



Court File No. CV-23-00692784-00CL

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

THE HONOURABLE	)	FRIDAY THE 24 <sup>TH</sup>
	)	
JUSTICE CONWAY	)	DAY OF MARCH, 2023

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 INSCAPE CORPORATION, INSCAPE  
(NEW YORK) INC., AND INSCAPE INC.

**APPROVAL, VESTING AND LIQUIDATION ORDER**

THIS MOTION, made by Inscape Corporation, Inscape (New York) Inc. and Inscape Inc. (collectively, the “**Applicants**”) pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), for an order, among other things, (i) approving the sale of the Acquired Assets (the “**Sale Transaction**”) to Gordon Brothers Canada ULC (“**GBC**”) contemplated by an asset purchase agreement (the “**Agreement**”) among the Applicants and GBC dated as of March 10, 2023, (ii) vesting in GBC all of the Applicants’ right, title and interest in and to the Acquired Assets and (iii) approving the Auction and Removal and the Inventory Sale contemplated by Article 6 of the Agreement, was heard this day by Zoom videoconference.

ON READING the affidavit of Eric Ehgoetz sworn March 20, 2023 (the “**Ehgoetz Affidavit**”), the Third report of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor of the Applicants (the “**Monitor**”), and on hearing the submissions of counsel

for the Applicants, counsel for the Monitor and counsel for those other parties present as indicated on the counsel slip, and on reading the affidavit of service of Darlene Moffett, filed:

## **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Third Report 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, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Agreement.

## **THE AGREEMENT**

3. THIS COURT ORDERS AND DECLARES that the Agreement and the transactions contemplated therein are hereby approved, authorized and ratified and that the execution of the Agreement by the Applicants is hereby authorized, approved and ratified, *nunc pro tunc*, with such minor amendments as the Applicants (with the consent of the Monitor) and GBC may agree to in writing. Subject to the provisions of this Order and the Initial Order made in these proceedings on January 12, 2023 (as amended and restated from time to time, the “**Initial Order**”), the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Agreement and each of the transactions contemplated therein, including without limitation completing the Sale Transaction, conveying the Acquired Assets to GBC and undertaking the Auction and Removal and the Inventory Sale. Without limiting the foregoing, the Applicants are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agreement.

## **VESTING OF THE ACQUIRED ASSETS**

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to GBC substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Applicants’ right, title and interest in and to the Acquired Assets shall vest absolutely in GBC, free and clear of and from any and all security interests, hypothecs,

mortgages, trusts or deemed trusts, liens, executions, levies, charges, claims, encumbrances, executions, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of this Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, RSO 1990, c P.10 or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Acquired Assets are hereby expunged and discharged as against the Acquired Assets.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Acquired Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Acquired Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Acquired Assets immediately prior to the sale, as if the Acquired Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that the Monitor may rely on written notice from the Applicants and GBC or their respective counsel regarding the satisfaction of the Purchase Price, the fulfillment or waiver of conditions to closing under the Agreement and the completion of the Sale Transaction, and shall incur no liability with respect to the delivery of the Monitor’s Certificate.

## THE AUCTION AND REMOVAL AND THE INVENTORY SALE

8. THIS COURT ORDERS that the Applicants, with the assistance of GBC, are authorized to conduct the Auction and Removal and the Inventory Sale in accordance with this Order and the Agreement, and to advertise and promote the auction portion of the Auction and Removal (the “**Auction**”) and the Inventory Sale. If there is a conflict between this Order and the Agreement, this Order shall govern.

9. THIS COURT ORDERS that the Applicants, with the assistance of GBC as agent for the Applicants, are authorized to market and sell the Inventory in accordance with the Agreement, free and clear of all Claims and Encumbrances, which Claims and Encumbrances will attach instead to the proceeds of the Inventory Sale (other than amounts specified in paragraph 18 of this Order) in the same order and priority as they existed immediately prior to such sale.

10. THIS COURT ORDERS that, subject to the terms of this Order, the Initial Order or any greater restrictions in the Agreement, GBC shall have the right as agent for the Applicants to enter and use the Facilities on the terms set out in the Agreement for the purpose of conducting (i) the Auction and Removal and (ii) the Inventory Sale, and for such purposes, GBC shall be entitled to the benefit of the Applicants’ stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

11. THIS COURT ORDERS that during the Occupancy Period (which shall end no later than June 30, 2023) or such earlier date as a lease is disclaimed or resiliated in accordance with the CCAA, GBC shall have access to the Facilities as agent for the Applicants in accordance with the leases governing the Applicants’ occupation thereof (each, a “**Lease**”) on the basis that GBC is assisting the Applicants as agent and the Applicants have granted to GBC the right of access to each of the Facilities. To the extent that the terms of an applicable Lease are in conflict with any term of this Order, the terms of this Order shall govern.

12. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of any Lease. Nothing contained in this Order shall be construed to create or impose upon the Applicants or GBC any additional restrictions not contained in any Lease or other occupancy agreement.

13. THIS COURT ORDERS that, subject to and in accordance with the Agreement and this Order, GBC is authorized to advertise and promote the Auction and the Inventory Sale, without further consent of any Person (as defined in the Initial Order) other than the Applicants and the Monitor as provided under the Agreement.

14. [THIS COURT ORDERS that during the Occupancy Period, GBC shall have the right to use, without interference by any intellectual property licensor, any of the Applicants' trade names, trademarks and logos relating to and used in connection with the operation of the Facilities, as well as all licenses and rights granted to the Applicants to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Auction and the Inventory Sale in accordance with the terms of the Agreement and this Order.]

### **GBC LIABILITY**

15. THIS COURT ORDERS that GBC shall not be liable for any claims against the Applicants other than as expressly provided in the Agreement and, for greater certainty:

- (a) GBC shall not be deemed to be an owner or in possession, care, control or management of (i) the Facilities, (ii) the assets located therein or associated therewith except the Acquired Assets or (iii) the Applicant's employees located at the Facilities or any other property of the Applicants;
- (b) GBC shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Applicants shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Facilities during and after the Auction and Removal or the Inventory Sale, or otherwise in connection with the Auction and Removal or the Inventory Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of GBC, its

employees, agents or other representatives, or otherwise in accordance with the Agreement.

### **GBC AN UNAFFECTED CREDITOR**

16. THIS COURT ORDERS that (i) the Agreement (including any agreements, contracts or arrangements entered into with GBC in relation thereto) shall not be repudiated, resiliated or disclaimed by the Applicants, (ii) GBC shall not be affected by the stay of proceedings in the Initial Order and shall be entitled to exercise its rights and remedies under the Agreement including in respect of claims of GBC pursuant to the Agreement (collectively, “**GBC Claims**”), and (iii) the GBC Claims shall not be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a “**Plan**”) and, for greater certainty, in respect of the GBC Claims only, GBC shall be treated as an unaffected creditor in these proceedings and any other insolvency proceedings that may be initiated by or in respect of the Applicants, and under any Plan.

17. THIS COURT ORDERS that the Applicants are hereby authorized and directed, in accordance with the Agreement, to remit all amounts that become due to GBC thereunder.

18. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable to or to be credited or reimbursed to, or retained by, GBC pursuant to the Agreement, including, without limitation, any amounts to be reimbursed by the Applicants to GBC pursuant to the Agreement, and at all times GBC will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agreement.

19. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), as amended, or other applicable legislation in respect of the Applicants, or any of

them, and any bankruptcy or receivership order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Applicants, or any of them;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which the Applicants, or any of them, are a party,

the entering into of the Agreement, the Agreement, the transactions and actions provided for and contemplated therein, and the vesting of the Acquired Assets in GBC pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants, or any of them, and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable law.

## **OTHER**

20. THIS COURT ORDERS that the Applicants are authorized and permitted to transfer to GBC personal information in the Applicants' custody and control solely for the purposes of assisting with and conducting the Auction and Removal and the Inventory Sale and only to the extent necessary for such purposes.

## GENERAL

21. 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 Applicants, the Monitor, GBC and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, the Monitor (as an officer of this Court) and GBC as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or any of the Applicants in any foreign proceeding or to assist the Applicants, the Monitor, GBC and their agents in carrying out the terms of this Order.

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

23. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and is enforceable without any need for entry and filing.



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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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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  
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**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 12, 2023, Alvarez & Marsal Canada Inc. was appointed as the monitor (the “**Monitor**”) of Inscape Corporation, Inscape (New York) Inc. and Inscape Inc. (collectively, the “**Applicants**”) in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

B. Pursuant to an Order of the Court dated March 24, 2023, the Court approved the sale transaction (the “**Sale Transaction**”) contemplated by the asset purchase agreement dated as of March 10, 2023 (the “**Purchase Agreement**”) among the Applicants and Gordon Brothers Canada ULC (the “**Purchaser**”) and provided for the vesting in the Purchaser of all of the Applicants' right, title and interest in and to the Acquired Assets, which vesting is to be effective with respect to the Acquired Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Acquired Assets; (ii) that the conditions to Closing as set out in Article 8 of the Purchase Agreement have been satisfied or waived by the Applicants and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of Applicants and the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Applicants have provided written notice to the Monitor that they has received the Purchase Price for the Acquired Assets.

applicable conditions under the Purchase Agreement have been satisfied or waived, as applicable, and (ii) the Sale Transaction has been completed to the satisfaction of the Monitor.

3. This Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_.

Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of Inscope Corporation, Inscope (New York) Inc. and Inscope Inc., and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name:  
Title:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Court File No.: CV-23-00692784-00CL

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Proceeding commenced at TORONTO

**APPROVAL, VESTING AND LIQUIDATION**  
**ORDER**

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