

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

**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.

**NINTH REPORT OF THE RECEIVER**

**April 28, 2015**

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- “G” Letter from Counsel for the Receiver to Counsel for the Lagoon City Landlord dated January 28, 2015
- “H” Notice of Dispute
- “I” Letter from Counsel for the Receiver dated April 17, 2015
- “J” Letter from Counsel for 2122915 Ontario Inc. dated April 22, 2015
- “K” Letter from Counsel for 2122915 Ontario Inc. dated April 27, 2015

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**NINTH REPORT OF THE RECEIVER**

**April 28, 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, 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 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 certain of the Companies and (iii) to substitute A.

Farber & Partners Inc. as bankruptcy trustee of certain 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 (the “**Interim Receiver**”) 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 pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny.

4. Following two intervening hearings, 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.

5. Since December 8, 2014, the Receiver has taken the following steps and brought the following motions, all of which have been more fully set out in the First, Second, Third, Fourth and Fifth reports of the Receiver and the Supplementary Report to the Fifth Report of the Receiver:

- (a) On December 12, 2014, the Receiver and Trustee brought a motion to correct a typographical error in the Order dated December 8, 2014 regarding a misdescription of 1282648 Ontario Limited, and for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief. Mr. Justice Newbould issued an Amended Order dated December 8, 2014, a copy of which is attached as **Appendix “A”**. Mr. Justice Newbould also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief;
- (b) 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 the Interim Receiver; (iv) increase the borrowing power of the Receiver; and (v) as discussed in more detail below, establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. Mr. Justice Penny issued Orders granting that relief, including the Property Claims Procedure Order (the “**PCPO**”);
- (c) On January 14, 2015, the Receiver and Trustee commenced an application against Steven Crate, Gregory Crate, Lynn Marko, Ryan Crate, and Robin

Crate (a.k.a. Robin Silver) and sought and obtained a certificate of pending litigation without notice regarding properties held in their name in the vicinity of the lands owned by the Companies in Keswick but for which the Companies appear to have provided all funds for the acquisition and maintenance of those properties;

- (d) On January 30, 2015 the Receiver and Trustee commenced a further application against Ryan Crate and sought and obtained a certificate of pending litigation with notice regarding further a property held in his name at 14 Highland Ave. in Belleville, but for which the Companies appear to have provided all funds for the acquisition and maintenance of that property;
- (e) On February 13, 2015, the Receiver brought a motion for approval of a stalking horse sales process, which is fully described in the Receiver's Third Report dated February 8, 2015. By order dated February 18, 2015, the Honourable Mr. Justice Pattillo granted that relief;
- (f) On February 19, 2015 the Receiver commenced applications for bankruptcy orders against Steven Crate, Gregory Crate, Lynn Marko and the estate of Lloyd Crate in connection with amounts owing by them to the Companies. These applications are disputed and will be proceeding for hearing on April 27 and April 28, 2015;
- (g) On March 13, 2015, the Receiver brought a motion to approve its and its counsel's fees and disbursements to February 8, 2015 and to increase the Receiver's Borrowing Charge, as defined in the Appointment Order, to \$2,000,000.00. The Honourable Madam Justice Conway granted the relief sought; and
- (h) On March 20, 2015, after obtaining a preservation Order without notice from Mr. Justice Newbould respecting the subject matter of the motion, the Receiver brought a motion on notice seeking, inter alia, declarations that certain life insurance policies issued by Transamerica Life Canada and held by 1382415 Ontario Ltd. ("415") and 1382476 Ontario Ltd. ("416") on the lives of Steven Crate, Gregory Crate and Lynn Marko and the proceeds thereof are property of 415 and 416, and finding Steven Crate, Gregory Crate and Lynn Marko in contempt of the Order and Amended Order of Mr. Justice Newbould dated December 8, 2014. On March 20, 2015, Madam Justice Conway made an order which, among other things, adjourned the motion to April 29, 2015, continued the preservation Order and required the disclosure of records pertaining to transactions in respect those proceeds.
- (i) On March 31, 2015, the Receiver brought a motion to approve an agreement of purchase and sale which is fully described in the Receiver's Sixth Report. Madam Justice Conway granted an order vesting the right, title, and interest of certain assets of the Companies in Krates Keswick Inc. Madam Justice

Conway also granted an order authorizing the Receiver to take certain steps for the purposes of the PCPO dated December 23, 2014.

## **PURPOSE OF THIS REPORT**

6. This is the Ninth report of the Receiver (the “**Ninth Report**”). Its purpose is to seek advice and directions in connection with property subject to the PCPO that is still at the Lagoon City location, and in respect of chattels for which there is an ownership dispute as between the Lagoon City landlord and the Companies. The Order is sought because the Receiver has administered claims in respect of more than 350 chattels in the possession of the Companies at Lagoon City, most of which are boats or yachts with quite some value. However, a new tenant takes possession as of May 1, which threatens the ability of the Receiver to complete the Court-mandated property claims process. To date, the Receiver and the landlord of the Lagoon City premises have been unable to agree on the terms of access. While discussions in that regard are ongoing, any terms that are agreed should be put into an Order, and if terms cannot be agreed then adjudication will be necessary. Accordingly, the Receiver requires advice and directions on these issues.

## **LIMITATION OF REVIEW**

7. 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 Ninth 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 Ninth Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) SUMMARY OF STEPS UNDERTAKEN IN FURTHERANCE OF THE PROPERTY CLAIMS PROCEDURE, AND THE PROPERTY CLAIMS DATABASE**

### **Background to the Property Claims Procedure**

8. The basis for the Receiver's request to implement a property claims procedure was set out in paragraphs 21 to 27 of the Second Report of the Receiver and Trustee dated December 19, 2013, a copy of which is attached as **Appendix "B"**, without appendices.

9. In summary, there was substantial uncertainty regarding what tangible personal property was owned by the Companies, and what was owned by third parties (and in some such cases, precisely which third party owned the property). This was due to the state of the Companies' books and records and also due to the manner in which the Companies had conducted their business. The tangible personal property at issue included boats held and stored for customers, inventory of boats apparently held by the Companies for sale, equipment apparently owned or leased by the Companies, other assorted items such as miscellaneous chattels apparently owned by customers (boat trailers, dinghies, and other recreational items), and boat parts owned by the Companies.

10. The uncertainty arose most frequently with boats, because the business of the Companies had been comprised of both the sale and resale of new and used boats, and also the maintenance and storage (during boating months in dock or slip facilities, and during winter on land while shrink-wrapped) of boats belonging to customers. In that regard, there were more than 700 boats in the possession of the Companies upon appointment of the Receiver.

11. Examples of such issues had been previously noted in reports made by the Interim Receiver, which included:

- (a) boats in the Companies' possession which were sold without discharging loans against them owing by prior owners when sold to the Companies,
- (b) boats in the Companies' possession which were financed by third parties, or pledged as security for amounts owing by the Companies to third parties,
- (c) boats sold by the Companies as broker or intermediary without payment to the vendor (or secured creditor if applicable), which remain in the Companies' possession; and



- (d) boats in the Companies' possession which appeared to be under contract for sale to purchasers who paid some or all of the purchase price, but the transactions did not close. The Companies' books and records did not record all of these transactions, and were not always accurate, as explained below.

12. In light of these concerns, and in order to obtain an accurate factual foundation for the evaluation of property claims to the boats and other tangible personal property in the Companies' possession, the Receiver sought and obtained the PCPO, a copy of which is attached as **Appendix "C"**.

13. The PCPO also extends to tangible personal property other than boats, and also extends to the interests of secured creditors, including those who have registrations under the *Personal Property Security Act*.

14. The basis for including the claims of creditors in the claims process was that the Companies appeared to have in many cases entered into loan or financing arrangements with lenders based upon certain understandings, including unregistered security agreements by which (for example) title to a boat was said to have been held by a lender in a fashion that might be security for the loan, or might be ownership. The reports of the Interim Receiver also noted that, in several cases involving Crawmet and other lenders, the Companies appear to have nonetheless sold the boat(s) purportedly held as security. The PCPO accordingly extended to creditor claims in order to allow the Receiver to obtain a full understanding of the various secured creditors.

15. As set out in paragraphs 15 to 60 of the Seventh Report of the Receiver dated March 29, 2015 (the "**Seventh Report**"), a copy of which is attached without appendices as **Appendix "D"**, the Receiver has diligently administered the property claims process order and as of the close of business on March 27, 2015 had processed 922 claims under the following categories:

<b>Category</b>	<b>Number</b>
Approved	663
Late but otherwise Approved	67
Unresolved	37

Disallowed	20
Contested	36
Not Reviewed	99
Total	922

16. On the basis of the Seventh Report, the Honourable Madam Justice Conway authorized the Receiver to administer the property claims it had received up to March 27, 2015. The administration of these claims included the authorization of the Receiver to release approved boats to their owners, and to continue with the administration of the claims process. A copy of the Order of Justice Conway dated March 31, 2015 in that regard is attached as **Appendix “E”**.

#### **B) ISSUES IN CONNECTION WITH THE LAGOON CITY FACILITY**

17. As set out in the Seventh Report, there were, and remain, several issues in relation to the Lagoon City facility. A brief description of certain of the issues is below.

##### **Unsuccessful attempts to negotiate with the landlord regarding the business of the Companies at the Lagoon City facility**

18. Shortly after its appointment, the Receiver attempted to engage the representatives of 2122915 Ontario Inc. (“**212**”), which is the landlord of the Lagoon City marina at which the Companies formerly carried on business, in discussions about the possible inclusion of a future lease opportunity and/or the business of the Companies at the Lagoon City location in a sales process. Those discussions were deferred by 212. The discussions did not take place before 212 instead advised the Receiver in late December, 2014 or early January, 2015 that it had concluded a new lease with Pride Marine Group (“**Pride Marine**”) effective May 1, 2015.

19. 212 has since attempted to make requests of the former employees of the Companies (whom the Receiver had engaged) for records relating to the customers and business of the Companies, which the Receiver has instructed the relevant personnel to disregard, out of

concern that 212 is attempting to obtain the goodwill of the Companies' business at Lagoon City without offering any value for the creditors of the Companies.

### **Issues in connection with the tenancy arrangements of the Companies**

20. 212 has asserted, including in an affidavit filed in these proceedings, that its tenancy arrangements were with Steven Crate and Greg Crate personally.

21. The Receiver has no information or documentation regarding the arrangements (if any) by which the Companies came to operate at the Lagoon City location. The books and records of the Companies disclose that all costs and revenue associated with operations at that location were booked by CMSL, and the signage and advertising (including on the internet) by Crate Marine.

22. During the Receivership of the Companies, the Receiver has continued to hold keys for the Lagoon City location (which were changed during the period of interim receivership following November 21, 2014), and has also maintained utilities, some security services, and insurance over the assets at the Lagoon City location. Copies of the keys were given to 212 as well.

23. 212 has advised that its tenancy arrangements with Steven Crate and Greg Crate end as of April 30, 2015. The Receiver has no information or documentation to the contrary.

24. Counsel for the Receiver has also been advised by counsel for Steven Crate and Greg Crate that 212 has begun steps to enforce its rights against them. Details of such steps are not known.

25. Counsel for 212 has in correspondence also raised the issue whether the Receiver is obliged to pay occupation rent for the period after December 8, 2014 for the Lagoon City marina. The Receiver does not seek any relief in connection with that issue, as 212 has not commenced a motion in that regard, and also because any issues in that regard do not need to be determined before Pride Marine takes possession on May 1, 2015 in the same manner as the other issues described in the Ninth Report.

## **Claimed boats**

26. There are approximately 218 boats for which the Receiver has, with the Court's approval, accepted customers' property proofs of claim and been authorized by the Court to release the boats to the customers upon payment of outstanding accounts owed by the customers for materials or services provided.

27. Customers whose claims have been accepted will wish to launch their boats in the near future and continuing over the coming weeks. The Receiver must comply with the Court's orders efficiently and with a minimum of inconvenience to the customers. However, the lack of access arrangements for the premises threatens to frustrate the Receiver from fulfilling its court-ordered responsibilities.

28. Subject to weather conditions, the time when boat owners will wish to launch their boats for the 2015 boating season is imminent and the peak time for doing so will be during the month of May. Moreover, virtually all of the boats with accepted claims have not yet been picked up by the approved claimants, despite the fact that Pride Marine will occupy the Lagoon City marina commencing May 1, 2015. Therefore it is urgent that the Receiver resolve how to deal with boats stored at Lagoon City on and after May 1, 2015.

29. In view of the urgency of the matter, particularly to customers with accepted claims to customer boats, it is important that there be a determination as soon as possible on the Receiver's access to the Lagoon City premises after April 30, 2015. The importance of permitting the Receiver to complete the property claims process in an efficient manner that serves the best interest of the customers who have filed claims cannot be overstated.

## **Unclaimed boats**

30. There are 132 unclaimed items (most of which are boats) that are currently held at the Lagoon City location. The Receiver continues to review what it can and should do with respect to such boats.

31. The options in this regard include securing access to the marina after April 30 in order to continue administering unclaimed assets for a short period of time in order to hopefully obtain more claims, or relocating such boats to other facilities under the control of the Receiver, which would be required due to the notice received from the landlord of this facility that another tenant takes possession as of May 1, unless other arrangements are made. Moving large numbers of boats would likely only be feasible if unclaimed boats were going to be liquidated, because there is likely considerable cost to moving and storing so many boats and there is similarly considerable value to the creditors of the Companies if these boats have no proper claimant.

### **Boats with Accounts Receivable**

32. The Receiver further notes that of the claims that have been approved for boats at the Lagoon City location, there are accounts receivable associated with repairs and/or storage services for 65 boats that amount to approximately \$122,000.

33. Retaining possession of such boats until accounts receivable are paid will accordingly not work in this case, because many boat owners will not try to deal with their boats until after May 1 – when the lease will have ended.

34. The Receiver is accordingly assessing options to enhance recovery of these accounts receivable, including maintaining control of such boats though access by the Receiver to the Lagoon City marina after April 30, 2015 or relocating such boats to other facilities controlled by the Receiver and then asserting liens pursuant to the *Repair and Storage Lien Act* until all such amounts are paid.

### **Property Proof of Claim by the landlord**

35. 212 has also submitted a Property Proof of Claim over substantially all the equipment and inventory of parts and supplies located at the Lagoon City marina.

36. The Receiver perceives issues with at least parts of 212's Property Proof of Claim. For example, in its Property Proof of Claim 212 appears to have simply copied the Receiver's

list of chattels at the Lagoon City location and attached it, a copy of which is attached as **Appendix “F”**.

37. The difficulty in that regard is that the Receiver arranged for an on-site meeting with representatives of 212 on January 23, 2015 to inspect the chattels and to compile lists of the chattels and what was at issue in 212’s claim to them, which had already been asserted in prior correspondence. The Receiver’s representative agreed with 212’s representatives to exchange lists, which the Receiver did through its counsel’s letter of January 28, 2015, a copy of which is attached as **Appendix “G”**.

38. In response, however, no list has been provided by 212. The Receiver is accordingly concerned that all the tangible personal property described in 212’s Property Proof of Claim may not be the property of 212.

39. The Property Proof of Claim by 212 was disallowed by the Receiver on March 6, 2015. A Notice of Dispute was sent to the Receiver by 212 on March 20, 2015 (the last day within the period allowed by the Property Claims Procedure Order). A copy of the Notice of Dispute is attached as **Appendix “H”**. The scope of the chattels claimed by 212 was narrowed in that document as compared to the Property Proof of Claim.

#### **Access Issues**

40. Given the rapidly approaching May 1, 2015 new tenancy, and the fact that the purchaser under the agreement of purchase and sale by which substantially all the assets of the Companies have been sold has elected (pursuant to that agreement) not to assume any possessory rights of the Companies at the Lagoon City location, the Receiver has attempted to ensure that these issues were resolved either by negotiation or adjudication prior to May 1, 2015 so that any tangible personal property that 212 has claimed, but was ultimately the property of the Companies (and thus was vested in the purchaser) or of third party property claimants, can be removed before the new tenant takes possession.

41. To this end, counsel for the Receiver has engaged in without prejudice discussions with counsel for 212 on issues including an access agreement to the Lagoon City premises after April 30, 2015, and has also engaged in with prejudice discussions.

42. The Receiver will not report on the without prejudice discussions in view of the settlement privilege that attaches to them. The Receiver will only note that due to scheduling issues (including religious observance for Passover) a planned meeting among the parties and counsel did not take place until April 14, 2015 and further exchanges took place by e-mail and letter until April 16, 2015, at which point the Receiver determined that on the record communications would be required to deal with issues that it believes need to be addressed before Pride Marine takes possession on May 1, 2015.

43. In terms of the with prejudice discussions, the Receiver wrote on April 17, 2015 to propose an agreement along the following terms:

- (a) Access terms shall initially be in force during the period of May 1 – June 15, 2015, subject to extension after that time period upon agreement of all the parties or court order.
- (b) 212 and Pride Marine shall cooperate with the Receiver in respect of, and facilitate, the Receiver's (a) discharge of its the duties and responsibilities in respect of the 352 customer boats (the "**Customer Boats**") pursuant to the Property Claims Orders and any other applicable orders of the Court (collectively, the "**Orders**"), and (b) release of the Customer Boats to persons with accepted property claims, any and all such actions and decisions being the sole responsibility of the Receiver at its discretion, subject to the terms of the Orders.
- (c) Without limiting the generality of the previous section, 212 and Pride Marine shall, at no charge to or consideration from the Receiver, but at the Receiver's risk, (a) permit the Customer Boats to continue to remain at the premises, (b) permit the Receiver and its duly authorized agents to have access to the premises to comply with the Orders and to take all necessary actions to preserve, protect and insure the Customer Boats as would a prudent owner thereof and (c) permit the Customer Boats for which property claims have been accepted to be removed from the premises by the Receiver and its duly authorized agents or by persons with accepted property claims at times mutually acceptable to 212, Pride Marine and the Receiver.
- (d) The agreement among the parties constituted by these accepted terms shall be without prejudice to the resolution by agreement or order of the outstanding issues and claims between the Receiver and 212, including 212's disallowed property proof of claim, which disallowance has been disputed by 212.

Attached as **Appendix "T"** is a copy of the letter dated April 17, 2015 from the Receiver's counsel to 212's counsel setting out these terms.

44. Counsel for 212 has responded that Pride Marine is amenable to working with the Receiver within the following parameters:

- (a) Access will be granted from May 1 to May 31, 2015;
- (b) Preferably only one representative of the Receiver is to have access at any given time;
- (c) The representative of the Receiver must be present seven days a week; and
- (d) The representative of the Receiver must be present on May 2-3, 2015.

Attached as **Appendix “J”** is a copy of the letter dated April 22, 2015 from 212’s counsel to the Receiver’s counsel setting out these terms.

45. Discussions regarding those matters are ongoing. Part of the issues that arise is that Pride Marine has not specifically agreed to in the terms proposed on April 17, 2015, specifically with regard to the access of the Receiver’s representatives and storage of Customer boats without charge.

#### **Property Claimed by 212**

46. Counsel for 212 has indicated that 212 objects to the removal of any of the chattels over which 212 maintains a claim under the PCPO as set out in its Notice of Dispute (attached as Appendix “H”).

47. Of the items claimed, only the “Marine Travellift” with serial number 21751087 has been accepted by the Receiver. The ownership of the remainder of the items claimed is either unclear to the Receiver, or the items in question seem to properly be property of the Companies. On April 27, 2015, counsel for 212 wrote to counsel for the Receiver requesting immediate possession of the Marine Travellift. Attached as Appendix “K” is a copy of the letter dated April 27, 2015 from 212’s counsel to counsel for the Receiver.

48. Pride Marine will take possession commencing May 1 and the Receiver believes that it is not appropriate to leave the chattels at issue at the Lagoon City location pending determination of the ownership dispute, or without adequate arrangements to safeguard the interests of the Companies in those assets.



49. In other correspondence, however, counsel for 212 (Randall Rothbart of Solmon Rothbart Goodman LLP) has demanded that the items listed in 212's Proof of Property Claim not be moved pending either further adjudication of the claim in accordance with the PCPO, or on consent.

50. The Receiver accordingly seeks advice and direction regarding removal of the assets under dispute, or regarding arrangements to safeguard those assets pending determination of the dispute such as the posting of adequate security by 212.

### C) CONCLUSION

51. The Receiver therefore requests advice and directions regarding the issues described above.

All of which is respectfully submitted this 28<sup>th</sup> day of April, 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)

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.

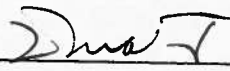
### **SERVICE AND NOTICE**

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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**Lawyers for Crawmet Corp.**

**TAB B**

**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

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CRATE MARINE SALES LIMITED

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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, flowing style.

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Per: Stuart Mitchell  
Senior Vice President



T A B C

**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

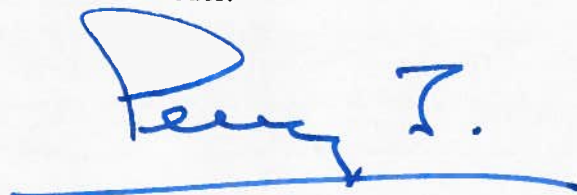
Any such notice or other communication by a Claimant shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day. Where the communication is to be by way of a form attached as a Schedule to this Order, such communication shall be in substantially the form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

---

**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")**

---

**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"

---

**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")

---

### 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"**

---

**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")

---

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 [●]**

---

**NOTICE OF DISALLOWANCE**

---

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:

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



**SCHEDULE "E"**

---

**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](mailto: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.

TAB D



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

**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.

**SEVENTH REPORT OF THE RECEIVER**

**MARCH 29, 2015**

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**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.

**SEVENTH REPORT OF THE RECEIVER**

**MARCH 29, 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, 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 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 certain of the Companies and (iii) to substitute A. Farber & Partners Inc. as bankruptcy trustee of certain 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 (the “**Interim Receiver**”) 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 pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny.

4. Following two intervening hearings, 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.

5. Since December 8, 2014, the Receiver has taken the following steps and brought the following motions, all of which have been more fully set out in the First, Second, Third, Fourth and Fifth reports of the Receiver and the Supplementary Report to the Fifth Report of the Receiver:

- (a) On December 12, 2014, the Receiver and Trustee brought a motion to correct a typographical error in the Order dated December 8, 2014 regarding a misdescription of 1282648 Ontario Limited, and for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief. Mr. Justice Newbould issued an Amended Order dated December 8, 2014, a copy of which is attached as **Appendix “A”**. Mr. Justice Newbould also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief;
- (b) 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 the Interim Receiver; (iv) increase the borrowing power of the Receiver; and (v) as discussed in more detail below, establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. Mr. Justice Penny issued Orders granting that relief;
- (c) On January 14, 2015, the Receiver and Trustee commenced an application against Steven Crate, Gregory Crate, Lynn Marko, Ryan Crate, and Robin Crate (a.k.a. Robin Silver) and sought and obtained a certificate of pending litigation without notice regarding properties held in their name in the

vicinity of the lands owned by the Companies in Keswick but for which the Companies appear to have provided all funds for the acquisition and maintenance of those properties;

- (d) On January 30, 2015 the Receiver and Trustee commenced a further application against Ryan Crate and sought and obtained a certificate of pending litigation with notice regarding further a property held in his name at 14 Highland Ave. in Belleville, but for which the Companies appear to have provided all funds for the acquisition and maintenance of that property;
- (e) On February 13, 2015, the Receiver brought a motion for approval of a stalking horse sales process, which is fully described in the Receiver's Third Report dated February 8, 2015. By order dated February 18, 2015, the Honourable Mr. Justice Pattillo granted that relief;
- (f) On February 19, 2015 the Receiver commenced applications for bankruptcy orders against Steven Crate, Gregory Crate, Lynn Marko and the estate of Lloyd Crate in connection with amounts owing by them to the Companies. These applications are disputed and will be proceeding for hearing on April 27 and April 28, 2015;
- (g) On March 13, 2015, the Receiver brought a motion to approve its and its counsel's fees and disbursements to February 8, 2015 and to increase the Receiver's Borrowing Charge, as defined in the Appointment Order, to \$2,000,000.00. The Honourable Madam Justice Conway granted the relief sought; and
- (h) On March 20, 2015, after obtaining a preservation Order without notice from Mr. Justice Newbould respecting the subject matter of the motion, the Receiver brought a motion on notice seeking, inter alia, declarations that certain life insurance policies issued by Transamerica Life Canada and held by 1382415 Ontario Ltd. ("415") and 1382476 Ontario Ltd. ("416") on the lives of Steven Crate, Gregory Crate and Lynn Marko and the proceeds thereof are property of 415 and 416, and finding Steven Crate, Gregory Crate and Lynn Marko in contempt of the Order and Amended Order of Mr. Justice Newbould dated December 8, 2014. On March 20, 2015, Madam Justice Conway made an order which, among other things, adjourned the motion to April 29, 2015, continued the preservation Order and required the disclosure of records pertaining to transactions in respect those proceeds.

## **PURPOSE OF THIS REPORT**

6. This is the Seventh report of the Receiver (the "**Seventh Report**"). Its purpose is to seek an order in the form attached as Schedule "A" to the Receiver's Notice of Motion. The Order is sought because the Receiver has administered claims in respect of more than 900

chattels in the possession of the Companies, many of which are boats or yachts with quite some value, and with the majority of the review on claims now complete, the Receiver wishes to report to the Court and seek approval of its activities in that regard.

7. The Seventh Report and associated motion is being returned before the Court on March 31, 2015 at the same time as the Sixth Report of the Receiver and associated motion, which pertain to approval of and a vesting order for the transaction with the purchaser under the stalking horse agreement following a stalking horse sales process authorized by the February 18, 2015 Order.

## **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 Seventh 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 Seventh Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) SUMMARY OF STEPS UNDERTAKEN IN FURTHERANCE OF THE PROPERTY CLAIMS PROCEDURE, AND THE PROPERTY CLAIMS DATABASE**

### **Background to the Property Claims Procedure**

9. The basis for the Receiver's request to implement a property claims procedure was set out in paragraphs 21 to 27 of the Second Report of the Receiver and Trustee dated December 19, 2013, a copy of which is attached as **Appendix "B"**, without appendices.

10. In summary, there was substantial uncertainty regarding what tangible personal property was owned by the Companies, and what was owed by third parties (and in some such cases, precisely which third party owned the property). This was due to the state of the Companies' books and records and also due to the manner in which the Companies had conducted their business. The tangible personal property at issue included boats held and

stored for customers, inventory of boats apparently held by the Companies for sale, equipment apparently owned or leased by the Companies, other assorted items such as miscellaneous chattels apparently owned by customers (boat trailers, dinghies, and other recreational items), and boat parts owned by the Companies.

11. The uncertainty arose most frequently with boats, because the business of the Companies had been comprised of both the sale and resale of new and used boats, and also the maintenance and storage (during boating months in dock or slip facilities, and during winter on land while shrink-wrapped) of boats belonging to customers. In that regard, there were more than 700 boats in the possession of the Companies upon appointment of the Receiver.

12. Examples of such issues had been previously noted in reports made by the Interim Receiver, which included:

- (a) boats in the Companies' possession which were sold without discharging loans against them owing by prior owners when sold to the Companies,
- (b) boats in the Companies' possession which were financed by third parties, or pledged as security for amounts owing by the Companies to third parties,
- (c) boats sold by the Companies as broker or intermediary without payment to the vendor (or secured creditor if applicable), which remain in the Companies' possession; and
- (d) boats in the Companies' possession which appeared to be under contract for sale to purchasers who paid some or all of the purchase price, but the transactions did not close. The Companies' books and records did not record all of these transactions, and were not always accurate, as explained below.

13. In light of these concerns, and in order to obtain an accurate factual foundation for the evaluation of property claims to the boats and other tangible personal property in the Companies' possession, the Receiver sought and obtained the Property Claims Procedure Order on December 23, 2014, a copy of which is attached as **Appendix "C"**.

14. The Property Claims Procedure Order also extends to tangible personal property other than boats, and also extends to the interests of secured creditors, including those who have registrations under the *Personal Property Security Act*.



15. The basis for including the claims of creditors in the claims process was that the Companies appeared to have in many cases entered into loan or financing arrangements with lenders based upon certain understandings, including unregistered security agreements by which (for example) title to a boat was said to have been held by a lender in a fashion that might be security for the loan, or might be ownership. The reports of the Interim Receiver also noted that, in several cases involving Crawmet and other lenders, the Companies appear to have nonetheless sold the boat(s) purportedly held as security. The Property Claims Procedure Order accordingly extended to creditor claims in order to allow the Receiver to obtain a full understanding of the various secured creditors.

### **The Companies' Records**

16. Upon appointment, the records available to the Receiver regarding boats and other chattels in the possession of the Companies were comprised of a series of Excel spreadsheets provided by the Companies which listed the boats and other assets in the Companies' possession (the "**Companies' Property Listing**").

17. The Companies' Property Listing did not record whether customer-owned boats were subject to security interests of third parties.

18. Further, the Companies' Property Listing contained numerous errors and omissions. For instance, it did not reflect all the boats that were on site, and included some boats that had been sold years previously. The Receiver has been updating the Companies' Property Listing based on information obtained by former employees of the Companies retained by the Receiver, including Greg Staples, who works out of the Keswick Facility. Mr. Staples contributed to this by investigating the boats that were on the premises, and providing the Receiver with missing information, including hull identification numbers or licence numbers for the boats. This task was complicated by the fact that the boats had been shrink wrapped for winter storage, and therefore in many cases this information is not clearly visible or easily ascertainable without removing a portion of the shrink wrap.

## **Notice and Publication Pursuant to the Property Claims Procedure Order**

19. 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 approximately 850 Known Claimants (as defined in the Property Claims Procedure Order) for which it had addresses. A further 100 property claim packages were emailed as inquiries were made to the Receiver. The Receiver is also aware that an unknown number of further claim packages were downloaded from its website, because certain people indicated that they wished to do so rather than receive a hard copy.

20. 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 Barrie Advance and Orillia Today on January 8 and 15, 2015. Copies of these notices are attached as **Appendix "D"**.

## **Steps Taken by the Receiver to Review Claims**

21. Once received, each Proof of Property Claim was reviewed by the Receiver and entered into a database (the "**Property Claims Database**"). The Receiver waited until the Claims Bar Date of January 30, 2015 before reviewing the Proofs of Property Claim and making a determination about them. This was done so the Receiver could identify any competing Proof of Property Claims (where multiple Proof of Property Claims were received for the same item). The time that was required to do this review was lengthened by the Companies' poor record keeping - updating the Companies' Property Listing took several weeks.

22. Where a Proof of Property Claim was for more than one item, a separate line in the Property Claims Database was created for each item (an "**Item Claim**"). The Receiver's analysis and categorization was accordingly done on the basis of individual Item Claims, rather than by Proof of Property Claims, because where a Proof of Property Claim related to

more than one item, each item might be reviewed and administered differently by the Receiver as discussed below.

23. The Receiver compared each Item Claim that it received to the information in the Companies' Property Listing, which was being updated on a weekly basis by former employees of the Companies retained by the Receiver as described above.

24. The Receiver categorized the Item Claims that were received by 5:00pm on January 30, 2015, which was the deadline under the Property Claims Procedure Order (the "**Claims Bar Date**"), as follows:

- a) where an Item Claim properly described an item in the Receiver's possession, demonstrated a proper basis for the claim (such as asserted ownership consistent with records of ownership in the Companies' Property Listing, or the provision of satisfactory documentation), and did not involve any competing claims, the Receiver approved the claim;
- b) where an Item Claim was unclear or otherwise required more information such as a missing registration or licence number or an inadequate description of the item, the Receiver marked the claim as requiring more information and then corresponded with the claimant directly to obtain it;
- c) where an Item Claim involved an item for which there is one or more competing claim(s) that have been filed with the Receiver, or involves an item in which the Companies have an interest and which the Receiver believes requires further review, the Receiver has marked such claims as unresolved;
- d) where an Item Claim did not:
  - i) describe an item in the Receiver's possession, including after further inquiry by the Receiver of the claimant if applicable, or
  - ii) disclose a proper foundation for, or contain sufficient proof of, the interest claimed,

the Receiver disallowed the claim.

25. There were several instances where ownership claims were asserted to boats that were different than the ownership recorded in the Companies' Property Listing and no claim had been received from the owner according to the Companies' records. In those instances, the Receiver followed up with the owner listed on the Companies' Property Listing to attempt to resolve the matter. In most such cases, the person listed on the Companies' Property Listing indicated that they had sold the boat to the person who submitted the Item Claim, such that the Item Claim was then allowed.

26. After reviewing the Item Claims filed, the Receiver also reviewed the Companies' Property Listing for items for which no Item Claims were received. For boats that appeared to be owned by customers according to those records, the Receiver called the person(s) listed as the owners in order to attempt to ensure that items that properly belonged to third parties would be returned to their true owners. This prompted some Property Proofs of Claim to be filed.

### **Late Claims**

27. Where a Proof of Property Claim was not received by the Claims Bar Date, the Receiver has nonetheless reviewed that claim as outlined above, but has noted that it was late on the Property Claims Database.

28. The Receiver is of the view that if such an Item Claim would have been otherwise allowed under the criteria noted above in paragraph 24(a), it should be accepted notwithstanding the late filing. The reason for this is due to the significant number of customer-owned boats and other property within the Companies' possession, which the Receiver believes should not be taken from the true owners solely due to a matter of late filing.

### **Item Claims For Customer Chattels Other Than Boats That Have Not Been Reviewed**

29. In the course of reviewing the Property Proofs of Claim, the Receiver found that many claimants had included several, and in some cases many, items of property in addition to a

boat. These items were often things like picnic tables, barbeques, lifejackets, dinghies and trailers.

30. Such items are, in the opinion of the Receiver, of a nature such that extensive review of the ownership status or location of those items on the premises of the Companies is not practical. The value of the items in question is modest, such that the cost of review by the Receiver's representatives would be disproportionate to their value, and any possible recovery from items like this that are not claimed (and thus could be sold for the benefit of creditors) would not offset the costs of review. Further, such items are in most cases stored in (or in the case of trailers, under) a boat that has been shrink-wrapped, such that the Receiver would be unable to do a review without opening the shrink wrap, which should not be done before boats are taken out of storage (or would have to be redone, which would entail significant expense).

31. The Receiver has accordingly not done any review or administration of such Item Claims. It is has not confirmed that any such items are in the possession of the Receiver.

## **B) CLASSIFICATION OF CLAIMS**

32. The Proof of Property Claims received resulted in 922 Item Claims.

33. As at the close of business on March 27, 2015, the Item Claims submitted to the Receiver have been categorized as follows. The categories are described in further detail below.

<b>Category</b>	<b>Number</b>
Approved	663
Late but otherwise Approved	67
Unresolved	37
Disallowed	20
Contested	36
Not Reviewed	99
Total	922

## Approved Claims

34. There are 663 Item Claims that the Receiver has approved, subject to authorization by the Court.

35. Where the Receiver has concluded that an Item Claim should be approved, it has issued a letter in the form attached as **Appendix “E”**, which described the further authorization that would be sought from the Court and is now requested in this motion.

36. Letters allowing Item Claims were mailed starting at the end of February 2015 and continuing to date.

37. A listing of the 663 Item Claims that the Receiver has approved, with redactions for personal identifying information of the claimants, is attached as **Appendix “F”**. A full version of this listing is attached as **Confidential Appendix “A”**.

38. The Receiver requests authority to accept these 663 Item Claims.

## Late But Otherwise Approved Item Claims

39. There are 67 Item Claims which were received after the Claims Bar Date, but which the Receiver otherwise proposes to approve, subject to authorization by the Court.

40. The claimants in question for these Item Claims have not been notified that the claim in question has been approved or disallowed. The Receiver intends to correspond with the claimants in question following this motion and direction from the Court.

41. A listing of the 67 Item Claims that were filed after the Claims Bar Date but which the Receiver proposes to approve, with redactions for personal identifying information of the claimants, is attached as **Appendix “G”**. A full version of this listing is attached as **Confidential Appendix “B”**.

42. The Receiver requests authority to accept these 67 Item Claims.

## **Unresolved Item Claims**

43. To date, there are 37 Item Claims for which the Receiver has insufficient information to administer the claims. Some such Item Claims were received after the Claims Bar Date. The Receiver continues to correspond with the claimants and to review the available sources of information in respect of these claims.

44. A listing of the 37 unresolved Item Claims, with redactions for personal identifying information of the claimants, is attached as **Appendix “H”**. A full version of this listing is attached as **Confidential Appendix “C”**.

45. The Receiver requests authority to review these Item Claims further and to accept or disallow them based on the available information and the conclusions of the Receiver’s review, including if appropriate advice of the Receiver’s counsel.

46. Consistent with the administration of claims to date, the Receiver also requests authority to administer the unresolved claims that have already been provided to the Receiver as at end of day on March 27, 2015 as if they had been received by the Claims Bar Date.

## **Disallowed Claims**

47. The Receiver has issued one Notice of Disallowance respecting the substance of an Item Claim with respect to the claim by the landlord of the Lagoon City location (described in paragraphs 79-85, below).

48. The Receiver has disallowed, or is in the process of disallowing, 19 more Item Claims, on the basis that the Receiver does not have the boat or asset in question in its possession, or the claim asserted is without foundation. A listing of the Item Claims at issue is attached as **Appendix “I”**.

49. The Receiver has not to date relied upon lateness of any Proof of Property Claim as the basis for disallowance.

## Contested Claims

50. The Receiver has also identified 36 Item Claims involving competing interests. Such Item Claims include cases where multiple claimants filed an Item Claim for the same boat, or a Property Claim was filed for something that the Receiver believes may be the property of the Companies.

51. Contested claims can be broken into the following subcategories :

- (a) two (or more) Item Claims filed for the same asset: 27
- (b) item that may properly belong to the Companies: 10

52. The Receiver is attempting to further evaluate these Item Claims and formulate a recommendation as to how such Item Claims should be further adjudicated as contemplated in the Property Claims Procedure Order.

53. A listing of these 37 contested Item Claims, with redactions for personal identifying information of the claimants, is attached as **Appendix “J”**. A full version of this listing is attached as **Confidential Appendix “D”**.

## Item Claims For Customer Chattels Other Than Boats That Have Not Been Reviewed

54. A list of the 99 Item Claims for customer chattels other than boats that the Receiver has received, but not reviewed due to concerns of practicality (as discussed at paragraphs 29-31 above), is attached with redactions for personal identifying information of the claimants as **Appendix “K”**.

55. The Receiver requests that it be authorized, but not obligated, not to administer, accept or disallow any of these Item Claims. If appropriate, the Receiver may accept or disallow Item Claims in certain cases. Otherwise the claimants may make whatever arrangements they deem fit to attend at the premises of the Companies once the purchaser under the agreement of purchase and sale is in place and attempt to locate the items in question (which the Receiver is unable to state are, or are not, on the premises and the purchaser under the asset purchase agreement will therefore only be able to deal with to the extent that customers can locate the items).



### **C) UNCLAIMED PROPERTY**

56. There continue to be approximately 320 boats and other items of value that the Receiver has identified on the books and records of the Companies and that may have customers or other third parties as owners, but remain unclaimed.

57. The Receiver requests authority from the Court to continue its administration of these unclaimed items and to accept or disallow any Property Proofs of Claim that are made in respect of them in accordance with the provisions of the Property Claims Procedure Order without further Order of the Court, including by accepting claims submitted after the Claims Bar Date in circumstances considered appropriate by the Receiver.

### **D) RELEASE OF PROPERTY SUBJECT TO ACCEPTED CLAIMS**

58. Subject to one further issue, the Receiver requests authority to release property for which it has approved Item Claims as described in this Report, or for which there are existing or further Item Claims that the Receiver subsequently determines should be accepted.

59. The further issue that will apply for release of any property is whether there is an outstanding account receivable for repair and/or storage services supplied by the Companies before December 8, 2014 or by the Receiver since that time. For example, many customers have not paid the rental agreement amounts for boat slip and winter storage service, which includes storage over this winter, and many other customers reversed the credit card authorizations that had been given to that effect.

60. Since all accounts receivable, including both those owing to the Companies before December 8, 2014 and those owing to the Receiver after that time, are going to be conveyed to the purchaser under the agreement of purchase and sale, the release of property at locations controlled by the Receiver or the purchaser should be dependent on outstanding accounts receivable being paid.

61. The Receiver accordingly requests that it be authorized, but not obligated, to release property subject to Item Claims to the relevant claimant as follows:

- a) all approved claims set out in Appendix “F” and Confidential Appendix “A”;

- b) all late but otherwise approved claims set out in Appendix “G” and Confidential Appendix “B”;
- c) any unresolved claims set out in Appendix “H” and Confidential Appendix “C” that the Receiver concludes should be accepted; and
- d) any unclaimed items that the Receiver concludes should be accepted.

#### **E) ISSUES IN CONNECTION WITH THE QUEBEC FACILITY**

62. The Receiver notes that of the unclaimed boats, 16 are currently held at the Quebec location.

63. The Receiver has concerns, however, that the efficacy of the notices sent and published pursuant to the Property Claims Procedure Order may have been attenuated for customers of the Quebec location, because those notices were exclusively in English.

64. The Receiver has accordingly provided its Quebec agent on March 17 with a French language version of the property claims package to the known customers of the Quebec location, which is being mailed to the known contacts for these 16 boats.

65. The Receiver anticipates that Property Proofs of Claim will be filed in respect of these boats. If there are any boats that continue to be unclaimed after a further period of time, the Receiver will report further to the Court at that time and request any relief or directions that may be appropriate.

#### **F) ISSUES IN CONNECTION WITH THE LAGOON CITY FACILITY**

66. There are several issues in relation to the Lagoon City facility. A brief description of certain of the issues is below. The Receiver will report to the Court subsequently if any relief or directions are required.

#### **Unsuccessful attempts to negotiate with the landlord regarding the business of the Companies at the Lagoon City facility**

67. Shortly after appointment, the Receiver attempted to engage the representatives of 2122915 Ontario Inc. (“212”), which is the landlord of the Lagoon City marina at which the Companies formerly carried on business, in discussions about the possible inclusion of a future lease opportunity and/or the business of the Companies at the Lagoon City location in a

sales process. Those discussions were deferred by 212. The discussions did not take place before 212 instead advised the Receiver in late December, 2014 that it had concluded a new lease with Pride Marine group effective May 1, 2015.

68. 212 has since attempted to make requests of the former employees of the Companies (whom the Receiver had engaged) for records relating to the customers and business of the Companies, which the Receiver has instructed the relevant personnel to disregard, out of concern that 212 is attempting to obtain the goodwill of the Companies' business at Lagoon City without offering any value for the creditors of the Companies.

### **Issues in connection with the tenancy arrangements of the Companies**

69. 212 has asserted, including in an affidavit filed in these proceedings, that its tenancy arrangements were with Steven Crate and Greg Crate personally.

70. The Receiver has no information or documentation regarding the arrangements (if any) by which the Companies came to operate at the Lagoon City location. The books and records of the Companies disclose that all costs and revenue associated with operations at that location were booked by Crate Marine Sales Limited, and the signage and advertising (including on the internet) by Crate Marine.

71. During the Receivership of the Companies, the Receiver has continued to hold keys for the Lagoon City location (which were changed during the period of interim receivership following November 21, 2014), and has also maintained utilities and insurance over the assets at the Lagoon City location.

72. 212 has advised that its tenancy arrangements with Steven Crate and Greg Crate end as of April 30, 2015. The Receiver has no information or documentation to the contrary.

73. Counsel for the Receiver has also been advised by counsel for Steven Crate and Greg Crate that 212 has begun steps to enforce its rights against them. Details of such steps are not known.

## **Unclaimed boats**

74. Similar to the Quebec facility there are 134 unclaimed items (most of which are boats) that are currently held at the Lagoon City location. The Receiver continues to review what it can and should do with respect to such boats.

75. The options in this regard include relocating such boats to other facilities under the control of the Receiver, which would be required due to the notice received from the landlord of this facility that another tenant takes possession as of May 1. This may be useful because there is likely considerable value to the creditors of the Companies if these boats have no proper claimant, in which case the Receiver would dispose of them for value, likely through auction or liquidation.

## **Boats with Accounts Receivable**

76. The Receiver further notes that of the claims that have been approved for boats at the Lagoon City location, there are accounts receivable associated with repairs and/or storage services for 62 boats that amount to of approximately \$122,000.

77. The approach noted above at paragraphs 58-60 of retaining possession of such boats until accounts receivable are paid will accordingly not work in this case, because many boat owners will not try to deal with their boats until after May 1.

78. The Receiver is accordingly assessing options to enhance recovery of these accounts receivable, including relocating such boats to other facilities controlled by the Receiver and then asserting liens pursuant to the *Repair and Storage Lien Act* until all such amounts are paid.

## **Property Proof of Claim by the landlord**

79. 212 has also submitted a Property Proof of Claim over substantially all the equipment and inventory of parts and supplies located at the Lagoon City marina.

80. The Receiver perceives issues with at least parts of 212's Property Proof of Claim. For example, in its Property Proof of Claim 212 appears to have simply copied the Receiver's

list of chattels at the Lagoon City location and attached it, a copy of which is attached as **Appendix “L”**.

81. The difficulty in that regard is that the Receiver arranged for an on-site meeting with representatives of 212 on January 23, 2015 to inspect the chattels and to compile lists of the chattels and what was at issue in 212’s claim to them, which had already been asserted in prior correspondence. The Receiver’s representative agreed with 212’s representatives to exchange lists, which the Receiver did through its counsel’s letter of January 28, 2015, a copy of which is attached as **Appendix “M”**.

82. In response, however, no list has been provided by 212. The Receiver is accordingly concerned that all the tangible personal property described in 212’s Property Proof of Claim may not be the property of 212.

83. The Property Proof of Claim by 212 was disallowed by the Receiver on March 6, 2015. A Notice of Dispute was sent to the Receiver by 212 on March 20, 2015 (the last day within the period allowed by the Property Claims Procedure Order).

84. In other correspondence, counsel for 212 (Randall Rothbart of Solmon Rothbart Goodman LLP) has demanded that the items listed in 212’s Proof of Property Claim not be moved pending either further adjudication of the claim in accordance with the Property Claims Procedure Order, or on consent.

85. The Receiver continues to review 212’s Property Proof of Claim and Notice of Dispute. Given the rapidly approaching May 1, 2015 new tenancy, and the fact that the purchaser under the agreement of purchase and sale by which substantially all the assets of the Companies will be sold has elected (pursuant to that agreement) not to assume any possessory rights of the Companies at the Lagoon City location, the Receiver intends to attempt to ensure that these issues are resolved either by negotiation or adjudication prior to May 1, 2015 so that any tangible personal property that 212 has claimed but is ultimately the property of the Companies can be removed before the new tenant takes possession.

## G) ASSERTED RIGHTS OF 1889863 ONTARIO INC. TO THE BELLEVILLE LIFT

86. The Receiver has been advised that there is a travel lift described as a “New Lift 50 BFM II S/N 3495-0713” (the “**Lift**”) at the Belleville marina in which one of the Companies, Crate Marine Sales Limited (“**CMS**”) may have an interest.

87. The Belleville marina is, or was previously, operated by Crate Belleville Inc. (“**CBI**”), which is a company to which CMS provided assistance, loans and funds for the operations.

88. Part of the assistance provided by CMS to CBI appears to have been the possession and use of the Lift, which CMS leased from 1889863 Ontario Inc. (“**188**”) as described in the letter from counsel for 188 dated February 24, 2015 and the copy of the lease enclosed (the “**Lift Lease**”), a copy of which is attached as **Appendix “N”**.

89. The Receiver was advised of the lease arrangements for the Lift between 188 and CMS in January of 2015. In the second week of February, however, the Receiver was advised by an interested party (the landlord of the Belleville marina, who hopes to obtain a new tenant to operate the marina for the 2015 boating season and who also wishes to obtain the use of the Lift) that the Lift Lease had been terminated as of September 14, 2014 by 188, which had been acknowledged by Greg Crate signing for CMS. Counsel for 188 also attached what purport to be the relevant documents in that regard in his letter at Appendix “N”.

90. The Receiver has reviewed the issues in connection with the Lift further, and has determined that:

- a) the Lift Lease was not registered pursuant to the *Personal Property Security Act*, which was required because it was for a period of more than one year;
- b) the payments under the Lift Lease had been made up to and including August 1, 2014 were been made by CMS;
- c) CBI appears to have made the payments under the Lift Lease commencing September 1, 2014 to February 1 of 2015 (which is different than the advice in the letter from counsel for 188 at Appendix “N” that those payments ceased in January);
- d) the Lift Lease appears to have been assigned to or assumed by CBI after the purported termination of the Lift Lease to CMS on September 14, 2014;

- e) CMS provided CBI with funds in the amount of \$10,000 on August 29 and \$5,000 on September 3, 2015, and CBI also sold boat inventory that was the property of CMS, such that CMS may have been directly or indirectly funding CBI's payments under the Lease Lift after the purported termination of the Lift Lease on September 14, 2014; and
- f) there are no documents that have been found in the possession of the Companies that corroborate the purported notice of termination of acknowledgement dated September 14, 2014 in relation to the Lift Lease, and a request for such documents from 188 has not been answered to date.

91. The Receiver notes that 188 has not filed a Property Proof of Claim in relation to the Lift. As stated in the letter attached as Appendix "N", 188 asserts that because the Lift was in the possession of CBI on the December 8, 2014, it was not in the possession of the Companies or of someone on their behalf within the meaning of the Property Claims Procedure Order.

92. The Receiver seeks the advice and direction of the Court as to whether 188 has an interest in the Lift that would rank ahead in priority to that of Crawmet (which the Receiver believes has general first-ranking security over the personal property of CMS). The Receiver requests that a schedule for the hearing of a motion on this issue be set.

## H) CONCLUSION

93. The Receiver therefore requests and Order in the form attached as Schedule "A" to its Notice of Motion.

All of which is respectfully submitted this 29<sup>th</sup> day of March, 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.**

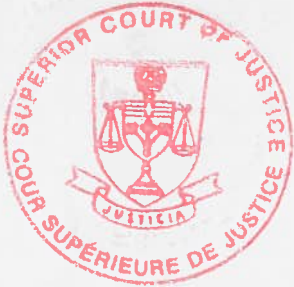


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Per: Stuart Mitchell  
Senior Vice President

# T A B L E





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

THE HONOURABLE MADAM ) TUESDAY, THE 31ST  
JUSTICE CONWAY )  
) DAY OF MARCH , 2015

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.

**CLAIMS ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc. in its capacity as the Court-appointed Receiver (in such capacity, the “Receiver”), without security, of all the assets, undertakings and properties (collectively, the “Property”) 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 attached as Schedule “A” to the Notice of Motion, amongst other things, approving the Seventh Report of the Receiver dated March 29, 2015 (the “Seventh Report”), and authorizing the Receiver to take certain steps for purposes of the Property Claims Procedure Order dated December 23, 2014 (the “PCPO”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report, and the appendices thereto, and on hearing the submissions of counsel for the Receiver and the other parties appearing on the counsel slip, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of R. Brendan Bissell sworn March 30, 2015, filed.

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and the Motion Record is hereby abridged and the service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the Seventh Report, and the activities, decisions, and conduct of the Receiver and its counsel as set out in the Seventh Report be and hereby are approved.
3. **THIS COURT ORDERS** that unless otherwise defined, the capitalized terms used in this Order shall have the meaning ascribed to them in the the Property Claims Procedure Order dated December 23, 2014 (the "PCPO").
4. **THIS COURT ORDERS** that, for purposes of administering the PCPO and discharging its duties thereunder the Receiver be and hereby is authorized:
  - a) to accept within the meaning of the PCPO those Property Claims made under the PCPO that the Receiver has approved as set out in Appendices "F" and "G", and Confidential Appendices "A" and "B" to the Seventh Report;
  - b) in its discretion to accept, disallow or seek determination within the meaning of the PCPO of those Property Claims made under the PCPO for which the Receiver has not yet completed its review as set out in Appendix "H" and Confidential Appendix "C" to the Seventh Report;
  - c) to administer all Property Claims made under the PCPO that were delivered to the Receiver by end of business on March 27, 2015 as if all such claims were received by the Claims Bar Date stipulated in the PCPO, including, without limiting the generality of the foregoing, the claims referred to in paragraphs 3(a) and (b), above; and

- d) in its discretion to administer any Property Claim made under the PCPO that is delivered to the Receiver after the end of business on March 27, 2015 as if such claim had been received by the Claims Bar Date stipulated in the PCPO, and in its discretion accept, disallow or seek determination of those claims within the meaning of the PCPO;

5. **THIS COURT ORDERS** that the Receiver be and hereby is authorized, but not obliged, not to review or in any way administer, accept or disallow those Property Claims made under the PCPO as set out in Appendix "K" to the Seventh Report.

6. **THIS COURT ORDERS** that the Receiver be and hereby is authorized, but not obliged, to release the following tangible personal property in the discretion of the Receiver, including upon payment by any claimant of any outstanding accounts for materials or services supplied by the Companies or the Receiver:

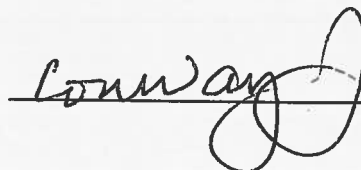
- a) the property subject to those Property Claims set out in Appendices "F" and "G" and Confidential Appendices "A" and "B" to the Seventh Report;
- b) the property subject to those Property Claims set out in Appendix "H" and Confidential Appendix "C" that the Receiver concludes should be accepted; and
- c) the property subject to any Property Claims that may be received after the date of this Order that the Receiver concludes should be accepted.

7. **THIS COURT ORDERS** that Confidential Appendices "A", "B", "C" and "D" to the Seventh Report be sealed until further Order of this Court.

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

MAR 31 2015

MB

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**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. CV-14-10798-0CL**

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

**CLAIMS 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 capacity as the 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.

**T A B F**

# SRG

Solmon Rothbart Goodman LLP  
Barristers

Melvyn L. Solmon, B.A.Sc., LL.M. (Harv) \*\*

Randall M. Rothbart, B.A., LL.B.

Mark L. Goodman, B.A., LL.B.

Avrum D. Slodovnick, LL.B.

Nancy J. Tourgis, B.Sc.H., LL.B.

James P. McReynolds, B.Comm., LL.B.

Raffaele Sparano, B.A.(Hon.), LL.B.

Matthew Valitutti, B.A., LL.B.

Cameron J. Wetmore, B.A.C.S., LL.B.

Ryan R. McKeen, B.A.(Hon.), J.D.

Eric P. Borzi, B.A.(Hon.), LL.B.

Member of the New York Bar \*\*

January 30, 2015

**SENT VIA EMAIL:** [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)  
**FAX:** (416) 496-3839  
**AND PROCESS SERVER**

A.FARBER & PARTNERS INC.  
Court- appointed receiver of Crate Marine Sales Limited,  
F.S. Crate & Sons Limited, 1330732 Ontario Limited,  
1328559 Ontario Limited, 12822648 Ontario Limited,  
1382415 Ontario Limited, and 1382416 Ontario Limited  
150 York Street, Suite 1600  
Toronto, ON, M5H 3S5

Attention: Gena Lowe

Dear Ms. Lowe:

Re: 2124915 Ontario Inc. re: Crate Marina Receivership  
Our File No.: 17427

We act for 2124915 Ontario Inc.

Attached please find our client's Proof of Property Claim, delivered pursuant to the Order of the Honourable Mr. Justice Penny, dated December 23, 2014 (the "Order").

Please note that this Property Claim is made without prejudice to the position and objections of 2124915 Ontario Inc. as to whether the Order applies to claims it has for chattels at the Lagoon City facility, in accordance with paragraph 7 of the Order.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP



James P. McReynolds  
JPM/mg  
Encl.

[jmcreynolds@srglegal.com](mailto:jmcreynolds@srglegal.com)

375 University Ave., Suite 701, Toronto, ON M5G 2J5

T 416 947.1093 F 416 947.0079

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")

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

A. PARTICULARS OF CLAIMANT:

1. Full Legal Name of Claimant: 2124915 Ontario Inc.

(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):

145 Adelaide St. W., Suite 500, Toronto, ON, M5H 4E5

3. Telephone Number: (416) 869-2735

4. E-Mail Address: mcallery@taliskercorp.com

5. Facsimile Number:

6. Attention (Contact Person): Maeve Callery

7. Has the Property Claim been sold or assigned by the Claimant to another party [check (A) 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, Maeve Callery, of the City of Toronto, Province of Ontario,

do hereby certify:

(a) that I [check one]

am the Claimant of the Debtor; OR

am the authorized agent of



- (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):

See Schedule "A" attached. This Property Claim is made without prejudice to the position and objections of 2124915 Ontario Inc. as to whether the Order of the Honourable Mr. Justice Penny, dated December 23, 2014, applies to claims it has for chattels at the Lagoon City facility, in accordance with paragraph 7 of that Order.

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

See relevant portions of the Lease between Lagoon City Holdings Inc. and Steve Crate and Greg Crate dated May 1, 2005, attached. Since the formation of the Lease, Lagoon City Holdings Inc., has sold and assigned all of its rights and obligations as landlord to 2124915 Ontario Inc.

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:

2124915 Ontario Inc. Property Claim is for all machinery and equipment, including, without limitation, the travel lift on the Demised Premises and owned by the Landlord, including the tangible property listed in Schedule "A" and all fixtures on or about the Demised Premises in accordance with the Lease dated May 1, 2005.

~~(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.

See Schedule "A" and relevant excerpts from the Lease dated May 1, 2005, attached.

**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

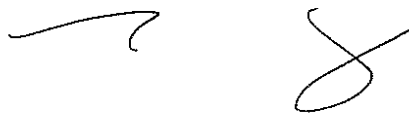
Attention: Gena Lowe  
Telephone: (416) 496-3762  
E-mail [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)  
Fax: (416) 496-3839

**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 Toronto this 30<sup>th</sup> day of January, 2015

Signature of Claimant



# SCHEDULE "A"

Lagoon City Marina  
Machinery, Equipment, Travel Lift,  
etc., January 29 2015

Location	Quantity	Item, and Where Available, Serial Number (SN)
<u>Retail and Office Area:</u>	3	Desks
	4	Credenzas/wooden filing cabinets
	1	Small bookshelf
	4	Office chairs
	3	Computers and accessories
	4	Upright metal filing cabinets
	2	Metal horizontal filing cabinets
	2	Retail display racks
	1	Wooden boat-shaped retail display rack
<u>Hallway to shop:</u>	2	Shelving units with doors holding engine repair tools
<u>Parts Room:</u>	7	Upright metal shelving units
<u>Shop/Repair Area:</u>	1	stern drive tool (red)
	Misc.	Miscellaneous Boat Parts
	Misc.	Spark Plugs
	2	Synthetic gear oil in pump containers
	1	Balcrank work bench
	1	Canbuilt hydraulic press SN: HP021594
	1	Magna 2-horsepower air compressor-model M104C0200-20A SN:L1420019
	1	Fuel tank for travel lift (red)
	1	Subaru gas powered fire pump Robin EX 17 SN: D10 2776197
	1	480 Solar battery charger
	1	Black and Decker portable battery charger and cables
	1	Lincwelder welder AC 225-S
	1	X-Stream power washer SN: RX706C10003374
	1	Line Backer aluminum platform
	1	Parts washer (red)
	1	Large stepladder (10' approx)
	1	Large shelving unit/work bench (back of shop) with vice, mitre saw and bench grinder HG68
	1	Moveable stair (red-9 or 10 foot)
	1	1/2 Horsepower drill press
	1	Large shelving unit/work bench (middle of shop) with vice attached
	Misc.	Repair Manuals
<u>Upstairs in Repair Area:</u>	Misc.	Miscellaneous Pictures of Lagoon City
	3	Sterndrives
	9	Shelving units
	3	Outboard motors
	4	Bubblers
	Misc	Miscellaneous boat parts
<u>In laundry/sauna Room:</u>	3	Inglis commercial coin dryers T0-81001 SN: 9CM38640, 9DB32121, 9CM38616
	3	GE commercial coin washers WCCB1030J1WC SN: HT145501G, HT145513G, ST116562G
<u>Outside:</u>	1	Marine Travelift (moveable), Capacity 70,000 pounds 35 BFM SN: 21751087
	1	Taylor forklift (red) no vin
	1	Trailer with no vin, located near forklift
	8	Boat straps (approximately 8) in boat slip area mini cabin
	4	3 ton chain fall hoist in boat slip area attached at 234
	4	5 ton chain fall hoist in boat slip area attached at 216
	1	Mobile waste trailer and pumper
	1	Fuel pump at Cabana
	1	Gas pump located at channel entrance to Lagoon City, hoses and incidental pieces to pumps
	2	Gas pumps on Dock (Petro Canada) and all hoses and other incidental pieces to pumps
	1	Ice Chest at Cabana
	Misc.	Park benches/picnic tables(approximately 200+)
<u>Boat Yard:</u>	1	Moveable staircase (blue)
	2	Canoes-red
	1	Lagoon City marina Monterey boat 30E1E273 written on side
	1	Dolly (red)
	1	Electric boat lift for lifting boats in water (five foot)
	1	Sailboat mast crane (motorized) SN 34JC43-0071G1
	1	Yard Truck Ford 350 4 x 4 Vin 2FDKF37G6JCA86575*
	1	Conolift Hydraulic Trailer*
	1	GMC 2500 HD with arctic plow attachment Vin 1GTHK24UC4E367368*
	1	Trailer ES4 16X* VIN L110216066004
	1	Yard Truck, International Harvester Company, with boom Vin 2HT010327CCA18591*
<u>Poolhouse:</u>	1	Stereo
	Misc	All equipment servicing pool
	Misc	Miscellaneous plastic pool furniture
<u>Inside and Outside of Marina:</u>	Misc	Blocks and metal boat stands for holding boats-many hundreds

\*these items are under investigation as the Vin numbers are not registered and they may be equipment in which the owner of the property has an interest directly or pursuant to the applicable provisions of the Lease

L E A S E  
LAGOON CITY HOLDINGS INC.

Lease With

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

Premises: Lagoon City Marina and Storage Yard  
Lagoon City, (Township of Ramara)

THIS LEASE, dated as of the 1<sup>st</sup> day of May, 2005, is made pursuant to THE SHORT FORMS OF LEASES ACT OF ONTARIO

BETWEEN:

~~LAGOON CITY HOLDINGS INC.~~, a corporation incorporated under the laws of the Province of Ontario.

(referred to throughout as the "Landlord"),

OF THE FIRST PART;

- and -

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

(referred to throughout as the "Tenant"),

OF THE SECOND PART.

WHEREAS the Landlord is the registered owner of the lands and premises on which is located a two-storey marina building (the "Main Building"), washroom building, swimming pool, service dock, 277 boat slips, shore walls, two gas docks, work shop and storage yard (referred to collectively throughout as the "Marina"), located on Laguna Parkway and on the lagoon described as Mariners Cove in the Township of Ramara, with the Main Building and boat slips shown in their approximate location on the plan attached as Schedule "A" and with the storage yard located across Laguna Parkway to the east of the Main Building (such storage yard hereinafter called the "Storage Yard") and with one of the two gas docks being at the entrance to Lagoon City from Lake Simcoe (hereinafter called the "Hotel Gas Dock");

AND WHEREAS the Landlord has agreed to lease to the Tenant the entire Marina, save and except those portions of the Main Building presently occupied by the restaurant on the second floor and by the realtors on the first floor (the lands and premises being leased hereinafter called the "Demised Premises" and the areas not being leased hereinafter called the "Excluded Premises").

1. INTENT OF LEASE

1.1 Net Lease

It is the intent of the parties hereto that, except as expressly herein set out, this Lease be absolutely net and carefree to the Landlord and the Landlord shall not be responsible for any expenses or obligations of any kind whatsoever in respect of the Demised Premises as defined herein.

2. GRANT

2.1 Premises

In consideration of the Tenant's covenants contained in this Lease, the Landlord leases to the Tenant the Demised Premises and all machinery and equipment, including, without limitation, the travel lift, presently on the Demised Premises and owned by the Landlord (hereinafter called the "Equipment"). The premises as so demised are referred to throughout this Lease as the "Demised Premises".

2.2 Dockominiums

The Tenant acknowledges that approximately seventy-seven (77) of the boat slips are subject to long term leases and agrees to assume the obligations of the Landlord under such

leases during the Term of this Lease and the Tenant shall be entitled to receive the maintenance fees payable by such tenants during the Term.

2.3 Common Areas

The Tenant shall provide the occupants of the Excluded Premises and their invitees with a non-exclusive licence to use during the Term the common areas and facilities of the Main Building, as from time to time designated by the Landlord (the "Common Areas"), in common with all others entitled to such use as may be reasonably required to access their premises and to use them for their intended purposes. Such use shall at all times be subject to the provisions of this Lease and to any rules and regulations prescribed by the Landlord in connection with such common areas and facilities. The Common Areas shall at all times be under the control and management of the Tenant.

3. TERM

3.1 Term

The term of this Lease (called throughout the "Term") is ten (10) years commencing on May 1, 2005, and terminating on April 30, 2015.

3.2 Early Possession

The Tenant acknowledges that it has had possession of the Demised Premises and the Equipment for the six (6) months prior to commencement of the Term and agrees that it is accepting the Demised Premises and Equipment in an "as is", "where is" condition and except as specified herein, agrees that the Landlord has no responsibility to maintain, repair or replace any portion of the Demised Premises or the Equipment.

5.1 Operating and Maintenance

The Tenant shall pay all costs and expenses which are properly attributable in accordance with generally accepted accounting principles, to the maintenance, operation, repair and replacement of the Marina and the Equipment to the extent that is reasonable for a prudent owner of a facility such as the Marina to incur them.

9. REPAIRS AND MAINTENANCE

9.1 Tenant's Obligation to Repair

The Tenant shall, at its expense, maintain and repair both the interior and exterior of the Demised Premises (including, without limitation, the heating, ventilating and air conditioning system and the shore walls and boat slips) and the Equipment in good order and condition in the same manner as a careful and prudent owner would, including the repair of reasonable wear and tear to the extent that such repair is necessary to maintain the improvements and equipment in such manner so that they shall function properly, having regard to their nature and the purpose for which they are intended to be used, and is necessary to keep the appearance of the Demised Premises neat, clean and presentable, but excluding the repair of damage caused by fire or other insured casualties, and excluding such repair as may be specifically required to be performed by the Landlord pursuant to this Lease.

9.3 Tenant's Default in Repairs

If the Tenant is in default of any of its obligations under Section 9, the Landlord may proceed to make the needed repairs and may then charge its cost for doing so to the Tenant as Additional Rent for immediate payment on demand.

9.4 Notice of Damage to Premises

The Tenant shall give immediate written notice to the Landlord of any damage occurring to the Demised Premises or the Equipment.



12.4 Restoration of Premises

Prior to the expiration or other termination of this Lease, the Tenant shall, if required by the Landlord, restore the Demised Premises to its former condition (reasonable wear and tear excepted) prior to the alterations and shall rectify any damage caused by the removal, all at the Tenant's own expense. Such rectification shall be carried out in compliance with all current relevant laws, by-laws and codes and in a good and workmanlike manner. This covenant shall survive the expiration or earlier termination of this Lease.

12.5 Landlord's Property

All alterations, additions or improvements made by the Tenant, or made by the Landlord on the Tenant's behalf shall immediately upon affixation become the Landlord's property without compensation to the Tenant, however, the Landlord shall be under no obligation to repair, maintain or insure same, all of which shall be the obligation of the Tenant.

18. TRADE FIXTURES

18.1 Removal

The Tenant, if not in default, may remove its trade fixtures from the Demised Premises on the expiration of the Term. The Tenant shall repair any damage caused to the Demised Premises by its removal of trade fixtures. The Tenant agrees that any erection, alteration, addition or structure made to or erected on the Demised Premises by the Tenant shall immediately become a part of the Demised Premises, shall not be removed by the Tenant without the consent of the Landlord and shall be subject to all provisions of this Lease. The Landlord may, at its option, require the Tenant to remove all or any part of such erections, alterations, additions or structures at the termination of this Lease and the Tenant shall, if so notified by the Landlord, effect such removal immediately and repair any damage so caused. The Tenant shall close off all electrical wiring which may have previously served any machinery or equipment installed by the Tenant in the Demised Premises.

20. BANKRUPTCY AND INSOLVENCY

20.1 Bankruptcy and Insolvency

If during the Term, any of the goods of the Tenant, are taken in execution or in attachment by any creditor of the Tenant, or if a writ of execution shall be taken out by a creditor of the Tenant against the goods of the Tenant and remains unsatisfied for ten (10) days; or if a receiver, trustee or manager of the Tenant's property or affairs shall be appointed in any manner whatsoever; or if the Tenant makes an assignment for the benefit of creditors, or a bulk sale of all or a substantial part of its undertaking and assets, or is judged to be bankrupt and insolvent by any court; or if the Tenant takes the benefit of any law for bankrupt or insolvent debtors; or if the Tenant abandons the Demised Premises; or if the Tenant disposes of its goods in such manner that a sufficient distress could not be made against the Tenant's goods remaining on the Demised Premises for the then accruing Rent, then in any such event, the then accruing Basic Rental and Additional Rent, together with the Basic Rental and Additional Rent for the following three (3) months of the Term, and all taxes payable by the Tenant for the current year of the Term (calculated on the rate for the preceding year in case the tax rate has not been fixed for the current year) shall immediately be paid by the Tenant to the Landlord. The Landlord may, in any such event, terminate this Lease, and may recover such accelerated Basic Rental, Additional Rent and taxes as if they were Rent in arrears, and the Landlord may also re-enter and take possession of the Demised Premises as if the Tenant was an overholding tenant following the expiration of the Term without legal right.

have the right to add such facility to its Demised Premises without being required to pay any additional Basic Rental; provided that the Landlord reserves the right at any time to remove such mini-golf facility from the Demised Premises in order to accommodate the development of the lands upon which the mini-golf facility is built or to transfer such mini-golf facility to the operator of any hotel, golf-course or other resort facility.

36. INTERPRETATION

36.1 Interpretation

Words importing the singular number only shall include the plural. Any reference to "Tenant" shall include, where the context allows, the servants, employees, agents, invitees and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. If any section or part of a section contained in this Lease shall be judicially held invalid or unenforceable the remainder of this Lease shall be interpreted as if such section had not been included. The word "person", if the context allows, shall include any person, firm or corporation. "Hereof", "herein", "hereunder" and similar expressions used in any section or sub-section relate to the whole of this Lease and not to that section or sub-section only. All Schedules attached hereto form part of this Lease. Each covenant, agreement or obligation or other provision contained in this Lease shall be deemed to be, and shall be construed as a separate independent covenant of the party bound thereby and shall not be dependent upon any other provisions of this Lease unless otherwise expressly provided.

36.2 Captions and Headings

The captions and headings herein are for convenience and reference only and shall not affect the interpretation of this Lease.

37. MERGER

37.1 Merger

The parties agree that upon execution of this Lease, the terms and conditions of any Offer to Lease between the parties in respect of the Demised Premises, as same may have been amended, shall merge with this executed and delivered Lease.

IN WITNESS WHEREOF the parties have executed this Lease under seal as of the day and year first above written.

LANDLORD:  
LAGOON CITY HOLDINGS INC.

Per \_\_\_\_\_  
Name: Pat Sogge  
Title: President

I have the authority to bind the Corporation

SIGNED, SEALED AND DELIVERED

TENANT:

[Signature]  
Witness

[Signature]  
STEVE CRATE, in Trust, for a company to be incorporated

[Signature]  
Witness

[Signature]  
GREG CRATE, in Trust, for a company to be incorporated

TAB G

*dedicated to your success*

R. BRENDAN BISSELL  
Direct Dial 416-597-6489  
Email [bissell@gsnh.com](mailto:bissell@gsnh.com)  
Our File No.: 143089

January 28, 2015

**DELIVERED BY EMAIL**

Mr. Randall Rothbart  
Solmon Rothbart Goodman LLP  
375 University Avenue, Suite 701  
Toronto, ON M5G 2J5

Dear Mr. Rothbart:

**RE: 2124915 Ontario Inc. and the receivership of Crate Marine Sales Limited ("CMSL") et al.**

---

Thank you for your e-mails of January 26 to me and of yesterday to my colleague, Michael Rotsztain.

Your e-mail of January 26 is correct in that the representatives of your client, the landlord of the Lagoon City marina, and of our client, the Receiver and Trustee, did meet at the site of the marina on January 23, 2015 to, among other things, review the tangible personal property on site.

I am advised that our clients' representatives agreed to share the lists of the tangible personal property on site. I am therefore enclosing the listing prepared by CMSL of property it owns, as well as separate lists of apparently leased equipment and other owned items as prepared by our client. I look forward to receipt of the same information from your client.

Insofar as your e-mail of January 26 purported to confirm our client's advice that your client need not submit the forms under the Property Claims Procedure Order (on the basis that that Order only applies to boats), I must note that this is quite incorrect. No such advice has been given. Moreover, there is no basis for that position either, as this Order by its terms clearly applies to all tangible personal property. We note that your client has not pursued its position that it should not be within this procedure, and in any event there is good reason for a person claiming property in the possession of a receiver or trustee to substantiate its claim as the Order requires – if the Order were not in place your client would be obliged to make and substantiate such a claim under s. 81 of the *Bankruptcy and Insolvency Act* in any event. Please accordingly ensure that your client complies with the terms of the Order no later than 4:00pm on January 30, 2015.

That said, I do wish to also note that the Receiver and Trustee remains open to a discussion of the remaining substantive issues between our clients in parallel to the formal processes. I imagine that the provision of your client's list(s) of the property on site as requested above will assist in identifying areas for discussion, which may then flow into a discussion about issues more generally. Perhaps I can leave it to you to get that information to us and then let me or Michael know when you are in a position to discuss that further?

Yours truly,

**GOLDMAN SLOAN NASH & HABER LLP**

Per:

A handwritten signature in black ink, appearing to read "R. B. Bissell", with a stylized flourish at the end.

R. Brendan Bissell

RBB:ac

Encls.

c.c. Stuart Mitchell, *A. Farber & Partners Inc.* (via e-mail)  
Michael Rotsztain

**TAB H**

**SRG****Solmon Rothbart Goodman LLP**  
Barristers

Melvyn L. Solmon, B.A.Sc., LL.M. (Hon)\*\*

Randall M. Rothbart, B.A., LL.B.

Mark L. Goodman, B.A., LL.B.

Avrum D. Slodovnick, LL.B.

Nancy J. Tourgis, B.Sc.H., LL.B.

James P. McReynolds, B.Comm., LL.B.

Raffaele Sparano, B.A.(Hon.), LL.B.

Matthew Valitutti, B.A., LL.B.

Cameron J. Wetmore, B.A.C.S., LL.B.

Ryan R. McKeen, B.A.(Hon.), J.D.

Eric P. Borzi, B.A.(Hon.), LL.B.

Member of the New York Bar \*\*

**FACSIMILE COVER SHEET****Date:** March 19, 2015**Pages:** **4)** (including cover sheet)  
If you do not receive all pages, please phone Cristina Garisto  
at 416-947-1093

ATTENTION	FIRM NAME	PHONE NUMBER	FAX NUMBER
Mr. R. Brendan Bissell Mr. Michael Roszstain	GOLDMAN SLOAN NASH & HABER LLP	416-597-6489	416-597-3370

**From:** Randall M. Rothbart**Re:** 2124915 Ontario Inc. re: Crate Marina Receivership**File Number:** 17427**Original To Follow:** (X) no ( ) by mail ( ) by courier

This material is intended for use only by the individual or entity to whom it is addressed and should not be read by, or delivered to, any other person. This material may contain privileged or confidential information, the disclosure or other use of which by other than the intended recipient may result in the breach of certain laws or the infringement of rights of third parties. If you have received this facsimile in error, please telephone us immediately (collect if necessary) so that we can make arrangements for the return of this facsimile and any confirmation copy which you may receive by mail, at our expense.

**Comments:** Please refer to attached documents.**rrothbart@srglegal.com**

375 University Ave., Suite 701, Toronto, ON M5G 2J5

**T 416 947.1093 F 416 947.0079**



**SRG****Solmon Rothbart Goodman LLP**  
Barristers

Melvyn L. Solmon, B.A.Sc., LL.M. (Hon) \*\*

Randall M. Rothbart, B.A., LL.B.

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Matthew Valitutti, B.A., LL.B.

Cameron J. Wetmore, B.A.C.S., LL.B.

Ryan R. McKeen, B.A.(Hon.), J.D.

Eric P. Borzi, B.A.(Hon.), LL.B.

Member of the New York Bar \*\*

March 19, 2015

**SENT VIA EMAIL TO: [cratemarine@farberfinancial.com](mailto:cratemarine@farberfinancial.com)**  
**and**  
**SENT VIA FACSIMILE TO: 416-496-3839**A. Farber & Partners Inc.  
Court-appointed Receiver of Crate Marine Sales Limited,  
F.S. Crate & Sons Limited, 1330732 Ontario Limited,  
1328559 Ontario Limited, 1328559 Ontario Limited  
and 1382416 Ontario Limited  
150 York Street, Suite 1600  
Toronto, Ontario M5H 3S5

Attn: Gena Lowe

Dear Ms. Lowe:

Re: 2124915 Ontario Inc. re: Crate Marina Receivership  
Our File: 17427

---

As you are aware, we are counsel to 2124915 Ontario Inc., the owner of the Lagoon City marina property and Landlord in respect of the Crates Lease dated as of the 1<sup>st</sup> day of May, 2005.

We enclose herein our clients' Notice of Dispute delivered in accordance with the claim's procedures. We would ask that you immediately confirm receipt of the same by return email.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP

Randall M. Rothbart  
RMR/cg

Encl.

cc: Michael Roszstain and R. Brendan Bissell *via facsimile to 416-597-3370***[rrothbart@srglegal.com](mailto:rrothbart@srglegal.com)**

375 University Ave., Suite 701, Toronto, ON M5G 2J5

T 416 947.1093 F 416 947.0079

**DISPUTE NOTICE**

RE: In the matter of the Property Claim dated January 30, 2015 filed by 2124915 Ontario Inc. 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): 2124915 Ontario Inc.

*(the "Claimant").*

Full Mailing Address of the Claimant:

145 Adelaide Street West, Suite 500, Toronto, Ontario M5H 4E5

Other Contact Information of the Claimant:

Telephone Number: 416-869-2735

Email Address: mcallery@taliskercorp.com

Facsimile Number: (416) 864 9929

Attention (Contact Person): Maeve Callery

**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): Lagoon City Holdings Inc.

Attached hereto are redacted copies of a Transfer Agreement and Assignment of Leases attached hereto and marked as Schedule "H" evidencing the assignment of the Lease from Lagoon City Holdings Inc. to

the Claimant. These documents include references to other irrelevant matters. The portions that are relevant to this matter are included.

### **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):

See Schedule "A" attached. This Property Claim is made without prejudice to the position and objections of 2124915 Ontario Inc. as to whether the Order of the Honourable Mr. Justice Penny dated December 23, 2014, applies to claims it has for equipment and Chattels at the Lagoon City facility, in accordance with paragraph 7 of that Order.

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

See Schedule "B" attached.

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

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

N/A [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)]*

1. These reasons for dispute relate to the Equipment that is claimed by the Claimant in accordance with Schedule "A" of the within Notice of Dispute.

2. The Lagoon City Lease to the Crates provides, inter alia, that **“the Landlord leases to the Tenant the Demised Premises and all machinery and equipment, including, without limitation, the travel lift, presently on the Demised Premises and owned by the Landlord (hereinafter called the “Equipment”).**
3. The Lagoon City Marina was an operating Marina when it was leased to the Crates in 2005. That is the reason why the lease refers to “all machinery and equipment” at the Leased Premises.
4. The Lease makes express reference to the largest and most important part of the equipment necessary to operate the marina, that being the “travel lift”.
5. Clearly there was a travel lift at the Marina when it was leased to the Crates.
6. The Claimant has received confirmation from the former owner of the travel lift, Stanmore Equipment of Stouffville, Ontario that the Lagoon City Marine Travelift was sold to Lagoon City Holdings Inc. in 2004, prior to the Crates Lease. Attached hereto as Schedule “F” is a copy of the Sales Invoice evidencing the sale of the Marine Travelift, serial number 2175-1087 to Lagoon City Holdings Inc. It confirms delivery of the Marine Travelift to the Lagoon City marina on September 16, 2004, well prior to the commencement of the Lease with the Crates in May 2005.
7. The other various machinery and Equipment including blocks, metal boat stands, trucks, hoists, trailers and forklifts claimed in Schedule “A” are all incidental to the operations of a marina. For the most part, all of the machinery and Equipment claimed is very old.
8. The unplatd vehicles and trailers do not appear to have any registration particulars with the Ministry and were apparently all utilized for the purpose of marina activities, given they are not licensed to travel on roadways.
9. The one truck that was found to be registered in the name of Crates is not claimed by the Claimant or included in Schedule “A”.
10. The Receiver has provided no evidence to the effect that other than inventory, the Crates or their companies own any of the other machinery or Equipment claimed in Schedule “A”.

11. To the extent that any of the Equipment or machinery claimed in Schedule "A" are attached to the Demise Premises, they constitute fixtures which are the property of the Landlord pursuant to the Lease.

**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](mailto:cratemarine@farberfinancial.com)  
Fax: (416) 496-3839  
DATED this 19<sup>th</sup> day of March, 2015.

Name of Claimant: 2124915 Ontario Inc.

Elina Guttenberg Per: [Signature]  
Witness Elina Guttenberg Name: Maeve Callery  
Title: Authorized Agent

**SCHEDULE "A"**

Lagoon City Marina  
Machinery, Equipment, Travel Lift,  
etc., January 29 2015

Location	Quantity	Item, and Where Available, Serial Number (SN)
<u>Retail and Office Area:</u>	3	Desks
	4	Credenzas/wooden filing cabinets
	1	Small bookshelf
	4	Office chairs
	3	Computers and accessories
	4	Upright metal filing cabinets
	2	Metal horizontal filing cabinets
	2	Retail display racks
	1	Wooden boat-shaped retail display rack
<u>Hallway to shop:</u>	2	Shelving units with doors holding engine repair tools
<u>Parts Room:</u>	7	Upright metal shelving units
<u>Shop/Repair Area:</u>	1	stern drive tool (red)
	2	Synthetic gear oil in pump containers
	1	Balcrank work bench
	1	Canbuilt hydraulic press SN: HP021594
	1	Magna 2-horsepower air compressor-model M104C0200-20A SN:11420019
	1	Fuel tank for travel lift (red)
	1	Subaru gas powered fire pump Robin EX 17 SN: D10 2776197
	1	480 Solar battery charger
	1	Black and Decker portable battery charger and cables
	1	Linwelder welder AC 225-S
	1	X-Stream power washer SN: RX706C10003374
	1	Line Backer aluminum platform
	1	Parts washer (red)
	1	Large stepladder (10' approx)
	1	Large shelving unit/work bench (back of shop) with vice, mitre saw and bench grinder HG68
	1	Moveable stair (red-9 or 10 foot)
	1	1/2 Horsepower drill press
	1	Large shelving unit/work bench (middle of shop) with vice attached
<u>Upstairs in Repair Area:</u>	Misc.	Miscellaneous Pictures of Lagoon City
	9	Shelving units
	4	Bubblers
<u>In laundry/sauna Room:</u>	3	Inglis commercial coin dryers TO-81001 SN: 9CM38640, 9DBB2121, 9CM38616
	3	GE commercial coin washers WCCB1030J1WC SN: HT145501G, HT145513G, ST116562G
<u>Outside:</u>	1	Marine Travellift (moveable), Capacity 70,000 pounds 35 BFM SN: 21751087
	1	Taylor forklift (red) no vin
	1	Trailer with no vin, located near forklift
	8	Boat straps (approximately 8) in boat slip area mini cabin
	4	3 ton chain fall hoist in boat slip area attached at 234
	4	5 ton chain fall hoist in boat slip area attached at 216
	1	Mobile waste trailer and pumper
	1	Fuel pump at Cabana
	1	Gas pump located at channel entrance to Lagoon City, hoses and incidental pieces to pumps
	2	Gas pumps on Dock (Petro Canada) and all hoses and other incidental pieces to pumps
	1	Ice Chest at Cabana
	Misc.	Park benches/picnic tables(approximately 200+)
<u>Boat Yard:</u>	1	Moveable staircase (blue)
	2	Canoes-red
	1	Lagoon City marina Monterey boat 30E1E273 written on side
	1	Dolly (red)
	1	Electric boat lift for lifting boats in water (five foot)
	1	Sailboat mast crane (motorized) SN 34JC43-0071G1
	1	Yard Truck Ford 350 4 x 4 Vin 2FDKF37G6JCA86575*
	1	Conolift Hydraulic Trailer*
	1	GMC 2500 HD with arctic plow attachment Vin 1GTHK24UC4E367368*
	1	Trailer E54 16X* VIN L110216066004
	1	Yard Truck, International Harvester Company, with boom Vin 2HT010327CCA18591*
<u>Poolhouse:</u>	1	Stereo
	Misc	All equipment servicing pool
	Misc	Miscellaneous plastic pool furniture
<u>Inside and Outside of Marina:</u>	Misc	Blocks and metal boat stands for holding boats-many hundreds

\*these items are under investigation as the Vin numbers are not registered and they may be equipment in which the owner of the property has an interest directly or pursuant to the applicable provisions of the Lease

## Schedule "B"

### DETAILS OF THE BASIS FOR THE PROPERTY CLAIM

1. Lagoon City Holdings Inc. sold and assigned all of its rights and obligations as Owner and Landlord to the Claimant, 2124915 Ontario Inc. in or about 2007.
2. This is well-known to the Receiver given the fact that it and its employees have had access to all of the Crates legal and financial documentation, which clearly confirms that 2124915 Ontario Inc. has been the Landlord to whom rental payments have been made over the past almost 10 years.
3. The relevant portions of the Lease between Lagoon City Holdings Inc. and Steve Crate and Greg Crate dated May 1, 2005 are attached hereto and marked as Schedule "C".
4. Pursuant to paragraph 2.1 of the Lease **"...the Landlord leases to the Tenant Demised Premises and all machinery and equipment, including, without limitation, the travel lift, presently on the Demise Premises and owned by the Landlord (hereinafter called the "Equipment")"**.
5. At the time of the Lease, there was clearly a substantial amount of machinery and equipment at the Demise Premises, otherwise there would be no need for this reservation in the Lease terms.
6. In particular, the travel lift, being the most substantial piece of equipment at the Demise Premises is clearly and expressly referred to in the Lease. Annexed hereto and marked as Schedule "D" is a picture evidencing the serial number and identification of the travel lift and a picture of the travel lift. It is a very substantial piece of equipment that is crucial to the marina operations. It is utilized to move boats around the marina premises. The marina could not function without this travel lift given the number and size of the boats that are stored and dock at the marina premises.
7. Furthermore, the Tenant had the obligation throughout the term of the Lease to repair and/or replace any equipment that was at the Demise Premises that formed part of the Equipment as defined in the above-noted lease terms.
8. The Claimant has received confirmation from Omar Abdul Adi, the Regional Sales representative for Marine Travelift Inc., the manufacturer of the Lagoon City travel lift to the effect that this travel lift was originally manufactured in 1987 and sold to a

customer in Florida who thereafter sold it a company carrying on business as Stanmore Equipment Limited in Stouffville, Ontario.

9. Stanmore Equipment has confirmed that the travel lift was sold by them to Lagoon City Holdings Inc. in 2004, prior to the commencement of the Lease. Attached hereto as Schedule "F" is a copy of the Sales Invoice evidencing the sale of the Marine Travelift, serial number 2175-1087 to Lagoon City Holdings Inc. It confirms delivery of the Marine Travelift to the Lagoon City marina on September 16, 2004, well prior to the commencement of the Lease with the Crates in May 2005.
10. It is our information that there was a fully operational marina carrying on business from Lagoon City from at least 1987<sup>1</sup>, well before the Lease to the Crates in 2005. As such, there would have been substantial machinery and Equipment at the Demised Premises at the time of the Lease. This is consistent with the fact that there are various lifts, trailers and vehicles having significant wear and tear and are apparently quite old at the Premises.
11. Our solicitors conducted a number of searches with respect to the vehicle VIN numbers or serial numbers concerning equipment. We did find that one of the trucks on the property, that being a relatively new 2007 Ford DRW was registered in the name of Crate Marine Sales Limited. That vehicle is not included in the Claimant's Schedule "A". The searches conducted are annexed hereto as Schedule "G".
12. On the other hand, the GMC 25000HD with plow attachment is a 2004 vehicle. It is unplatd and unregistered. It is our information that the unplatd vehicles and trailers that are listed in Schedule "A" were not plated because they were exclusively utilized on the marina premises for marina business only and were accordingly not driven on roadways.
13. The Receiver has not provided the Claimant with any substantive evidence that the Crates or any other companies are the owners of any machinery or equipment claimed in Schedule "A".
14. Should the claimant be required to do so, it will summons witnesses who will provide affidavits or viva voce evidence as may be required to substantiate ownership of the travel lift and other machinery or Equipment as the case may be. Given the fact that there does not appear to be an inventory of most of the machinery or Equipment, much of that evidence will likely have to be anecdotal.
15. The Claimant has deleted those entries relating to miscellaneous boat parts and repair manuals from Schedule "A" given the fact that it is agreed that there would be more in the nature of inventory belonging to the Crates.

---

<sup>1</sup> Attached as Schedule "E" is a document retrieved from the internet entitled "The History of Lagoon City" which apparently confirms that there was a fully-operational luxury marina operating from out of the Lagoon City premisis from 1987 onwards. ([www.lcca.ca/history](http://www.lcca.ca/history))



SCHEDULE "C"

L E A S E

LAGOON CITY HOLDINGS INC.

Lease With

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

Premises: Lagoon City Marina and Storage Yard  
Lagoon City, (Township of Ramara)

THIS LEASE, dated as of the 1<sup>st</sup> day of May, 2005, is made pursuant to THE SHORT FORMS OF LEASES ACT OF ONTARIO

BETWEEN:

~~LAGOON CITY HOLDINGS INC.~~, a corporation incorporated under the laws of the Province of Ontario.

(referred to throughout as the "Landlord"),

OF THE FIRST PART;

- and -

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

(referred to throughout as the "Tenant"),

OF THE SECOND PART

WHEREAS the Landlord is the registered owner of the lands and premises on which is located a two-storey marina building (the "Main Building"), washroom building, swimming pool, service dock, 277 boat slips, shore walls, two gas docks, work shop and storage yard (referred to collectively throughout as the "Marina"), located on Laguna Parkway and on the lagoon described as Mariners Cove in the Township of Ramara, with the Main Building and boat slips shown in their approximate location on the plan attached as Schedule "A" and with the storage yard located across Laguna Parkway to the east of the Main Building (such storage yard hereinafter called the "Storage Yard") and with one of the two gas docks being at the entrance to Lagoon City from Lake Simcoe (hereinafter called the "Hotel Gas Dock");

AND WHEREAS the Landlord has agreed to lease to the Tenant the entire Marina, save and except those portions of the Main Building presently occupied by the restaurant on the second floor and by the realtors on the first floor (the lands and premises being leased hereinafter called the "Demised Premises" and the areas not being leased hereinafter called the "Excluded Premises").

1. INTENT OF LEASE

1.1 Net Lease

It is the intent of the parties hereto that, except as expressly herein set out, this Lease be absolutely net and carefree to the Landlord and the Landlord shall not be responsible for any expenses or obligations of any kind whatsoever in respect of the Demised Premises as defined herein.

2. GRANT

2.1 Premises

In consideration of the Tenant's covenants contained in this Lease, the Landlord leases to the Tenant the Demised Premises and all machinery and equipment, including, without limitation, the travel lift, presently on the Demised Premises and owned by the Landlord (hereinafter called the "Equipment"). The premises as so demised are referred to throughout this Lease as the "Demised Premises".

2.2 Dockominiums

The Tenant acknowledges that approximately seventy-seven (77) of the boat slips are subject to long term leases and agrees to assume the obligations of the Landlord under such

- 2 -

leases during the Term of this Lease and the Tenant shall be entitled to receive the maintenance fees payable by such tenants during the Term.

### 2.3 Common Areas

The Tenant shall provide the occupants of the Excluded Premises and their invitees with a non-exclusive licence to use during the Term the common areas and facilities of the Main Building, as from time to time designated by the Landlord (the "Common Areas"), in common with all others entitled to such use as may be reasonably required to access their premises and to use them for their intended purposes. Such use shall at all times be subject to the provisions of this Lease and to any rules and regulations prescribed by the Landlord in connection with such common areas and facilities. The Common Areas shall at all times be under the control and management of the Tenant.

## 3. TERM

### 3.1 Term

The term of this Lease (called throughout the "Term") is ten (10) years commencing on May 1, 2005, and terminating on April 30, 2015.

### 3.2 Early Possession

The Tenant acknowledges that it has had possession of the Demised Premises and the Equipment for the six (6) months prior to commencement of the Term and agrees that it is accepting the Demised Premises and Equipment in an "as is", "where is" condition and except as specified herein, agrees that the Landlord has no responsibility to maintain, repair or replace any portion of the Demised Premises or the Equipment.

5.1 Operating and Maintenance

The Tenant shall pay all costs and expenses which are properly attributable in accordance with generally accepted accounting principles, to the maintenance, operation, repair and replacement of the Marina and the Equipment to the extent that is reasonable for a prudent owner of a facility such as the Marina to incur them.

9. REPAIRS AND MAINTENANCE

9.1 Tenant's Obligation to Repair

The Tenant shall, at its expense, maintain and repair both the interior and exterior of the Demised Premises (including, without limitation, the heating, ventilating and air conditioning system and the shore walls and boat slips) and the Equipment in good order and condition in the same manner as a careful and prudent owner would, including the repair of reasonable wear and tear to the extent that such repair is necessary to maintain the improvements and equipment in such manner so that they shall function properly, having regard to their nature and the purpose for which they are intended to be used, and is necessary to keep the appearance of the Demised Premises neat, clean and presentable, but excluding the repair of damage caused by fire or other insured casualties, and excluding such repair as may be specifically required to be performed by the Landlord pursuant to this Lease.

9.3 Tenant's Default in Repairs

If the Tenant is in default of any of its obligations under Section 9, the Landlord may proceed to make the needed repairs and may then charge its cost for doing so to the Tenant as Additional Rent for immediate payment on demand.

9.4 Notice of Damage to Premises

The Tenant shall give immediate written notice to the Landlord of any damage occurring to the Demised Premises or the Equipment.

12.4 Restoration of Premises

Prior to the expiration or other termination of this Lease, the Tenant shall, if required by the Landlord, restore the Demised Premises to its former condition (reasonable wear and tear excepted) prior to the alterations and shall rectify any damage caused by the removal, all at the Tenant's own expense. Such rectification shall be carried out in compliance with all current relevant laws, by-laws and codes and in a good and workmanlike manner. This covenant shall survive the expiration or earlier termination of this Lease.

12.5 Landlord's Property

All alterations, additions or improvements made by the Tenant, or made by the Landlord on the Tenant's behalf shall immediately upon affixation become the Landlord's property without compensation to the Tenant, however, the Landlord shall be under no obligation to repair, maintain or insure same, all of which shall be the obligation of the Tenant.

18 TRADE FIXTURES18.1 Removal

The Tenant, if not in default, may remove its trade fixtures from the Demised Premises on the expiration of the Term. The Tenant shall repair any damage caused to the Demised Premises by its removal of trade fixtures. The Tenant agrees that any erection, alteration, addition or structure made to or erected on the Demised Premises by the Tenant shall immediately become a part of the Demised Premises, shall not be removed by the Tenant without the consent of the Landlord and shall be subject to all provisions of this Lease. The Landlord may, at its option, require the Tenant to remove all or any part of such erections, alterations, additions or structures at the termination of this Lease and the Tenant shall, if so notified by the Landlord, effect such removal immediately and repair any damage so caused. The Tenant shall close off all electrical wiring which may have previously served any machinery or equipment installed by the Tenant in the Demised Premises.

20. BANKRUPTCY AND INSOLVENCY20.1 Bankruptcy and Insolvency

If during the Term, any of the goods of the Tenant, are taken in execution or in attachment by any creditor of the Tenant, or if a writ of execution shall be taken out by a creditor of the Tenant against the goods of the Tenant and remains unsatisfied for ten (10) days; or if a receiver, trustee or manager of the Tenant's property or affairs shall be appointed in any manner whatsoever; or if the Tenant makes an assignment for the benefit of creditors, or a bulk sale of all or a substantial part of its undertaking and assets, or is judged to be bankrupt and insolvent by any court; or if the Tenant takes the benefit of any law for bankrupt or insolvent debtors; or if the Tenant abandons the Demised Premises; or if the Tenant disposes of its goods in such manner that a sufficient distress could not be made against the Tenant's goods remaining on the Demised Premises for the then accruing Rent, then in any such event, the then accruing Basic Rental and Additional Rent, together with the Basic Rental and Additional Rent for the following three (3) months of the Term, and all taxes payable by the Tenant for the current year of the Term (calculated on the rate for the preceding year in case the tax rate has not been fixed for the current year) shall immediately be paid by the Tenant to the Landlord. The Landlord may, in any such event, terminate this Lease, and may recover such accelerated Basic Rental, Additional Rent and taxes as if they were Rent in arrears, and the Landlord may also re-enter and take possession of the Demised Premises as if the Tenant was an overholding tenant following the expiration of the Term without legal right.

have the right to add such facility to its Demised Premises without being required to pay any additional Basic Rental; provided that the Landlord reserves the right at any time to remove such mini-golf facility from the Demised Premises in order to accommodate the development of the lands upon which the mini-golf facility is built or to transfer such mini-golf facility to the operator of any hotel, golf course or other resort facility.

36. INTERPRETATION

36.1 Interpretation

Words importing the singular number only shall include the plural. Any reference to "Tenant" shall include, where the context allows, the servants, employees, agents, invitees and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. If any section or part of a section contained in this Lease shall be judicially held invalid or unenforceable the remainder of this Lease shall be interpreted as if such section had not been included. The word "person", if the context allows, shall include any person, firm or corporation. "Hereof", "herein", "hereunder" and similar expressions used in any section or sub-section relate to the whole of this Lease and not to that section or sub-section only. All Schedules attached hereto form part of this Lease. Each covenant, agreement or obligation or other provision contained in this Lease shall be deemed to be, and shall be construed as a separate independent covenant of the party bound thereby and shall not be dependent upon any other provisions of this Lease unless otherwise expressly provided.

36.2 Captions and Headings

The captions and headings herein are for convenience and reference only and shall not affect the interpretation of this Lease.

37. MERGER

37.1 Merger

The parties agree that upon execution of this Lease, the terms and conditions of any Offer to Lease between the parties in respect of the Demised Premises, as same may have been amended, shall merge with this executed and delivered Lease.

IN WITNESS WHEREOF the parties have executed this Lease under seal as of the day and year first above written.

LANDLORD:  
LAGOON CITY HOLDINGS INC.

Per \_\_\_\_\_  
Name: Ray Sogard  
Title: President

I have the authority to bind the Corporation

SIGNED, SEALED AND DELIVERED

TENANT:

[Signature]  
Witness

[Signature]  
STEVE CRATE, in Trust, for a company to be incorporated

[Signature]  
Witness

[Signature]  
GREG CRATE, in Trust, for a company to be incorporated



# SCHEDULE "D"

## MARINE TRAVELIFT

INC.

49 East Yew Street  
STURGEON BAY, WISCONSIN 54235

MODEL NO. 

SERIAL NO. 

CAPACITY  LBS.

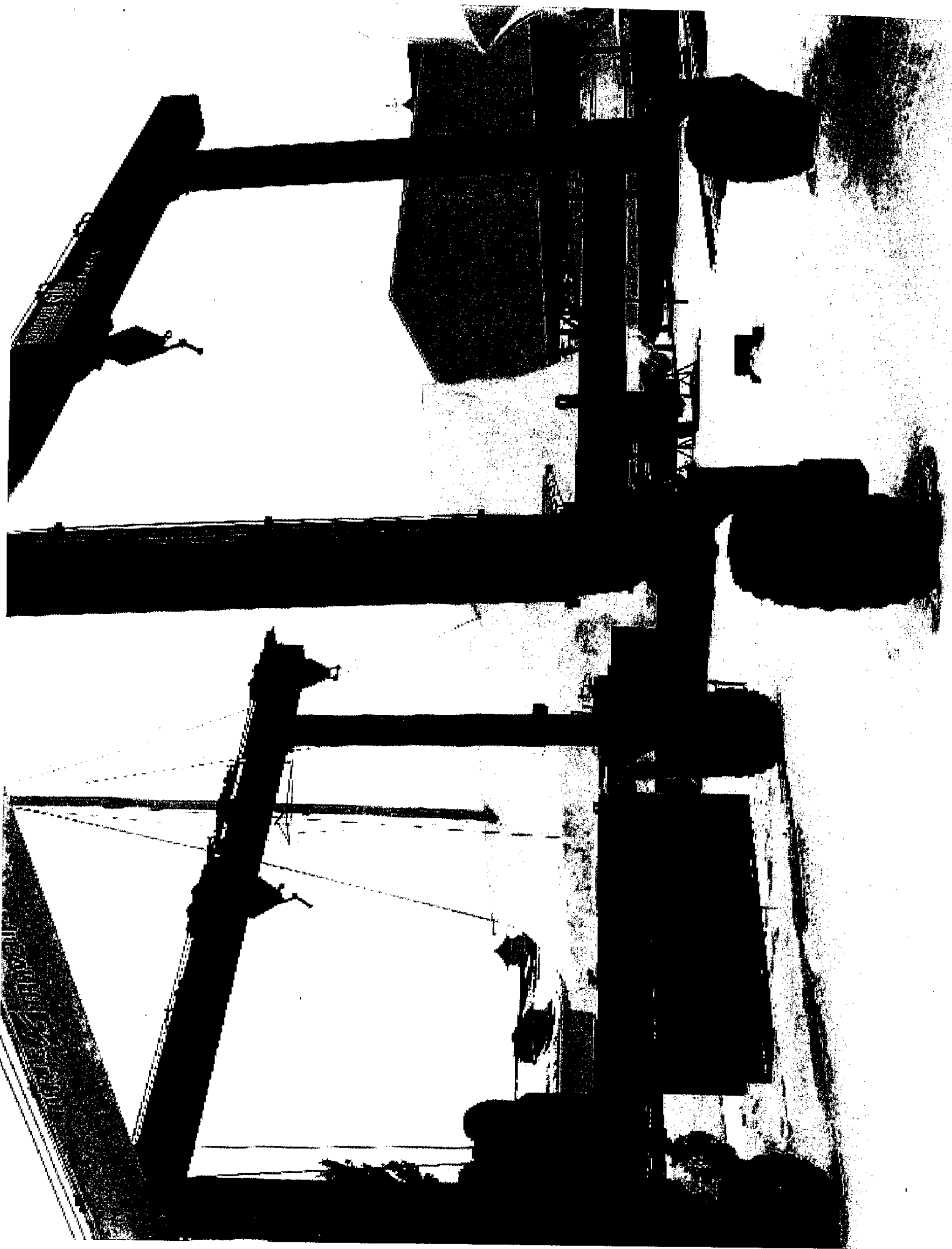
REGISTERED TO ONE OR MORE OF THE  
FOLLOWING U.S. PATENTS:

2080100	3075003-RE. 25901
3058762	3078025-RE. 20290
3400158	3412118-RE. 24143
3632035	
3821403	

OTHER PATENTS PENDING.

MARINE TRAVELIFT INC.  
STURGEON BAY, WIS.

403810



3/18/2015

**SCHEDULE "E"**

History

**The History Of Lagoon City**

The 1600 acres which today make up Lagoon City Resort were previously unusable swampland. Roughly 400 years ago the surrounding area was occupied by the Indians of the Huron Nation whose capital, Cahiague, was located a few miles north of Lagoon City near what is currently the town of Warminster. At that time, the population of the Huron people exceeded 20,000 and was believed to be the largest concentration of Indians in all of North America. In order to get to the rich fishing areas of Lake Simcoe, the people of the Huron villages east of the Lagoon City site traversed along the top of a ridge which cut through the low property. For many years this path was known to the local farmers and people of Mara Township as Old Indian Trail. Today, part of Old Indian Trail is used for hiking and cross-country skiing by the Resort's residents and the other part forms one of Lagoon City's oldest streets which lies on a section of the original trail.

The first white man to set foot on what is today Lagoon City, was Samuel de Champlain. In September of 1615, Champlain led an army of 500 Huron warriors to battle the Iroquois. The war party left Cahiague and canoed south through the narrows where Lakes Simcoe and Couchiching meet. Travelling south along the north-east shore of Lake Simcoe they arrived at the Lagoon City area and portaged directly east, about 40 kilometres to what is today Sturgeon Lake. Champlain and his party then traveled through the Kawarthas to Lake Ontario.

Through the centuries the Lagoon City site remained unfarmable, unusable, and for the most part unpenetrable to the local settlers. The small amount of cottage development which took place on the shoreline north and south of the site during the 1900's proved only to exacerbate the problem as the natural drainage routes to the lake were cut off by the cottage roads. 5000 feet of shore and thousands of acres of flooded lowlands remained undeveloped and useless.

In 1962, Andrew Zsolt, a young civil engineer who ran a small development company, came upon the Lagoon City site. Given its sandy shoreline, Zsolt saw potential in developing the area into a resort town with a protected harbour, similar to those he had enjoyed in Hungary as a student. That year he optioned to buy two shoreline properties from the owners, August Geisberger and Abraham Katz. Zsolt was convinced that Ontario needed a major, pre-planned resort town in the European tradition. He envisaged a stimulating community with a choice of accommodations, elegant restaurants, attractive beaches, superb water sports, colourful dinner theatres, nightclubs, and activities for a variety of tastes. He foresaw a resort town that could accommodate these various features, and that would

3/18/2015

History

ultimately become a popular destination resort on an international scale. Zsolt conceived and designed a resort town concept in 1962. In 1963 he formed Lagoon City Developments Limited (which was subsequently merged with Zsolt's Inducon Development Corporation). The company purchased these properties with 5,000 feet of shoreline and about 1,000 acres of land, which was subsequently expanded to 1,600 acres.

He submitted his first draft plan to the Ontario Department of Municipal Affairs in 1963 for the 1,000 acre community to be known as "Lagoon City". The Lagoon City town concept was revolutionary for several reasons:

- \*Rather than proposing a strip beach-front development, all of the 5,000 feet of sandy Lake Simcoe shoreline were reserved as a private community beach park for the use of all the residents and guests of Lagoon City;

- \*The plan called for the excavation of over 12 miles of waterways through the swamp which provided the needed fill for the project;

- \*The waterways provided lake access and protected dockage at the backyard of every house.

Although the plan raised many objections and concerns initially, the concept of using wasteland rather than prime agricultural land for development and making private community beach park available for the whole community, instead of a chosen few, became Ontario government guidelines for resort development several years later.

In 1963, prior to formal approvals, 50 acres of brush were cleared and about 3,000 feet of navigable inland waterways were dug, including the first harbour. The original "Lake Avenue" was extended to make up a leg of Lagoon City's first road, Poplar Crescent. It crossed the Harbour Lagoon at Mara Township's 5<sup>th</sup> Concession, where the first building was erected. This motel style building, completed on Labour Day of 1963, contained 12 small residential units which were used initially as summer rental units and later sold as condominiums.

The following summer, in 1964, a second building was erected on the south side of the harbour, the Lagoon City Marina (today the site of the Harbour Inn). Five mahogany sailboats were purchased and the Lagoon City Yacht Club was formed. Work continued.....digging lagoons, building roads, cleaning up the shoreline and the sandy beach.

In 1965, the Ontario Municipal Board ruled in favour of the project and its waterways. Phase I was approved for registration in four sub-phases over the following 7 years. This released for development 186 single-family lots, and 6 multiple-residential lots

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for 110 dwelling units. Thus began the long and painstaking construction of the sewer and water services throughout Phase I and ultimately through the whole resort project. Efforts reached a milestone in the summer of 1971 with the completion of the water filtration and sewage disposal plants, both built and operated for Lagoon City by the developer, Inducon Development Corporation. With the construction of Laguna Parkway, the Poplar Crescent causeway extension over the Harbour Lagoon was removed, linking miles of waterways and homesites directly with Lake Simcoe and the Trent-Severn System.

The original harbour entrance built in 1963 was taken over by the Federal Department of Works in 1973. At that time, the Federal Government upgraded the harbour entrance by building up and extending the berms past the sandbars, and digging out the entrance way between the berms. The expenditures by the Federal Government of about \$270,000 were matched by Inducon on improvements inland to accommodate the boating public. Subsequently, over 8 miles of navigable waterways and numerous bridges were completed in Lagoon City.

In the 70's, with Phase I sold out and the newly opened harbour entrance in place, the project began to hit its stride. Ontario's new Condominium Act allowed for the registration and sale of the original "motel" units, which became the building block for the Harbour Village project. This complex became the first resort condominium project in Ontario. Completed in 3 phases during the summers of 1973, 1974, and 1976, Harbour Village has over 100 condominium units. Also in 1974, Phase II of Lagoon City was approved by the Ontario Municipal Board, bringing the total number of single-family dwelling lots to over 450, and adding 12 more condominium project sites.

In 1977, the Ontario Ministry of the Environment purchased the Lagoon City water filtration plant and existing piping from Inducon in order to extend the water mains to service the adjacent village of Brechin. This program involved a substantial enlargement of the Lagoon City waterworks to meet future demands of the surrounding region. For Phase II, Lagoon City's sewage treatment plant was also upgraded, expanded, and relocated in 1978 to handle the increased demand.

The Harbour Inn and Resort Club, completed in the summer of 1979, proved to be Lagoon City's most important single project up until that time. This was Canada's first, and Ontario's most successful, timeshare ownership resort. In 1981, 18 years after the initial application, the second Official Plan for the region was approved by the Province and Lagoon City received official status as an Urban Resort Town-site, the only one in Ontario, (Whistler, B.C. being the only other in Canada), with a projected permanent population of 10,000 people. The approval helped open the door for the Township of Mara Council to exercise a more positive supporting role towards the development of Lagoon City.

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Responding to the continued demand for waterfront condominiums, in 1982 the first condominium project of Phase II, Pinetree Villas, was built on Laguna Parkway by Inducon, followed by Canada's first segmented ownership project, Chateau Genevieve. Besides the unique concept, the project's design and layout were also new for Lagoon City.

As Lagoon City's Community Association and the Yacht Club grew, it became apparent that a large permanent facility would be required to house these two very active groups. Simultaneously, Inducon's sales and administrative staff were outgrowing their facilities. This prompted the creation of the Lagoon City Resort Centre in 1984. This multi-purpose complex located at the resort's busiest intersection, Polar Crescent and Laguna Parkway, became the permanent home for the Community Association, the Yacht Club, and the resort's sales group. Three years later, in the summer of 1987, the Laguna Shores Mews was built directly across the street from the Resort Centre. This shopping mall offered goods and services at the hub of the resort, which previously were only available in Brechin or Orillia.

On November 4, 1986, "The Township Of Mara Act" received Royal Assent in the Ontario Legislature. This Act created the "Lagoon City Parks and Waterways Commission" which, with the Township, were given the power to acquire the private beach parks, waterways, and footbridges in trust and to manage, maintain, and regulate these properties, including shore walls. The Act also gave the Commission and the Township the taxing power to apportion the cost of maintenance among the properties benefiting from it. This Act created a unique precedent for Canada and for the resort development industry. It also insured the perpetual ownership and maintenance of the waterways, shore walls, and private community beach parks, and secured the property values in this unique setting for years to come.

Lagoon City's waterways, beaches, and numerous facilities had always attracted many outside boaters. And the resort's harbour became the most popular transient port on Lake Simcoe. During the 80's the interest in boating, especially power-boating, surged. These two phenomena set the stage for Lagoon City's most significant and consequential development - the creation of a world-class, luxury marine center. Upon its completion in 1987, the Lagoon City Marine Centre was quickly recognized throughout the boating industry as Ontario's finest and most elegant full-service marina and became the focal point of the entire resort.

If, during the 70's, the project hit its stride, then the latter half of the 80's brought on a full gallop! Since 1987, Inducon could barely keep up with the demand for waterfront resort condominiums and properties. All remaining lots from Phase II were quickly sold. In 1987, the first phase of the Laguna Shores Condominiums was introduced and completely sold before breaking ground. This started a new trend in Lagoon City

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of pre-selling condominium projects before construction commenced. In 1988, all 5 phases of Laguna Shores had been sold. That year Lagoon City's most exclusive project, Marine Cove Villas, part of Lagoon City's Marine Village, was introduced and sold out.

In the Fall of 1988, the designs of 4 entirely new resort condominium projects were unveiled at Lagoon City. Woodland Shores Condominiums, Leeward Cove Villas, Chateau Simone, and Marina Quay represented an unprecedented offering of resort homes. After 25 years of building, the project was still only about one-third complete with over 1000 acres of lakefront property remaining and Lagoon City Resort was well on its way to becoming Canada's world-class waterfront resort town.

Excerpted from "Lagoon City Resort"

Inducon Development Corporation

**SCHEDULE "F"**



**Kalmar AC**



**Perkins Engines**

TEL: 416 291-1928  
FAX: 416 297-4034

SALES INVOICE

PAGE: 1

**STANMORE EQUIPMENT LTD.**

2275 Markham Road, Scarborough (Toronto)  
Ontario, Canada M1B 2W3

INVOICE NO. / NO. DE LA FACTURE: 43263  
INVOICE DATE / DATE DE LA FACTURE: 01/24/2006  
TERMS / CONDITIONS: ON RECEIPT  
ORDER NO. / NO. DE LA COMMANDE:  
OUR REF. NO. / NOTRE NO. DE REFERENCE: 031910

FIRST CHOICE FOR ROUGH TERRAIN FORKLIFTS

SOLD TO / VENDU A:

LGNCITY  
LAGOON CITY HOLDINGS INC.  
SITE #2 BOX 9  
BRECHIN, ONTARIO  
L0K 1B0

SHIP TO / EXPÉDIÉ A:

LGNCITY 705 484 5063  
LAGOON CITY HOLDINGS (INC.)  
SITE #2 BOX 9  
BRECHIN, ONTARIO  
L0K 1B0

QTY	SHIP	B/O	ITEM/PRODUCT#	DESCRIPTION	UM	U. PRICE	AMOUNT
1	1			MARINE TRAVELIFT BOAT HOIST SERIAL#: 2175-1087	EA	85000.00 Y	85000.00
1	1			LABOUR SET UP	EA	5000.00 Y	5000.00
1	1			INTEREST INTEREST CHARGES	EA	6015.87 W	6015.87
-1	-1			INTEREST BANK CHARGES	EA	25.00 W	-25.00

ONE (1) USED MARINE TRAVELIFT MODEL m6f 35  
SERIAL NO. 2175-1087  
COMPLETE WITH ALL STANDARD EQUIPMENT  
DELIVERED : SEPT 16, 2004

THE UNIT WAS PAID TIME PAYMENTS  
AUG 2004 TO DEC 2005 \*\* IN FULL INCLUDING INTEREST \*\*

SERVICE CHARGE OF 2% PER MONTH (24% PER ANNUM) CHARGED ON OVERDUE ACCOUNTS.

SUB TOTAL SOLS TOTAL	MISC DIVERS	FREIGHT FRET	GST/TPS	PST/TPS	DEPOSIT DEPOT	BALANCE SOLDE
95090.87			6300.00	7200.00		109490.87



# SCHEDULE "G"

MTO - ARIS - Order Product



### SEARCH CRITERIA

Product: SVEH004 - VIN History with Address (Regulated)  
 VIN: 1FDAF56P57EA91957  
 Reference: 17427  
 Order #: 18488846  
 Order Date/Time: 2015-01-29 14:16 EST

\*\*\*\*\*  
 VIN History with Address (Regulated)

### VEHICLE INFORMATION

VIN: 1FDAF56P57EA91957  
 Class: Commercial  
 Make: FORD  
 Model: DRW  
 Year: 2007  
 Colour: Tan  
 Body Type: Cab and Chassis  
 Vehicle Status: Fit  
 Brand:  
 File #: 338227639

EVENT	DATE	EVENT DETAILS
Vehicle Registered	2013-02-28	REGISTERED OWNER RIN: 050-900-864 Registrant Status: ACTIVE PLATED Driver's Licence #: Carrier Name: CRATE MARINE SALES LIMITED Operating As: Type: Company Registered Address: 290 THE QUEENSWAY S, KESWICK L4P2B3
Plate Attached	2013-02-28	ATTACHED PLATE Plate #: AD18432 Series: Commercial

\*\*\*\*\* END OF RECORD \*\*\*\*\*

MTO - ARIS - Order Product



```
SEARCH CRITERIA
Product:          SVEH004 - VIN History with Address (Regulated)
VIN:              1GTHK24UC4E367368
Reference:        17427
Order #:          18488936
Order Date/Time: 2015-01-29 14:19 EST
*****
                  VIN History with Address (Regulated)
                  VIN not on file
VIN:              1GTHK24UC4E367368

***** END OF RECORD *****
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MTO - ARIS - Order Product



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SEARCH CRITERIA

Product:          SVEH004 - VIN History with Address (Regulated)
VIN:              2FDKF37G6JCA86575
Reference:        17427
Order #:          18488873
Order Date/Time: 2015-01-29 14:16 EST
*****
                               VIN History with Address (Regulated)
                               VIN not on file

VIN:              2FDKF37G6JCA86575

***** END OF RECORD *****
  
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MTO - ARIS - Order Product



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SEARCH CRITERIA
Product:          SVEH004 - VIN History with Address (Regulated)
VIN:              2HT010327CCA18591
Reference:        17424
Order #:          18488902
Order Date/Time: 2015-01-29 14:18 EST
*****
                  VIN History with Address (Regulated)
                  VIN not on file
VIN:              2HT010327CCA18591
***** END OF RECORD *****
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MTO - ARIS - Order Product .



```

SEARCH CRITERIA
Product:          SVEH004 - VIN History with Address (Regulated)
VIN:              L110216066004
Reference:        17427
Order #:          18488950
Order Date/Time: 2015-01-29 14:19 EST
*****
                               VIN History with Address (Regulated)
                               VIN not on file
VIN:              L110216066004

***** END OF RECORD *****
  
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**SCHEDULE "H"****TRANSFER AGREEMENT****AMONG:**

**LAGOON CITY HOLDINGS INC., PEERLESS INVESTMENTS INC., SAIL POINT KINGSTON II INC. and 1697499 ONTARIO INC.**, all corporations incorporated pursuant to the laws of the Province of Ontario, together with each of their respective successors and assigns

(collectively, the "**Vendors**" and each individually, the "**Vendor**")

**OF THE FIRST PART**

-and-

**2124915 ONTARIO INC.**, a corporation incorporated pursuant to the laws of the Province of Ontario, as general partner for and on behalf of The Fifty Partnership, a limited partnership formed under the laws of the Province of Ontario

(the "**Purchaser**")

**OF THE SECOND PART**

**WHEREAS** the Vendors are the registered and/or beneficial owners of the Property in fee simple and have agreed to sell, transfer, assign, set over and convey the Purchased Assets to the Purchaser and the Purchaser has agreed to purchase acquire and assume the Purchased Assets from the Vendors on the terms and conditions set forth in this Agreement;

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Ten Dollars (\$10.00) paid by each of the Vendors and the Purchaser to the other and for good and other valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties hereto covenant and agree as follows:

- 2 -

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

- (i) **“Chattels”** means the equipment and chattels, if any, owned by the Vendors, situate on and used exclusively in the ownership of the Property, but excluding any goods, equipment, chattels and trade fixtures belonging to Tenants. Chattels includes the "Equipment" as defined in the Crates Lease.

- 3 -

- (p) **“Crates”** means Steve Crate and Greg Crate, in trust, for a company to be incorporated under the names **“Crates Lagoon City Marina Inc.”** or a similar name.
- (q) **“Crates Lease”** means the lease of the Marina between Lagoon City Holdings Inc. as landlord and Crates as tenant dated as of May 1, 2005.



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- (aa) **“Leases”** means all offers to lease, agreements to lease, leases, subleases, renewals of leases, and other rights or licenses granted by or on behalf of any of the Vendors or their respective predecessors to possess or occupy space within the Property now or hereafter, in each case as amended, renewed or otherwise varied to the date hereof and **“Lease”** means any of the Leases. For clarification, Leases shall not include any leases, subleases or rights to occupy boat slips at the Marina which have been assumed by Crates pursuant to the Crates Lease.
- (dd) **“Marina”** means the Marina Buildings, boat slips, gas docks, storage yard, swimming pool, washrooms and other areas included in the Crates Lease.
- (ee) **“Marina Buildings”** means the main marina building, storage building and other structures on that portion of the Property comprising the Marina.

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(ii) **“Property”** means the Lands and Marina Buildings.

(kk) **“Purchased Assets”** means:

- (i) the Lands;
- (ii) the Marina Buildings;
- (iii) the Leases;
- (iv) the Contracts; and
- (v) the Chattels.

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**ARTICLE 2**  
**TRANSFER**

2.1 **Transfer and Conveyance**

Each of the Vendors hereby sells, transfers, assigns, set over and conveys the Purchased Assets to the Purchaser and the Purchaser hereby agrees to purchase, acquire and assume the Purchased Assets from the Vendors at the Purchase Price on and subject to the terms and conditions of this Agreement.


This Agreement shall operate, without further act or formality, as a conveyance and assignment by each of the Vendors to the Purchaser of the Purchased Assets effective as at the Closing Date.

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to the other, shall constitute a binding agreement of transfer between the parties and shall supersede any previously executed facsimile copies.

IN WITNESS WHEREOF each of the Vendors have executed this Agreement this 15<sup>th</sup> day of June, 2007.

**LAGOON CITY HOLDINGS INC.** (Vendor)

Per   
\_\_\_\_\_  
Altaf Sobity  
Authorized Signing Officer

**SAIL POINT KINGSTON II INC.** (Vendor)


Per   
\_\_\_\_\_  
Altaf Sobity  
Authorized Signing Officer

- 19 -

**PEERLESS INVESTMENTS INC.**

(Vendor)

Per

  
\_\_\_\_\_  
Altaf Soorty  
Authorized Signing Officer

**1697499 ONTARIO INC.**

(Vendor)

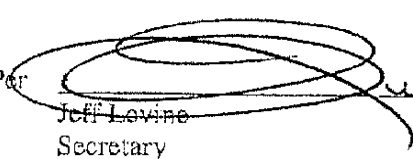
Per

  
\_\_\_\_\_  
Altaf Soorty  
Authorized Signing Officer

**2124915 ONTARIO INC., as general partner  
for the limited partnership, THE FIFTY  
PARTNERSHIP**

(Purchaser)

Per

  
\_\_\_\_\_  
Jeff Levine  
Secretary

**ASSIGNMENT OF LEASES**

**THIS AGREEMENT** dated as of the 28th day of June, 2007.

**BETWEEN:**

**LAGOON CITY HOLDINGS INC.**

(the "Assignor")

-and-

**2124915 ONTARIO INC.**

(the "Assignee")

**WHEREAS** pursuant to a transfer agreement dated June 28, 2007 between the Assignor, Sail Point Kingston II Inc., Peerless Investments Inc. and 1697499 Ontario Inc., as vendors, and the Assignee, as purchaser (the "**Transfer Agreement**"), the Assignee agreed to purchase and the Assignor agreed to sell, *inter alia*, the property legally described in Schedule "A" attached hereto (the "**Property**")

**AND WHEREAS** on Closing the Assignee will acquire the Property and hold registered title thereto as nominee for The Fifty Partnership and The Fifty Partnership will be the sole and beneficial owner of the Property;

**AND WHEREAS** the Transfer Agreement provides for, *inter alia*, the execution and delivery of this Assignment;

**NOW THEREFORE** in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1. Definitions**

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Transfer Agreement.

**2. Assignment**

The Assignor hereby assigns, transfers and sets over unto the Assignee absolutely as of and from the date hereof all of the Assignor's right, title and interest (both at law and in equity) in and to the Leases and any and all rents or other monies accruing under the Leases from and after the Closing Date, and the full power and authority to demand, collect, sue for, distrain for, recover,

- 2 -

receive and give receipts of such rents and other such monies and to enforce payment thereof and performance of the covenants given by the tenants therein.

**3. Assumption**

The Assignee hereby accepts the assignment and transfer contained in Section 2 hereof, and hereby agrees with the Assignor that from and after the Closing Date, it will assume, observe, perform, fulfil and be bound by every covenant, proviso, obligation, term and condition of the Assignor arising on or after the Closing Date, that is contained in each of the Leases (the "Assumed Obligations").

**4. Indemnity by Assignee**

The Assignee covenants and agrees with the Assignor to fully indemnify and save harmless the Assignor from and against any and all future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis, interest, demands and actions of any nature or kind whatsoever arising from or in connection with, or resulting from any breach by the Assignee or those for whom it is responsible in law, of any of the covenants or obligations of the Assignee in the performance of the Assumed Obligations.

**5. Notices**

Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement shall be given in accordance with the notice provisions in Section 7.15 of the Transfer Agreement.

**6. Further Assurances**

Each of the parties hereto shall execute and deliver such additional documents and instruments and shall perform such additional acts as may be necessary or appropriate in connection with this Assignment and all transactions contemplated by this Assignment to effectuate, carry out and perform all of the covenants, obligations, and agreements contained herein.

**7. Successors and Assigns**

The provisions of this Assignment shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**8. Counterparts**

This Assignment may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on all the parties hereto notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart.


**9. Facsimile Signatures**

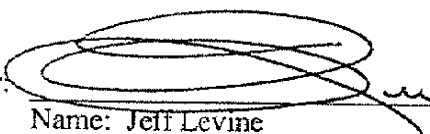
This Assignment may be executed and delivered by facsimile transmission and the parties hereto may rely upon all such facsimile signatures as though such facsimile signatures were original signatures.

**10. Governing Law**

This Assignment shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Assignment as of the date first written above.

**LAGOON CITY HOLDINGS INC.**  
Per:   
Name: Altal Soorty  
Title: Authorized Signing Officer

**2124915 ONTARIO INC.**  
Per:   
Name: Jeff Levine  
Title: Secretary



# T A B I

April 17, 2015

**DELIVERED BY EMAIL**

Mr. James P. McReynolds  
Solmon Rothbart Goodman LLP  
375 University Avenue, Suite 701  
Toronto, ON M5G 2J5

Dear Mr. McReynolds:

**RE: 2124915 Ontario Inc. and the receivership of Crate Marine Sales Limited (“CMSL”) et al.**

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Thank you for your letter of April 16, 2015. The Receiver intends to consider the positions taken in your letter and the merits of continuing the without prejudice discussions which, if successful, would resolve the outstanding matters between our clients. It is possible however, that no settlement will be agreed upon or, if one is, that agreement may not be reached until after April 30<sup>th</sup>, when your client has advised that Pride Marine Group takes possession of the premises under a new lease.

Subject to weather conditions, the time when boat owners will wish to launch their boats for the 2015 boating season is now almost upon us and the peak time for doing so will be during the month of May. Therefore, independent of the without prejudice discussions, it is urgent that our respective clients and Pride Marine resolve how to deal commencing on May 1<sup>st</sup> with boats stored on the premises under arrangements made between CMSL and its customers.

As you know, the Receiver is administering a property claims process in respect of boats and other tangible personal property in the possession of the Debtors in receivership, including CMSL, pursuant to orders of the Court dated December 23, 2014 and March 31, 2015 (“**the Property Claims Orders**”). In its Seventh Report dated March 29, 2015, the Receiver reported to the Court on the status of the property claims process as at that date.

There are currently approximately 352 boats on the Lagoon City premises under arrangements made between CMSL and its customers (the “**Customer Boats**”). Of these boats, there are (a) approximately 218 for which the Receiver has, with the Court’s approval, accepted the customers’ property proofs of claim and been authorized by the Court to release the boats to the customers upon payment of outstanding accounts owed by the customers for materials or services provided, (b) approximately 132 for which the Receiver has received no property proofs of claim and (c) a further 2 boats for which the claim is unresolved, and approximately

65, claimed and unclaimed, with respect to which the customers owe amounts to CMSL for materials and services.

Accordingly, the Receiver requires access to the Lagoon City premises for an indeterminate period after April 30<sup>th</sup> to complete the Court-mandated property claims process relating to the Customer Boats. Customers whose claims have been accepted will wish to launch their boats in the near future and continuing over the coming weeks and the Receiver must comply with the Court's orders efficiently and with a minimum of inconvenience to the customers. The Receiver is considering possible options with respect to the unclaimed boats and upon formulating its recommendation will seek directions from the Court. In the meantime, the most practical and cost-effective measure is to leave the unclaimed boats at their current location.

While the Receiver appreciates that granting it access to the premises for the purposes indicated could result in some inconvenience to your client and Pride Marine, it is hopeful that they will recognize the importance of permitting the Receiver to complete the property claims process in an efficient manner that serves the best interests of the customers who have filed claims. Other alternatives, such as relocating unclaimed boats or boats whose claimants are indebted to CMSL appear to entail disproportionate disruption to all parties and the customers.

The following are the specific terms that the Receiver proposes be accepted by your client, the Landlord, and Pride Marine:

1. These terms shall initially be in force during the period of May 1 – June 15, 2015, subject to extension after that time period upon agreement of all the parties. Failing such agreement, the Receiver will seek the Court's directions on applicable arrangements to be in force after June 15, 2015.
2. The Landlord and Pride Marine shall cooperate with the Receiver in respect of, and facilitate, the Receiver's (a) discharge of its the duties and responsibilities in respect of the Customer Boats pursuant to the Property Claims Orders and any other applicable orders of the Court (collectively, the "**Orders**"), and (b) release of Customer Boats to persons with accepted property claims, any and all such actions and decisions being the sole responsibility of the Receiver at its discretion, subject to the terms of the Orders.
3. Without limiting the generality of section 2, the Landlord and Pride Marine shall, at no charge to or consideration from the Receiver, but at the Receiver's risk, (a) permit the Customer Boats to continue to remain at the premises, (b) permit the Receiver and its duly authorized agents to have access to the premises to comply with the Orders and to take all necessary actions to preserve, protect and insure the Customer Boats as would a prudent owner thereof. and (c) permit the Customer Boats for which property claims have been accepted to be removed from the premises by the Receiver and its duly authorized agents or by persons with accepted property claims at times mutually acceptable to the Landlord, Pride Marine and the Receiver.
4. The agreement among the parties constituted by these accepted terms shall be without prejudice to the resolution by agreement or order of the outstanding issues and claims between the Receiver and the Landlord, including the Landlord's disallowed property proof of claim, which disallowance has been disputed by the Landlord.

If the Landlord does not wish to be a party to the agreement proposed herein, the Receiver is prepared to enter into an agreement on such terms solely with Pride Marine, as the new tenant of the premises commencing on May 1, 2015. We assume that you or the Landlord will in any event be discussing the proposed terms with Pride Marine or its counsel. If thought advisable, the Receiver or our firm may directly contact Pride Marine or its counsel on the matters at issue.

In view of the urgency of the matter, particularly to customers with accepted claims to Customer Boats, the Receiver is hopeful that the required terms can be settled very quickly. If the terms set out above are acceptable, please execute this letter in the space provided below on behalf of the Landlord and request that Pride Marine also execute where indicated. Since May 1<sup>st</sup> is only two weeks away, it will be necessary for the Receiver to seek the Court's directions, perhaps on short notice, if the terms are not settled promptly.

Yours truly,

**GOLDMAN SLOAN NASH & HABER LLP**

Per:



R. Brendan Bissell

RBB:ac

c.c. Stuart Mitchell, A. Farber & Partners Inc. (via e-mail)  
Michael Rotsztain

We hereby accept the terms set out above and agree to be bound thereby.

2124915 Ontario Inc. by its counsel, Solmon Rothbart Goodman LLP:

Per:

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Pride Marine Group:

Per:

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**T A B J**

April 22, 2015

**SENT VIA EMAIL:** [bissell@gsnh.com](mailto:bissell@gsnh.com)

Mr. Brendan Bissell  
Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, Ontario  
M5G 1V2

Dear Mr. Bissell:

Re: 2124915 Ontario Inc. re: Crate Marina Receivership  
Our File No.: 17427

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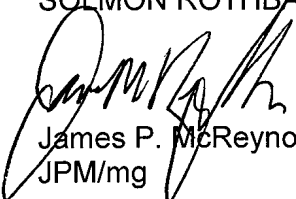
Further to our letter of yesterday, and your letter of April 17, 2015, our client has been advised by Pride Marine Group ("Prides") that it is amenable to co-operating with the Receiver within the following parameters:

- A. a timeframe of May 1 to May 31, 2015, with the Receiver working diligently to resolve issues regarding the boats within this timeframe;
- B. Prides' preference is to have one representative from the Receiver on site at a time to ensure effective communication;
- C. An on-site representative of the Receiver should be present 7 days a week as boaters can be there at any time; and,
- D. It is important that the Receiver's representative be present on May 2 and May 3, 2015 as Prides expects a significant number of boaters during that first weekend in May.

We understand that you have made an appointment with the court for April 30, 2015, for one hour. We are preparing materials to address the issues raised in your correspondence and ours, and look forward to receipt of your motion materials in a timely way.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP

  
James P. McReynolds  
JPM/mg

TAB K



**Solmon Rothbart Goodman LLP**  
Barristers

Melvyn L. Solmon, B.A.Sc., LL.M. (Harv) \*\*

Randall M. Rothbart, B.A., LL.B.

Mark L. Goodman, B.A., LL.B.

Avrum D. Slodovnick, LL.B.

Nancy J. Tourgis, B.Sc.H., LL.B.

James P. McReynolds, B.Comm., LL.B.

Raffaele Sparano, B.A.(Hon.), LL.B.

Matthew Valitutti, B.A., LL.B.

Cameron J. Wetmore, B.A.C.S., LL.B.

Ryan R. McKeen, B.A.(Hon.), J.D.

Eric P. Borzi, B.A.(Hon.), LL.B.

Member of the New York Bar \*\*

April 27, 2015

**VIA EMAIL TO: [bissell@gsnh.com](mailto:bissell@gsnh.com)**

Mr. R. Brendan Bissell  
GOLDMAN SLOAN NASH & HABER LLP  
Barristers & Solicitors  
480 University Avenue  
Suite 1600  
Toronto, Ontario  
M5G 1V6

Dear Mr. Bissell:

Re: 2124915 Ontario Inc. re: Crate Marina Receivership  
Our File: 17427

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Insofar as the Travel Lift is concerned, would you please make immediate arrangements for my client or my office to be provided with the keys to the Travel Lift. They are absolutely necessary in order for it to be utilized to launch boats this coming weekend. As it stands, the Landlord's representative has received many inquiries with respect to utilizing the boat launchers which apparently have been either locked or blocked by the Receiver. Our client needs keys to the gate that has been padlocked by the Receiver at one of the boat launches. At the other, apparently the Receiver has arranged for a large powerboat to be placed at the access point to block its use. We have attached pictures of both of these boat launches.

Our client requires immediate access to the boat launches so that not only Lagoon City boaters can launch their boats, but also the community can utilize the boat launches for that purpose. Our understanding is that the community utilizes these two boat launches and pay a fee for so doing.

As the Receiver has been made well aware for some time, Prides is commencing its lease of the marina this coming Friday, May 1, 2015. There will be numerous boat launches this weekend and the Receiver's blockage of the boat launches will cause irreparable harm to Lagoon City Marina, the boaters who wish to launch their boats and also Pride Marine who will be commencing its tenancy. We trust that the Receiver will make immediate arrangements to provide the Landlord with access to the boat launches. There is no logistic reason why this cannot be accomplished. Should the Receiver wish to post a

**[rrothbart@srglegal.com](mailto:rrothbart@srglegal.com)**

375 University Ave., Suite 701, Toronto, ON M5G 2J5

T 416 947.1093 F 416 947.0079



representative at the marina so as to monitor which boats are being launched, that would be amenable to our client.

We look forward to your response to this request first thing tomorrow morning. Given the timing, arrangements must be made for boaters to have access to the launch facilities.

Yours very truly,

SOLMON ROTHBART GOODMAN LLP

A handwritten signature in black ink, appearing to read "Randall M. Rothbart", with a stylized flourish at the end.

Randall M. Rothbart  
RMR/cg