covenants.** The Purchaser covenants and agrees that it will effective on and after the Closing Date, assume and be fully responsible for:

- (i) all obligations which are to be observed or performed from and after completion of this transaction under the Permitted Encumbrances; and
- (ii) any other obligations and liabilities assumed by the Purchaser as provided for by this Agreement.

**5.2 Purchaser's Representations and Warranties.** The Purchaser hereby represents and warrants to the Vendor as follows, as applicable:

- (i) the Purchaser is and will be as of Closing, a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and is duly qualified to purchase and own the

Purchased Assets and the Purchaser has full power, authority and capacity to enter into this Agreement and carry out the transaction contemplated herein;

- (ii) all necessary action on the part of the Purchaser has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the transaction contemplated herein;
- (iii) no consent or approval of or registration, declaration or filing with any Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of its obligations hereunder;
- (iv) the Purchaser will be a “registrant” under Part IX of the ETA as of the Closing Date and will notify the Vendor of its registration number prior to such time, and the Purchaser shall indemnify the Vendor with respect to the amount of any HST exigible in respect of the transaction contemplated by this Agreement should the Purchaser not pay such amount on Closing; and
- (v) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada).

**5.3 Survival of Representations and Warranties.** The representations and warranties contained in Section 5.2 hereof or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing, and notwithstanding the Closing, shall continue in full force and effect for the benefit of the Vendor, for a period of twelve (12) months from the Closing Date, after which time the Purchaser shall be released from all obligations in respect of such representations and warranties except with respect to any claims asserted by the Vendor in writing (setting out in reasonable detail the nature of the claim and the appropriate amount thereof) before the expiration of such period.

**5.4 Purchaser’s Acknowledgements.** Save as otherwise provided herein, the Purchaser hereby acknowledges and agrees as follows:

- (a) it is relying entirely upon its own investigations and inspections in entering into this Agreement and has satisfied itself with respect to such investigations and inspections;
- (b) there is no representation, warranty or condition, express or implied, statutory or otherwise, of any kind as to the Purchased Assets or any of the Debtors including, without limitation, that the present use or future intended use by the Purchaser of the Purchased Assets is or will be lawful or permitted, and/or relating in any way to the condition or state of repair of the Lands, the Equipment, and/or the Inventory or to title, outstanding liens or charges, description, fitness for purpose, merchantability, quantity, condition, defect (patent or latent), value, and/or quality thereof;
- (c) it is purchasing the Purchased Assets on an “as is, where is” basis including without limitation, outstanding work orders, stop work orders, deficiency notices, infractions, open permits, compliance requests, development fees, education levies imposts, lot levies, local improvements, sewer charges, zoning and building code violations and any outstanding requirements which have been or may be issued by any Authority, the structural integrity of the Lands, together with any other improvements on the Lands;
- (d) the Vendor shall have no liability or obligation with respect to the value, state, condition or extent of the Purchased Assets, whether or not the matter is within the Vendor’s Knowledge and that pursuant to Property Claims Procedure Order dated December 23, 2014, Persons may assert proprietary or security interests in certain of the Purchased Assets which, if accepted by the Vendor and, with respect to Purchased Assets in which Crawmet Corp. is asserting a propriety or security interest, not disputed by Crawmet Corp., or otherwise determined to be valid, would result in the Persons being entitled to the relevant Purchased Assets;
- (e) the Vendor has made no representations or warranties with respect to or in any way related to the Lands, including without limitation, the following:

- (i) the conformity of the Lands to past, current or future applicable zoning or building code requirements;
  - (ii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill;
  - (iii) the sufficiency of any drainage;
  - (iv) whether the Lands is located wholly or partially in a flood plain or a flood hazard boundary or similar area;
  - (v) the existence or non-existence of underground storage tanks;
  - (vi) the presence or absence of toxic wastes, hazardous materials or contaminants in, on or about the Lands or any other environmental issue or condition;
  - (vii) any other matter affecting the stability or integrity of the Lands;
  - (viii) the availability of public utilities and services for the Lands; and/or
  - (ix) the existence of zoning or building entitlements affecting the Lands;
- (f) any information provided by the Vendor describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete or accurate or correct and none of such information forms a part of this Agreement;
- (g) no adjustment shall be allowed to the Purchaser for changes to the Purchased Assets from the Acceptance Date to the Closing Date;
- (h) the Vendor shall not be required to furnish or produce any document, record, survey or evidence of title with respect to the Purchased Assets, except those in its possession;
- (i) the description of the Lands is believed by the Vendor to be correct, but if any misstatement, error or omission is found in the particulars thereof, this Agreement shall not be rendered null and void and the Purchaser shall not be entitled to an abatement in the Purchase Price;
- (j) it is understood that the tenants named in the Real Property Lease for the Marina in Brechin, Ontario, the term of which expires on April 30, 2015, are "Steve Crate and Greg Crate, in trust, for a company to be incorporated under the name 'Crates Lagoon City Marine Inc' or a similar name", the landlord under such Real Property Lease is seeking an order from the Court, among other things, excluding the leased premises from the receivership of the Debtors and precluding the removal of any assets or equipment from the premises in the absence of proof of ownership of that asset by one of the Debtors and the landlord has advised the Vendor that it has entered into a lease relationship with Pride Marine Group which is to commence after the expiry of the present Real Property Lease term; and
- (k) it is understood that the lands on which the Willow Beach Marina is located are owned by 219, whose shareholders appear to be 138, as to 50%, and DPII, as to 50%, and the shares of 219 owned by 138 may be encumbered by a share pledge or other security in favour of DPII and/or Dwight Powell. 219 may be the owner of the equipment, inventory and other personal property on the Willow Beach Marina premises. The tenant named in a lease letter of intent (which may apply to the Willow Beach Marina) from DPII (unsigned by it) addressed to Powell Contracting Limited, is "Crates Willow Beach", apparently an unincorporated operating division of 138, which appears to have signed the lease letter of intent;
- (l) the Vendor has no knowledge as to whether physical share certificates for any of the Securities may be available and/or in the possession of the Debtors;
- (m) the Vendor has no knowledge other than as set out above in this Section 5.4(k) as to whether or not the Securities have been pledged or encumbered in favour of a third party, or whether the same may be the subject of any control agreement.

The Purchaser further acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they exist on the Closing Date and that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted or will have conducted prior to Closing such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply to this transaction of purchase and sale and have been waived by the Purchaser.

## **ARTICLE 6 – SALE PROCESS AND CONDITIONS OF CLOSING**

### **6.1 Sale Process.**

- (a) The Vendor shall bring a motion for the Sales Process Order on or before February 13, 2015. The Sales Process Order shall recognize the Purchase Price as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”), and shall also provide for a marketing process of the Purchased Assets by the Vendor with the potential for competitive bidding, to be administered by the Vendor. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a Superior Bid can be obtained for the Purchased Assets.
- (b) In the event that one or more Persons submit a Superior Bid on or before the Bid Deadline, an auction of the Purchased Assets shall be held within three (3) Business Days of the Bid Deadline (the “**Auction**”). The Auction will be conducted in accordance with the process set forth in the Sales Process Order. Upon the completion of the Auction, there shall be a binding agreement of purchase and sale between the winner of the Auction (the “**Winning Bidder**”) and the Vendor. The Vendor shall make a motion to the Court, within seven (7) Business Days following the Auction, for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder and, if granted, shall proceed with closing the transaction forthwith.
- (c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Winning Bidder, then upon the making of the order by the Court contemplated in subsection 6.1(b) above, the Deposit shall immediately be released from trust and paid to the Purchaser. If no Superior Bid(s) is received by the Bid Deadline, the Vendor shall bring a motion to the Court to obtain the Vesting Order and, if granted, shall proceed with completing the transaction contemplated hereby forthwith.

**6.2 Purchaser’s Conditions.** The Purchaser shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the Purchaser becomes the Winning Bidder and all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Vendor on or before the Closing Date shall have been complied with or performed by the Vendor, and all representations and warranties of the Vendor are true and correct as of the Closing Date as though made on and as of that date.

**6.3 Vendor’s Conditions.** The Vendor shall not be obliged to complete the transaction contemplated hereunder unless, on or before the Closing Date, the following conditions shall have been satisfied:

- (a) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by the Purchaser on or before the Closing Date shall have been complied with or performed by the Purchaser, and all representations and warranties of the Purchaser are true and correct as of the Closing Date as though made on and as of that date;
- (b) the Purchaser becomes the Winning Bidder;
- (c) the making of the Vesting Order by the Court approving the sale by the Vendor to the Purchaser of the Purchased Assets in accordance with this Agreement and vesting the Trustee’s and the Debtors’ respective right, title and interest therein in the Purchaser, free and clear of any claims, save and except for the Permitted Encumbrances;
- (d) the Vesting Order shall not have been stayed, set aside or varied in any material respect; and

- (e) no stay shall be effective in respect of the Closing nor any order restraining or prohibiting Closing shall have been made by the Court.

**6.4 Court Approval.** The Purchaser hereby further acknowledges and agrees that this Agreement and the contemplated sale of the Purchased Assets are subject to the condition (not capable of waiver) that prior to Closing the Vendor shall have obtained the Vesting Order from the Court. The Vendor shall diligently pursue such application or applications and shall promptly notify the Purchaser of the disposition thereof. The Purchaser, at its own expense, shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Vesting Order. If the Court shall not have granted the Vesting Order on or before March 27, 2015 or any extension thereof as may have been mutually agreed to between the parties hereto, this Agreement shall be automatically terminated and neither party shall have any further obligation to the other respecting this Agreement.

**6.5 Non-Fulfillment.** If any of the conditions contained in this Article 6 shall not have been fulfilled or performed on or before the date provided for satisfaction of such condition(s) and the party or parties entitled to waive the same, if capable of waiver, shall not have done so, this Agreement shall be deemed to be terminated without further act by the Vendor or the Purchaser and the further obligations of the Vendor and the Purchaser under this Agreement shall terminate, and the Deposit shall be returned to the Purchaser without deduction or interest and neither party shall have any further obligations or liabilities hereunder.

**6.6 Planning Act.** This Agreement is subject to the express condition that it will be effective only if the parties have complied with the provisions of Section 50 of the *Planning Act* (Ontario), as of the Closing Date.

#### **ARTICLE 7 – PREPARATION OF CLOSING DOCUMENTS**

**7.1 Delivery of Closing Documents by Vendor.** On or before the Closing Date, the Vendor will cause the Vendor's Solicitors to deliver to the Purchaser's Solicitors the following items, duly executed by the Vendor (if applicable) and in registrable form wherever appropriate, to be dealt with pursuant to Article 8 of this Agreement:

- (a) a copy of the Vesting Order and the Receiver's Certificate;
- (b) the listings of the Remaining Customer Boats and of the Disputed Equipment and Inventory in accordance with Section 2.11(c) hereof;
- (c) a statement showing the amounts secured under the Receiver's Charge and the Receiver's Borrowings Charge as of the Closing Date;
- (d) a bill of sale relating to the Equipment and the Inventory;
- (e) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Assumed Contracts;
- (f) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Assumed Leases;
- (g) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Licenses;
- (h) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of all warranties and guarantees relating to the Purchased Assets, to the extent transferrable;
- (i) the certificate(s) representing the Securities, duly endorsed by the Vendor in blank if in the Vendor's possession or control;
- (j) all keys for the Lands which are in the possession or control of the Vendor, or a direction to release such keys in lieu thereof;
- (k) a certificate of a senior officer of the Vendor declaring that the Vendor is not a "non-resident" for the purposes of Section 116 of the ITA;

- (l) a certificate of a senior officer of the Vendor certifying that each of the warranties and representations of the Vendor set out herein are true and accurate on the Closing Date except as disclosed therein and that the Vendor has complied with and performed all the terms, covenants and agreements set out herein to be complied with or performed by the Vendor on or before the Closing Date; and
- (m) to the extent applicable, the joint elections contemplated by Sections 9.5 and 9.6 hereof.

**7.2 Delivery of Closing Documents by Purchaser.** On or before the Closing Date, the Purchaser will cause the Purchaser's Solicitors to deliver to the Vendor's Solicitors the following items, duly executed by the Purchaser (if applicable), to be dealt with in accordance with Article 8:

- (a) the balance of the Purchase Price for the Purchased Assets in accordance with the provisions of Section 2.3(c) hereof;
- (b) the assumption of the Assumed Secured Debt together with the releases and discharges from Crawmet Corp., DPII, and Dwight Powell required pursuant to s.2.3(b);
- (c) a certificate of a senior officer of the Purchaser certifying that each of the warranties and representations of the Purchaser set out herein are true and accurate on the Closing Date except as disclosed therein;
- (d) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Assumed Contracts;
- (e) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of the Assumed Leases;
- (f) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, the Licenses;
- (g) an assignment by the Vendor and assumption by the Purchaser, effective as of Closing Date, of all warranties and guarantees Related to the Business, to the extent transferrable;
- (h) to the extent applicable, the joint elections contemplated by Sections 9.5 and 9.6 hereof, and otherwise the amount of any HST required to be paid on Closing in connection with the Purchaser's purchase of the Purchased Assets, other than those for which it may self-assess and indemnify the Vendor, and, to the extent the responsibility of the Purchaser, all other Taxes in connection with the Purchaser's purchase of the Purchased Assets;
- (i) the HST statutory declaration and indemnity contemplated by Section 9.5 of this Agreement;
- (j) a certificate of a senior officer of the Purchaser certifying that each of the warranties and representations of the Purchaser set out herein are true and accurate on the Closing Date except as disclosed therein and that the Purchaser has complied with and performed all the terms, covenants and agreements set out herein to be complied with or performed by the Purchaser on or before the Closing Date; and
- (k) any other documents relative to the completion of this Agreement as may reasonably be required by the Vendor or the Vendor's Solicitors.

## **ARTICLE 8 – CLOSING PROCEDURE**

**8.1 Purchaser Deliveries.** By 12:00 p.m. on the Closing Date, the Purchaser will deliver in escrow to the Vendor's Solicitors, a Certified Cheque, Wire Transfer or Bank Draft payable to the Vendor or as the Vendor may direct in the amount due to the Vendor pursuant to Section 2.3(c) hereof, as adjusted pursuant to Section 3.3 hereof, and the documents referred to in Section 7.2 hereof, such Certified Cheque, Wire Transfer or Bank Draft and documents to be released in accordance with Section 8.3 hereof.

**8.2 Vendor Deliveries.** On the Closing Date, the Vendor will deliver in escrow to the Purchaser's Solicitors, the documents and items referred to in Section 7.1 and 8.1 hereof, such documents and items to be released in accordance with Section 8.3 hereof. Upon receipt of such Purchaser Deliveries, the Vendor shall cause the Vendor's solicitors to file a Receiver's certificate (the "**Receiver's Certificate**") with the Court, substantially in the form of the certificate scheduled to the Court's model approval and vesting order, confirming in part that the transaction contemplated by this Agreement has been completed and payment of the Purchase Price has been received, which Receiver's Certificate shall be attached to the applications to register the Vesting Order against the Lands.

**8.3 Closing.** Immediately following delivery of the items referred to in Sections 8.1 and 8.2 hereof and the filing with the Court of the Receiver's Certificate, the Purchaser shall cause the Purchaser's Solicitors to register the applications to register the Vesting Order together with the Receiver's Certificate against the Lands and, upon registration, the balance due on Closing, documents and items delivered in escrow pursuant to this Article and listed in Sections 7.1, 7.2, 8.1 and 8.2 hereof shall be released from escrow

**8.4 Concurrent Requirements.** It is a condition of this Agreement that all requirements of this Article 8 are concurrent requirements and it is specifically agreed that nothing will be completed on the Closing Date until everything required to be paid, executed, delivered and registered on the Closing Date has been so paid, executed, delivered and registered.

**8.5 Electronic Registration.** In the event that a system for electronic registration ("**Ereg**") is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor's Solicitors, to complete this transaction using Ereg in accordance with the Law Society of Upper Canada's guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Upper Canada, (ii) the Purchaser's Solicitors will enter into the Vendor's Solicitors' standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing this transaction provided same are in accordance with Law Society guidelines, and (iii) if the Purchaser's Solicitors are unwilling or unable to complete this transaction using Ereg, then the Purchaser's Solicitors must attend at the Vendor's Solicitors' office or at another location designated by the Vendor's Solicitors at such time on Closing as directed by the Vendor's Solicitors to complete the transaction using Ereg utilizing the Vendor's Solicitors' computer facilities, in which event, the Purchaser shall pay to the Vendor's Solicitors a reasonable fee therefor.

## **ARTICLE 9 – GENERAL**

**9.1 Time.** Time is of the essence and will remain of the essence notwithstanding the extension of any of the dates hereunder.

**9.2 No Waiver.** No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited herein, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.

**9.3 Tender.** It is agreed that any tender of documents or money may be made upon the respective solicitors for the parties and that it will be sufficient to tender a solicitor's certified trust cheque rather than cash.

**9.4 Fees and Expenses.** Each party will pay its own legal fees incurred in connection with the transaction contemplated hereunder. The Purchaser will be responsible for all registration fees and land transfer tax payable in connection with such transaction.

**9.5 HST Election.** The Vendor and the Purchaser shall jointly elect under section 167(1) of the ETA to have subsection 167(1.1) apply to the sale of the Purchased Assets to the Purchaser such that no HST shall be payable in respect of such sale. The Vendor and the Purchaser shall take all necessary actions in order to complete and file such valid joint election on or before the date on which the Purchaser must submit its HST return for the reporting period in which the Closing occurs. Provided that notwithstanding the foregoing, the Parties hereto hereby acknowledge and agree that any HST applicable to the sale of the Purchased Assets shall be in addition to the Purchase Price. On or before the Closing Date, the Purchaser or its permitted assignee or designee as the beneficial owner(s) of the Purchased Assets shall deliver to the Vendor a statutory declaration of a senior officer of the Purchaser or such beneficial owner(s), attaching thereto evidence of said party's HST registration number from the relevant Authority,



and whereby such officer certifies that such party's HST registration number remains in full force and effect and that such party will be the legal and/or beneficial owner of the Purchased Assets. The Purchaser and any beneficial owner(s) of the Purchased Assets shall further indemnify and save harmless the Vendor from any and all HST, penalties, costs, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with such parties' failure to remit any HST applicable in this transaction to the applicable Authorities.

**9.6 Section 22 Election.** The Purchaser and the Vendor shall execute jointly an election in prescribed form under Section 22 of the ITA in respect of the Receivables and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date. The Vendor shall not be liable for any income tax that may be payable as a result of this election. Provided that nothing herein shall require the Vendor or the Trustee to file any income tax returns that it is not otherwise required to file.

**9.7 Entire Agreement.** This Agreement and the agreements, instruments and other documents entered into pursuant to this Agreement set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the matters herein and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

**9.8 Amendment.** This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

**9.9 Further Assurances.** Each of the parties hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.

**9.10 Notices.** Any demand or notice which may be given pursuant to this Agreement will be in writing and delivered or telecopied to the parties addressed as follows:

to the Purchaser:

2450902 Ontario Limited  
132 Sheppard Avenue West, Suite 100  
Toronto, Ontario M2N 1M5

Attention: Allan Lyons  
Telecopier: (416) 222-1940  
E-mail: [allan.lyons@4162225355.com](mailto:allan.lyons@4162225355.com)

with a copy to:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

Attention: Harvey Chaiton  
Telecopier: (416) 218-1849  
E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

to the Vendor:

Farber Financial Group  
150 York Street  
Suite 1600  
Toronto, Ontario M5H 3S5

Attention: Stuart Mitchell  
Telecopier: (416) 496-3839  
E-mail: [smitchell@farberfinancial.com](mailto:smitchell@farberfinancial.com)

with a copy to:

Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2

Attention: Michael B. Rotsztain  
Telecopier: (416) 597-3370  
E-mail: [rotsztain@gsnh.com](mailto:rotsztain@gsnh.com)

or at such other address as either party may specify in writing to the other. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal or if such day is not a Business Day, the first Business Day thereafter.

**9.11 Assignment.** The Purchaser may not assign its interest in this Agreement or direct title to any other person without the prior written consent of the Vendor, which consent may not be unreasonably withheld or delayed. Whether or not this Agreement is assigned as aforesaid, the Vendor acknowledges and agrees that the Purchaser shall be entitled, prior to the Vendor serving the Notice of Motion for the Vesting Order, to direct title to any of the Purchased Assets to an Affiliate of the Purchaser, any of its shareholders and/or any Affiliates of such shareholders, as the Purchaser may direct in writing, and in such event, the Vendor shall seek the Vesting Order in accordance with the Purchaser's direction. In this regard, the Vendor agrees to endeavour to provide the Purchaser with a minimum of five (5) Business Days notice of its intention to serve the Notice of Motion for the Vesting Order. In no event shall any assignment or direction for title to the Purchased Assets relieve the Purchaser of any of its obligations under this Agreement to and including Closing and the Purchaser shall remain jointly and severally liable with any such assignee or Affiliate for the performance of all of the terms and conditions on the part of the Purchaser to be performed pursuant to the terms and conditions of this Agreement including the execution of all closing documents.

**9.12 Non-Transferable and Non-Assignable Purchased Assets.** To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "Rights") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any applicable law unless the approval, consent or waiver of such third Person is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until (i) such approval, consent or waiver has been obtained, or (ii) an order from the Court has been obtained by the Vendor transferring all such Rights to the Purchaser, provided that the Purchaser shall first fund all costs and expenses and all payments to third parties and other amounts required to be paid or expended in connection with seeking such order. After the Closing and until all such Rights are transferred to the Purchaser, the Vendor shall until it is discharged by the Court as Receiver:

- (a) hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall until it is discharged by the Court as Receiver, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in

and under the Rights are received by the Purchaser. The Vendor shall until it is discharged by the Court as Receiver promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken pursuant to this Section.

**9.13 Counterparts.** This Agreement may be executed in any number of original counterparts, with the same effect as if all the parties had signed the same document, and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the reference date set out above and accepted on the date of the last signature, and only one of which need be produced for any purpose.

**9.14 Binding Effect.** This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties, as applicable.

**9.15 Execution by Facsimile or PDF.** This Agreement may be executed by the parties and transmitted by facsimile (via telecopier) or PDF (via email) and, if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

**9.16 Non-Registration.** The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Lands. Should the Purchaser be in default of its obligations under this Section, the Vendor may (as agent and attorney of the Purchaser) causing the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the title to the Lands and the Purchaser shall be deemed to be in default of its obligations hereunder. The Purchaser irrevocably nominates, constitutes and appoints the Vendor as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Lands.

**9.17 Severability.** Any provision of this Agreement which is determined to be void, prohibited or unenforceable shall be severable to the extent of such avoidance, prohibition or unenforceability without invalidating or otherwise limiting or impairing the other provisions of this Agreement.

**9.18 Confidentiality.** The Purchaser agrees that all non-public information and documents supplied by the Vendor or anyone on its behalf to the Purchaser or anyone on the Purchaser's behalf shall, unless and until Closing occurs, be received and kept by the Purchaser and anyone acting on the Purchaser's behalf on a confidential basis and shall not without the Vendor's prior written consent be disclosed to any third party. If for any reason Closing does not occur, all such documents shall forthwith be returned intact to the Vendor and no copies or details thereof shall be retained by the Purchaser or anyone acting on its behalf. The Purchaser further agrees that unless and until the terms of this Agreement become public knowledge in connection with the Sales Process Order and/or the Vesting Order, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's Solicitors, agents or lenders acting in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

**9.19 Solicitors as Agents and Tender.** Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of closing documents and the balance of the Purchase Price may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

**9.29 Media Releases.** Save and except as hereinafter set out, neither party to this Agreement may discuss with the media, issue any press release or other public announcement or release information with respect to this Agreement to the public unless same has been pre-approved in writing by the other party, provided the foregoing shall not apply to Court filings including reports by the Receiver. Notwithstanding the foregoing, the parties hereto hereby agree that upon the issuance by the Court of the Sales Process Order, either party hereto may issue an announcement or another form of notice to the customers of the Business, in such a form as may be acceptable to the other party, acting reasonably, advising that a sales process has been commenced for the sale of the Purchased Assets and upon the successful completion of same, the Purchaser, if it is the Winning Bidder, intends to continue the operation of the Business.

**[REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the date first above written.

**A. FARBER & PARTNERS INC.** in its capacity as Court-Appointed Receiver of Crate Marine Sales Limited, F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd., and not in its personal capacity



Per: \_\_\_\_\_

Name: Stuart Mitchell

Title: Senior Vice President

Per: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Corporation.

**2450902 ONTARIO LIMITED**

Per: \_\_\_\_\_

Name: Benn-Jay Spiegel

Title: Authorized Signing Officer

Per: \_\_\_\_\_

Name: Dwight Powell

Title: Authorized Signing Officer

We have the authority to bind the Corporation.

The undersigned hereby acknowledges and agrees to be bound by the terms of Sections 1.1(s) and 2.7 hereof, provided that it has no further obligations, liabilities and/or benefits hereunder.

**A. FARBER & PARTNERS INC.** in its capacity as Trustee in Bankruptcy of Crate Marine Sales Limited, F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd., and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

**A. FARBER & PARTNERS INC.** in its capacity as Court-Appointed Receiver of Crate Marine Sales Limited, F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd., and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**2450902 ONTARIO LIMITED**

Per:   
Name: Benn-Jay Spiegel  
Title: Authorized Signing Officer

Per: \_\_\_\_\_  
Name: Dwight Powell  
Title: Authorized Signing Officer

We have the authority to bind the Corporation.

The undersigned hereby acknowledges and agrees to be bound by the terms of Sections 1.1(s) and 2.7 hereof, provided that it has no further obligations, liabilities and/or benefits hereunder.

**A. FARBER & PARTNERS INC.** in its capacity as Trustee in Bankruptcy of Crate Marine Sales Limited, F. S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd., and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation.

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

**OWNER: F. S. CRATE & SONS LIMITED**

**PIN 03475-0147 (LT)**

Block C, Plan 224 North Gwillimbury; Part of Block D, Plan 224 North Gwillimbury, designated as Part 6 on Plan 65R-19902, Georgia. Amended 2003/04/28 By Deb Wallen, ADLR.

**PIN 03475-0140 (LT)**

Lot 44, Plan 224, North Gwillimbury; Lot 45, Plan 224, North Gwillimbury; Lot 46, Plan 224, North Gwillimbury; Lot 47, Plan 224, North Gwillimbury; Lot 48, Plan 224, North Gwillimbury; Part Block D, Plan 224, North Gwillimbury; Part of Block E, Plan 224, North Gwillimbury; Part of Block F, Plan 224, North Gwillimbury; Part of Lot 9, Concession 3, North Gwillimbury, as in Instrument Numbers A38709A and A64512A.

Together with a right if any as in Instrument Numbers A61914A, A7428A, B86062B, A61914A, except easements therein, Part 1 on Plan 65R-13692, Georgia.

Together with a right as in Instrument Number A7428A. Subject to Spousal Interest as in Instrument Number R407105, Georgia.

Subject to Instrument Numbers A64512A, A38709A and A61914A; Georgia.

**OWNER: 1328559 ONTARIO LIMITED**

**PIN 03475-0923 (LT)**

Part Lot 40, Plan 224, North Gwillimbury, designated as Part 3 on Plan 65R-19902; Georgia.

Subject to Instrument Numbers R735544, R717319 and R717320, Georgia.

**PIN 03475-0901 (LT)**

Part of Lots 8 and 9, Concession 3 (GN) and Part of the Bed of Lake Simcoe lying in Front of Lots 8 and 9 and Part of Lots 35, 36, 37, 38 and 39, Plan 224, designated as Parts 8, 9, 10, 11, 12, 13, 14, 22, 23 and 24 on Plan 65R-19902, Georgia.

Together with a right of way over Wymhurst Road, Plan 198 and Plan 224 and over Block A, Plan 198 and Lot 33, Plan 224, Georgia

Together with a right of way over Block C and Part of Block D, Plan 224, lying between the production north westerly of the north easterly and south westerly limits of Block C to the Maskinonge River with the right to dredge that Part of the right of way over Block D a distance south easterly from the Maskinonge River sufficient to permit and allow the owner of these lands to have an entrance from the Maskinonge River to these lands, Georgia.

Subject to a right of way in favour of Part of Lot 8, Concession 3, designated as Part 1 on Plan 66R-2527 over Parts 23 and 24 on Plan 65R-19902 as in Instrument Number LT23068, Georgia.

Subject to an easement in favour of The Hydro-Electric Power Commission of Ontario over Parts 11, 12 and 23 on Plan 65R-19902 as in Instrument Number NG9316, Georgia.

Subject to a right of way in favour of Part of Lot 8 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and all of Lots 42, 43 and Part of Lots 35, 36, 37, 38, 39, 41 and Part of Block D, Plan 224, designated as Parts 15, 16, 17, 18, 20 and 21 on Plan 65R-19902 over said Parts 9, 10, 11, 12, 14, 22, 23 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to an easement in favour of said Parts 15, 16, 17, 18, 20 and 21 on Plan 65R-19902 over said Part 13, Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to an easement in favour of said Parts 15, 16, 17, 18, 20 and 21 on Plan 65R-19902 over said Parts 13, 22 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with a right of way over said Parts 16, 17, 18 and 20 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to an easement in favour of Part of Lot 8, Concession 3 and Part of the Bed of Lake Simcoe being Part 1 on Plan 66R-2527 over said Parts 10, 11, 12, 14, 22, 23 and 24 on Plan 65R-19902 as in Instrument Number LT1251520. (Amended 2001/07/24 by Deb Wallen, ADLR).

**PIN 03475-0902 (LT)**

Part of Lot 41, Plan 224, designated as Part 19 on Plan 65R-19902, Georgia.

Together with a right of way over Wynhurst Road, Plan 198 and Plan 224 and over Block A, Plan 198 and Lot 33, Plan 224, Georgia.

Together with a right of way over Block C and Part of Block D, Plan 224, lying between the production north westerly of the north easterly and south westerly limits of said Block C to the Maskinonge River with the right to dredge that part of the right of way over Block D a distance south easterly from the Maskinonge River sufficient to permit and allow the owner of these lands to have an entrance from the Maskinonge River to these lands, Georgia.

Subject to a right of way in favour of Part of Lot 8 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and all of Lots 42, 43 and Part of Lots 35, 36, 37, 38, 39, 41 and Part of Block D, Plan 224 being Parts 15, 16, 17, 18, 20 and 21 over said Part 19 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with a right of way over said Parts 16, 17, 18 and 20 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to an easement in favour of Part of Lot 8, Concession 3 and Part of the Bed of Lake Simcoe being Part 1 on Plan 66R-2527 over said Part 19 on Plan 65R-19902 as in Instrument Number LT1251520, Georgia.

**PIN 03475-1967 (LT)**

Part of Lot 8, Concession 3, designated as Part 4 on Plan 65R-22164, except Part 2 on Plan 65R-27407 (NG), Georgia.

Together with a right as in Instrument Number R649951, Georgia.

**PIN 03475-1972 (LT)**

Part of Lot 8, Concession 3 (NG), designated as Parts 1 and 2 on Plan 65R-27407, Georgia.

Together with a right as in Instrument No. R649951, Georgia.

**OWNER: 1282648 ONTARIO LIMITED**

**PIN 03475-0924 (LT)**

Part of Lot 40, Plan 224, North Gwillimbury, designated as Part 2 on Plan 65R-19902, Georgia.

Together with a right as in Instrument Number R717318, Georgia

**PIN 03475-0925 (LT)**

Part of Lot 40, Plan 224, North Gwillimbury, designated as Parts 4 and 5 on Plan 65R-19902, Georgia.



Together with a right of way as in Instrument Number R717318, Georgia

**PIN 03475-0146 (LT)**

Part of Block D, Plan 224, North Gwillimbury, designated as Part 7 on Plan 65R-19902, Georgia.

Subject to Instrument Number R717318, Georgia.

**PIN 03475-0898 (LT)**

Part of Lots 37, 38 and 39, Plan 224, designated as Parts 15 and 16 on Plan 65R-19902, Georgia.

Together with a right of way over Wynthurst Road Plan 198 and Plan 224 and over Block A on Plan 198 and Lot 33 on Plan 224, Georgia.

Together with a right of way over Block C and Part of Block D on Plan 224 lying between the production north westerly of the north easterly and south westerly limits of said Block C to the Maskinonge River with the right to dredge that part of the right of way over Block D a distance south easterly from the Maskinonge River sufficient to permit and allow the owner of these lands to have an entrance from the Maskinonge River to these lands, Georgia.

Together with a right of way over Part of Lot 8, Concession 3, Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224, designated as Parts 9, 10, 11, 12, 14, 19, 22, 23 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with an easement over Part of Lot 8, Concession 3, Part of Lots 35 and 36 on Plan 224, designated as Parts 13, 22 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to a right of way in favour of Part of Lots 8, 9 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224, designated as Parts 8, 9, 10, 11, 12, 13, 14, 19, 22, 23 and 24 on Plan 65R-19902 over said Part 16 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

**PIN 03475-0900 (LT)**

Part of Lot 8 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and all of Lots 42 and 43 and Part of Lots 35, 36, 37, 38, 39, 41 and Part of Block D on Plan 224, designated as Parts 20 and 21 on Plan 65R-19902, Georgia.

Together with a right of way over Wynthurst Road, Plan 198 and Plan 224 and over Block A on Plan 198 and Lot 13 on Plan 224, Georgia;

Together with a right of way over Block C and Part of Block D on Plan 224 lying between the production north westerly of the north easterly and south westerly limits of the said Block C to the Maskinonge River with the right to dredge that part of the right of way over Block D a distance south easterly from the Maskinonge River sufficient to permit and allow the owner of these lands to have an entrance from the Maskinonge River to these lands, Georgia.

Together with a right of way over Part Lot 8, Concession 3 and Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224, designated as Parts 9, 10, 11, 12, 14, 19, 22, 23 and 24 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with an easement over Part of Lot 8, Concession 3 and Part of Lots 35 & 36 on Plan 224, designated as Part 13 on Plan 65R-19902 to maintain the building erected on said Part 21 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with an easement over Part of Lot 8, Concession 3 and Part of Lots 35 and 36 on Plan 224, designated as Parts 13, 22 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to a right of way in favour of Part of Lots 8 and 9 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224, designated as Parts 8, 9, 10, 11, 12, 13, 14, 19, 22, 23 and 24 on Plan 65R-19902 over Part 20 on Plan 65R-19902 as in Instrument Number1251518, Georgia.

**PIN 03475-0899 (LT)**

Part of Lot 41, Plan 224, designated as Parts 17 and 18 on Plan 65R-19902, Georgia;

Together with a right of way over Wynthurst Road, Plan 198 and Plan 224 and over Block A on Plan 198 and Lot 33 on Plan 224, Georgia.

Together with a right of way over Block C and Part of Block D on Plan 224 lying between the production north easterly and south westerly limits of Block C to the Maskinonge River with the right to dredge that part of the right of way over Block D a distance south easterly from the Maskinonge River sufficient to permit and allow the owner of these lands to have an entrance from the Maskinonge River to these lands, Georgia.

Together with a right of way over Part of Lot 8, Concession 3 and Part Lots 35, 36, 37, 38, 39 and 41 on Plan 224, being Parts 9, 10, 11, 12, 14, 19, 22, 23 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Together with an easement over Part of Lot 8, Concession 3 and Part Lots 35 and 36 on Plan 224, designated as Parts 13, 22 and 24 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

Subject to a right of way in favour of Part Lots 8 and 9 and Part of the Bed of Lake Simcoe lying in front of Lots 8 and 9, Concession 3 and Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224, designated as Parts 8, 9, 10, 11, 12, 13, 14, 19, 22, 23 and 24 on Plan 65R-19902 over said Parts 17 and 18 on Plan 65R-19902 as in Instrument Number LT1251518, Georgia.

**OWNER: 1330732 ONTARIO LIMITED**

**PIN 03475-0150 (LT)**

Parcel 8-1, Section C224 being Part of Lot 8, Concession 3 (GN) and Part of the Bed of Lake Simcoe, designated as Part 1 on Plan 65R-2527, Georgia.

Together with a right over Part 2 on Plan 65R-2527 as in Instrument Number LT23068, Georgia.

Together with a right of way for all those now and hereafter entitled, over, along and upon Lot 33 on Plan 224, Georgia.

Together with an easement over Part of Lot 8, Concession 3 and Part of Lots 35, 36, 37, 38, 39 and 41 on Plan 224 being Parts 10, 11, 12, 14, 19, 22, 23 and 24 on Plan 65R-19902 as in Instrument Number LT1251520, Georgia.

**OWNER: CRATE MARINE SALES LIMITED**

**PIN 03475-0135 (LT)**

Part of Lot 1, East Side of Matilda Street, Plan 245 (NG); Part of Lot 2, East Side of Matilda Street, Plan 245 (NG); Part of Lot 3, East Side of Matilda Street, Plan 245 (NG); Part of Lot 1, West Side of Queen Street, Plan 245 (NG); Part of Block F, Plan 224 (NG); Part of Lot 9, Concession 3 (NG), designated as Parts 1, 2 & 3 on Plan 65R-3745, Georgia.

Subject to a right as in Instrument Number R351383, Georgia.

**SCHEDULE "B"**  
**LIST OF EQUIPMENT**

SCHEDULE B

Crates Marine Sales Limited - Listing of Machinery, Equipment and Office Equipment

Item No.	Description	Other Information	Model
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The Purchased Assets listed in this Schedule may be subject to Permitted Encumbrances and claims pursuant to the Property Claims Procedure Order.

**Keswick Equipment**

**Main Shop Equipment**

1	Rotor/sander table	Rigid	EB44241
2	Thickness planer	Crafex	B350
3	Band saw	General International	90-20071
4	Standup Sander	Rockwell Delta	31-710
5	Joiner	Poltas	
6	120" Metal Swivel Cutting Band Saw		
7	Cut-off saw with stand	DeWalt	DW718
8	table saw	Rockwell	
9	Dust collector	Crafex	B405
10	Paint shaker		
11	Portable dust collector	Crafex	B1140
12	Portable generator	Honda	EB3500X
13	Moisture extractor	Inject-dry	HP Plus
14	Portable compressor w/honda motor		EO2184
15	Ladders (5)	various heights	
16	Caged ladders (4)	Carney Equipment	
17	Line backers (2)		
18	Portable shop vac		
19	Booster packs (2)	Truck Pros	ES6000

**Showroom / Mechanics**

20	Boat cradles (11)	Marine Cradles	various
21	Heavy duty cradles (2)	Ardel Marine	various
22	Portable Jack Stands (2)		
23	5 ton jack		
24	20 ton jack	Eagle 55	L90
25	Portable dolly	Jet	
26	5 ton chain falls (2)		
27	Snut remover		
28	Oxygen/aceylene tanks with torches	Jet Hydraulic	HSP20
29	Hydraulic shop press 20 ton	Long Chang Machine	LCN-14
30	Drill press	Steel City	15420
31	Variable speed grinder	Zep	6100
32	Parts washer/degreaser	Weg	PPM1750
33	Compressor - 5.5HP	Scotzman	B948S
34	Icebreaker	Big Dog	930347
35	Riding lawnmower	King Canada	8439
36	Air compressor 100 PSI		
37	Gear oil pump (2)		
38	Oil extractor		

**Service Building**

**Service/Parts/Shipping**

39	7 PC's with monitors and kb	various	
40	2 3-drawer filing cabinets		
41	Parts shelving		
42	Fasteners shelving/bins		

Inventory List

2/6/2015

Item No.	Description	Other Information	Model
43	5 L-shaped desks		
44	Microwave		
45	Bar fridge		
48	Lexmark x842e printer	Lexmark	
Customer Reception			
47	5 PCs with monitors and kb		various
48	4 tall office chairs		
49	4 office chairs		
50	2 4-drawer filing cabinets		
51	2 2-drawer filing cabinets		
52	2 reception chairs and wooden mariner table lamp		
Upstairs Office			
53	Boardroom table and 5 chairs		
54	4 desks, various sizes		
55	6 office chairs		
56	Bar fridge		
57	3 wall shelving units match desk (red oak veneer)		
58	Matching desk, 3-shelf cabinet, 2 small tables		
59	2 shelving units (light wood)		
60	2 black lounge chairs		
61	Royal paper shredder		
62	Xerox Workcentre 4250 s/n 8749	Xerox	
63	3 PCs with monitors and kb		
64	HP Laserjet P2055dn	HP	
65	Samsung. Scx-4826FN multifunction printer	Samsung	
66	1 4-drawer lateral filing cabinet		
67	7 4-drawer filing cabinets		
68	3 dark brown wall shelving units		
69	1 2-drawer lateral filing cabinet		
70	Swingline paper shredder		
71	Large safe	Harry Stone	
72	2 servers (IBM and Dell) with monitor, kb, APs, network switch, Cisco router		
73	Panasonic phone system KX-tda200c	Panasonic	
74	Panasonic TVP120 phone system	Panasonic	
Stowroom Building			
Upstairs			
75	Desk with 4 hightop chairs		
76	Beige leather couch		
77	Steel cabinet		
78	3 drawer filing cabinet		
79	PC with monitor and kb		
80	2 office desks with matching small credenza		
81	2 office chairs		
82	3 4-drawer filing cabinets		
83	Lexmark MX 310dn multipurpose fax machine	Lexmark	
84	4 misc chairs		
85	Boardroom table with 7 chairs		
86	6 limited edition Original Six NHL prints on canvas by D McLaren (25/25)		
Sales Reception Office			
87	Laminator		
88	Sharp MX-M450N copier	Sharp	
89	Upright steel cabinets		
90	2 2-drawer filing cabinets		
91	Built in desk		
92	3 PCs		

Inventory List

2/6/2015

Item No.	Description	Other Information	Model
93	Brother MFC 9340cdw	Brother	
Salesmen offices (5)			
94	3 desks with matching small credenza		
95	2 high corner desks with 6 hightop chairs		
96	3 offic chairs		
97	6 misc chairs		
98	6 PCs with monitors and kb	various	
99	HP deskjet840c	HP	
100	3 drawer filing cabinet		
101	Windtunnel upright vacuum cleaner	Hoover	
102	12 golf carts- various sizes		
103	Various adjustable boat stands and boat cradles (in use)		
South Clubhouse			
104	Dual door cooler – Habco – SE40s		
105	Dishwasher – Kitchenaid		
108	Mini dual door cooker – True – TBB-24GAL-48G		
107	2 – Sony Bravia flat screens – KDL46EX400		
108	Surround sound speakers		
109	Various glassware		
110	Microwave – Sanyo – EM-S8800S		
111	Express toaster – APW WYOTT		
112	Coffee maker – Cuisinart		
113	Commercial toaster – Fusion		
114	Kettle		
115	Griddle – Cuisinart		
116	4 – 4' high round bar tables		
117	10 bar chairs		
118	2 – leather couches		
119	4 -leather foot rests		
120	Glass coffee table – 1 large, 1 small		
121			
122	6 - outdoor tables		
123	23 outdoor chairs with cushions		
124	3 – umbrellas with stands		
125	Various cleaning supplies		
126	2 – portable a/c units, 8000BTU – Mobil Comfort – KY-80, Maytag – NMPEB08FFRA* A		
127	Fitness Centre & Washroom Area – South Clubhouse		
128	Machines, have the name Maxam on them, Hamilton 905-387-4447		
129	Squat machine		
130	4 station exercise machine with accessories		
131	Bench press		
132	Punching bag		
133	2 – Tread machines – Vision Fitness – T9700		
134	Elliptical – Vision Fitness		
135	2 – Dumbbell stands		
136	2 – Free weight stands		
137	Dumbbells – from 5 lbs to 75lbs		
138	Free weights – from 2.5lbs to 45lbs		
139	Panasonic tube tv		
140	Plasma receiver – VSK-D307		
141	4 speakers		
142	2 – Commercial dryers (coin operated) – Speed Queen		
143	2 – commercial washing machines (coin operated) – Speed Queen		
144	Sosp dispenser		

Gas Dock

Inventory List

Item No.	Description	Other Information	Model
145	2 - Stand up coolers		
146	Computer, keyboard		
147	Shelving		
148	Freezer for bagged ice - Leer Limited - 1002UC60MS and Propane tank cage with 13 - 20 lbs tanks (possible 3rd party property)		
149	4 20-ton block and tackles with 4 boat slings		
<b>Willow Beach Equipment</b>			
150	Stand up car/dollie		
151	Small pressure washer - Simoniz SPH-190		
152	Grass trimmers - 2 Twist nEdge - TE476, Ryobi - 2800R, Featherlite - XT260 L3		
153	Motor stand		
154	Stand up lighting with lamps		
155	Golf cart		
156	Riding lawn mower		
157	2 - push mowers		
158	Various tools (many are older tools for old motors) and shop manuals		
<b>Lagoon City Equipment</b>			
159	Metal display racks	LOCATION	QUANTITY
160	Wooden boat-shaped shelf	Front shop	2
161	4' Horizontal file cabinets	Front shop	1
162	4' x 2' Metal file cabinets	Front shop	2
163	Office desks	Front shop	3
164	Wood filing cabinets	Front office	3
165	Office chairs	Front office	4
166	Small wood bookshelf	Front office	4
167	Old computers, monitors and peripheral devices	Front office	1
168	Old wooden office desks	Back office	3
169	Old office chairs	Back office	3
170	Old boat/engine parts (scrap)	Shop	3
171	Old stern drive	Shop	Lot
172	7' x 4' metal racking	Parts room	1
173	6' x 3' metal racking	Parts room	6
174	Stern drive oil pumps	Parts room	1
175	Blue 50 gallon plastic barrels - empty	Shop	2
176	Blue 50 gallon plastic barrels - filled with antifreeze	Shop	20
177	2HP Magna compressor, model M104CQ200-20A	SN: L1420019 (120 PSI)	3.5
178	Robin EX17 6.0 gas powered file pump	SN D10 2776197	1
179	480 Battery charger	Shop	1
180	Black & Decker portable battery charger w/ cables	Shop	1
181	X-Stream power washer	SN RX708C10003374	1
182	Canbuilt 10-ton hydraulic press	SN HP021594	1
183	Balcrank workbench	Shop	1
184	Parts washer	Shop	1
185	10' aluminum ladder	Shop	1
186	Old 1/2 HP drill press	Shop	1
187	Movable 9' red metal staircase (on wheels)	Shop	1
188	Old parts (scrap)	Shop	Lot
189	Cans of paint - Various	Shop	Lot
190	Assorted shop tools - Cutoff saw, vice, grinder	Shop	Lot
191	Old outboard motor parts	Shop	Lot
192	Stern drives	Upstairs	3
193	Old Mercury 18 outboard motor (for parts)	Upstairs	1
194	Old Johnson outboard motor (for parts)	Upstairs	1
195	Old Sealhorse outboard motor (for parts)	Upstairs	1
196	Assorted scrap and garbage	Upstairs	1
197	6' x 3' metal racking	Upstairs	Lot
			5

Inventory List

2/6/2015

Item No.	Description	Other Information	Model	Lot
198	6' x 3' aluminum sheving	Upstairs		4
199	Round kitchen table (wood)	Kitchen		1
200	Old microwaves	Kitchen		3
201	Toaster oven	Kitchen		1
202	Old chairs	Kitchen		4
203	Small refrigerator	Kitchen		1
204	Bubblers	Downstairs storage		4
205	G/E commercial washers (coin operated), Model WCCB1030J1WC	ST116562G		3
206	Inqdis commercial driers (coin operated), Model TO-81001	9CM38616		3
207	Taylor forklift (old)	No SN or model; flat tire		1
208	Boat slings	Yard storage house		8
209	Trailer - old	No VIN; near forklift		1
210	3-Ton chain fall/hoist	Slip 234		4
211	5-Ton chain fall/hoist	slip-216		4
212	Assorted picnic benches	By boat:slips		Lot
213	Mobile waste removal trailer & pump			1
214	Conofit hydraulic boat trailer	Compound in yard across street		1
215	32 x 180 Shrink Wrap	Full boxes of leftover shrink wrap		1
216	40 x 150 Shrink Wrap	Full boxes of leftover shrink wrap		5
217	40 x 149 Shrink Wrap	Full boxes of leftover shrink wrap		3
218	28 x 94 Shrink Wrap	Full boxes of leftover shrink wrap		6
219	32 x 186 Shrink Wrap	Full boxes of leftover shrink wrap		6
220	Mobile staircase (on wheels)	Compound in yard across street		1
221	Blue CRATIES golf cart	street		1
222	5' Electric boat lift (in water)	Back of yard across street		1
223	Blue 50-gallon barrels - empty	Back yard across street - garbage		Lot
224	1988 Ford F350 4x4 yard truck	plated)		1
225	International Boom Truck (very old) w/ boom attachment	plated); no SN available for aental		1
226	Richtelieu trailer	Vin L11021608004		1
227	Sailboat mast crane (motorized)	34JC43-0071G1		1
228	Marine Travelift 35 BFM (movable boat lift)	2753 hours		1
<b>Port McNicholl</b>				
229	Marine Travelift 75 tonne	SN 3480-0910; 70,000 lbs.		1
<b>Belleville</b>				
230	Marine Travelift 50 BFM (movable boat lift)	SN 3486-0713		1



CRATE MARINE SALES LIMITED  
COMPANY VEHICLE LISTING

The Purchased Assets listed in this Schedule may be subject to Permitted Encumbrances and claims pursuant to the Property Claims Procedure Order

EQUIPMENT #	DESCRIPTION	VAL	SERIAL #	MODEL #
1	2008 FORD		1FTWAS3P20E828028	350
2	2010 MAZDA	400,000 approx	1M1AA077ZAN009782	600
3	2007 FORD	198,887	1FDAT88P87E833003	850
4	2010 FORD		1FTTWEVXAF8A90004	F-150
6	2009 FORD	300,242	1FTPX14VDBF808228	F-150
7	2009 FORD	398,730	1FTPX14V80KAY1730	F-150
9	1998 FORD		2F9K138W4BLA84121	F-350
10	2005 FORD		1FT9B34P78Y0417416	E-350 VAN
13	2000 HONDA	254,780	2HGEL084YH333861	CRVC
15	2004 FORD	278,869	1FTPX1600FA07216	F-150
16	2004 GMC		1GTHK2AL6387388	SIERRA
18	2012 FORD		1FTW5B8TCEA30763	F-350
20	1988 INTERNATIONAL		1H8GLAET7XHX11650	TRANSPORT
21	2010 FORD	169,318	1FTWENZAPB88848	F-150
22	2007 FORD		1FDAR88P8EAB1897	F-350 TAN
23	2013 FORD	31,602	1FTTWEFDKGF80072	F-150
24	2013 FORD	74,611	1FTFWHEFD0F028282	F-150
27	2004 FLEETWOOD	77,830	884MP87084388886	PAGE ARCON
29	2011 FORD		NM00.878ND8T064163	TRABBIT CONNECT
241	2010 FORD	240,788	1FTTWEVW6AF8A0488	F-150
CB1	1989 DODGE		1B7RF-18YCX828242	DODGE
Y1	1998 GMC		1GTEC19H85N252831	1500
Y2	2000 FORD		2FTRF18WVCA41403	F-150
Y3	2004 FORD		1FTRF12W84NCS8374	F-150
Y4	MAZDA			AEROMAX L-900

TRAILERS AND LIFTS

A	TRAILER	SMALL - YARD ONLY		CONCLIFT
B	TRAILER	LARGE - YARD ONLY		CONCLIFT
T1	2008 TRAILER	BLACK 5TH WHEEL	2C98A6L268P650015	CONCLIFT YH-915
T2	2009 TRAILER	WHITE XL 6TH WHEEL	2C9BKS5YXK9P050029	CONCLIFT YH-1620
T3	1985 TRAILER	CARGO - P3X79	2R1B3V01E7F1002675	ROLLUPSY PRP
T4	1988 TRAILER	SEMI-HEM	2M6921618V7052722	8425322
G	TAYLOR FORKLIFT	YARD	8-EG-18882	TRE-120-01
H	YALE FORKLIFT	SMALL - YELLOW	E187V13918X	GLC080RGNVAED02
I	TRACTOR	BUCKET TRACTOR		CASE
L	TRABBITLIFT	refurbished 2010	3186-0805	808FM 8
M	1989 TRAILER	not for sale	60004	CONCLIFT
N	2008 SHORELANDER	E19 49H	1M0AHP1280A08280	TRAILER 80T
T5	2013 CONCLIFT	BLACK 5TH WHEEL	2C9BES263SPR08003	CONCLIFT YH-915
885	2009 VWLTRON	RED W49	2A939A8226R023086	VWALTRON
T8	1992 FLATBED	Y99 888	2FEP0483VW824601	Mobile 1132
PNLIR	Marine Travelift		5480-0910	78 tonne travelift

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'Isle-Aux-Noix, Qc., J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
	LOT # 1	
	EQUIPEMENTS	
	PRINCIPAL OFFICE AND SALES	
130	KENMOORE air conditioning	1
131	2 drawers lateral brown wooden filling cabinet	1
132	Black secretary chair on wheels	1
133-140-		
141	3 drawers, 60" x 28" black wooden working tables	2
134	NORTEL multilines phone, model T7208E	1
136-138	Brown leather swivel visitor chairs with chrome feet	4
137	3 drawers, 39" x 28" x 30" black wooden furniture	1
135-139	Metal chrome desk lamps with mirror abajour	2
142	Gray fabric armchair on wheels	1
144	SHARP tape calculator, model EL-2192GII	1
144	MERIDIAN multilines phone, model NT8B20	1

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'Île-Aux-Noix, Qc, J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
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143	2 drawers, 20" x 20" x 27" brown wooden furniture	1
143	BROTHER multifunction printer, model MFC-J4410DW, serial U63337C3F455655	1
	GARAGE	
180	13' Aluminium ladder	1
181	30" X 60" Top melamine table with metal chrome feet	1
182	SONY cassette radio	1
183	KOSS DYD reader, model KSS121-2	1
184	102" x 24" x 42" wooden serving counter with stainless steel top	1
185	Metal and wooden gray stool	1
186	Aluminium ladder, 8 steps	1
189-190	46" x 44" chromed metal frame partitions with plexiglass center	15
191	MERIDIAN multilines phone, model NT8B20	1
192	CANON photocopier, model NP2120, non-functional	1

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'Île-Aux-Noix, Qc, J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
230-231	Assorted hydraulic jacks floor	2
232-233	Black metal staircase, 4 stairs carpeted	2
234	Black wooden staircase, 6 steps	1
235-242-		
243	Assorted wooden and metal workbenches	3
236	Commercial pedestal fan	1
238.	4 shelves 60" chrome shelving on wheels	1
239	Aluminium ladder, 6 steps	1
240	72" black metal shelf with 4 shelves and lockers	1
241	SHOP VAC Commercial vacuum cleaner	1
244	White plastic 2 stairs step	1
245	BOSH portable grinder	1
246	6" KING table grinder	1
247	Black plastic wheelbarrow	1
248	Lot of 2 Aluminium ladder, 8 and 5 steps	1

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principle Street, St-Paul-De-L'Isle-Aux-Noix, Qc, J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
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249 MOTOMASTER portable booster pack, model Eliminator 1

### GARAGE'S OFFICE

193 Blue plastic visitor chairs with chromed base 2

194 33" x 33" top brown melamine working table with brown metal base 1

195-196 Computer system composed of: 1  
HP Core 2.4.0 GB, 3.0 GHZ table computer  
19" LCD Compaq monitor, model LA1905WG  
Wireless keyboard and mouse

195-197-  
198 Computer system composed of: 1  
CLONE table computer, 4.0 GO, 3.10GZ  
19" LCD ViewSonic monitor, model VA.902B  
LEXMARK multifunction printer, model Platinum PRO905  
Wireless keyboard and mouse

200 22" x 19" x 43" black metal shelving unit with 5 brown wooden shelves 1

201-202 6 drawers 72" x 36" brown melamine desk 1

203 Gray office chair on wheels 1

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'Île-Aux-Noirs, Qc., J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
204	4 drawers beige metal filing cabinets	2
201	MERIDIAN multiline phone, model NT8B20 MEZZANINE'S OFFICE	1
206	MERIDEAN phone system	1
207	ARRIS external modem	1
208	LYNKSYS wireless router, 2.4 GHZ	1
209	4 drawers 72" x 30" gray melamine desk	1
209	Gray office armchair on wheels	1
209	Blue plastic visitor chair with chromed base	1
209	Wooden easel	2

177 to 179 Lot composed of: feet racks (support) for boat storage 1

TOTAL

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'He-Aux-Noix, Qc., J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
-------------	-------------	-----

LOT # 2  
ROLLING STOCK

OUTDOOR

52-53 2006 CON-O-LIFT Fifthwheel boat trailer

1

169-170 Size: 30'

Axles: 2

Model: 915

Serial: 2C9BBS1266P050015

Registered: L52-63Z (Ontario)

With hydraulic system

56-57 FORD 2006 Pick-up

1

171-172 Model: F-350 Lariat

Serial: 1F1W33PX6EB25036

Registered: 774-5RY (Ontario)

KM: Not available (+/- 300 000 km, according to the debtor's declaration)

173-174 FORD 2011 (vehicle service)

1

Model: Transit Connect

Serial: NM0L57BN0BT054163

Registered: F1W5479 (Quebec)

KM: 73 301

## BOAT INVENTORY

Name of file: CRATE MARINE SALES LIMITED

Address: 951A, Principale Street, St-Paul-De-L'Isle-Aux-Roches, Qc., J0J 1G0

Location of goods: Same

Customer: H.H. Davis & Assoc. Inc.

PICTURE NO.	DESCRIPTION	QTY
61-62	FORD 2010 Pick-up	1
175-176	Model: F-150 XLT	
	Serial: 1FTFW1EVXAPA39034	
	Registered: 525-6YB (Ontario)	
	KM: 167 140	

**TOTAL**



**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES OF THE LANDS**

- (i) Any reservations, restrictions, rights of way, easements or covenants that run with the Lands;
- (ii) Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including, without limitation, subdivision agreements, development agreements, site plan agreements, cost sharing agreements, engineering, grading or landscaping agreements and similar agreements;
- (iii) Easements and servitudes, including those registered on title, which do not materially and adversely impair the use of the Lands for the purpose for which they are presently held or used;
- (iv) Registered easements for the supply of utilities or telephone services to the Lands and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to the Lands, including without limitation, agreements, easements, licences, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables;
- (v) Easements or rights of way in favour of any governmental body, any private or public utility, any railway company or any adjoining owner;
- (vi) Defects or irregularities or encroachments, rights of way or other discrepancies in title or possession disclosed by any errors or omissions in existing surveys of the Lands or of neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Lands;
- (vii) Minor encroachments by the Lands over neighbouring lands which do not materially and adversely impair the use of the Lands;
- (viii) With respect to instruments registered via Teraview Electronic Registration System ("TERS System"), any error or omission in the receipt, transmission or recording of such instrument, or of any of the particulars contained in such instruments, subsequent to creation and electronic delivery of same to Teranet Real Property Information Services Inc. via the TERS System;
- (ix) Zoning, land use and building restrictions, bylaws, regulations and ordinances of federal, provincial, municipal or other governmental bodies or regulatory authorities, including, without limitation, municipal by-laws and regulations and airport zoning regulations;
- (x) Laws, by-laws and regulations affecting the Lands;
- (xi) Outstanding work orders, stop work orders, deficiency notices, notices of violation, infractions, open permits and compliance requests affecting the Lands;
- (xii) The reservations, limitations, provisos and conditions, if any, expressed in any original grant from the Crown, unpatented mining claims and native land claims;
- (xiii) The standard exceptions and qualifications contained in the *Land Titles Act* (Ontario), the *Registry Act* (Ontario) and the *Condominium Act, 1998* (Ontario), as applicable;
- (xiv) Any right of expropriation, access or user vested in any governmental or public body or authority;
- (xv) The Crawlmet Charges; and,

(xvi) The Powell Charges.

**PIN 03475-0140 (LT)**

(xvii) Together with any rights, interests and easements if any as set out in Instrument Numbers A61914A, A7428A, B86062B, A61914A, except easement therein, Part 1 on Plan 65R-13692 and as more particularly set out in the Property Description in the aforementioned PIN;

(xviii) Subject to any rights, interest and easements set out in Instrument Nos. A64512A, A38709A and A61914A as more particularly set out in the Property Description in the aforementioned PIN;

(xix) Instrument No. R427546, registered on March 26, 1987 is a Notice of Site Plan Agreement in favour of The Town of Georgia;

**PINs 03475-0923 (LT), 03475-0901 (LT), 03475-0902 (LT), 03475-1967 (LT) and 03475-1972 (LT)**

(xx) Together with any rights, interests and easements more particularly set out in Instrument No. LT1251518, Instrument No. R649951 and any other rights, interests and easements set out in the Property Descriptions in the aforementioned PINs;

(xxi) Subject to any rights, interest and easements set out in Instrument Nos. LT23068, NG9316, LT1251518, LT1251520, R735544, R717319, R717320 and the Right of Way in LT23068 as more particularly set out in the Property Descriptions in the aforementioned PINs;

(xxii) Instrument No. NG9316, registered on October 15, 1924, is a Transfer of Easement in favour of The Hydro-Electric Power Commission of Ontario.

(xxiii) Instrument No. IF338, registered on June 29, 1950 is a By-Law re Subdivision Control;

(xxiv) Instrument No. LT1251519, registered on February 26, 1988, is a Transfer of Easement from Dawson's Marina Limited to Dawson's Marina Limited for purpose of ingress, egress, and laying down of services and maintenance, over the lands described as Part 3 on Plan 65R-19902 and Parts 10, 11, 12, 14, 19, 22, 23 and 24 on plan 65R-19902.

(xxv) Instrument No. LT1251520, registered on February 26, 1988, is a Transfer of Easement from Dawson's Marina Limited to Dawson's Marina Limited for purpose of ingress, egress, and laying down of municipal and utility services and maintenance, over the lands described as Part 3 on Plan 65R-19902 and Parts 10, 11, 12, 14, 19, 22, 23 and 24 on plan 65R-19902.

**PINs 03475-0924 (LT), 03475-0925 (LT), 03475-0146 (LT), 03475-0898 (LT), 03475-0900 (LT) and 03475-0899 (LT)**

(xxvi) Together with any rights, interests and easements more particularly set out in Instrument Nos. R717318 and LT1251518 and any other rights, interests and easements set out in the Property Descriptions in the aforementioned PINs;

(xxvii) Subject to any rights, interest and easements set out in Instrument Nos. R717318 and LT1251518 as more particularly set out in the Property Descriptions in the aforementioned PINs;

(xxviii) Instrument No. IF338, registered on June 29, 1950, is a By-Law re Subdivision Control;

**PIN 03475-0150 (LT)**

(xxxix) Together with any rights, interests and easements more particularly set out in Instrument Nos. LT230668, LT1251520 and any other rights, interest and easements set out in the Property Description in the aforementioned PIN;

(xxxx) Instrument No. LT1251520, registered on February 26, 1988, is a Transfer of Easement from Dawson's Marina Limited to Dawson's Marina Limited for purpose of ingress, egress, and laying down of municipal and utility services and maintenance, over the lands described as Part 3 on Plan 65R-19902 and Parts 10, 11, 12, 14, 19, 22, 23 and 24 on plan 65R-19902;

**PIN 03745 – 0135 (LT)**

(xxxix) Instrument No. R351383, registered on August 23, 1984, is a Transfer of Easement in favour of "H. M. The Queen – Ontario"; and Instrument No. R692439, registered on January 29, 1997, is a Transfer of Easement in favour of The Corporation of the Town of Georgina.

**SCHEDULE "D"  
CRAWMET AND POWELL CHARGES**

**Crawmet Charges**

1. Instrument No. YR1763076, registered on December 22, 2011 is a charge/mortgage of land in favour of Crawmet Corp. in the original principal amount of \$2,000,000.
2. Instrument No. YR2077245, registered on December 20, 2013 is a charge/mortgage of land in favour of Crawmet Corp. in the original principal amount of \$7,000,000.

**Powell Charges**

1. Instrument No. YR1011208, registered on July 3, 2007 is a charge/mortgage of land in favour of Dwight Powell Investments Inc., in the original principal amount of \$7,500,000.
2. Instrument No. YR1347517, registered on July 23, 2009 is a charge/mortgage of land in favour of Dwight Powell, in the principal amount of \$550,000.
3. Instrument No. YR2077239, registered on December 20, 2013 is a charge/mortgage of land in favour of Dwight Powell Investments Inc., in the original principal amount of \$7,500,000.

**SCHEDULE "E"**  
**SECURED DEBT AS AT MARCH 31, 2015**  
 Unless otherwise specified all values below are in Canadian dollars

**DWIGHT POWELL INVESTMENTS INC. ("DPII") and DWIGHT POWELL ("DP")**

Facility No.	Original Principal Amount	Outstanding Principal Amount	Interest to and including March 31, 2015	Fees	Balance as at March 31, 2015
A (DPII)	\$7,500,000.00	\$7,536,685.88 <sup>1</sup>	\$238,464.75	\$5,050.00	\$7,780,200.63
B (DP)	\$550,000.00	\$550,000.00 <sup>2</sup>	\$18,318.86	\$2,650.00	\$570,968.86
Estimated legal fees and disbursements					\$15,000.00
<b>TOTAL POWELL SECURED LOANS</b>					<b>\$8,366,169.49</b>

**CRAWMET CORP.**

Facility No.	Original Principal Amount	Outstanding Principal Amount	Interest to and including March 31, 2015 <sup>3</sup>	Balance as at March 31, 2015
A	\$2,085,244.24	\$1,970,303.99	\$100,214.94	\$2,070,518.93
B	\$318,440.00	\$310,536.66	\$13,061.14	\$323,597.80
C	\$900,000.00	\$900,000.00	\$59,188.91	\$959,188.91
D	US\$1,940,270	US\$1,940,270.00	\$220,924.22	\$2,161,194.22
	\$44,163.58	\$44,163.57	\$3,133.80	\$47,297.37
E	\$525,000.00	\$317,610.42	\$19,504.37	\$337,114.79
F	\$246,862.00	\$246,862.00	\$16629.69	\$263,491.69
G	\$300,000.00	\$300,000	\$18,907.55	\$318,907.55
H	\$300,000.00	\$200,767.00	\$10,049.14	\$210,816.14
I	US\$66,075.01	\$43,376.31	\$3,969.23	\$47,345.54
J	\$7,000,000.00	\$6,935,412.52	\$301,078.39	\$7,236,490.91
Legal Fees and Disbursements to January 31, 2015				
Estimated legal fees and disbursements to completion				
<b>TOTAL CRAWMET SECURED LOANS CAD</b>				
<b>TOTAL CRAWMET SECURED LOANS USD</b>				
<b>\$12,073,228.03</b>				
<b>\$2,208,539.76</b>				

<sup>1</sup> Outstanding as at October 28, 2014, interest at 7.5% per annum.

<sup>2</sup> Outstanding as at October 23, 2014, interest at 7.5% per annum.

<sup>3</sup> Interest at 10% per annum on all loan facilities with the exception of facility J. Facility J, interest at 9% per annum.

**SCHEDULE "F"  
INVENTORY OF BOATS**

See attached.

**CRATE MARINE SALES LTD**  
**Inventory Listing of Crate Owned Boats provided by Crate Marine**  
**Crates Marine Sales Limited**  
**Schedule of Boat Inventory**

**SCHEDULE F**

**The Purchased Assets listed in this Schedule may be subject to Permitted Encumbrances and claims pursuant to the Property Claims Procedure Order**

STOCK NO	DESCRIPTION	TYPE	New or		SERIAL NO	DATE RCVD
			Used			
<b>NEW BOATS</b>						
4762 10	SEA-DOO	RXT	SD	N	YDV12689C010	31-Oct-10
5538 14	REGAL	2550	CC	N	RGMMMP242D414	25-May-14
5725 14	PHOENIX	S22-507B	BT	N	5VWBT722XF006450	12-Jun-14
<b>USED BOATS</b>						
3956 87	CARVER	28 RIVIERA	AC	U	CDR011141687	18-Apr-07
4322 69	CHRIS-CRAFT	42COMAND	AC	U		01-Oct-08
4335 31	CHRIS-CRAFT	CLASSIC	R	U		14-Oct-08
4483 88	CARVER	3257 MONTTEGO	EC	U	CDRN5133E888	10-Sep-09
4638 02	REGAL	2600 LSR	BR	U	RGMWVH024J102	01-Jun-10
4696 89	CARVER	3607	AC	U	CDR600538989	13-Aug-10
4745 07	ZODIAC	DINGHY	INF	U	XDCR222KK607	05-Oct-10
5128 95	TROJAN	350 EXPRESS	EC	U	TRJR1027K495	27-Apr-12
5195 63	CHRIS-CRAFT	30	CON	U		07-Aug-12
5312 97	CARVER	32 VOYAGER	SF	U	CDRM20041697	30-Jan-13
5341 06	DONZI 43		PB	U	DNAZC006K506	25-Feb-13
5779 12	BOAT TRAILER	MANNING	BT	U	IM97B4330CC495563	31-Jul-14
5347 97	DONZI 22	& TRAILER	PB	U	DNA2C008D697	27-Feb-13
5363 89	CRUISERS	3060	EC	U	CRS8448B8989	28-Mar-13
5437 10	LARSON	288	BR	U	LAR89725E910	21-Jun-13
5496 90	WELLCRAFT	31 SCARAB EX	PB	U	WELP61591990	04-Sep-13
5564 92	SEA-RAY	180	BR	U	SERV4423A292	21-Jan-14
5565 06	RINKER	27	CC	U	RNK73048B03	21-Jan-14
5567 10	REGAL	2100	BR	U	RGMCB203D010	22-Jan-14
5600 08	MONTREY	214 FSC & TRA	CC	U		14-Apr-14
5601 03	SEA-RAY	41	AC	U	SERFR9467203	14-Apr-14
5732 11	REGAL	2300 & PHOENIX T	BR	U	RGMDR327D11 Trailer's	22-May-14
5647 11	CRUISERS	330 EXPRESS	EC	U	CRSFDA70D011	05-Jun-14
5670 04	KEY WEST	CONQUEST	BR	U	KWEDD1301304	18-Jun-14
5671 97	LARSON	290 CABRIO	BR	U		19-Jun-14
5672 97	DORAL	1997 240 DORAL	AC	U	QJA06303A797	23-Jun-14
5679 00	WELLCRAFT	WILKER 18	R	U		26-Jun-14
5777 88	DORAL 26		AC	U	A152917888	24-Sep-14
5781 99	REGAL	32 COMMODORE	EC	U		25-Sep-14
5795 12	SEA-RAY	240 SUNDANCER	AC	U	US-SERT40111112	02-Oct-14
5808 03	BAYLINER	245 & GALVANI	BR	U	259403963	17-Oct-14
5816 99	RINKER	232 CAPTIVA & T	BR	U	KNK61752C999	23-Oct-14
5820 96	THOMPSON	26 SANTA	AC	U	TMS37895K595	03-Nov-14
5662 88	CARVER	2807 RIVIERA	AC	U	CDRJ0023088	16-Jun-14
5704 87	PROWLER	9M Aaft CABIN	AC	U		14-Jul-14
4682 88	PROWLER	10M	AC	U		26-Jul-10
5400 78	SEA-RAY	30 SEDAN BRIDG	SF	U	QC3507805	13-May-13
5424 04	Bayliner 245		CC	U	PFWCJ003K011	31-May-13
5485 11	Four Winns V305		EC	U		05-Apr-14
5508 13	Regal 355C		SC	U		26-Sep-14
5533 11	Coblat 262WSS W Trailer		R	U	FGE65002G011 / QC3088553	04-Oct-14
5700 03	CARVER 57	PILOT HOUSE	MY	U	CDRNA1123H203	09-Jul-14
<b>Other</b>						
4858 09	DYNAMAMAX	DYNA AIRE	DYN	N	1D9FE362391358008	24-Mar-11
4859 09	DYNAMAMAX	DYNA AIRE	DYN	N	1D9FE362591358009	14-Apr-11