

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

IN THE MATTER OF *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

APPLICANT

**MOTION RECORD
(Motion to Assign Agreements
Returnable August 13, 2015)**

July 31, 2015

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CCAA Proceedings of Comark Inc., Court File No. CV15-10920-00CL

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Tab 1

Court File No. CV15-10920-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

APPLICANT

**NOTICE OF MOTION
(Motion to Assign Agreements
Returnable August 13, 2015)**

The Applicant, Comark Inc. ("**Comark**"), will make a motion before the Honourable Senior Regional Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on August 13, 2015 at 8:30 a.m. or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) assigning the rights and obligations under certain leases and contracts held by the Applicant to Pacific West Commercial Corporation and its permitted assignees (the "**Purchaser**");

- (b) ordering that the Confidential Exhibit “C” to the Affidavit of Gerald Bachynski sworn July 31, 2015 be sealed and kept confidential pending further order of the Court;
- (c) approving the Fifth Report of the Monitor and the Monitor’s activities described therein; and

2. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

3. On March 26, 2015, this Honourable Court granted protection to the Applicant under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “CCAA”) in the form of an initial order, as amended and restated on April 21, 2015 and further amended on June 1, 2015;

4. Alvarez & Marsal Canada Inc. was appointed to act as the monitor in this CCAA proceeding (the “**Monitor**”);

5. On July 29, 2015, this Court approved a sale of substantially all of the assets and business of Comark to the Purchaser (the “**Transaction**”) pursuant to an asset purchase agreement made between Comark and the Purchaser dated July 16, 2015 (the “**Asset Purchase Agreement**”);

6. The Transaction represented both the highest and the best offer identified in the extensive, Court-supervised sale and investor solicitation process that was conducted;

7. Under the terms of the Asset Purchase Agreement, it is a condition of the closing of the Transaction that Comark obtain consents to the assignment of all of the Tier A Leases and 80% of the Tier B Leases (as such terms are defined in the Asset Purchase Agreement), representing a total of approximately 300 leases;

8. For all assigned contracts other than leases, Comark agreed to use commercially reasonable efforts to obtain the consent of the applicable counterparty, or, in the event that the requisite consents were not obtained, to seek an Order assigning all of the rights and obligations of Comark under the applicable contract to the Purchaser;

9. The Applicant and its counsel have engaged in intensive discussions with the respective landlords and counterparties for the leases and assigned contracts, and, as a result, consents for the assignment of 56 leases and 3 assigned contracts have been obtained;

10. It is appropriate to assign the rights and obligations under the remaining 261 leases (the “**Leases**”) and 21 contracts (the “**Remaining Contracts**”) to the Purchaser and its permitted assignees;

11. The Purchaser has advised that it anticipates assigning Comark’s three banners to separate permitted assignee entities, each of which is able to comply with the covenants and obligations under the respective assigned contracts;

12. No amendments are being sought in respect of the Leases or the Remaining Contracts;

13. As set out in the Asset Purchase Agreement, all Cure Amounts related to the Leases and the Remaining Contracts will be paid;

14. Comark is continuing to work diligently to obtain requested consents, and the number of Leases and Remaining Contracts to be assigned pursuant to the Order will be reduced by the number of consents obtained prior to the return date for this motion;

15. The Confidential Exhibit "C" to the Bachynski Affidavit contains commercially sensitive information, the disclosure of which would be harmful to the Company;

16. It is in the best interests of the Applicant's stakeholders that the requested Order be granted;

17. The relief requested herein is supported by the Monitor;

18. The provisions of the CCAA and, in particular, Section 11.3 thereof;

19. The inherent and inequitable jurisdiction of this Honourable Court;

20. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and

21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

22. The Affidavit of Gerald Bachynski sworn July 31, 2015 and the exhibits attached thereto;

23. The Fifth Report of the Monitor, to be filed; and

24. Such further and other material as counsel may advise and this Honourable Court may permit.

July 31, 2015

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Lawyers for the Applicant

TO: THE SERVICE LIST

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK INC.**

APPLICANT

Court File No. CV15-10920-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Motion to Assign Agreements
Returnable August 13, 2015)**

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Toronto, Canada M5X 1B8

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Lawyers for the Applicant

Matter No: 1163824

Tab A

Schedule “A”

|Court File No. CV15-10920-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONORABLE REGIONAL SENIOR) JUSTICE MORAWETZ))	THURSDAY, THE 13TH DAY OF AUGUST, 2015
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IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

Applicant

ORDER APPROVING ASSIGNMENT OF CONTRACTS

THIS MOTION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order approving the assignment of certain leases and contracts (the "**Assignment**") to the Purchaser as contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicant and Pacific West Commercial Corporation and its permitted assignees (collectively, the "**Purchaser**") dated July 16, 2015 and appended to the Motion Record of the Applicant, was heard this day at 330 University Avenue, Toronto, Ontario.

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Sale Agreement.

APPROVAL OF ASSIGNMENT OF CONTRACTS

3. THIS COURT ORDERS AND DECLARES that immediately upon the delivery of a monitor's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto, all of the rights and obligations of the Vendor under the contracts and real property leases/occupation agreements (the "**Real Property Leases**") listed in Schedule "A" hereto (collectively, the "**Contracts**") shall be assigned, conveyed and transferred to the Purchaser pursuant to section 11.3 of the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**"). As and from the Closing Time, the Purchaser shall be entitled and subject to all of the rights and obligations as tenant pursuant to the terms of the Real Property Leases and registrations thereof and may enter into and upon and hold and enjoy each premises contemplated by the Real Property Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Leases, without any interruption from the Vendor, the landlords under the Real Property Leases or any person whomsoever claiming through or under any of the Vendor or the landlords under the Real Property Leases.

4. THIS COURT ORDERS that the assignment and transfer of the Contracts shall further be subject to the provision of this Court's Approval and Vesting Order dated July 29, 2015 directing that the Vendor's rights and obligations under the Contracts shall vest in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances.

5. THIS COURT ORDERS that the assignment of the Contracts is valid and binding upon all of the counterparties to the Contracts, notwithstanding any restriction or prohibition contained in any such Contract relating to the assignment thereof, including, but not limited to,

any provision requiring the consent of any party to the transfer, conveyance, or assignment of the Contracts.

6. THIS COURT ORDERS that no counterparty under any Contract, nor any other person, upon the assignment and transfer to, and assumption by, the Purchaser of the Contracts hereunder shall make or pursue any demand, Claim, action or suit or exercise any right or remedy under any Contract against the Purchaser relating to:

- (a) the Vendor having sought or obtained relief under the CCAA;
- (b) the insolvency of the Vendor; or
- (c) any failure by the Vendor to perform a non-monetary obligation under any Contract;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty, nothing herein shall limit or exempt the Purchaser in respect of obligations accruing, arising or continuing after the date hereof, under the Contracts other than in respect of items (a) - (c) above.

7. THIS COURT ORDERS that all existing monetary defaults in relation to any of the Contracts, if applicable, other than those arising by reason only of the Vendor's insolvency, the commencement of these CCAA proceedings or failure to perform a non-monetary obligation under any Contract; on or before the Closing Date, shall be paid in accordance with Section 2.4(b) of the Sale Agreement.

8. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume the Assumed Liabilities and to perform its obligations under the Assigned Contracts, as set out in the Sale Agreement.

9. THIS COURT ORDERS AND DIRECTS that the Monitor is hereby authorized and directed to take such actions as it deems necessary or appropriate in the circumstances to assist the Vendors in the assignment and transfer of the Contracts.

GENERAL

10. 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 Applicant 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and its agents in carrying out the terms of this Order.

11. The Vendor, the Purchaser, the Monitor and any counterparty to any Contract being assigned may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, including without limitation, as necessary, to effect the transfer of the Contracts (including any transfer of title registrations in respect of such Contracts), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

SCHEDULE A

LEASES

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	40766	cleo	TD Square	AB	1260642 Alberta Ltd. & AIMCo RE GP Corp., as general partner for AIMCo	20 Vic Management Inc.
A	20511	Bootlegger	St. Vital Centre	MB	20 Vic Management Inc. & OPB Realty (St. Vital) Inc.	20 Vic Management Inc.
A	30524	Ricki's	St. Vital Centre	MB	20 Vic Management Inc. & OPB Realty (St. Vital) Inc.	20 Vic Management Inc.
A	40539	cleo	St. Vital Centre	MB	20 Vic Management Inc. & OPB Realty (St. Vital) Inc.	20 Vic Management Inc.
A	20928	Bootlegger	Aberdeen Mall	BC	Aberdeen Kamloops Mall Limited	20 Vic Management Inc.
A	30925	Ricki's	Aberdeen Mall	BC	Aberdeen Kamloops Mall Limited	20 Vic Management Inc.
A	40890	cleo	Aberdeen Mall	BC	Aberdeen Kamloops Mall Limited	20 Vic Management Inc.
A	30258	Ricki's	Billings Bridge Plaza	ON	Capital City Shopping Centre Limited	20 Vic Management Inc.
A	30590	Ricki's	Cornwall Centre	SK	Cornwall Centre Inc.	20 Vic Management Inc.
A	40609	cleo	Cornwall Centre	SK	Cornwall Centre Inc.	20 Vic Management Inc.
A	20385	Bootlegger	Quinte Mall	ON	HOOPP Realty Inc.	20 Vic Management Inc.
A	30496	Ricki's	Devonshire Mall	ON	HOOPP Realty Inc.	20 Vic Management Inc.
A/A	40491/ 30288/ 40353	cleo Ricki's/cleo	Devonshire Mall Quinte Mall	ON ON	HOOPP Realty Inc.	20 Vic Management Inc.
A	30376	Ricki's	Lambton Mall	ON	KS Lambton Mall Inc.	20 Vic Management Inc.
A	40389	cleo	Lambton Mall	ON	KS Lambton Mall Inc.	20 Vic Management Inc.
A	30494	Ricki's	Tecumseh Mall	ON	KS Tecumseh Mall Inc.	20 Vic Management Inc.
A	30254	Ricki's	Lansdowne Place	ON	Lansdowne Place Inc.	20 Vic Management Inc.
A	40256	cleo	Lansdowne Place	ON	Lansdowne Place Inc.	20 Vic Management Inc.
A	20755/ 30755/ 40685	Bootlegger/Ricki's/cleo	Londonderry Mall	AB	Londonderry Shopping Centre Inc.	20 Vic Management Inc.
A	20599	Bootlegger	Midtown Plaza	SK	Midtown Plaza Inc.	20 Vic Management Inc.
A	30601	Ricki's	Midtown Plaza	SK	Midtown Plaza Inc.	20 Vic Management Inc.
A	40605	cleo	Midtown Plaza	SK	Midtown Plaza Inc.	20 Vic Management Inc.
A	40444	cleo	Erin Mills Town Centre	ON	OPB (EMTC) Inc.	20 Vic Management Inc.
A	30291	Ricki's	Carlingwood Mall	ON	OPB Realty (Carlingwood) Inc.	20 Vic Management Inc.

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	20049	Bootlegger	Halifax Shopping Centre	NS	OPB Realty (Halifax Centre) Inc.	20 Vic Management Inc.
A	30041	Ricki's	Halifax Shopping Centre	NS	OPB Realty (Halifax Centre) Inc.	20 Vic Management Inc.
A	40074	cleo	Halifax Shopping Centre	NS	OPB Realty (Halifax Centre) Inc.	20 Vic Management Inc.
A	20359/ 30359	Bootlegger/Ricki's	Pickering Town Centre	ON	OPB Realty (Pickering Ctr) Inc.	20 Vic Management Inc.
A	20456	Bootlegger	Pen Centre	ON	OPB Realty Inc.	20 Vic Management Inc.
A	30283	Ricki's	Pen Centre	ON	OPB Realty Inc.	20 Vic Management Inc.
A	40474	cleo	Pen Centre	ON	OPB Realty Inc.	20 Vic Management Inc.
B	20883/ 30883	Bootlegger/Ricki's	Campbell River Common	BC	Campbell River Common Shopping Centre Ltd.	A.B. Edie Equities Inc.
B	30461	Ricki's	Station Mall	ON	Algoma Central Properties Inc.	Algoma Central
B	40493	cleo	Station Mall	ON	Algoma Central Properties Inc.	Algoma Central
A	20916	Bootlegger	Willowbrook Shopping Centre	BC	2725312 Canada Inc. & 2973758 Canada Inc.	Bentall Kennedy (Canada) LP
A	30878	Ricki's	Willowbrook Shopping Centre	BC	2725312 Canada Inc. & 2973758 Canada Inc.	Bentall Kennedy (Canada) LP
A	40904	cleo	Willowbrook Shopping Centre	BC	2725312 Canada Inc. & 2973758 Canada Inc.	Bentall Kennedy (Canada) LP
A	20637/3 0637	Bootlegger/Ricki's	Victoria Square Mall	SK	Artis Victoria Square Ltd.	Bentall Kennedy (Canada) LP
A/A	20679/ 20857/ 30857	Bootlegger Bootlegger/Ricki's	Bower Place Westshore Town Centre	AB BC	bcIMC Realty Corporation	Bentall Kennedy (Canada) LP
A/A	30715/ 30716; 30295	Ricki's Ricki's	Bower Place Cloverdale Mall	AB ON	bcIMC Realty Corporation	Bentall Kennedy (Canada) LP
A	40698	cleo	Bower Place	AB	bcIMC Realty Corporation	Bentall Kennedy (Canada) LP
A	20859	Bootlegger	Driftwood Mall	BC	Driftwood Mall Ltd. and 5275 Investments Ltd	Bentall Kennedy (Canada) LP
A	20867	Bootlegger	Hillside Centre	BC	Hillside Centre Holdings Inc.	Bentall Kennedy (Canada) LP
A	30860	Ricki's	Hillside Centre	BC	Hillside Centre Holdings Inc.	Bentall Kennedy (Canada) LP
A	40834	cleo	Hillside Centre	BC	Hillside Centre Holdings Inc.	Bentall Kennedy (Canada) LP
A	20913	Bootlegger	Village Green Mall	BC	OPTRUST RETAIL INC.	Bentall Kennedy (Canada) LP
A	30492	Ricki's	Windsor Crossing Premium Outlets	ON	OPTRUST RETAIL INC.	Bentall Kennedy (Canada) LP
A	30398/ 40398	Ricki's/cleo	Sheridan Centre	ON	PCM Sheridan Inc.	Bentall Kennedy (Canada) LP
A	20909	Bootlegger	Tamarack Shopping Centre	BC	Pellex Holdings Ltd.	Bentall Kennedy (Canada) LP

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	30929	Ricki's	Tamarack Shopping Centre	BC	Pellex Holdings Ltd.	Bentall Kennedy (Canada) LP
A	20307	Bootlegger	White Oaks Mall	ON	White Oaks Mall Holdings Ltd.	Bentall Kennedy (Canada) LP
A	30388	Ricki's	White Oaks Mall	ON	White Oaks Mall Holdings Ltd.	Bentall Kennedy (Canada) LP
A	40410	cleo	White Oaks Mall	ON	White Oaks Mall Holdings Ltd.	Bentall Kennedy (Canada) LP
Other	20409	Bootlegger	Masonville Place	ON	CF / Realty Holdings Inc.	Cadillac Fairview
A/A	40387/ 40373	cleo cleo	Lime Ridge Mall Masonville Place	ON ON	CF / Realty Holdings Inc.	Cadillac Fairview
A	20090	Bootlegger	Champlain Place	NB	CFCL re: Champlain Place	Cadillac Fairview
A	30087	Ricki's	Champlain Place	NB	CFCL re: Champlain Place	Cadillac Fairview
A	40078	cleo	Champlain Place	NB	CFCL re: Champlain Place	Cadillac Fairview
A	20699	Bootlegger	Chinook Centre	AB	Chinook (2014) Inc.	Cadillac Fairview
A	30687	Ricki's	Chinook Centre	AB	Chinook (2014) Inc.	Cadillac Fairview
A	20312	Bootlegger	Fairview Park Mall	ON	Fairview Park Leaseholds Inc.	Cadillac Fairview
A	30314	Ricki's	Fairview Park Mall	ON	Fairview Park Leaseholds Inc.	Cadillac Fairview
A	40322	cleo	Fairview Park Mall	ON	Fairview Park Leaseholds Inc.	Cadillac Fairview
A	20683/ 30767	Bootlegger/Ricki's	Calgary Market Mall	AB	Market Mall Leaseholds Inc.	Cadillac Fairview
A	40759	cleo	Calgary Market Mall	AB	Market Mall Leaseholds Inc.	Cadillac Fairview
A	20510	Bootlegger	Polo Park	MB	Ontrea Inc.	Cadillac Fairview
A	30504	Ricki's	Polo Park	MB	Ontrea Inc.	Cadillac Fairview
A	40505	cleo	Polo Park	MB	Ontrea Inc.	Cadillac Fairview
A	40466	cleo	Toronto-Dominion Centre	ON	Toronto Dominion Centre Leaseholds Limited	Cadillac Fairview
A	30355/ 40355	Ricki's/cleo	SmartCentres Barrie South	ON	Calloway REIT (Barrie) Inc.	Calloway REIT
A	30682	Ricki's	Capilano SmartCentres	AB	Calloway REIT (Edmonton East) Inc. & IG Investment Management, Ltd.	Calloway REIT
A	30282	Ricki's	Innes Rd & Mer Bleue Power Centre	ON	Calloway REIT and Calloway LP	Calloway REIT
B	30274	Ricki's	Aurora North Power Centre	ON	SmartREIT (Aurora North II) Inc. and Calloway REIT (Aurora North) Inc.	Calloway REIT
B	30271	Ricki's	Oshawa South Power Centre	ON	SmartREIT (Oshawa South II) Inc. and Calloway REIT (Oshawa South) Inc.	Calloway REIT
A	20693	Bootlegger	South Edmonton Common	AB	Cameron Corporation	Cameron Corporation
A	30681	Ricki's	South Edmonton Common	AB	Cameron Corporation	Cameron Corporation
A	40669	cleo	South Edmonton Common	AB	Cameron Corporation	Cameron Corporation

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	30426	Ricki's	Lynden Park Mall	ON	Centrecorp Management Services Limited	CentreCorp
A	40343	cleo	Lynden Park Mall	ON	Centrecorp Management Services Limited	CentreCorp
B	20858/ 30858	Bootlegger/Ricki's	Piccadilly Place Mall	BC	The Standard Life Assurance Company of Canada	Colliers International
Other	809201	CMK warehouse	930 ST-MARTIN BOUL (Distrib. Centre)	QC	Cominar REIT	Cominar Real Estate Investment Trust
A	20653	Bootlegger	Emerald Hills Centre	AB	1445006 Alberta Ltd.	Courtenay Real Estate Services Inc.
A	30651	Ricki's	Emerald Hills Centre	AB	1445006 Alberta Ltd.	Courtenay Real Estate Services Inc.
A	20092	Bootlegger	Avalon Mall	NL	Crombie Properties	Crombie
A	30083	Ricki's	Avalon Mall	NL	Crombie Properties	Crombie
A	40088	cleo	Avalon Mall	NL	Crombie Properties	Crombie
B	20841	Bootlegger	Totem Mall	BC	Centeur Properties Limited	Edgecombe Realty Advisors Inc.
B	40417	cleo	Cornwall Square	ON	Partners Real Estate Investment Trust	EPIC Realty Partners (Ottawa) Inc.
B	30371	Ricki's	Milton Crossroads Shopping Centre	ON	First Milton Shopping Centres Limited	First Gulf Development Corporation
B	40384	cleo	Milton Crossroads Shopping Centre	ON	First Milton Shopping Centres Limited	First Gulf Development Corporation
A	20448/ 30448	Bootlegger/Ricki's	Pembroke Mall	ON	1529452 Ontario Limited	Fishman Holdings
A	20596	Bootlegger	Gateway Mall	SK	1540709 Ontario Limited	Fishman Holdings
A	30598/ 40597	Ricki's/cleo	Gateway Mall	SK	1540709 Ontario Limited	Fishman Holdings
A	40639	cleo	Market Mall	SK	2055190 Ontario Limited	Fishman Holdings
B	20839	Bootlegger	Boitania Mall	BC	0833850 B.C. Ltd.	Grand Peak Capital Ltd.
B	20940	Bootlegger	Centre Square Shopping Centre	NT	Huntingdon Holdings 18 Corporation	HREIT
A	30260	Ricki's	Bayshore Shopping Centre	ON	Bayshore Shopping Centre Limited and KS Bayshore Inc.	Ivanhoe Cambridge
A	40264	cleo	Bayshore Shopping Centre	ON	Bayshore Shopping Centre Limited and KS Bayshore Inc.	Ivanhoe Cambridge
A	40499	cleo	Mapleview Centre	ON	Canapen (Halton) Ltd. & Ivanhoe Cambridge II Inc.	Ivanhoe Cambridge

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	20869	Bootlegger	Guildford Town Centre	BC	Guildford Town Centre Limited Partnership	Ivanhoe Cambridge
A	30865	Ricki's	Guildford Town Centre	BC	Guildford Town Centre Limited Partnership	Ivanhoe Cambridge
A	20935	Bootlegger	Metropolis at Metrotown	BC	Ivanhoe Cambridge II Inc.	Ivanhoe Cambridge
A/A	30464 30298	Ricki's Ricki's	Conestoga Mall Vaughan Mills	ON ON	Ivanhoe Cambridge II Inc.	Ivanhoe Cambridge
A/A	20677 20900	Bootlegger Bootlegger	CrossIron Mills Woodgrove Centre	AB BC	Ivanhoe Cambridge Inc.	Ivanhoe Cambridge
A/A	30674/ 30880	Ricki's Ricki's	CrossIron Mills Woodgrove Centre	AB BC	Ivanhoe Cambridge Inc.	Ivanhoe Cambridge
A/A	40704/ 40887	cleo cleo	CrossIron Mills Woodgrove Centre	AB BC	Ivanhoe Cambridge Inc.	Ivanhoe Cambridge
A	20273	Bootlegger	Oshawa Centre	ON	Oshawa Centre Holdings Inc.	Ivanhoe Cambridge
A	40488	cleo	Oshawa Centre	ON	Oshawa Centre Holdings Inc.	Ivanhoe Cambridge
B	20875	Bootlegger	Skeena Mall	BC	Loon Properties (Skeena) Inc.	Loon Properties (Skeena) Inc.
A	20917	Bootlegger	Cottonwood Mall	BC	2046459 Ontario Inc.	Morguard Investments Limited
A	30902	Ricki's	Cottonwood Mall	BC	2046459 Ontario Inc.	Morguard Investments Limited
A	40889	cleo	Cottonwood Mall	BC	2046459 Ontario Inc.	Morguard Investments Limited
A	20593/ 30602/ 40559	Bootlegger/Ricki's/cleo	Lawson Heights	SK	3934390 Canada Inc.	Morguard Investments Limited
A	20881	Bootlegger	Sevenoaks Shopping Centre	BC	585562 B.C. Ltd.	Morguard Investments Limited
A	30882	Ricki's	Sevenoaks Shopping Centre	BC	585562 B.C. Ltd.	Morguard Investments Limited
A	40923	cleo	Sevenoaks Shopping Centre	BC	585562 B.C. Ltd.	Morguard Investments Limited
A	30470	Ricki's	St. Laurent Shopping Centre	ON	713949 Ontario Limited	Morguard Investments Limited
A	40267	cleo	St. Laurent Shopping Centre	ON	713949 Ontario Limited	Morguard Investments Limited
A	30351	Ricki's	Bramalea City Centre	ON	Aktion Capital Corporation & Bramalea City Centre Equities Inc.	Morguard Investments Limited
A	40436	cleo	Bramalea City Centre	ON	Aktion Capital Corporation & Bramalea City Centre Equities Inc.	Morguard Investments Limited
A/A	20346/ 20345	Bootlegger Bootlegger	Intercity Shopping Centre New Sudbury Centre	ON ON	HOOPP Realty Inc.	Morguard Investments Limited
A	30320/ 30486	Ricki's Ricki's	Intercity Shopping Centre New Sudbury Centre	ON ON	HOOPP Realty Inc.	Morguard Investments Limited
A	40275	cleo	New Sudbury Centre	ON	HOOPP Realty Inc.	Morguard Investments Limited

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A/A/ A/A	20533/ 20430/ 20615/ 30615 20874	Bootlegger Bootlegger Bootlegger/ Ricki's Bootlegger	Brandon Shoppers Mall Cambridge Centre Centre At Circle And Eighth Pine Centre Mall	MB ON SK BC	Morguard Real Estate Investment Trust	Morguard Investments Limited
A/A/ A	30515/ 30462/ 30848	Ricki's Ricki's Ricki's	Brandon Shoppers Mall Cambridge Centre Pine Centre Mall	MB ON BC	Morguard Real Estate Investment Trust	Morguard Investments Limited
A/A	40521/ 40442	cleo cleo	Brandon Shoppers Mall Cambridge Centre	MB ON	Morguard Real Estate Investment Trust	Morguard Investments Limited
A	20901	Bootlegger	Coquitlam Centre	BC	Pensionfund Realty Limited	Morguard Investments Limited
A	40836	cleo	Coquitlam Centre	BC	Pensionfund Realty Limited	Morguard Investments Limited
A	20735/ 30735	Bootlegger/Ricki's	Parkland Mall (AB)	AB	Red Deer Shopping Centre Inc.	Morguard Investments Limited
A	40691	cleo	Parkland Mall (AB)	AB	Red Deer Shopping Centre Inc.	Morguard Investments Limited
A	20736	Bootlegger	Prairie Mall	AB	Revenue Properties Company Limited	Morguard Investments Limited
A	30741	Ricki's	Prairie Mall	AB	Revenue Properties Company Limited	Morguard Investments Limited
B	20842/ 30842	Bootlegger/Ricki's	Haney Place Mall	BC	Narland Properties (Haney) Ltd.	Narland Properties
B	30404	Ricki's	Heartland Town Centre	ON	Orlando Corporation	Orlando Corporation
B	40401	cleo	Heartland Town Centre	ON	Orlando Corporation	Orlando Corporation
A	20706	Bootlegger	Kingsway Mall	AB	Kingsway Garden Holdings Inc.	Oxford
A	30696	Ricki's	Kingsway Mall	AB	Kingsway Garden Holdings Inc.	Oxford
A	40710	cleo	Kingsway Mall	AB	Kingsway Garden Holdings Inc.	Oxford
A	30672	Ricki's	Edmonton City Centre East	AB	Oxford Properties Group Inc. & CPPIB Real Estate Holdings Inc.	Oxford
A	40663	cleo	Edmonton City Centre East	AB	Oxford Properties Group Inc. & CPPIB Real Estate Holdings Inc.	Oxford
A	40407	cleo	Upper Canada Mall	ON	Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.	Oxford
A	20656	Bootlegger	Southcentre Mall	AB	Oxford Properties Retail Holdings Inc & Oxford Properties Retail Holdings II Inc	Oxford
A	30680	Ricki's	Southcentre Mall	AB	Oxford Properties Retail Holdings Inc & Oxford Properties Retail Holdings II Inc	Oxford
A	40671	cleo	Southcentre Mall	AB	Oxford Properties Retail Holdings Inc & Oxford Properties Retail Holdings II Inc	Oxford
A	40280	cleo	Square One Shopping Centre	ON	Square One Property Corporation	Oxford
B	20852	Bootlegger	Town Centre Mall	BC	Powell River Town Centre Ltd.	Powell River

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	30313	Ricki's	Cataraqui Town Centre	ON	Cataraqui Holdings Inc.	Primaris Management Inc.
A	40476	cleo	Cataraqui Town Centre	ON	Cataraqui Holdings Inc.	Primaris Management Inc.
A	30519	Ricki's	Kildonan Place	MB	Kildonan Place Ltd.	Primaris Management Inc.
A	20694	Bootlegger	Medicine Hat Mall	AB	Medicine Hat Mall Inc.	Primaris Management Inc.
A	30686	Ricki's	Medicine Hat Mall	AB	Medicine Hat Mall Inc.	Primaris Management Inc.
A	40676	cleo	Medicine Hat Mall	AB	Medicine Hat Mall Inc.	Primaris Management Inc.
A	20905	Bootlegger	Orchard Park	BC	Orchard Park Shopping Centre Holdings Inc.	Primaris Management Inc.
A	30906	Ricki's	Orchard Park	BC	Orchard Park Shopping Centre Holdings Inc.	Primaris Management Inc.
A	40912	cleo	Orchard Park	BC	Orchard Park Shopping Centre Holdings Inc.	Primaris Management Inc.
A	20732/ 30765	Bootlegger/Ricki's	Park Place	AB	Park Place Mall Holdings Inc.	Primaris Management Inc.
A	40695	cleo	Park Place	AB	Park Place Mall Holdings Inc.	Primaris Management Inc.
A	30333/ 40333	Ricki's/cleo	Place d'Orleans	ON	Place d'Orleans Holdings Inc.	Primaris Management Inc.
A	20748	Bootlegger	Peter Pond Shopping Centre	AB	PRR TRUST by its sole trustee, PRR Investments Inc.	Primaris Management Inc.
A	30760	Ricki's	Peter Pond Shopping Centre	AB	PRR TRUST by its sole trustee, PRR Investments Inc.	Primaris Management Inc.
A	20045	Bootlegger	Regent Mall	NB	Regent Mall Holdings Inc.	Primaris Management Inc.
A	30050	Ricki's	Regent Mall	NB	Regent Mall Holdings Inc.	Primaris Management Inc.
A	40051	cleo	Regent Mall	NB	Regent Mall Holdings Inc.	Primaris Management Inc.
A	20700/ 30720	Bootlegger/Ricki's	Sherwood Park Mall	AB	Sherwood Park Portfolio Inc.	Primaris Management Inc.
A	40708	cleo	Sherwood Park Mall	AB	Sherwood Park Portfolio Inc.	Primaris Management Inc.
A	20744/ 30744	Bootlegger/Ricki's	St. Albert Centre	AB	St. Albert Centre Holdings Inc.	Primaris Management Inc.
A	30439	Ricki's	Stone Road Mall	ON	Stone Road Mall Holdings Inc.	Primaris Management Inc.
A	40435	cleo	Stone Road Mall	ON	Stone Road Mall Holdings Inc.	Primaris Management Inc.
A	20697	Bootlegger	Sunridge Mall	AB	Sunridge Mall Holdings Inc.	Primaris Management Inc.
A	30701	Ricki's	Sunridge Mall	AB	Sunridge Mall Holdings Inc.	Primaris Management Inc.
A	40690	cleo	Sunridge Mall	AB	Sunridge Mall Holdings Inc.	Primaris Management Inc.
B	40319	cleo	l'Esplanade Laurier	ON	Her Majesty the Queen	Public Works and Gov. Services Canada

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
A	30665	Ricki's	Mayfield Common	AB	1451945 Ont Ltd & Sun Life Assurance Co. of Canada	RioCan REIT
A	30522	Ricki's	Garden City Shopping Centre	MB	1562903 Ontario Ltd.	RioCan REIT
A	30289	Ricki's	RioCan Durham Centre I	ON	Durham Holdings Limited	RioCan REIT
A	30483	Ricki's	Hamilton SE Power Centre	ON	RioCan Holdings (Hamilton) Inc.	RioCan REIT
A (Georgian Mall) Other (Parkland Mall)	20406/ 20606	Bootlegger Bootlegger	Georgian Mall Parkland Mall	ON SK	RioCan Holdings Inc.	RioCan REIT
A/A	30592/ 30661	Ricki's Ricki's	Parkland Mall South Trail Crossing	SK AB	RioCan Holdings Inc.	RioCan REIT
A	40594	cleo	Parkland Mall	SK	RioCan Holdings Inc.	RioCan REIT
A	30285	Ricki's	RioCan Green Lane Centre	ON	Riotrin Properties (Newmarket) Inc.	RioCan REIT
A	30657	Ricki's	Signal Hill Centre	AB	Riotrin Properties Inc.	RioCan REIT
A	40338	cleo	Burlington Mall	ON	RK (Burlington Mall) Inc.	RioCan REIT
A	20336/ 30336	Bootlegger/Ricki's	Timmins Square	ON	Timmins Square Shopping Centre Inc. & 1451945 Ontario Limited	RioCan REIT
B	20921	Bootlegger	Lougheed Mall	BC	Shape Properties (Lougheed) Corp. and LTC Equities Inc.	Shape Property Mgmt Corp.
Other	039401	RK H/O	1670 Inkster Blvd. (RK H/O)	MB	6485155 Manitoba Limited	Shelter Canadian Properties Limited
A	30286	Ricki's	Guelph Power Centre	ON	6 & 7 Developments Limited	SmartCentres
A	30536	Ricki's	Kenaston Power Centre	MB	Calloway Limited Partnership	SmartCentres
A	30244/ 40244	Ricki's/cleo	SmartCentres Scarborough	ON	Calloway REIT (1900 Eglinton) Inc.	SmartCentres
A	30281	Ricki's	Burlington North Power Centre	ON	Calloway REIT (Burlington) Inc.	SmartCentres
A	30768	Ricki's	Edmonton NE Power Centre	AB	Calloway REIT (Edmonton) Inc.	SmartCentres
A	30259/ 40259	Ricki's/cleo	Etobicoke Power Centre	ON	Calloway REIT (Etobicoke) Inc.	SmartCentres

<u>Tier</u>	<u>Store #</u>	<u>Division</u>	<u>Shopping Centre</u>	<u>Prov</u>	<u>Landlord's Legal Name</u>	<u>Notice Party</u>
B	30396	Ricki's	London North Power Centre	ON	Calloway REIT (London N) and Canadian Property Holdings (Ontario) Inc.	SmartCentres
A	30069	Ricki's	SmartCentres St. John's East	NL	Calloway REIT (Stick Pond) Inc.	SmartCentres
A	40062	cleo	SmartCentres St. John's East	NL	Calloway REIT (Stick Pond) Inc.	SmartCentres
A	30249	Ricki's	SmartCentres Oakville	ON	SmartReit (Oakville) Inc.	SmartCentres
A	40247	cleo	SmartCentres Oakville	ON	SmartReit (Oakville) Inc.	SmartCentres
A	20094	Bootlegger	Corner Brook Plaza	NL	Montez (Corner Brook) Inc.	Westcliff Management Ltd.
A	30082	Ricki's	Corner Brook Plaza	NL	Montez (Corner Brook) Inc.	Westcliff Management Ltd.
A	40084	cleo	Corner Brook Plaza	NL	Montez (Corner Brook) Inc.	Westcliff Management Ltd.

CONTRACTS

Counterparty	Agreement	Date of Agreement
Amex Bank of Canada	AeroplanPlus Corporate Card Joint & Several Account Agreement	May 25, 2007
Amex Bank of Canada	AeroplanPlus Corporate Card Joint & Several Account Agreement	May 25, 2007
Aviscar Inc.	Avis Worldwide Rate Agreement	October 1, 2014
Bazaarvoice, Inc.	Master Application Service Provider Agreement	June 17, 2009
Bazaarvoice, Inc.	Bazaarvoice, Inc. Second Amended and Restated Service Addendum	August 31, 2011
Beanstream Commerce Inc.	Internet Beanstream Pre-Authorized Debt (PAD) Plan Agreement	August 12, 2012

Bell Canada	Master Communications Agreement – Non-Tariffed (Retail)	July 1, 2009
Bell Canada	Master Communications Agreement – Tariffed (Retail)	July 1, 2009
CGI Information Systems and Management Consultants Inc.	Non-Standard Service Request Form Part I and Part II – Approval to Proceed and Terms & Conditions and Part III – Upon Completion	(1) Date of original request: September 20, 2013 Revised date of request: May 15, 2014 (2) Date of original request: September 20, 2013 Revised date of request: October 24, 2013 (3) Date of original request: October 15, 2013 Revised date of request: February 23, 2015 (4) Revised date of request: April 4, 2014
CGI Information Systems and Management Consultants Inc.	Change Control Notice (CCN)	May 2015
CGI Information Systems and Management Consultants Inc.	Amended and Restated Outsourcing Services Agreement	March 1, 2012
Ryder CRSA Logistics	Offshore Program	March 21, 2007

Ryder CRSA Logistics	Inland Service Agreement	June 1, 2009
Demandware Inc.	Master Subscription and Services Agreement	March 28, 2013
Epicor Retail Solutions Corporation	Software Order Addendum to the Master Agreement	June 26, 2013
NSB Retail Solutions Inc.	Software Implementation Agreement Addendum	February 26, 2010
Fujitsu Transaction Solutions Canada Inc.	Master Agreement for the Supply of Equipment and Services	November 25, 2008
Kintetsu World Express (Canada) Inc.	Master Agreement for Transportation Services	September 21, 2011
Lawson Software, Inc.	Product Order Form – Lawson Software End User Agreement	November 23, 2004
Lawson Software, Inc.	Master Services Agreement	November 23, 2004
Momentum Digital Solutions Inc.	Managed Application Support and Maintenance Program Statement of Work	May 6, 2014
Momentum Digital Solutions Inc.	Managed Application Support and Maintenance Program Renewal Agreement	May 31, 2015
Momentum Digital Solutions Inc.	Professional Services Agreement	May 12, 2014

Momentum Digital Solutions Inc.	Responsive Design Retrofit Project (Statement of Work)	January 30, 2015
Momentum Digital Solutions Inc.	Responsive Design Retrofit Project Change Request (CR001)	March 18, 2015
Momentum Digital Solutions Inc.	Tagging Strategy and Implementation Project (Statement of Work)	March 2, 2015
Momentum Digital Solutions Inc.	OMS Breakwall Enhancement Project (Statement of Work)	May 28, 2015
Oracle Canada ULC	General Terms of Master Agreement	May 20, 2015
Datavantage Corporation	Global Support Services Agreement, Agreement #1443	April 15, 2009
Datavantage Corporation	First Amendment to the Proact Software License Agreement No. 1245	June 26, 2008

Datavantage Corporation	Addendum to Analytics Software License and Services Agreement No. 1245	December 21, 2007
Datavantage Corporation	Proact Software License Agreement No. 1245, Exhibit 1F Statement of Work – Xstore Release 9 – Base Upgrade (PTS 312453)	December 30, 2011
Datavantage Corporation	Proact Software License Agreement No. 1245 Proact – XBR	November 3, 2004
Prodco International Inc.	RMS Services Contract	March 10, 2010
Prodco International Inc.	Hardware Extended Warranty and Support Agreement	January 1, 2010
Purolator Inc.	Customer Loyalty Payment Addendum	No date
Purolator Inc.	Preferential Service Agreement	March 16, 2015
Purolator Inc.	Services Pricing Agreement	March 1, 2015
Rogers Communications Partnership	Enterprise Customer Agreement between Rogers Communications Partnership and Comark	March 17, 2006
Rogers Wireless Partnership	Amendment #1 to Enterprise Customer Agreement between Rogers Communications Partnership and Comark	December 20, 2010
Rogers Wireless Partnership	Amendment #2 to Enterprise Customer Agreement between Rogers Communications Partnership and Comark	March 31, 2013

STS Systems Ltd.	Software Maintenance Agreement	October 3, 1984
STS Systems Ltd.	Software Implementation Agreement	October 3, 1984
The Toronto-Dominion Bank	Merchant Services Corporate Agreement	October 1, 2011
The Toronto-Dominion Bank	First Amending Agreement to the Merchant Services Agreement	April 1, 2013
The Williamson Group Inc.	Service Agreement	March 1, 2006
Tyco Integrated Security Canada, Inc.	Commercial Sales Proposal Agreement	February 23, 2015
ValueLink LLC	Stored Value Card Agreement	No date
ValueLink LLC	Amendment No. 1 of the Stored Value Card Agreement	December 30, 2008
ValueLink LLC	Amendment No. 2 of the Stored Value Card Agreement	May 7, 2012
Xerox Canada Ltd.	Total Document Solutions Agreement	September 29, 2010
Xerox Canada Ltd.	Amendment to Total Document Solutions Agreement	December 5, 2014

SCHEDULE B

Court File No. CV15-10920-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

Applicant

RECITALS

- A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated July 29, 2015 (the "**Approval Order**") approving the Sale Agreement entered into among Comark Inc. ("**Comark**") and Pacific West Commercial Corporation and its permitted assignees (the "**Purchaser**") dated July 16, 2015 (as amended from time to time, the "**Sale Agreement**").
- B. Pursuant to the Approval Order, the Court approved the Sale Agreement and provided for the vesting in and sale, assignment and transfer to the Purchaser of Comark's right, title and interest in and to the Purchased Assets, which vesting, sale, assignment and transfer is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and Comark of a certificate confirming: (i) the conditions to Closing as set out the Sale Agreement have been satisfied or waived by the Purchaser and Comark, as applicable; and (ii) the Transaction has been completed to the satisfaction of the Monitor.
- C. As of the date hereof, Comark and the Purchaser, with the consent of the Monitor, have agreed to effect the sale, assignment and transfer of the Purchased Assets in accordance with the provisions of the Sale Agreement and the Approval Order.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing with respect to the Purchased Assets as set out in Articles 7 and 8 of the Sale Agreement have been satisfied or waived by the Purchaser and Comark, as applicable; and

2. The Transaction with respect to the Purchased Assets has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at _____ on _____, 2015.

ALVAREZ & MARSAL CANADA INC., in its capacity as Court-appointed Monitor of Comark Inc. and not in its personal or corporate capacity

Per: _____

Name:

Title:

Tab 2

Court File No. CV15-10920-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK INC.

APPLICANT

**AFFIDAVIT OF GERALD BACHYNSKI
(Sworn July 31, 2015)**

(Motion to Assign Agreements)

I, Gerald Bachynski, of the Town of Oakville, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Chief Executive Officer of the Applicant, Comark Inc. (“**Comark**” or the “**Company**”). As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and verily believe them to be true.

Overview

2. I swear this Affidavit in support of the motion brought by Comark seeking an order assigning the rights and obligations under certain leases and contracts, set out below, to Pacific West Commercial Corporation and its permitted assignees (the “**Purchaser**”).

3. On July 29, 2015, this Court approved a sale of substantially all of the assets and business of Comark to the Purchaser (the “**Transaction**”) pursuant to an asset purchase agreement made between Comark and the Purchaser dated July 16, 2015 (the “**Asset Purchase Agreement**”). The Transaction represented both the highest and the best offer identified in the extensive, Court-supervised sale and investor solicitation process (the “**SISP**”) that was conducted. Capitalized terms contained herein that are not otherwise defined have the same

meaning ascribed to them in the Asset Purchase Agreement and the Affidavit of Neville Lewis sworn July 20, 2015 (the “**Sale Affidavit**”).

4. Under the Asset Purchase Agreement, it is a condition of the closing of the Transaction that Comark obtain consents to the assignment of all of the Tier A Leases and of 80% of the Tier B Leases, representing a total of approximately 300 leases, with a Purchase Price reduction for Tier B Leases that are not assigned within 60 days of closing (as described below). Comark must also use commercially reasonable efforts to obtain the assignments of all other Assigned Contracts other than leases. After intensive discussions with landlords and counterparties to Assigned Contracts (other than leases) over a compressed timeframe, Comark has, to date, obtained consents for the assignment of 56 leases and 3 Assigned Contracts. Comark makes this application for an order authorizing the assignment of the remaining 261 leases (the “**Leases**”) and 21 contracts (the “**Remaining Contracts**”) pursuant to section 11.3 of the CCAA. Comark is continuing to work diligently to obtain consents, and the number of Leases and Remaining Contracts to be assigned pursuant to the order will be reduced by the number of consents obtained prior to the return date for this motion.

5. The assignment of the Leases and Remaining Contracts are critical for a successful going concern solution for the business of Comark and for the employment of over 3000 employees. In particular, if Comark is not able to obtain consents for the assignment of the required number of Leases, the Transaction will not close. As previously reported to this Court, Comark believes that the Transaction represents the best possible transaction in the circumstances for the benefit of Comark and its stakeholders.

6. The Monitor has expressed its support for the proposed lease and contract assignments.

Background

7. On March 26, 2015, Comark was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) pursuant to an initial order of the Superior Court of Justice (Commercial List) (the “**Court**”), as amended and restated on April 21, 2015 and further amended on June 1, 2015 (the “**Initial Order**”). Alvarez

& Marsal Canada Inc. was appointed to act as the monitor in these CCAA proceedings (the “**Monitor**”). Further details regarding the background to this proceeding are set out in the my Affidavits sworn on March 25, 2015 and March 26, 2015 and in the Affidavits of Neville Lewis sworn April 15, 2015, May 26, 2015 and July 20, 2015.

8. In the Initial Order, the Court directed Comark to immediately commence the SISP pursuant to which Comark, with the assistance of its financial advisor, Houlihan Lokey Capital Inc. (the “**Financial Advisor**”) and the Monitor, sought qualified purchasers or investors for all or substantially all of Comark’s business and assets. A comprehensive description of the SISP is set out in the Sale Affidavit.

9. On July 29, 2015, this Court approved the Transaction pursuant to the Asset Purchase Agreement and granted the Approval and Vesting Order.

10. Since the granting of the Initial Order, Comark has been operating its business as a going concern in close consultation with the Monitor.

Update on Lease Disclaimers

11. In the Sale Affidavit, it was noted that Comark anticipated that it would disclaim ten store location leases which the Company, in consultation with the Purchaser, had identified as unprofitable. On July 20, 2015, Comark, with the consent of the Monitor, delivered disclaimer notices to the landlords of these leases.

12. Subsequent to July 20, 2015, Comark was contacted by a number of those landlords regarding possible amendments to certain leases that Comark has disclaimed. Comark and the Monitor continue to work with the landlords who wish to negotiate possible amendments to disclaimed leases on terms favourable to the business going forward.

Update on Competition Approval

13. It is a condition of the closing of the Transaction that Competition Act Approval be obtained. Pursuant to the Asset Purchase Agreement, Comark and the Purchaser have agreed

to use commercially reasonable efforts to take certain actions with respect to obtaining such approval.

14. On July 20, 2015, Comark and the Purchaser each filed with the Competition Bureau their respective statutory notification pursuant to Part IX of the *Competition Act*. A request for an advance ruling certificate (or in the alternative, a no action letter) was filed with the Competition Bureau on July 23, 2015. The initial 30-day statutory waiting period will expire on August 19, 2015.

15. On July 27, 2015, the Competition Bureau advised that the Transaction has been designated as “non-complex”. This means that approval by the Competition Bureau sufficient to satisfy the condition for Competition Act Approval under the Asset Purchase Agreement may be obtained in advance of the expiry of the initial statutory waiting period.

Key Terms of the Transaction

16. As noted in the Sale Affidavit, the Transaction represented both the highest and the best offer identified in the extensive SISP that was conducted by the Financial Advisor and Comark, with the assistance and under the supervision of the Monitor. The completion of the Transaction will result in numerous benefits to Comark’s stakeholders, including that Comark’s business will continue uninterrupted following the closing, at least 90% of Comark’s employees will be extended offers of employment by the Purchaser, and Comark’s secured lender, Salus Capital Partners, LLC (“**Salus**”), will be repaid in full, with the potential for additional proceeds to be available for distribution to Comark’s other creditors.

17. The details regarding the terms of the Transaction are set out in the Sale Affidavit and the Fourth Report of the Monitor. Some of the key aspects of the Transaction include:

- (a) The Purchaser will purchase substantially all of the property, assets and rights of Comark save and except for the Excluded Assets;
- (b) The Purchaser will offer employment to at least 90% of all current full-time and part-time employees of the Company with, at least 90% of those offers to be on

terms and conditions which are substantially similar in the aggregate for each individual employee; and

- (c) The Purchaser will assume all liabilities and obligations of the Company in connection with the performance of the Assigned Contracts (including, among other contracts, Comark's real estate leases), arising after the time of closing. Any Cure Amounts related to the Assigned Contracts will be paid.

The Assignment of Agreements

18. The Transaction contemplates the assignment of Assigned Contracts by obtaining the consent of the relevant counter party to such Assigned Contract, or if necessary, through an Order of the Court pursuant to section 11.3 of the CCAA. Under the Asset Purchase Agreement, the Purchaser has agreed to assume, at the time of closing, all of the Assumed Liabilities arising from or in connection with the performance of the Assigned Contracts.

19. The Assigned Contracts include all contracts in connection with the business, including real property leases for store locations and real property leases for each of the Ricki's, Bootlegger and cleo banners (the "**Banners**"), the corporate headquarters, and the distribution centre. The vast majority of the Assigned Contracts are leases. The Asset Purchase Agreement contemplates that substantially all of the real property leases will be assigned to the Purchaser. The assignment of these leases is essential to the continuation of Comark's business by the Purchaser and for the continued employment of substantially all of Comark's employees.

20. It is a condition of the closing of the Transaction that Comark will obtain consents for the assignment of all of the Tier A Leases (representing approximately 226 stores) and for 80% of the Tier B Leases (representing approximately 71 stores). Accordingly, the assignment of the Leases is critical for a successful going concern solution for the business of Comark and for the continued employment of thousands of employees. As noted in the Sale Affidavit, given the importance of the assignment of leases to the closing of the Transaction, if Comark is not able to obtain consents for the assignment of the Leases, it would be necessary to make an application before this Honourable Court for an order authorizing the assignment of such Assigned Contracts pursuant to section 11.3 of the CCAA.

21. Under the terms of the Asset Purchase Agreement, to the extent that Comark does not obtain the requisite consent to the assignment of the remaining 20% of Tier B Leases by 60 days following the closing (the “**Tier B Lease Deadline**”), the Purchase Price will be reduced by the amount, if any, equal to the aggregate of the Lease Adjustment Amount for each such Tier B Lease (the “**Lease Adjustment**”). Subsequent to the Tier B Lease Deadline, the applicable Tier B Lease shall be deemed to be an Excluded Contract under the Asset Purchase Agreement.

22. For all Assigned Contracts other than leases, pursuant to the Asset Purchase Agreement, Comark has agreed to use commercially reasonable efforts to obtain the consent of the applicable counterparty, or, in the event that the requisite consents are not obtained, to seek an Order compelling the assignment of all of the rights and obligations of Comark under the Assigned Contracts to the Purchaser.

23. The Purchaser has agreed to accept all Assigned Contracts, including real property leases, on the same terms and conditions set out in each of the Assigned Contracts between Comark and its respective counterparty. Any Cure Amounts in respect of an Assigned Contract will be paid.

24. The Purchaser has advised Comark that it anticipates assigning Comark’s three Banners and Comark’s corporate headquarters to separate permitted assignee entities under section 11.6 of the Asset Purchase Agreement. Each of the permitted assignee entities will assume all of the rights and obligations of the Purchaser associated with its respective Banner.

Discussions with Landlords and Counterparties to Contracts

25. Subsequent to the execution of the Asset Purchase Agreement, Comark contacted each landlord to advise them of the Transaction and to seek their consent to the assignment of their leases. On July 20, 2015, Comark sent a letter to each landlord of a Lease to advise them of the Transaction and request their consent to the assignment of the applicable Lease. A copy of the form of letter dated July 20, 2015 is attached as Exhibit “A”.

26. On July 28, 2015, Comark sent a letter to each counterparty to an Assigned Contract, other than a Lease, to advise them of the Transaction and request their consent to the

assignment of the applicable contract. The landlords and applicable counter parties to contracts were advised that if they did not provide their consent, Comark would be required to seek an order of the Court pursuant to section 11.3 of the CCAA to assign the Lease or contract, as applicable, without their consent. A copy of the form of letter dated July 28, 2015 is attached as Exhibit "B"

27. Under the SISP, the outside date for completion of a sale transaction is August 15, 2015. To allow for various steps to be taken with respect to Competition Approval, which is a condition of the closing of the Transaction, Salus agreed to an extension of the outside date to August 24, 2015. To ensure that the Transaction is closed by this time, Comark and/or its legal counsel, with the assistance of its counsel and the Monitor, has been on daily calls and engaged in intensive discussions with landlords in an effort to obtain their consent to assignment and negotiate the form of the consent to the assignment of the lease (the "Consent") in the short amount of time prior to closing. In addition, Comark with the assistance of its counsel and the Monitor, has been on daily calls with counterparties to the Assigned Contracts, other than Leases in an effort to obtain consents to assignments to contracts related to the operation of the business.

28. In under two weeks, from July 20, 2015 to July 30, 2015, Comark was able to obtain consent from landlords for 10 Tier A Leases and for 46 of the Tier B Leases. Since this is not sufficient to fulfill Comark's closing obligation under the Asset Purchase Agreement, and given the importance of completing the Transaction, Comark seeks an order assigning the rights and obligations under the remaining Leases and the Remaining Contracts to the Purchaser. Between the date of the swearing of this Affidavit and the hearing of the motion on August 13, 2015, Comark intends to work diligently to obtain consents for the assignment of the Leases and Remaining Contracts on a consensual basis. To the extent that Comark is able to obtain such consents, the relevant counterparty and agreement will be removed from the schedule of the draft Assignment Order.

The Assignment Should be Approved

A. The Purchaser is Able to Perform the Obligations under the Leases and Contracts

29. The Purchaser, including its permitted assignees, has advised, and Comark and the Monitor believe, that the Purchaser has the financial ability to perform the obligations under

the Assigned Contracts. The Purchaser has provided to Comark and the Monitor information and financial projections of its financial ability, including an information memorandum prepared by the Purchaser in consultation with the Company and the Monitor, at the request of certain landlords. The Information Memorandum contains financial information relating to the Transaction and the financial forecast of each of cleo, Ricki's and Bootlegger individually (the "**Information Memorandum**"). Attached as Confidential Exhibit "C" is a copy of the Information Memorandum.

30. As shown on the pro forma balance sheets contained in the Information Memorandum, each of the new entities holding cleo, Bootlegger and Ricki's, subsequent to closing, will, on an individual basis, be well capitalized not only to perform its respective obligations under the Assigned Contracts but also to continue as financially healthy going concern entities. Sales for each new entity Banner are expected to increase from prior years, and the Transaction will result in a significant reduction of debt overall across all of the new cleo, Ricki's and Bootlegger entities.

31. Each of Comark's three Banners are being capitalized with their own working capital and will each share access to the debt facility that is being used to capitalize the business. Since the new debt is denominated in Canadian dollars, there will not be the same risk exposure to foreign exchange fluctuations as Comark's previous debt facilities. From an operating perspective, each Banner is expected to have positive cash flow and emerge from Comark's restructuring stronger and more commercially sound. For the fiscal year ending February 28, 2015, Comark's total rent expense, including maintenance and other occupancy costs, amounted to only 30.0% of gross profit. On an individual Banner basis, the equivalent metric was only 27.0% for Bootlegger, 31.7% for Ricki's and 31.3% for cleo. These results were achieved prior to Comark filing for CCAA. Since the Filing Date, Comark has implemented a number of restructuring initiatives for each Banner, including the closing of underperforming stores and the renegotiation of certain leases. In addition, each individual Banner is currently cash flow positive, and cash flows have significantly improved relative to the prior year. As a result, Comark is of the view that each Banner's ability on an individual basis to meet its obligations under the Leases is strong and will have strengthened significantly upon emerging under new ownership. In addition, the Purchaser has advised that each of Ricki's, cleo and Bootlegger

permitted assignees will have the financial ability to perform their respective obligations under the Leases and Remaining Contracts.

B. The Applicant Will Remedy All Monetary Defaults in relation to the Leases and Contracts

32. All monetary defaults in relation to the Leases and Remaining Contracts, including those relating to the period prior to March 26, 2015, will be remedied within two business days of the date of assignment of the Leases and the Remaining Contracts.

C. The Assignment is Appropriate

33. The advantages to Comark's creditors of assigning the Leases and the Remaining Contracts far outweigh any disadvantages to the Landlords. The advantages include the following:

- (a) The Transaction will be completed. The assignment of the Leases is a condition of closing and therefore is critical to the successful restructuring of Comark. Without the assignment of Leases, Comark will not be able to continue as a going concern, resulting in the loss of employment for thousands of employees and the loss of business to Comark's suppliers;
- (b) Absent the assignment to the Purchaser, including its permitted assignees, the Leases and Remaining Contracts would be disclaimed pursuant to the provisions of the CCAA;
- (c) Each new Banner Purchaser entity is and will be able to comply with the covenants and obligations under the Assigned Contracts;
- (d) No amendments are being sought in respect of the Leases or the Remaining Contracts and, because this is a going concern sale, any restriction on use provisions with respect to leased premises will be complied with on a go forward basis;
- (e) the Remaining Contracts do not include any eligible financial contracts, contracts entered into post-filing or collective agreements;

- (f) All Cure Amounts will be paid; and
- (g) All landlords to the Leases and counter parties to the Assigned Contracts, other than Leases will be provided with notice of the motion to assign the Leases and Remaining Contracts.

34. Comark therefore believes that it is appropriate to assign the rights and obligations under the Leases to the Purchaser. Comark has engaged in extensive and ongoing discussions with landlords throughout these CCAA proceedings, including with respect to the assignment of Leases. Under the Transaction, the Purchaser has agreed to assume all liabilities and obligations of Comark in connection with the performance of the Assigned Contracts on an “as is, where is” basis, without any modifications to any provisions of the Assigned Contracts. As noted above, the Transaction, if completed, will preserve Comark’s business as a going concern, which includes consequential benefits to Comark’s employees, customers, landlords and suppliers.

35. The Monitor has expressed its support for the proposed assignment of the rights and obligations under the Leases and Remaining Contracts to the Purchaser.

Sealing of Confidential Information

36. Comark will be filing with the Court the Confidential Exhibit C which discloses certain commercially sensitive financial information about Comark. Comark requests that the sensitive commercial information in the Information Memorandum be sealed from the public record and kept confidential as its disclosure would be harmful to the Company.

37. The Monitor has expressed its support for the sealing order.

Relief Requested

38. Accordingly, I request that this Honourable Court approve the relief requested herein.

SWORN BEFORE ME at the City of }
Toronto, in the Province of Ontario, this }
31th day of July, 2015. }



Commissioner for Taking Affidavits
SANJA PAVIC



Gerald Bachynski

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK INC.**

APPLICANT

Court File No. CV15-10920-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF GERALD BACHYNSKI
(Motion to Assign Agreements)**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Caitlin Fell (LSUC #: 60091H)
Tel: 416.862.6690
Fax: 416.862.6666

Lawyers for the Applicant

Matter No: 1163824

Tab A

**THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF GERALD BACHYNSKI SWORN
BEFORE ME THIS 31ST DAY OF JULY, 2015**

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke, positioned above a solid horizontal line.

A Commissioner for taking Affidavits



6789 Millcreek Drive, Mississauga, ON L5N 5M4
 Telephone: (905) 567-7375 Fax: (905) 567-5965 Email: info@comark.ca

July 20, 2015

●

Attn: ●

IMMEDIATE ACTION REQUIRED

Re: Your lease with Comark Inc. listed on Exhibit "A" attached hereto (the "Lease")

Dear Sir/Madame,

As you may be aware, Comark Inc. ("**Comark**") is subject to protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 26, 2015, as amended. Further details of the CCAA proceedings of Comark can be found on the webpage of Alvarez & Marsal Canada Inc., the Court-appointed Monitor of Comark (the "**Monitor**"): <http://www.alvarezandmarsal.com/comark-inc/>.

Comark and Pacific West Commercial Corporation and/or its permitted assignees (the "**Purchaser**") have entered into an agreement whereby the Purchaser or its permitted assignees will acquire substantially all of Comark's business and assets, including location(s) leased from you to Comark (the "**Transaction**"). The Purchaser is acquiring Comark's business on a going concern basis. The Purchaser intends to create four new entities, one to operate under each of the Ricki's, cleo and Bootlegger banners, and a fourth to operate the Mississauga head office and Laval distribution centre (the "**New Operators**").

The Purchaser will cause the New Operators to continue to operate substantially all of Comark's retail, office, and distribution centre locations on the same basis as Comark operated prior to the CCAA filing and will be offering employment to substantially all of Comark's employees – including those employees at the locations in respect of your Lease, provided that consent to the assignment of such Lease is obtained or an Order is pronounced under section 11.3 of the CCAA assigning the Lease in the event you do not consent to the assignments. A motion for approval (the "**Approval and Vesting Order**") of the Transaction is scheduled to be heard by the Court on July 29, 2015. Please find enclosed a copy of the form of Approval and Vesting Order.

Pacific West Commercial Corporation is a member of the Stern group of companies, which are involved in a wide range of businesses, including multi-location retailing, manufacturing, packaging, distribution, media, publishing, printing, environmental services, real estate and other investments. Stern's current investments include over 14 stand-alone businesses with annual revenues ranging from \$20 million to \$300mm. The group has significant retail investing experience in Canada with controlling interests in two national retailers, Warehouse One Clothing and Urban Barn. Unlike most private equity funds, the Stern group deploys its own capital, which provides significant flexibility and opportunity to focus on the long-term growth and operations of its companies. Information about the Stern group and its operating companies can be found at www.sternpartners.com. The Stern Group looks forward to working with you.

If you have any questions or require any more information about the Purchaser, please contact Shamsh Kassam, the Vice President and Chief Financial Officer of Stern Partners Inc. (604-646-3794 or by email

at skassam@sternpartners.com), who, together with the undersigned and the Monitor, will be working with you in coordinating the transition of Comark's business to the Purchaser.

All monetary defaults in relation to the Lease, including those relating to the period prior to March 26, 2015, will be remedied within two business days of the date of assignment of the Lease.

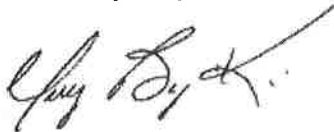
Comark and the Purchaser request that you provide your consent to the assignment of the Lease by signing the consent attached hereto and returning it to the undersigned by mail, facsimile or email within **five (5) days** of the date of this letter. If you deliver your consent by email, please send a scanned copy of fully executed consent in portable document format (pdf) to the undersigned.

If you provide your consent, the terms of the Lease will not change and the applicable New Operator will become responsible for all post-assignment obligations of the tenant under the Lease, including any payments associated therewith. If you do not provide your consent, Comark will be seeking an Order of the Court pursuant to Section 11.3 under the CCAA to assign the Lease without your consent.

Thank you for your continued co-operation and support during this restructuring period. We are excited about this Transaction and the benefits it provides to each of our landlords.

Should you have any questions about the form of consent, we direct you to speak with our counsel «Osler_Contact», Osler, Hoskin & Harcourt LLP, «Osler_Phone_Number» or by email at «Osler_Email» or Josh Nevsky, at Alvarez & Marsal Canada Inc, 416-847-5161 or by email at jnevsky@alvarezandmarsal.com Should you have any questions about the transaction, please contact the undersigned.

Yours very truly,



Gerry Bachynski
President and Chief Executive Officer

EXHIBIT A

LEASE

Tab B

**THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF GERALD BACHYNSKI SWORN
BEFORE ME THIS 31ST DAY OF JULY, 2015**

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner for taking Affidavits



6789 Millcreek Drive, Mississauga, ON L5N 5M4
 Telephone: (905) 567-7375 Fax: (905) 567-5965 Email: info@comark.ca

July ●, 2015

Attn:

IMMEDIATE ACTION REQUIRED

Re: Your contract with Comark Inc. listed on Exhibit "A" attached hereto (the "Contract")

Dear Sir/Madame,

As you may be aware, Comark Inc. ("**Comark**") is subject to protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 26, 2015, as amended. Further details of the CCAA proceedings of Comark can be found on the webpage of Alvarez & Marsal Canada Inc., the Court-appointed Monitor of Comark (the "**Monitor**"): <http://www.alvarezandmarsal.com/comark-inc/>.

Comark and Pacific West Commercial Corporation and/or its permitted assignees (the "**Purchaser**") have entered into an agreement whereby the Purchaser or its permitted assignees will acquire substantially all of Comark's business and assets, including the Contract between you and Comark (the "**Transaction**"). The Purchaser is acquiring Comark's business on a going concern basis. The Purchaser intends to create four new entities, one to operate under each of the Ricki's, cleo and Bootlegger banners, and a fourth to operate the Mississauga head office and Laval distribution centre (the "**New Operators**").

The Purchaser will cause the New Operators to continue to operate substantially all of Comark's retail, office, and distribution centre locations on the same basis as Comark operated prior to the CCAA filing and will be offering employment to substantially all of Comark's employees. The New Operators intend on fulfilling the obligations under the Contract, provided that you consent to the assignment of such Contract is obtained or an Order is pronounced under section 11.3 of the CCAA assigning the Contract in the event you do not consent to the assignments. A motion for approval (the "**Approval and Vesting Order**") of the Transaction is scheduled to be heard by the Court on July 29, 2015.

Pacific West Commercial Corporation is a member of the Stern group of companies, which are involved in a wide range of businesses, including multi-location retailing, manufacturing, packaging, distribution, media, publishing, printing, environmental services, real estate and other investments. Stern's current investments include over 14 stand-alone businesses with annual revenues ranging from \$20 million to \$300mm. The group has significant retail investing experience in Canada with controlling interests in two national retailers, Warehouse One Clothing and Urban Barn. Unlike most private equity funds, the Stern group deploys its own capital, which provides significant flexibility and opportunity to focus on the long-term growth and operations of its companies. Information about the Stern group and its operating companies can be found at www.sternpartners.com. The Stern Group looks forward to working with you.

If you have any questions or require any more information about the Purchaser, please contact Shamsh Kassam, the Vice President and Chief Financial Officer of Stern Partners Inc. (604-646-3794 or by email at skassam@sternpartners.com), who, together with the undersigned and the Monitor, will be working with you in coordinating the transition of Comark's business to the Purchaser.

All monetary defaults in relation to the Contract, including those relating to the period prior to March 26, 2015, will be remedied within two business days of the date of assignment of the Contract.

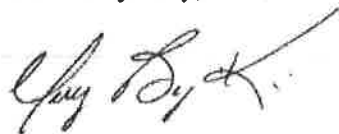
Comark and the Purchaser request that you provide your consent to the assignment of the Contract by signing the consent attached hereto and returning it to the undersigned by mail, facsimile or email within **five (5) days** of the date of this letter. If you deliver your consent by email, please send a scanned copy of fully executed consent in portable document format (pdf) to the undersigned.

If you provide your consent, the terms of the Contract will not change and the applicable New Operator will become responsible for all post-assignment obligations of the tenant under the Contract, including any payments associated therewith. If you do not provide your consent, Comark will be seeking an Order of the Court pursuant to Section 11.3 under the CCAA to assign the Contract without your consent.

Thank you for your continued co-operation and support during this restructuring period. We are excited about this Transaction and the benefits it provides to each of our landlords.

Should you have any questions about the form of consent, we direct you to speak with our counsel Caitlin Fell, Osler, Hoskin & Harcourt LLP, «Osler_Phone_Number» or by email at cfell@osler.com or Jamie Belcher, at Alvarez & Marsal Canada Inc, 416-847-5168 or by email at jbelcher@alvarezandmarsal.com. Should you have any questions about the transaction, please contact the undersigned.

Yours very truly,



Gerry Bachynski
President and Chief Executive Officer

EXHIBIT A
CONTRACT

Tab C

**THIS IS CONFIDENTIAL EXHIBIT "C" TO THE
AFFIDAVIT OF GERALD BACHYNSKI SWORN
BEFORE ME THIS 31ST DAY OF JULY, 2015**



A Commissioner for taking Affidavits

Confidential Exhibit “C”

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK INC.**

APPLICANT

Court File No. CV15-10920-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(Motion to Assign Agreements
Returnable August 13, 2015)**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC#: 44066M)
Tel: 416.862.4908

Caitlin Fell (LSUC #: 60091H)
Tel: 416.862.6690
Fax: 416.862.6666

Lawyers for the Applicant

Matter No: 1163824