

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

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.
(collectively, the “**Applicants**”)

Applicants

MOTION RECORD OF THE APPLICANTS
(Returnable March 8, 2023)

February 28, 2023

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TO: THE SERVICE LIST

**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
(the "CCAA")

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

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

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Applicants

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Exhibit B	Purchase Agreement dated February 24, 2023
Exhibit C	Verified Petition filed January 23, 2023
Exhibit D	Supplement to Verified Petition filed February 27, 2023
Exhibit E	Letter from Gowlings to dated February 22, 2023
3.	Draft Order

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

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Applicants

NOTICE OF MOTION
(Returnable March 8, 2023)

Inscape Corporation (“**Inscape**”), Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, and collectively with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”) will bring a motion before the Honourable Madam Justice Conway on Wednesday, March 8, 2023, at 10:00 a.m., or as soon after that time as the motion can be heard, via Zoom videoconference,

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location

Zoom Link to be updated on Caselines.

THE MOTION IS FOR:

1. An order, substantially in the form of the draft order attached as **Tab 3** to the Motion Record, among other things:
 - (a) abridging the time for and validating service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - (b) extending the stay of proceedings granted pursuant to the Initial Order of the Honourable Justice Conway dated January 20, 2023 (the “**Amended and Restated Initial Order**”) to April 21, 2023;
 - (c) sealing the Confidential Appendices to the second report of the Monitor, to be filed (the “**Second Report**”); and
2. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. The Applicants are in the business of designing, manufacturing and selling office furniture and architectural walls for customers across North America and Europe on contract.
4. The Inscape Group’s business operated at a net loss and experienced declining financial performance in each of the five years preceding this insolvency filing. The financial distress was exacerbated by the Covid-19 pandemic. Among other challenges, the Applicants experienced a dramatic decline in the size and sales mix of incoming orders, and much lower than expected

order volumes. Shortages of production materials, supply chain issues, and increases in the costs of raw materials all combined to destroy profit margins.

5. As a result of its insolvency, the Inscope Group determined that the best path forward to maximize value for its stakeholders was through a court-supervised process under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("CCAA"), including a liquidation of its assets and an orderly wind-up of the business.

Initial Order

6. On January 12, 2023, the Applicants applied for relief pursuant to the CCAA and this Court granted the Initial Order in favour of the Applicants.

7. Pursuant to the Initial Order, among other things, the Court:

- (a) granted an initial stay of proceedings in favour of the Applicants and its directors and officers up to and including January 20, 2023;
- (b) appointed Alvarez & Marsal Canada Inc. as the Monitor of the Applicants (in such capacity, the "**Monitor**");
- (c) granted the following charges against the Property, in the following priority rankings;
 - (i) first, an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the "**Administration Charge**"); and

- (ii) second, a directors' and officers' charge in the amount of \$750,000 (the **"Directors' Charge"**);
- (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the Initial Order); and
- (e) authorized the Applicants to maintain and continue to utilize their cash management system.

Comeback Hearing

8. On January 20, 2023 (the **"Comeback Hearing"**) Justice Conway granted the Amended and Restated Initial Order, which, among other things:

- (a) extended the stay of proceedings up to and including March 9, 2023;
- (b) approved a Key Employee Retention Plan (the **"KERP"**) and authorized the Applicants to make the payments in accordance with the terms of the KERP;
- (c) granted a charge over the Property (as defined in the Initial Order) of the Applicants in favour of the proposed KERP beneficiaries (the **"KERP Charge"**) in the aggregate amount of \$350,000;
- (d) declared that, pursuant to section 5(5) of the *Wage Earner Protection Program Act* (**"WEPPA"**) Inscape is a "former employer" in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations (**"WEPP Regulations"**);

- (e) authorized either one of Inscope Corporation, or in the alternative to Inscope Corporation, Eric Ehgoetz, to act as the foreign representative (the “**Foreign Representative**”) in respect of these CCAA Proceedings, for the purpose of having these CCAA Proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “**US Bankruptcy Code**”); and
- (f) increased the amount of the Administration Charge to \$800,000.

Update on CCAA Proceedings

9. In accordance with the restructuring provisions at paragraph 12 of the Amended and Restated Initial Order, the Applicants were granted the right to, among other things, permanently or temporarily cease, downsize or shut down any of their business or operations, terminate the employment of employees, and pursue all avenues of selling the Applicants’ business or property.

10. In the weeks since the Comeback Hearing, the Applicants have worked diligently with their advisors in furtherance of an orderly wind-down of operations, and a commercially reasonable realization of their assets.

11. The Applicants have, where appropriate, liaised with creditors, regulatory authorities and other stakeholders with a view to keeping them apprised of developments in the CCAA Proceedings.

Asset Sales and Collection Efforts

12. The Applicants have made steady progress with their wind-down and collection efforts. These efforts can be summarized as follows:

- (a) **Equipment and Inventory:** The Applicants and the Monitor designed and implemented a commercially reasonable and truncated marketing process (“**Sale and Liquidation Process**”) for the purpose of identifying one or more value-maximizing transactions for the Applicants’ assets and/or business. As part of the process, the Applicants and the Monitor identified and engaged with a list of 20 potential purchasers, including professional liquidators, office furniture manufacturers and distributors, as well as other parties who in the opinion of the Applicants or the Monitor may be interested in acquiring the Applicants’ assets and/or business (the “**Potential Purchasers**”). The Monitor received 10 letters of intent or expressions of interest by the prescribed bid deadline. Two of those bids were determined by the Applicants and the Monitor to be the successful bids (the “**Successful Bids**”). The Applicants, in consultation with the Monitor, informed those parties that they were the Successful Bids and moved to consummate transactions.
- (b) **HST Refund:** Deloitte Canada (“**Deloitte**”), the Applicants’ auditor, is in the process of pursuing an anticipated HST refund of approximately \$1.3 million. This amount had and continues to be withheld by Canada Revenue Agency pending the determination of a notice of objection. Deloitte remains engaged and these efforts are ongoing.

- (c) **Leases:** The Applicants have determined that there is significant value in the lease for the manufacturing premises in Holland Landing, Ontario, comprising the Applicants' head office and adjacent 313,000 square foot manufacturing facility (the "**Holland Landing Facility**"). Discussions are ongoing with the landlord of the Holland Landing Facility in furtherance of an agreement with a new tenant that would generate value for the Applicants' estate.
- (d) **Accounts Receivable:** Efforts in respect of the collection of accounts receivables are ongoing. Since the Initial Order, approximately \$1.1 million has been collected and approximately \$6.5 million has yet to be collected.

Results of Sale and Liquidation Process

13. The Successful Bids consist of (i) a bid submitted in respect of a fiber laser system and compressor ("**Fiber Laser Bid**"), and (ii) a liquidation bid submitted for the majority of the Applicants' remaining equipment, furniture, and fixtures, subject to certain exclusions (the "**Equipment Liquidation Bid**").

14. The Fiber Laser Bid and the transaction contemplated thereby was completed in accordance with the terms of a purchase agreement dated February 24, 2023 ("**Fiber Laser APS**"). The purchase price was paid by the purchaser to the Monitor upon closing of the transaction.

15. The purchase agreement in respect of the Equipment Liquidation Bid (the "**Equipment Liquidation APS**") is in the process of being finalized by the parties, in consultation with the Monitor. The Applicants intend to bring a motion in the near term seeking court approval of the

Equipment Liquidation APS on notice to the service list. The issuance of an approval and vesting order is a condition of the Equipment Liquidation APS.

U.S. Chapter 15 Proceeding

16. On January 23, 2023, the Foreign Representative filed a petition (“**Petition**”) (“**Chapter 15 Proceeding**”) requesting recognition of the CCAA proceedings in the United States Bankruptcy Court for the Southern District of New York (“**US Bankruptcy Court**”) pursuant to the Bankruptcy Code.

17. The US Bankruptcy Court convened a hearing on February 21, 2023 to consider the Petition. At the conclusion of the hearing, the Honourable Justice Wiles requested certain additional information from the Foreign Representative and continued the hearing to March 1, 2023. Specifically, His Honour requested the filing of supplemental materials addressing the issue of the center of main interests (“**COMI**”) of each of Inscope New York and Inscope Delaware is in Canada. A hearing is scheduled for March 1, 2023 in respect of this issue.

Extended Stay Period

18. The stay of proceedings is set to expire on March 9, 2023.

19. The requested extension of the stay of proceedings to April 21, 2023 will afford time for the Applicants in consultation with the Monitor to, among other things:

- (a) advance their ongoing wind-down, asset realization, and collection efforts;
- (b) finalize and seek court approval of the terms of the Equipment Liquidation APS;

- (c) assess the results of the wind-down and determine whether or not realizations are sufficient to justify a claims process;
- (d) if a claims process is advisable, to develop and propose an appropriate and cost efficient claims process and return to this court to seek approval thereof; and
- (e) advance the Chapter 15 Proceeding, by seeking recognition of the orders of this Honourable Court in the United States and achieving the benefits of creditor protection in the United States.

20. The Monitor has advised the Applicants that it supports the proposed extension of the stay and, as set out in the Cash Flow Forecast appended to the Monitor's Second Report, the Applicants will have sufficient liquidity.

Sealing Order

21. The Applicants and the Monitor are seeking a sealing order with respect to the confidential appendices to the Monitor's Second Report (together, the "**Confidential Appendices**"). The Confidential Appendices contain commercially sensitive information including economic details of the bids received in the Sale and Liquidation Process.

22. If the commercially-sensitive information is disclosed it would likely have a detrimental impact on the Applicants' ability to negotiate with other parties should the contemplated transaction in respect of the Equipment Liquidation APS not close.

General

23. The provisions of the CCAA, including sections 11, and the statutory, inherent and equitable jurisdiction of this Court;

24. Rules 1.04, 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 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

25. Such further other grounds as counsel may advise.

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

- (a) the Affidavit of Eric Ehgoetz sworn February 28, 2023;
- (b) the Second Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

February 28, 2023

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Lawyers for the Applicants

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

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Proceeding commenced at TORONTO

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(Returnable March 8, 2023)

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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**AFFIDAVIT OF ERIC EHGOETZ
(Sworn February 28, 2023)**

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**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 **INSCAPE CORPORATION, INSCAPE**
(NEW YORK) INC., AND INSCAPE INC. (the “**Applicants**”)

Applicants

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn February 28, 2023)**

I, Eric Ehgoetz, of the City of Mississauga, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer (“**CEO**”) of Inscape Corporation (“**Inscape**”). I am also the CEO of Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, and, collectively with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”).

2. I have acted as the CEO of the Inscape Group since March 2020. Prior to my role as CEO and from June 2016 to March 2020, I was a member of the Inscape Group’s Board of Directors and Chair of its Audit Committee. Among other professional qualifications I hold a Chartered Financial Analyst (CFA) charter holder designation, as well as an ICD.D.

3. As a result of my roles with the Inscape Group, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and information obtained from others, I have stated the source of that information and belief and believe such information to be true.

4. All references to dollar amounts herein are Canadian dollars unless otherwise indicated.
5. I swear this affidavit in support of a motion by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), seeking an Order, substantially in the form of the draft order attached as **Tab "3"** to the Motion Record, among other things:
- (a) abridging the time for and validating service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - (b) extending the stay of proceedings granted pursuant to the order of the Honourable Madam Justice Conway dated January 20, 2023 ("**Amended and Restated Initial Order**"), to and including April 21, 2023 (the "**Extended Stay Period**");
 - (c) sealing the Confidential Appendices to the second report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the Monitor of the Inscope Group (in such capacity, the "**Monitor**"), to be filed by the Monitor in support of the Applicants' motion (the "**Second Report**"); and
 - (d) such further and other relief as counsel may advise and as this Honourable Court may deem just.

BACKGROUND

Filing for CCAA Protection

6. My first affidavit in these CCAA proceedings was sworn on January 11, 2023 ("**First Ehgoetz Affidavit**"). All terms capitalized but not defined in this Affidavit are as defined in the

First Ehgoetz Affidavit. A copy of the First Ehgoetz Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.

7. The Inscape Group is in the business of manufacturing and selling office furniture equipment on contract to customers across North America and Europe.

8. The Inscape Group’s business operated at a net loss and experienced declining financial performance in each of the last five years leading up to the Filing Date (as defined below). The Applicants’ financial distress was exacerbated by the Covid-19 pandemic. Among other challenges, the Applicants experienced a dramatic decline in the size and mix of customer orders, and much lower than expected order volumes. Shortages of production materials, supply chain disruptions, and increases in the costs of raw materials all combined to destroy profit margins.

9. As a result of its insolvency, the Inscape Group determined that the best path forward to maximize value for its stakeholders was through a court-supervised CCAA process, including an orderly wind-up of the business and a controlled liquidation of assets.

Initial Order

10. On January 12, 2023 (the “**Filing Date**”), the Honourable Madam Justice Conway granted the Initial Order, which, among other things:

- (a) granted an initial stay of proceedings in favour of the Inscape Group and its directors and officers up to and including January 20, 2023;
- (b) appointed A&M as the Monitor of the Inscape Group;

- (c) granted the following charges against the Property, in the following priority rankings (the “**Priority Charges**”):
 - (i) first, an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”); and
 - (ii) second, a directors’ and officers’ charge in the amount of \$750,000 (the “**Directors’ Charge**”);
- (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the Initial Order); and
- (e) authorized the Applicants to continue utilizing its cash management system.

Amended and Restated Initial Order

11. On January 20, 2023 (the “**Comeback Hearing**”), Justice Conway granted the Amended and Restated Initial Order, which, among other things:

- (a) extended the Stay Period up to and including March 9, 2023 (“**Stay Period**”);
- (b) approved a Key Employee Retention Plan (the “**KERP**”) and authorized the Applicants to make payments in accordance with the terms of the KERP;
- (c) granted a charge over the Property (as defined in the Initial Order) of the Applicants in favour of the proposed KERP beneficiaries (the “**KERP Charge**”) in the aggregate amount of \$350,000;

- (d) declared that, pursuant to section 5(5) of the *Wage Earner Protection Program Act* (“**WEPPA**”) Inscape is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations (“**WEPP Regulations**”);
- (e) authorized either Inscape Corporation, or in the alternative to Inscape Corporation, Eric Ehgoetz, to act as the foreign representative (the “**Foreign Representative**”) in respect of these CCAA proceedings, for the purpose of having these CCAA proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “**US Bankruptcy Code**”); and
- (f) increased the amount of the Administration Charge to \$800,000.

UPDATE ON CCAA PROCEEDINGS

12. In accordance with the restructuring provisions at paragraph 12 of the Amended and Restated Initial Order, the Applicants were granted the right to, among other things, permanently or temporarily cease, downsize or shut down any of their business or operations, terminate the employment of employees, and pursue all avenues of selling the Applicants’ business or property.

13. In the weeks since the Comeback Hearing, the Applicants have worked diligently with their advisors in furtherance of an orderly wind-down of operations and a commercially reasonable realization of their assets. Among other things, the Applicants have continued to

liaise with creditors, regulatory authorities and other stakeholders, with a view to keeping all stakeholders apprised of developments in the CCAA proceedings.

Asset Sales and Collection Efforts

14. The Applicants have made steady progress with their wind-down and collection efforts. The focus has been on the realization of four categories of assets: equipment and inventory, tax refunds, leases, and accounts receivable.

Equipment and Inventory

15. Relying on the authority of the Amended and Restated Initial Order, the Applicants and the Monitor designed and implemented a commercially reasonable marketing process (“**Sale and Liquidation Process**”) for the purpose of identifying one or more value-maximizing transaction for the Applicants’ assets and/or business.

16. In furtherance of the Sale and Liquidation Process, the Applicants and the Monitor engaged with 20 potential purchasers, including professional liquidators, office furniture manufacturers and distributors, and other parties who in the opinion of the Applicants or the Monitor may be interested in acquiring any of the Applicants’ assets and/or business (“**Potential Purchasers**”).

17. The Monitor will provide more details on the Sale and Liquidation Process in its Second Report. The following is a high level summary of the process and its outcome(s) to date:

- (a) in order to participate in the Sale and Liquidation Process, Potential Purchasers were required to execute a non-disclosure agreement and thereafter were provided

with significant detail about the Applicants' assets and business, including asset listings and financial information;

- (b) the Applicants and the Monitor facilitated due diligence requests from Potential Purchasers, as well as management meetings, site tours, and plant visits;
- (c) Potential Purchasers were provided with a process letter ("**Bid Process Letter**"), a copy of which will be appended to the Monitor's Second Report. The Bid Process Letter published the deadlines and milestones of the Sale and Liquidation Process, including the deadline to submit a letter of intent by February 8, 2023 (the "**Bid Deadline**");
- (d) ten (10) letters of intent were submitted by Potential Purchasers to the Monitor by the Bid Deadline; and
- (e) the Applicants and the Monitor evaluated all bids received following the expiry of the Bid Deadline and engaged in follow-up discussions with certain Potential Purchasers with a view to clarifying and improving business terms.

18. For the reasons to be detailed in the Monitor's Second Report, it was ultimately determined that two of the bids (the "**Successful Bids**") were superior to the other offers received by the Bid Deadline. In making this determination the Applicants and the Monitor considered the value and structure of the purchase price, the specific asset parcels included or excluded in the transaction, the proposed timing for completion, and matters affecting conditionality and deal certainty.

19. The Successful Bids comprised of:

(a) a bid submitted for assets in respect of a fiber laser system and compressor (“**Fiber Laser Bid**”); and

(b) a liquidation bid submitted for the majority of the Applicants’ remaining equipment, furniture, and fixtures (the “**Equipment Liquidation Bid**”).

20. The negotiated purchase price for the assets which are subject to the Fiber Laser Bid was USD \$925,000. The transaction was completed in accordance with the terms of a purchase agreement dated February 24, 2023 (“**Fiber Laser APS**”). A copy of the executed Fiber Laser APS is attached as **Exhibit “B”**.

21. The purchase agreement in respect of the Equipment Liquidation Bid (the “**Equipment Liquidation APS**”) is in the process of being negotiated and finalized for execution by the parties. The deal will be conditional on the granting of a sale approval and vesting order. Once finalized, the Applicants intend to bring a motion seeking court approval of the Equipment Liquidation APS at the earliest opportunity, and on notice to the service list.

Tax Refunds

22. Deloitte Canada (“**Deloitte**”), the Applicants’ auditor, is in the process of pursuing an claimed HST refund of approximately \$1.3 million. This amount had and continues to be withheld by Canada Revenue Agency pending the determination of a notice of objection. Deloitte remains engaged and these efforts are ongoing.

Holland Landing Lease

23. As described in the First Ehgoetz Affidavit, Inscope is party to a January 2022 lease agreement (“**Holland Landing Lease**”) in respect of a property in East Gwillimbury, Ontario,

which comprises of the Applicants' head office and furniture manufacturing plant contained within a 313,002 square foot facility (the "**Holland Landing Facility**").

24. Inscape and the landlord (the "**Landlord**") under the Holland Landing Lease are in late stage discussions regarding a potential arrangement with a replacement tenant. A properly structured arrangement, if achieved, would be in the financial interest of the Landlord and the new tenant, and would also contribute material value to the Inscape Group's estate in liquidation.

Accounts Receivable

25. The Applicants are working diligently to collect accounts receivable. Since the Filing Date, approximately \$1.1 million has been collected, and approximately \$6.5 million remains to be collected by the Applicants.

26. The \$6.5 million accounts receivable figure takes into account the sales proceeds of certain additional goods produced following the Filing Date. In this regard, the Applicants continued manufacturing operations through to February 24, 2023 in order to finish certain customer orders that were nearing completion or were otherwise beneficial to complete. This work added value to the company in that the cost of completion will be more than offset by the associated sales revenue that will be collected.

27. A receivable of approximately \$2.8 million is expected to be received from Prevolv, Inc. ("**Prevolv**") in payment for multiple orders that required completion but which are now in transit. The Applicants have discussed payment arrangements with Prevolv, and Prevolv has committed to making full payment of the receivable within 60 days of delivery of the shipment.

28. Collection efforts are otherwise ongoing.

U.S. Chapter 15 Proceeding

29. On January 23, 2023, the Foreign Representative filed a petition (“**Petition**”) commencing a proceeding (“**Chapter 15 Proceeding**”) requesting recognition of the CCAA proceedings in the United States Bankruptcy Court for the Southern District of New York (“**US Bankruptcy Court**”) pursuant to the Bankruptcy Code. Attached hereto as **Exhibit “C”** is a copy of the Petition.

30. The US Bankruptcy Court convened a hearing on February 21, 2023 to consider the Petition. At the conclusion of the hearing, the Honourable Justice Wiles requested certain additional information from the Foreign Representative and continued the hearing to March 1, 2023. Specifically, His Honour requested the filing of supplemental materials addressing the question of the center of main interest (“**COMI**”) of each of Inscape New York and Inscape Delaware. The requested additional materials, consisting of a Supplement to the Verified Petition was filed with the US Bankruptcy Court on February 27, 2023. Attached as **Exhibit “D”** is a copy of the Supplement to the Verified Petition

Vacation Pay Claim

31. At the commencement of these proceedings, Inscape employed approximately 83 unionized workers who were members of the United Steelworkers 1-500 union (“**USW**”). Approximately 4 unionized workers are currently employed by Inscape and engaged in various wind-up activities.

32. On February 22, 2023, the Applicants received a letter (“**Gowlings Letter**”) from independent counsel for the director and officers of the Applicants regarding a certain USW Grievance Request. The Gowlings Letter asks that the Applicants pay all amounts claimed for

vacation for all employees, and demands indemnification, if necessary, for amounts (if any) that directors and officers may be liable for in the future. Attached as **Exhibit “E”** is a copy of the Gowlings Letter.

33. The Applicants are reviewing the scope and nature of this grievance with the Monitor, with a view to resolving the issue as soon as possible.

RELIEF SOUGHT

Extension of the Stay

34. The Applicants have acted, and continue to act in good faith and with due diligence throughout these CCAA proceedings.

35. The Stay Period is currently set to expire on March 9, 2023. The requested extension of the stay of proceedings up to and including to April 21, 2023 will afford time for the Applicants and the Monitor to, among other things:

- (a) continue to further their ongoing wind-down, asset realization, and collection efforts;
- (b) finalize the terms of the Equipment Liquidation APS;
- (c) assess the results of the wind-down and determine whether or not realizations are sufficient to justify a claims process;
- (d) if a claims process is advisable, to develop and propose an appropriate claims process and return to court to seek approval thereof; and

- (e) further the purpose of the Chapter 15 Proceeding, namely, to grant recognition to the orders of this Court in the CCAA proceedings and grant a stay to protect from creditors in the United States as the Applicants complete an orderly, timely, and cost-effective liquidation.

36. The Monitor supports the proposed extension to the Stay Period. As set out in the updated Cash Flow Forecast, a copy of which will be appended to the Second Report, the Applicants will have sufficient liquidity to carry out the ongoing wind up of operations, during the proposed extension.

FORM OF ORDERS AND CONCLUSION

37. I swear this affidavit in support of the Applicant's motion for the Amended and Restated Initial Order, substantially in the form attached at **Tab "3"** to this Motion Record and for no other or improper purpose.

SWORN BEFORE ME via video-conference with the deponent in the City of Mississauga, in the Province of Ontario, and the Commissioner in the City of Mississauga in the Province of Ontario this 28th day of February, 2023

DocuSigned by:

Eric Ehgoetz

EDF7B1AED28246B...

ERIC EHGOETZ

DocuSigned by:

Monica Faheim

A987328446B5242A

A Commissioner for taking Affidavits
MONICA FAHEIM

**This is Exhibit "A" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 28th day of February, 2023**

DocuSigned by:

Monica Fakhim

A COMMISSIONER FOR TAKING AFFIDAVITS

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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. (the "Applicants")

AFFIDAVIT OF ERIC EHGOETZ
(Sworn January 11, 2023)

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ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS*
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(NEW YORK) INC., AND INSCAPE INC. (the “**Applicants**”)

Applicants

AFFIDAVIT OF ERIC EHGOETZ
(Sworn January 11, 2023)

I, Eric Ehgoetz, of the City of Mississauga, MAKE OATH AND SAY:

1. I am the Chief Executive Officer (“**CEO**”) of Inscape Corporation (“**Inscape**”). I am also the CEO of Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, together with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”).
2. I have acted as the CEO of the Inscape Group since March 2020. Prior to my role as CEO and from June 2016 to March 2020, I was a member of the Inscape Group’ Board of Directors and Chair of its Audit Committee. My professional qualifications include a Chartered Financial Analyst (CFA) charter holder designation, as well as an ICD.D. As a result of my roles with the Inscape Group, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and belief obtained from others, I have stated the source of that information and belief and believe such information to be true.
3. All references to dollar amounts herein are Canadian dollars unless otherwise indicated.

INTRODUCTION

Relief Sought

4. This affidavit is sworn in support of an application for an order (“**Initial Order**”) substantially in the form of the draft order attached as **Tab “3”** to the within Application Record under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”), among other things:

- (a) abridging the time for and validating services of this notice of application and the application record and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are companies to which the CCAA applies;
- (c) granting a stay of proceedings in favour of the Inscope Group and its directors and officers for an initial period eight (8) days up to and including January 20, 2023;
- (d) appointing Alvarez & Marsal Canada Inc. as the court-appointed monitor of the Inscope Group (in such capacity, the “**Proposed Monitor**”);
- (e) granting an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”);
- (f) granting a director’s and officers’ charge (the “**D&O Charge**” together with the Administration Charge, the “**Priority Charges**”);
- (g) authorizing the Inscope Group to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the directors, officers, employees, and other representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings;
- (h) authorizing the Inscope Group to continue utilizing its cash management system (the “**Cash Management System**”); and

- (i) scheduling a comeback hearing (“**Comeback Hearing**”) for January 20, 2023.

Purpose of CCAA

5. The Inscape Group is in the business of manufacturing and selling office furniture equipment on contract. Over the last decade, the Inscape Group’s business has experienced declining financial performance and the Inscape Group no longer has access to sufficient working capital. The Inscape Group’s challenges continue to persist despite good faith efforts on the part of the Inscape Group and its advisors to revitalize the business. These challenges were intensified by the impact of the pandemic and its detrimental effects to the entire contract office furniture industry that the Inscape Group operates in.

6. As a result, the Inscape Group is insolvent, unable to meet its obligations as they become due and is in need of protection from its creditors. Without access to capital, the significant losses incurred by the Inscape Group can no longer be sustained and it is unable to complete any recovery of same. Further, the value of the Inscape Group continues to erode. The Inscape Group, in consultation with its advisors, has determined that the best path forward to maximize value for its stakeholders is through a court-supervised process under the CCAA.

7. At this time, the Inscape Group believes that it is in the best interest of its creditors to liquidate its assets and effect an orderly wind-up of the affairs of the business. The Applicants require the breathing room and stability offered by the CCAA in order to strategize and execute a path forward that will maximize the proceeds available for distribution to creditors on a more timely and cost-effective basis than alternative processes that may further harm the value of the Inscape Group and the value of its assets.

INSCAPE’S CORPORATE STRUCTURE AND OPERATIONS

Background to Business Operations

8. The Inscape Group is in the business of designing, manufacturing and selling office furniture and architectural walls and has been in operation for approximately 130 years. In particular, the Inscape Group’s business began in 1888 as a New York-based full-service provider of office furniture under the name Office Specialty. In the early 1900s, Office Specialty

moved to Canada and eventually relocated to Holland Landing, a community in the town of East Gwillimbury, 45 minutes north of Toronto.

9. Office Specialty Inc. became public on the TSX in 1997 and ultimately changed its name to Inscape Corporation. The business operates under two primary brand names, being Inscape and Office Specialty. The Inscape Group operates within the contract office furniture market such that it only produces products for customers based on firm purchase orders.

10. The Inscape Group's products are manufactured and produced out of two manufacturing facilities and are used to fulfill orders in Canada and in the United States.

11. Among other things, the Inscape Group designs, manufactures and distributes cubicles, movable walls, filing cabinets, bookcases and other ergonomic furniture for customers across North America and Europe. The Inscape Group has two divisions: (i) the "furniture" division, which provides storage, benching, and seating solutions; and (ii) the "wall" division, which provides architectural and movable partition walls for office spaces. The Inscape Group markets its products to both the commercial and consumer markets.

12. As further particularized below, the Inscape Group operates its design and manufacturing business out of two (2) leased facilities: (i) a facility in Holland Landing, East Gwillimbury, Ontario; and (ii) a facility in Jamestown, New York. The Inscape Group also maintains leased premises for showrooms in Chicago, Washington, and New York City.

13. Over the last decade, the Inscape Group's business has experienced declining financial performance. The Inscape Group's challenges continue to persist despite good faith efforts on the part of the Inscape Group and its advisors to revitalize the business through various cost-cutting measures and other strategic initiatives. These challenges were intensified by the impact of the pandemic and its detrimental effects to the entire contract office furniture industry.

Corporate Structure

14. On May 1, 2007, Inscape amalgamated with previous Canadian subsidiaries (which ceased to exist after the amalgamation) to form one corporation under Ontario's *Business Corporations Act*. Inscape is a publicly traded entity regulated by the Ontario Securities

Commission. Its shares are traded on the Toronto Stock Exchange under the trading symbol “INQ”. A corporate profile for Inscape is attached hereto as **Exhibit “A”**.

15. The Inscape Group’s corporate structure comprises of three legal entities:

- (a) Inscape (*ie*, the public Canadian parent company), with a registered head office located at 67 Toll Road, Holland Landing, Ontario, Canada;
- (b) Inscape Delaware, a holding company incorporated under the laws of the state of Delaware with a registered head office located at 15 Tiffany Avenue, Jamestown, New York, USA; and
- (c) Inscape New York, an operating company incorporated under the laws of the state of New York with a registered head office of 15 Tiffany Avenue, Jamestown, New York, USA. Copies of the corporate profile report for Inscape Delaware and Inscape New York are attached as **Exhibits “B”** and **“C”**, respectively.

16. Inscape is the parent (and 100% owner) of Inscape Delaware. Inscape Delaware is the 100% owner of Inscape New York. An organization chart demonstrating the corporate structure of the Inscape Group is attached hereto as **Exhibit “D”**.

17. Each of the Applicants has the same Board of Directors. I am the CEO and Jon Szczur is the Chief Financial Officer of each of the Applicants.

Employees and Payroll

18. As at January 9, 2023, the Inscape Group had a total of 218 employees in Canada and the United States, broken down as follows:

- (a) Inscape employs 184 individuals, of which 83 are hourly employees and 101 are salaried employees. In respect of Inscape’s payroll: (i) the hourly employees are paid on a bi-weekly basis in arrears, with the last payroll issued on December 30, 2022 for the pay period ending on December 24, 2022; and, (ii) the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022;

- (b) Inscape New York employs 23 individuals, of which 14 are hourly employees and 9 are salaried employees. In respect of Inscape New York's payroll: (i) the hourly employees are paid on a weekly basis in arrears, with the last payroll issued on January 6, 2023 for the pay period ending on January 1, 2023; and, (ii) the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022 and
- (c) Inscape Delaware employs 11 individuals, all of which are salaried sales staff. In respect of Inscape Delaware's payroll, the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022.

19. The Inscape Group offers certain benefits to unionized and non-unionized employees including life insurance, healthcare coverage, and dental health care coverage. The Inscape Group is current on payroll and source deductions.

Collective Agreements

20. Approximately 92 of the Inscape Group's employees are unionized, as follows:

- (a) Unionized workers employed by Inscape (approximately 83) are members of the United Steelworkers 1-500 union ("USW"). Inscape and USW are party to a collective agreement dated October 1, 2016 ("**USW Collective Agreement**"), which was recently renewed effective October 1, 2021 for a three-year (3) term ending September 30, 2024. A copy of the USW Collective Agreement is attached as **Exhibit "E"**; and
- (b) Unionized workers employed by Inscape New York (approximately 9) are members of Local Union No. 112 of the Sheet Metal Workers' International Association ("**SMW**"). Inscape New York and SMW are party to a collective agreement dated June 1, 2017 ("**SMW Collective Agreement**"), which was renewed effective June 1, 2021 for a five-year term. A copy of the SMW Collective Agreement is attached as **Exhibit "F"**.

21. As of the date of this Affidavit, the Inscape Group has a total of approximately \$5,308.00 owing in respect of union dues.

Inscape Pension Plans

22. The Inscape Group maintains a total of four (4) pension plans for its employees in Canada and the United States, the full details of which are thoroughly set out in **Exhibit “G”** attached, and the key details of which are summarized as follows:

- (a) In Canada, Inscape currently administers the following two (2) plans (collectively, the **“Canadian Plans”**):
 - (i) a defined contribution pension plan for unionized hourly employees, which prior to April 2, 2022 had both a contributory defined benefit provision and a contributory defined contribution provision (the **“DC Converted Union Plan”**), and which presently has a frozen defined benefit component with no benefit accrual and a defined contribution component for current service;
 - (ii) a defined contribution pension plan for non-unionized salaried and hourly employees (the **“DC Non-Union Plan”**);
- (b) In the United States, Inscape New York currently administers the following two (2) plans (the **“US Plans”**):
 - (i) a defined benefit pension plan for certain employees with service frozen as of June 30, 1991 (for non-unionized employees) or August 15, 2013 (for unionized employees) (the **“US Frozen DB Plan”**); and
 - (ii) a 401(k) plan, which is a contributory defined contribution benefit plan for salaried and hourly employees (the **“US 401(k) Plan”**).
- (c) The current status of the Canadian Plans and the US Plans (as fully particularized in Exhibit “G”) is as follows:

- (i) in respect of the DC Converted Union Plan, there are currently no special payments or other contributions required in respect of the defined benefit component, and contributions in respect of the defined contribution component are current;
- (ii) in respect of the DC Non-Union Plan, contributions to that plan are current;
- (iii) in respect of the US Frozen DB Plan, there are currently no contributions required; and
- (iv) in respect of the US 401(k) Plan, contributions to that plan are current.

Leased Premises: Place of Business and Manufacturing Facilities

23. As noted above, the Inscape Group operates its business out of manufacturing and warehouse facilities (where the office equipment and walls are designed and manufactured) as well as through showrooms (where the completed pieces of office furniture and walls are showcased for viewing in support of contract orders). In this regard, the Inscape Group leases five (5) premises in total.

Manufacturing and Warehouse Facilities and Leases:

24. The Inscape Group operates its manufacturing business out of the following two (2) locations:

- (a) a manufacturing and warehouse facility in Canada located in an approximately 313,000 square foot building at the leased premises municipally known as 67 Toll Road, East Gwillimbury, Ontario (“**Holland Landing Facility**”); and
- (b) a manufacturing and warehouse facility in the United States located in an approximately 30,000 square foot building at the leased premises municipally known as 15 Tiffany Avenue, Falconer, Jamestown, New York (“**Jamestown Facility**”).

25. The products manufactured at the Holland Facility in Ontario are used to fulfill customer orders in both the United States and Canada and upon completion, are shipped to the appropriate customer location in order to complete the orders.

26. Similarly, the products manufactured at the Jamestown Facility in New York are used to fulfill orders in both the United States and Canada, and upon completion, are shipped to the appropriate customer location in order to complete the orders.

27. The Holland Landing Facility is currently leased pursuant to an agreement dated January 24, 2022 (“**Holland Landing Lease**”) between Inscape and Cedar City Paradise Toll Rd Inc. (“**Holland Landing Landlord**”). Pursuant to the Holland Landing Lease, a copy of which is attached hereto as **Exhibit “H”**, among other things:

- (a) The lease term commenced on January 24, 2022 and expires on January 23, 2032, for a total lease term of 10 years;
- (b) The monthly basic rent was \$173,090.11 for 2022, which increases by 2.5% each subsequent year; and
- (c) The Holland Landing Landlord is in possession of a \$2.5 million rent deposit paid by Inscape, as security for Inscape’s performance of the covenants and conditions in the Holland Landing Lease.

28. The monthly basic rent due and owing to the Holland Landing Landlord has not yet been paid. The Applicants intend to use the funding to be made available to them under the terms of the Forbearance Agreement (as defined and further described below) to make payments on account of rental amounts owing, as deemed appropriate by the Applicants in consultation with the Monitor.

29. The Jamestown Facility is currently leased pursuant to an agreement dated December 29, 2020 (“**Jamestown Lease**”) between Inscape New York and Lynn Development, Inc. (“**Jamestown Landlord**”). Pursuant to the Jamestown Lease, a copy of which is attached hereto as **Exhibit “I”**, among other things.

- (a) The lease term commenced on February 1, 2021 and expires on January 31, 2026, for a total lease term of 5 years;
- (b) Inscape New York provided the Jamestown Landlord a one (1) month security deposit in the amount of USD \$11,673.84 as security for its obligations under the Jamestown Lease; and
- (c) The monthly basic rent was USD \$11,907.31 for 2022, and increases by 2% each subsequent year.

30. On February 1, 2021 and pursuant to a Promissory Note dated January 19, 2021, Inscape advanced a loan in the amount of USD \$250,000 to the Jamestown Landlord on account of tenant improvements to be made at the Jamestown Facility leased premise, payable over seven (7) years at an interest rate of 7% (with monthly payments in the amount of USD \$3,773.17 (inclusive of interest) commencing on March 10, 2021 and ending March 10, 2028). The last payment was made by the Jamestown Landlord on January 1, 2023, leaving a total outstanding balance of approximately USD \$195,829 as at today's date. The monthly basic rent due and owing for December 2022 and January 2023 have not yet been paid. The Applicants intend to use the funding to be made available to them under the terms of the Forbearance Agreement (as defined and further described below) to make payments on account of rental amounts owing, as deemed appropriate by the Applicants in consultation with the Monitor.

Showroom Leases

31. The Inscape Group operates showrooms out of three (3) locations: Chicago, New York City, and Washington:

- (a) A Chicago showroom located in a 11,945 square foot floor of a building at the leased premises municipally known as the 8th floor of the 800 W. Fulton Market Street, in Chicago Illinois (the "**Chicago Showroom**");
- (b) A New York showroom located in a 6,525 square foot floor of a building at the leased premises known as the 6th floor of the building located at 414 West 14th Street, New York, New York ("**New York Showroom**"); and

- (c) A Washington Showroom located in a 3,750 square foot floor of a building at the leased premises municipally known as the 11th floor of the building located at 1090 Vermont Avenue, N.W., Washington D.C. (“**Washington Showroom**”).

32. The Chicago Showroom is leased pursuant to an agreement dated June 17, 2021, as amended by a First Amendment to Lease executed in or around October 2022 (collectively, “**Chicago Showroom Lease**”) between Inscape Delaware and Prevolv Inc. (“**Prevolv**”) (together as tenants) and Thor 816 W Fulton Owner LLC (“**Chicago Landlord**”). Inscape Delaware co-lease the Chicago Showroom with Prevolv, a commercial furniture dealership company that also operates their business out of this location. Pursuant to an arrangement between Inscape Delaware and Prevolv, each co-tenant is responsible for their respective portion of the rent under the Chicago Showroom Lease. No rental amounts are owing by Inscape Delaware under the Chicago Showroom Lease until on or about April of 2023.

33. Pursuant to the Chicago Showroom Lease, a copy of which is attached hereto as **Exhibit “J”**, among other things:

- (a) The lease term commenced on December 1, 2021 and expires on November 30, 2032, for a total lease term of 11 years;
- (b) The monthly basic rent was USD \$36,730 for 2022, and increases by 2.5% each subsequent year. The basic rent for 2023 will be USD \$37,648.25; and
- (c) The Chicago Showroom Landlord is in possession of a USD \$250,000 rent deposit, as security for Inscape Delaware’s performance of the covenants and conditions in the Chicago Showroom Lease.

34. The New York Showroom is leased pursuant to an agreement dated October 10, 2020 (“**NYC Showroom Lease**”) between Inscape and Ponte Gadea New York, LLC (“**NYC Showroom Landlord**”). Pursuant to the NYC Showroom Lease, a copy of which is attached hereto as **Exhibit “K”**, among other things:

- (a) The lease term commenced on November 1, 2020 and expires on November 30, 2032, for a total lease term of 11 years;

- (b) The monthly basic rent is USD \$54,375;
- (c) The NYC Showroom Landlord is in possession of a USD \$271,875 rent deposit, as security for Inscape's performance of the covenants and conditions in the NYC Showroom Lease.

35. The Washington Showroom is leased pursuant to an agreement dated April 5, 2018 ("**Washington Showroom Lease**") between Inscape Delaware and 100 Vermont Avenue N.W. Associates Limited Partnership ("**Washington Landlord**"). Pursuant to the Washington Showroom Lease, a copy of which is attached hereto as **Exhibit "L"**, among other things:

- (a) The lease term commenced on June 1, 2018 for a period of seventy-two (72) months, and is therefore set to expire on May 31, 2024;
- (b) The monthly basic rent was USD \$17,246 for 2022, and increases by 2.5% each subsequent year; and
- (c) The Washington Landlord is in possession of a security deposit in the amount of USD \$15,625.

36. Currently, the Inscape Group continues to occupy all five (5) of the leased premises. The showrooms are currently open to the public. Rental amounts for November 2022 and December 2022 in respect of the Washington Showroom Lease and the New York Showroom Lease have not been paid.

Cash Management System

37. In the ordinary course of business, the Inscape Group uses a centralized banking and cash management system ("**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations. The Inscape Group's funds are managed by the Inscape Group's treasury team based in Canada. The Cash Management System is administered by the Inscape Group's finance department at Inscape's head office in Holland Landing, Ontario (the "**Canada Head Office**").

38. The Cash Management System has several functions, comprised of: (a) collection of accounts receivable from third parties (b) disbursements to fund payroll and benefits, capital expenditures, maintenance costs, payments to inventory vendors and other service providers; and (c) intercompany cash transfers amongst Inscape, Inscape Delaware and Inscape New York (the “**Intercompany Transfers**”).

39. Generally, Inscape Group’s customers are invoiced as follows:

- (a) Canadian customers of the furniture segment are invoiced by Inscape;
- (b) US customers of the furniture segment are invoiced by Inscape Delaware; and
- (c) All customers of the walls segment are invoiced by Inscape (New York).

40. Intercompany Transfers are payments made between Inscape, Inscape Delaware and Inscape New York for: (a) inventory sales from Inscape to Inscape Delaware; (b) the provision of net shared services by Inscape, comprising essential corporate functions from the Canada Head Office; and (c) any additional funding required to support ongoing operations of the entities, made by way of intercompany loans.

41. Inscape Group utilizes eight (8) bank accounts, of which, three (3) are held at Royal Bank of Canada (“**RBC**”) in Canada, four (4) are held at KeyBank in the US and one (1) is held at Platinum Bank in the U.S. (collectively, the “**Bank Accounts**”). An overview of the Bank Accounts is as follows:

- (a) KeyBank Deposit Account Control Agreement account owned by Inscape (New York), denominated in USD (“**DACA Account**”). The DACA Account is used to collect receipts from the majority of US customers, regardless if they are invoiced by Inscape or Inscape New York. The Inscape Group’s access to the DACA Account is restricted to deposits only and Hilco controls disbursements from this account;
- (b) KeyBank operating account owned by Inscape New York, denominated in USD (“**KeyBank Operating Account**”). The KeyBank Operating Account is mainly funded by advances under the Hilco Credit Facility (defined below) via a transfer

from the DACA Account initiated by Hilco (defined below). Certain US customers, such as government entities and general contractors, continue to deposit receipts into the KeyBank Operating Account. The Inscape Group manually transfers any customer receipts to the DACA Account. The KeyBank Operating Account is used to fund Inscape New York vendor payments and US payroll disbursements. The Inscape Group utilizes Ceridian, a third-party payroll services provider, to administer its payroll;

- (c) RBC operating account owned by Inscape Delaware, denominated in USD (“**RBC USD Account**”). The RBC USD Account is funded through Intercompany Transfers from the KeyBank Operating Account. It is used to pay disbursements to most US vendors, excluding a small number of vendors paid out of the KeyBank Operating Account;
- (d) RBC FX spot trade account owned by Inscape, denominated in USD (“**RBC FX Account**”). The RBC FX Account is used as an intermediary account to receive USD funds from the RBC USD Account and buy CAD funds for transfers out to the RBC CAD Account (defined below). The Inscape Group has a third-party hedging agreement in place, which hedges its USD to CAD foreign exchange rate;
- (e) RBC CAD operating account owned by Inscape, denominated in CAD (“**RBC CAD Account**”). The RBC CAD Account is funded through payments from Canadian customers and Intercompany Transfers from the RBC USD Account. All Canadian vendors are also paid out of the RBC CAD Account, as well as payroll for Canadian employees;
- (f) Two KeyBank employee benefits funding accounts owned by Inscape New York, denominated in USD (“**US Employee Benefits Accounts**”). The US Employee Benefits Accounts are funded by intercompany transfers from the KeyBank Operating Account and used to make payments towards US employee group health benefits and the FLEX health plan; and

- (g) Platinum USD account owned by Inscape Delaware, denominated in USD (“**Platinum Account**”). The Platinum Account is a restricted cash account holding a security deposit related to the Chicago showroom lease.

42. On a weekly basis, the Inscape Group’s finance department reviews near term cash requirements, cash receipts, residual account balances and availability under the Hilco Credit Facility (as defined below). Based on this review, forecast cash required to fund disbursements is requested from Hilco UK (as defined below). Approved funds are advanced by Hilco UK (as defined below) or transferred from the DACA Account into the KeyBank Operating Account.

43. Certain employees of the Inscape Group are issued an AMEX corporate credit card for business purposes. On a monthly basis, the Inscape Group initiates a payment towards the credit card balance from the RBC CAD Account for Canadian credit cards and from the KeyBank Operating Account for US credit cards.

44. The Applicants intend to continue using the existing Cash Management System during the CCAA Proceedings and are seeking the approval of the Court to do so.

45. Given the scale and nature of the Inscape Group’s operations and the volume of transactions that are processed daily within the Cash Management System, I am advised by the Proposed Monitor that it is of the view that the continued use of the existing Cash Management System is required and appropriate during these CCAA Proceedings.

46. As part of its monitoring procedures, if appointed, the Proposed Monitor will:

- (a) review receipts and disbursements processed through the Bank Accounts;
- (b) review weekly receipts and disbursements summaries, compare the summaries to the corresponding 13-week cash flow forecasts and review variances with management; and
- (c) review disbursements, as reasonably appropriate, for compliance with provisions of the Proposed Initial Order.

Directors' and Officers Insurance Policies

47. Prior to Inscape's recent change in ownership (described below), Inscape carried the following insurance for its directors and officers in a total amount of \$15 million which was set to expire on April 29, 2023:

- (a) A directors' and officers' liability insurance policy with Travelers Insurance Company of Canada Company (the "**D&O Policy**") with a policy limit of \$5 million;
- (b) An excess directors' and officers' liability insurance policy with Berkley Insurance Company (the "**Berkley Excess Policy**") with a policy limit of \$5 million; and
- (c) An excess directors' and officers' liability insurance policy with Chubb Insurance Company of Canada (the "**Chubb Excess Policy**" together with the D&O Policy and Berkley Excess Policy, the "**D&O Policies**") with a policy limit of \$5 million.

48. I am advised by the Inscape Group's insurance broker that the D&O Policies ceased to be in effect post the change in ownership. Accordingly, and as part of the transaction that resulted in Inscape's recent change in ownership (as described below), Inscape arranged to carry a run-off directors' and officers' liability insurance policy in a total amount of \$10 million and for a period of six (6) years expiring December 23, 2028 ("**Run-Off D&O Policies**"), as follows:

- (a) with Travelers Insurance Company of Canada Company with a policy limit of \$5 million; and
- (b) an excess directors' and officers' liability insurance policy with Berkley Insurance Company with a policy limit of \$5 million.

49. Notwithstanding the existence of the Run-Off D&O Policies, the Inscape Group's ordinary course operations may give rise to potential director or officer liability. To address legitimate concerns expressed with respect to their potential exposure if they continue to act, the directors and officers have requested reasonable protection against personal liability that might

arise during the post-filing period. The Directors' Charge, in the proposed amount discussed in the proposed Monitor's pre-filing report, to be filed, is intended to address potential claims that may be brought against the director and officers.

50. The quantum of the Directors' Charge was developed with the assistance and support of the Proposed Monitor. The Inscape Group is of the view that the quantum of the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' and officers' liability prior to the Comeback Hearing.

FINANCIAL CIRCUMSTANCES AND CASH FLOW FORECAST

Financial Performance

51. The Inscape Group's fiscal year end is April 30. Attached hereto as **Exhibit "M"** are the Inscape Group's Consolidated Audited Year End Financial Statements from April 30, 2022 (the "**2022 Financial Statements**"). The 2022 Financial Statements indicate that as of April 30, 2022, the Inscape Group had total assets of approximately \$55,630,000, total liabilities of approximately \$41,454,000.

Assets and Liabilities

52. The most recent and up-to-date financial position of the Inscape Group (on a consolidated basis) is as of November 30, 2022, which include:

- (a) cash in the amount of \$1,672,000, receivables in the amount of \$10,041,000; and inventory in the amount of \$5,445,000, among other things; and
- (b) liabilities of approximately \$16,376,000, including accounts payable in the amount of \$11,080,000, among other things;

53. The most significant asset of the Inscape Group comprises of accounts receivable owed to Inscape New York and/or Inscape Delaware. Inscape also owns a large laser machine, which is used for the manufacturing of steel parts used for storage and systems products in its furniture plant at the Holland Landing Facility.

Senior Secured Debt

54. In the context of its restructuring efforts with Hilco Capital Limited (“**Hilco**”), as further detailed below, Hilco Capital Limited, through its subsidiary, HUK 116 Limited (“**Hilco UK**”), agreed to provide Inscape with an interim loan to help fund ordinary course financial obligations.

55. Hilco UK (as lender), Inscape (as borrower), and Inscape New York and Inscape Delaware (as guarantors) are party to a credit agreement dated October 28, 2022 (“**Hilco Loan Agreement**”). Pursuant to the Hilco Loan Agreement, Hilco UK made available a revolving demand facility in the principal amount of \$5 million (“**Hilco Loan Facility**”), to be used for, among other purposes, the Inscape Group’s working capital requirements. A copy of the Hilco Loan Agreement is attached as **Exhibit “N”**.

56. As security for Inscape’s obligations under the Hilco Loan Agreement:

- (a) Inscape executed a general security agreement in favour of Hilco UK (“**Hilco GSA**”) over all personal property of Inscape; and
- (b) Inscape New York and Inscape Delaware executed a guarantee (“**Hilco Guarantee**”) and accompanying general security agreement (“**Hilco Guarantors GSA**”). Copies of the Hilco GSA, Hilco Guarantee, and Hilco Guarantors GSA, are attached as **Exhibits “O”, “P”, and “Q”**, respectively.

57. As at January 10, 2023, the total indebtedness outstanding under the Hilco Loan is \$1,323,698, inclusive of interest, management fees and expenses.

58. Following the financial results reported by the Inscape Group that were not satisfactory to Hilco UK, Inscape is in default of certain of its obligations under the Loan Agreement and accordingly, Hilco UK advised the Inscape Group that it will not continue funding the Inscape Group. Inscape has requested that Hilco UK forbear from exercising its rights and remedies under the Loan Agreement and the security to allow the Inscape to utilize the CCAA Proceedings to maximize value for its creditors and stakeholders; and (ii) allow Inscape to access the Hilco Loan Facility in order to fund the CCAA Proceedings, as further described below.

PPSA Registrations

59. A number of parties have registered interests against the Inscape Group under the *Personal Property Security Act* (“**PPSA**”):

- (a) Hilco UK has a registration against Inscape with respect to all present and after-acquired personal property of Inscape for all collateral classifications except consumer goods; and
- (b) Dell Financial Services Canada Limited (“**Dell**”) has a number of registrations against Inscape with respect to computer equipment and peripherals. Attached hereto as **Exhibit “R”** is a true copy of the certified Personal Property Registry search results for Inscape in Ontario.

Crown Obligations and Priority Claimants

60. In 2017, Canada Revenue Agency (“**CRA**”) issued to Inscape a notice of reassessment alleging approximately \$2.6 million in tax liability. The Inscape Group engaged a financial advisor to assist with an independent review of the notice of reassessment and on or about October 13, 2022, Inscape filed a notice of objection (“**Objection**”).

61. The Inscape Group is current on its HST remittances up to and including October 2022. Going forward, HST remittances are reflected in the projected cash flows. As of the date of this affidavit, approximately \$1,257,000 in respect of HST refunds has been withheld by CRA pending determination of the Objection.

Unsecured Debt: Trade Creditors and Suppliers

62. The Inscape Group has unpaid trade and other unsecured debt accrued in the normal course of business. As of January 9, 2023, accounts payable balances totalled approximately CAD \$6,307,198.00.

63. Certain critical suppliers of the Inscape Group have recently imposed more stringent payment terms as a result of the Inscape Group’s inability to promptly meet payment schedules. Other suppliers have refused to fulfil orders due to non-payment. The Inscape Group is currently

delinquent in its payments to about 91% of its suppliers, with a number of accounts placed on credit hold and/or being escalated to collections.

Cash Flow Forecast

64. The Inscape Group, with the assistance of the Proposed Monitor, has prepared a projected 13-week cash flow forecast (the “**Cash Flow Forecast**”) for the period ending April 7, 2023 that is premised on, among other things, the assumption that the Applicants will be granted CCAA protection. I believe that the Cash Flow Forecast is a reasonable forecast of the Applicants’ cash flow over the next quarter, which includes the Further Advances agreed upon and defined below. A copy of the Cash Flow Forecast is appended to the pre-filing report of the Monitor, to be filed.

Forbearance Agreement

65. On January 10, 2023, Inscape (as Borrower), Inscape Delaware and Inscape New York (as Guarantors) and Hilco UK (as Lender), entered into a Forbearance Agreement (the “**Forbearance Agreement**”), a copy of which is attached hereto as **Exhibit “S”**, whereby Hilco UK has agreed to (i) forbear from exercising its rights and remedies under the Hilco Loan Agreement and related security and (ii) allow Inscape to access the Hilco Loan Facility (the “**Further Advances**”), subject to the terms and conditions agreed upon therein. Pursuant to the Forbearance Agreement, among other things, Hilco UK has agreed to make Further Advances in accordance with the Cash Flow Forecast, as noted above and as attached thereto as Schedule “A”.

EVENTS LEADING UP TO CCAA FILING

Inscape’s Declining Financial Performance

66. The Inscape Group has operated at a net loss for the past five (5) years. The following simple chart demonstrates the Inscape Group’s declining financial performance:

Audit Year	30-Apr-18	30-Apr-19	30-Apr-20	30-Apr-21	30-Apr-22	YTD Nov 2022

Sales Revenue	\$93,936,000	\$90,583,000	\$75,818,000	\$38,203,000	\$ 38,741,000	\$21,399,000
Net Loss	\$(2,992,000)	\$(8,746,000)	\$(5,406,000)	\$(891,000)	\$(839,000)	\$(15,337,000)
EBITDA	\$(2,454,000)	\$(4,708,000)	\$(1,609,000)	\$3,908,000	\$521,000	\$(11,943,000)

67. Several factors have contributed to the Inscap Group's continued financial decline. The Inscap Group has faced a number of challenges as a result of extended impact of the Covid-19 pandemic, which directly affected the entire contract office furniture industry that Inscap operates in, and which industry was heavily impacted given the work from home mandates in Canada and the U.S. This includes a dramatic decline in the size and sales mix of incoming orders and much lower than expected order volumes. Many of these challenges are reflected in the slower than expected return-to-office by corporate employees throughout North America, varying degrees of hybrid/work from home policies, many companies instituting full-time work from home/virtual policies, with many companies also transitioning to an entirely virtual office environment.

68. The Inscap Group has also suffered from a number of supply chain issues, including a shortage of production materials (e.g. height adjustable bases and medium density fibreboard). These issues have perpetuated delays to the completion of existing customer projects and over all order fulfillment.

69. Other general operating costs have increased dramatically over the last few years. Among other things, the Inscap Group has suffered from increases to the cost of steel, aluminum, petroleum-based products and freight, all of which has had a negative impact on margins.

70. In light of the declining demand, the Inscap Group is becoming increasingly unable to sustain the high ongoing costs of running its business.

Attempts to Improve Financial Situation

71. As a result of these challenges, between March 2020 and December 2022, management implemented a number of initiatives to help improve the Inscape Group's operations, financial performance, and liquidity.

72. In early 2021, the board of directors (the "**Board**") of Inscape established a special committee to complete the sale and leaseback of the Holland Landing Facility and monetize its redundant real estate assets. It also arranged a \$16 million bridge debt facility, which facility closed on April 29, 2021, to enable to the Inscape Group to operate pending sale of the real estate. This transaction was completed in January of 2022, and it allowed the Inscape Group to repay its previous debt facility in full and replenish cash resources and working capital. In April of 2022, the Inscape Group also sold an additional parcel of surplus property, and completed its real estate monetization efforts.

73. In February of 2022, Inscape entered into a letter agreement with Stump & Co ("**Stump**"), a financial M&A advisory firm based in North Carolina specializing in the furniture industry, to formally seek potential strategic or financial buyers for the business. These efforts proved unsuccessful, and the Inscape Group continued to struggle to meet its financial projections. By the end of the quarter ended July 31, 2022, the Inscape Group had incurred a net loss of \$6.2 million.

74. Throughout the second half of 2022, the Inscape Group continued to implement measures including right-sizing its workforce and increasing automation, rationalizing excess space, refinancing its debt, and expanding the availability of work from home furniture through online platforms.

75. Most recently, in December, 2022, the Inscape Group made approximately 30 employee terminations and further reduced spending on product research and development.

76. Unfortunately, despite these measures, the Inscape Group continues to face a liquidity crisis as it no longer has access to capital to complete its turnaround efforts, even as markets begin to recover, sales volumes begin to restore and employees return to work.

Hilco Engagement and Acquisition

77. Inscape engaged Hilco Capital Limited (“**Hilco**”) in the summer of 2022 as part of its efforts to explore restructuring opportunities. Hilco specializes in restructuring and refinancing distressed companies across the globe.

78. Among other service offerings, Hilco provides distressed companies with turnaround solutions to help maximize the value of a business, including by acquiring under-performing businesses and assets.

79. Throughout the month of August, representatives of Hilco met with management of Inscape and conducted substantial due diligence on the Inscape Group’s business and assets. Among other things, Hilco determined that the Inscape Group’s equity value was extremely low, and significant financial investment was required for the Inscape Group to restructure. The Inscape Group worked directly with Hilco for several months to identify restructuring solutions for the business.

80. The decision was ultimately made by Hilco to submit an offer (“**HUK Offer**”) to acquire all of the issued and outstanding subordinate voting shares of Inscape (the “**SVS Shares**”) through a friendly take-over bid pursuant to National Instrument 62-104 – *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) through its affiliate, HUK 121 Limited (“**HUK**”).

81. On October 28, 2022, HUK and Inscape entered into a support agreement, pursuant to which HUK agreed to make the HUK Offer and Inscape agreed to, among other things, support the HUK Offer and not solicit any competing proposals. In addition, certain shareholders of Inscape owning 11,660,282 SVS Shares, or approximately 81.1% of the issued and outstanding SVS Shares (the “**Locked-Up Shareholders**”) entered into lock-up agreements with HUK, pursuant to which such Locked-Up Shareholders agreed to deposit or cause to be deposited their SVS Shares to the HUK Offer.

82. The HUK Offer was launched on November 17, 2022 through the mailing of the take-over bid circular (the “**Take-Over Bid Circular**”), which contained the HUK Offer (with an expiry time of 5:00 p.m. (Toronto time) on December 23, 2022), detailed summaries of the HUK Offer and the conditions thereto, instructions on how to accept the HUK Offer, together with a

number of ancillary documents, to shareholders of Inscape. A copy of the Take-Over Bid Circular is attached as **Exhibit “T”**.

83. On November 25, 2022, the previous directors of Inscape issued a circular (the **“Directors’ Circular”**) as required under NI 62-104, supporting the HUK Offer, and recommending that Inscape shareholders deposit their SVS Shares and accept the HUK Offer. Attached as **Exhibit “U”** is a copy of the Directors’ Circular.

84. On December 23, 2022, Inscape and HUK jointly announced that the conditions to the HUK Offer had been satisfied or waived by 5:00 p.m. (Toronto time) and that the SVS Shares that had been deposited to the HUK Offer had been taken up by HUK.

85. In accordance with NI 62-104, the HUK Offer was extended until 5:00 pm on January 3, 2023 (**“Mandatory Extension Period”**). On January 3, 2023, HUK confirmed that the HUK Offer had expired and no additional SVS Shares had been tendered to the HUK Offer during the Mandatory Extension Period. As a result, HUK currently owns 12,661,625 SVS Shares, representing approximately 88.05% of the outstanding SVS Shares.

CCAA PROCEEDINGS AND RELIEF SOUGHT

Need for CCAA Protection

86. Given the Inscape Group’s continued declining financial performance and the overall negative impacts on the contract office furniture market, the Inscape Group, in consultation with its advisors and the Proposed Monitor, believes it is in the best interests of all of its stakeholders to pursue a strategy that focuses on liquidating the Inscape Group’s assets and ultimately effecting an orderly wind up of the affairs of the business. The Inscape Group continuing to operate at a net loss is unsustainable and the value of the Inscape Group and its assets continues to erode. The Inscape Group believes that pursuing this strategy will maximize value for its stakeholders, and will enable it to protect the interests of its creditors by enabling an orderly distribution at a later date.

Stay of Proceedings

87. The Inscope Group seeks a stay of proceedings to provide the breathing room necessary for it to effectively develop a strategy and path forward, with a view to maximizing value for all of its stakeholders.

88. In addition to a stay of proceedings against the Inscope Group and its assets, the Applicants are also seeking a stay of proceedings in favour of the Inscope Group's directors and officers to ensure that they are able to focus their efforts on the Inscope Group's path forward.

Appointment of Monitor

89. The Applicants seek the appointment of Alvarez and Marsal Canada Inc. ("**A&M**") as Monitor of the Applicants in these CCAA proceedings. A&M has assisted in the preparation of the Cash Flow Statements and has provided guidance and assistance in the commencement of these CCAA proceedings. As a result, A&M has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives and restructuring efforts to date.

90. A&M has consented to act as the Monitor, subject to Court approval. Attached as **Exhibit "V"** is a copy of the proposed Monitor's consent.

Administration Charge

91. The Applicants seek a super-priority Administration Charge over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, Canadian and U.S. counsel to the Applicants, and counsel to the Board, if any, (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order.

92. The proposed Administration Charge being sought at the initial CCAA Application is for a maximum amount of \$250,000 in order to secure the payment of fees and expenses incurred in connection with moving for the within relief sought and for the initial ten (10) day protection period leading up to the first Comeback Hearing. The Administration Charge is proposed to rank as a first-priority charge on the Property.

93. It is contemplated that the Professionals Group will have extensive involvement during the CCAA proceedings. The Professionals Group have contributed and will continue to contribute to the Applicants' restructuring efforts, and will ensure that there is no unnecessary duplication of roles among them.

94. In preparation of the Cash Flow Forecast, the Applicants, in consultation with the Proposed Monitor, considered the professional fees forecasted to be incurred on a bi-weekly basis during the cash flow period. The Applicants have forecast to incur significant professional fees in connection with the CCAA proceedings to the end of the week of the Comeback Hearing including, without limitation, preparing for the Comeback Hearing, communicating with employees and stakeholders following the initial filing, and complying with statutory notices, mailings and communications.

95. Accordingly, I believe the quantum of the Administration Charge sought is reasonably necessary at this time to secure the professional fees of the Professionals Group.

Directors and Officers' Charge

96. The Applicants are seeking a Directors' Charge on the Property in the amount proposed in the proposed Monitor's pre-filing report, to be filed. To ensure the ongoing stability of the Inscape Group during the CCAA proceeding, it requires the continued participation of its officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful path forward.

97. The Inscape Group's directors have an insurance policy which I understand provides them with coverage for certain claims and liabilities that may arise. However the policy contains exclusions and exceptions to such coverage as provided. The Inscape Group's ordinary course operations give rise to potential director or officer liability, including payroll and sales tax. To address legitimate concerns with respect to their potential exposure, the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period.

98. The quantum of the Directors' Charge was developed with the assistance and support of the proposed Monitor. The Inscope Group is of the view that the quantum of the Directors' Charge is reasonable, and that the charge is necessary at this time to address circumstances that could lead to potential directors' liability prior to the Comeback Hearing.

Authorization to Incur no Further Costs in Connection with Securities Filings

99. The Applicants seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for Inscope to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "Securities Filings") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act (Ontario)*, RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Toronto Stock Exchange.

100. In my view, incurring the time and costs associated with preparing the Securities Filings will detract from the Applicants successfully developing a plan that will result in an orderly distribution to its creditors. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publically available through the materials filed in these CCAA proceedings.

ANTICIPATED RELIEF TO BE SOUGHT AT COMEBACK HEARING

101. If the Initial Order is granted, the Applicants propose to return to Court for a Comeback Hearing on January 20, 2023 and are seeking to schedule same at the hearing of this application.

102. At the Comeback Hearing, the Applicants intend to seek the Court's approval of an amended and restated Initial Order.

103. For the benefit of this Court and the Applicants' stakeholders, this section highlights critical relief that the Applicants intend to seek at the Comeback Hearing. The Applicants may

seek additional relief if the Applicants, in consultation with the Proposed Monitor, determine such relief is necessary during the course of the Initial Stay Period:

- (a) **Extension of Stay of Proceedings:** the Applicants intend to seek an extension of the stay of proceedings for a sufficient length of time to allow the Applicants and the Monitor to pursue and effect an orderly wind-up of the Inscape Group's business;
- (b) **Adjust the Amount of Charges:** if appropriate, the Applicants intend to seek adjustments to the quantum of the Administration Charge and the Director's Charge to better align with the protections required during the CCAA proceedings and the financing needs for the duration of the proceedings.
- (c) **Key Employee Retention Plan ("KERP"):** The Applicants intend to develop a KERP, with input from the Proposed Monitor, to facilitate and encourage the continued participation of certain key management employees in the business that are necessary to ensure stability and enhance the effectiveness of a liquidation process. The Applicants intend to seek Court approval of same.

104. At this time, it is anticipated that foreign recognition proceedings in the U.S. will likely be necessary in order to efficiently pursue and undertake the proposed liquidation and wind-up of the Inscape Group's business and affairs. At the Comeback Hearing, or such other date thereafter as the Applicants, in consultation with the Monitor, may deem appropriate, the Applicants intend to seek Court authority for myself (Eric Ehgoetz) to act as the foreign representative of the Inscape Group and to apply for foreign recognition of the within proceedings in the U.S. pursuant to Chapter 15 of Title 11 of the U.S. Code.

CONCLUSION

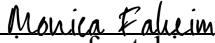
105. The Applicants, with the assistance of their legal and financial advisors, have determined that the proposed CCAA proceedings represent the best available strategy to maximize value for the Inscape Group's stakeholders.

106. I believe that the Applicants ought to be granted protection under the CCAA. I am confident that granting the draft Initial Order is in the best interests of the Applicants as well as their stakeholders.

107. As set out above, I believe that CCAA protection will enable the Applicants to strategize and execute a path forward that will maximize proceeds available for distribution to creditors on a more timely and cost-effective basis than the available alternatives, and will provide for an orderly claims process and distribution process.

108. I swear this affidavit in support of the Applicant's application for protection pursuant to the CCAA, including the Initial Order attached at **Tab "3"** to this Application Record and for no other or improper purpose.

SWORN BEFORE ME via video-conference with
the deponent in the City of Mississauga, in the
Province of Ontario, and the Commissioner in the
City of Mississauga in the Province of Ontario this
11th day of January, 2023

DocuSigned by:

A Commissioner for taking Affidavits
MONICA FAHEIM

DocuSigned by:

ERIC EHGOETZ

**This is Exhibit "B" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 28th day of February, 2023**

DocuSigned by:

Monica Fakeim

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A COMMISSIONER FOR TAKING AFFIDAVITS

ASSET PURCHASE AGREEMENT

This **AGREEMENT** (the “**Agreement**”) made and entered into this 24th day of February, 2023, by and between **Inscape Corporation**, with an office and place of business at 67 Toll Road Holland Landing, Ontario, L9N 1H2 (the “**Premises**”) and incorporated in the Province of Ontario (hereinafter referred to as the “**Owner**”), and **Workingman Capital Corp.**, with an office and place of business at 2500-120 Adelaide St. W, Toronto, Ontario, M5H 1T1, along with joint venture partners (hereinafter jointly referred to as the “**Purchaser**”), each a “**Party**” and collectively, the “**Parties**”.

WITNESSETH:

WHEREAS, the Owner has agreed to sell to the Purchaser the complete Amada combination laser turret and twin tower system, components and ancillary assets of the Owner, located at the Premises, as inspected by Joshua Sugar on January 20, 2023, including, but not limited to, those items listed in **Exhibit “A”** with related tooling packages and components as further described in this Agreement (the “**Goods**”);

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties hereby agree as follows:

1. Purchase Price; Closing. At the closing of the transaction contemplated by this Agreement (the “**Closing**”), the Purchaser shall pay to the Owner the amount of USD \$925,000 plus applicable sales taxes, in immediately available funds, for the Goods (the “**Purchase Price**”). Closing shall take place as soon as practicable following the satisfaction or waiver of the following conditions:
 - a. The Parties shall have received a fully executed copy of this Agreement;
 - b. The Purchaser shall have confirmed completion of satisfactory due diligence lien search, to be completed by no later than February 23, 2023;
 - c. The Purchaser shall have received a signed no-interest letter from HUK 116 Limited confirming the release of its security interest in the Goods at Closing;
 - d. The Purchaser shall have received proof of the Owner’s insurance as per Section 7; and
 - e. The Purchaser shall have conducted a satisfactory re-inspection of the Goods, confirming that the Goods remain under power or as originally inspected, which re-inspection shall occur on or before February 23, 2023.
2. Sale Process. The Purchaser will conduct a private treaty and/or online-only public auction sale process of the Goods, which will be held at the Premises (the “**Sale Process**”). In connection with the Sale Process, the Purchaser shall:
 - a. Use the Purchaser’s contact information in all advertising of the Sale Process. Should the Owner receive any inquiries regarding the Sale Process or the Goods, the Owner shall immediately refer all such inquiries to the Purchaser; and
 - b. Have the absolute right to determine all of the terms of the Sale Process and the Owner shall cooperate with the Purchaser, provided that the Sale Process shall not violate the terms and conditions of this Agreement.
3. Use of Premises.
 - a. The Purchaser shall be granted unrestricted and unencumbered license to use the Premises to prepare for and conduct the Sale Process, free of all costs, including all rent, utilities, trash/hazmat/snow removal, and security, commencing on the date of this fully executed Agreement and ending no later than June 30, 2023 (the “**Agreement Term**”) provided, however, that the Purchaser shall use best efforts to vacate the Premises on or before May 31, 2023;

- b. During the Agreement Term, the Owner shall not sell or release the Premises without written consent from the Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed;
 - c. If the Owner releases or sub-leases the Premises during the Agreement Term, within ten (10) days of the date hereof, the Owner shall provide the Purchaser with written authorization from the landlord confirming that the Purchaser will have a license to use such property to hold the Sale Process and remove sold items in accordance with this Agreement, in a form satisfactory to the Purchaser acting reasonably. If the Owner does not deliver such authorization, the Purchaser may terminate this Agreement and receive a full refund of the Purchaser Price;
 - d. A representative of the Owner will remain on the Premises to ensure access to the Premises during normal work hours and to ensure that utilities are disconnected from any Goods to be removed from the Premises; and
 - e. Notwithstanding the foregoing, the Purchaser acknowledges that the Owner intends to sub-lease or otherwise arrange for a new tenant to occupy the Premises from and after June 1, 2023, and the Purchaser further acknowledges and agree that such sub-lease or other arrangement does not and shall not constitute a breach of this Agreement.
4. Owner's Representations. The Owner hereby makes the following representations, warranties and covenants:
- a. The Owner has good and marketable title to the Goods. Should there be any liens, mortgages, easements, or encumbrances on the Goods, the Owner will immediately notify and disclose to the Purchaser;
 - b. The Goods shall be conveyed to the Purchaser free and clear of all claims, liens, mortgages, pledges, encumbrances or taxes of any kind. The Owner represents and warrants that all personal property taxes with respect to the Goods that are now due or become due during the Agreement Term are, or will be, paid;
 - c. The Owner has no information that would lead a reasonable person to believe that the Owner would be unable to, for any reason, convey good title, free and clear of liens and encumbrances, to the Purchaser as purchaser of the Goods;
 - d. The Owner will defend, indemnify and hold harmless the Purchaser from and against any and all liability, loss, cost, damage and expense, which may result from a claim made by any person, entity, governmental body, firm or corporation claiming to have an interest in or claim against the Goods;
 - e. The Goods shall exclude any other property of the Owner that is not identified, labelled, and segregated as the Goods;
 - f. In preparation for the Sale Process, the Owner will assist the Purchaser with identifying machinery equipment parts, components, books, and manuals that go with the Goods.
5. As is, Where is. The Purchaser acknowledges and agrees that the Goods are being purchased on an "as is, where is" basis as they exist and, other than the representations and warranties explicitly set out in Section 4 of this Agreement, Owner makes no representation, condition or warranty whatsoever with respect to the Goods.
6. Use of Name. The Purchaser may use the name, logo, and location of the Owner in any advertising and brochures advertising the Sale Process, consistent with trade practices in the Sale Process business.

7. Hazardous Substances. The Owner hereby acknowledges and agrees that the Purchaser is not buying any hazardous substances, nor can the Purchaser sell or remove, nor will it be responsible for the removal of, any hazardous or toxic material, hazardous or toxic waste or any equipment or supplies believed to contain hazardous or toxic material or hazardous or toxic waste. It is expressly understood that the Purchaser is purchasing the Goods only and is neither conducting any business nor operating any equipment other than for inspection purposes. The Owner hereby expressly agrees to indemnify and hold the Purchaser harmless from and against any and all claims relating to, or resulting from, the Owner's operation of its business, including, but not limited to, any liability for the production, storage, removal or handling of any hazardous or toxic material.
8. Insurance.
 - a. The Purchaser represents and warrants that it maintains, and will continue to maintain, liability and workers' compensation insurance. Prior to and as a condition of Closing, the Purchaser will provide satisfactory evidence of such insurance to the Owner for the Goods acquired and owned by the Purchaser and remaining at the Premises during the Agreement Term.
 - b. The Owner represents and warrants that it maintains, and will continue to maintain for the Agreement Term, both Liability Insurance coverage and Property Insurance coverage on the Goods. Prior to and as a condition of Closing, the Owner will provide satisfactory evidence of such insurance to the Purchaser.
9. Termination. The Purchaser's offer pursuant to this Agreement shall remain in force and valid until 5:00 pm Central Prevailing Time on February 24, 2023 or such later date as may be mutually agreed to by the Parties in writing (the "**Termination Date**"). If this Agreement is not accepted by the Owner prior to the Termination Date, the offer and all terms hereof are rescinded and void.
10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement. The execution of a counterpart of the signature page to this Agreement shall be deemed the execution of a counterpart of this Agreement. The delivery of this Agreement may be made by email or fax, and such signatures shall be treated as original signatures for all applicable purposes.
11. Choice of Law; Attorneys' Fees. This Agreement and all disputes hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of laws provisions. The prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.
12. Notices. All notices shall be given in writing and shall be deemed to have been fully given if delivered personally or sent by overnight courier, fax, or email to the recipients as follows:
 - a. If to the Purchaser, address to:

Workingman Capital Corp.
2500 – 120 Adelaide St. W.
Toronto, ON M5H 1T1

Josh Sugar, sugar@workingmancapital.com, 416-847-7336
 - b. If to the Owner, address to:

Inscape Corporation
67 Toll Road
Holland Landing, Ontario

Eric Ehgoetz, Chief Executive Officer, eehgoetz@myinscape.com
Jon Szczur, Chief Financial Officer, jszczur@myinscape.com

With an email copy to:

Alvarez & Marsal Inc. in its capacity as the Court appointed monitor of Inscape Corporation,
Inscape (New York) Inc. and Inscape Inc.

Josh Nevsky, Managing Director, jnevsky@alvarezandmarsal.com
Stephen Moore, Senior Director, smoore@alvarezandmarsal.com

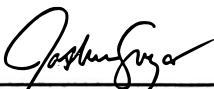
13. Force Majeure. Notwithstanding any of the terms of this Agreement to the contrary, the Purchaser shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Agreement and the Termination Date shall be extended accordingly, if the Purchaser is unable to conduct the Sale Process or is otherwise unable to fulfill its obligations hereunder solely as a result of any: (a) strike or lockout; (b) civil commotion, war-like operation, invasion, rebellion, terrorist act, hostilities, military or usurped power, sabotage, or acts of government; (c) flu, epidemic, serious illness or plagues, disease, emergency or outbreak; (d) widespread power failure or internet disruption; or (e) hurricane, tornado, flood, mudslide, fire, act of God, or any other cause that is beyond the control of the Purchaser.
14. Binding Effect and Severability. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, personal representatives, successors and assigns. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
15. Duly Authorized Signatories. This Agreement may only be executed by duly authorized individuals of the Owner and the Purchaser.
16. Entire Agreement. This Agreement represents the entire agreement among the Parties regarding the subject matter hereof and supersedes all prior, written or oral agreements or understandings among the Parties regarding this matter. This Agreement may be modified only by written instruments signed by each of the Parties hereto. The Owner and the Purchaser shall initial all pages of this Agreement.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Workingman Capital Corp.

Per:



Joshua Sugar

Inscape Corporation

Per:



Eric Ehgoetz CEO

Exhibit A
Included Assets

Complete Amada combination laser system, components and ancillary assets including but not limited to:

- 2020 Amada combination 3000-watt fiber laser model EML 2515, AJ3000 and 33-ton turret punch model EMLK 15AJ, AJ3000 resonator, CNC control stations, computer station, sn 73612027
- (2) Amada automated sheet feeding systems models AS3015NTK and ULS 3015 NTK, control pendant station
- Amada nitrogen gas generator
- Kaeser air compressor CSD 75T, dryer model ABT 105 with storage tank and oil filter
- Camfil Farr dust collection system model series X FLO GSP
- Related portable and fixed storage & tooling cabinets with manuals, cutting heads, consumables, components, spare parts, etc.
- Associated transformers

**This is Exhibit "C" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 28th day of February, 2023**

DocuSigned by:

Monica Faleim

A COMMISSIONER FOR TAKING AFFIDAVITS

Weston T. Eguchi
 Jeffrey Pawlitz
 Jamie M. Eisen
 Courtenay W. Cullen
 WILLKIE FARR & GALLAGHER LLP
 787 Seventh Avenue
 New York, New York 10019
 Telephone: (212) 728-8000
 Facsimile: (212) 728-8111

Counsel to the Foreign Representative

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹	)	Case No. 23-
)	
Debtors in a Foreign Proceeding.	)	(Joint Administration Requested)
)	

**VERIFIED PETITION FOR ENTRY OF
 ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

Inscape Corporation is the authorized foreign representative ("Foreign Representative") of the above-captioned debtors (the "Debtors" or the "Company"), which are the subject of jointly-administered proceedings under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") in the Ontario Superior Court of Justice, in Toronto, Ontario, Canada (the "Canadian Proceedings" and such court, the "Canadian Court"). Concurrently herewith, the Foreign Representative has filed chapter 15 petitions for each of the Debtors (the chapter 15 petitions, together with this Verified Petition, the "Petitions"), and respectfully seeks entry of an order substantially in the form attached hereto as **Exhibit A** (the

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Employer Identification Number ("FEIN") or Canada Revenue Agency Business Number ("BN"), are: (i) Inscape Corporation ("Inscape") (BN 1738), (ii) Inscape Inc., a Delaware Corporation ("Inscape Delaware") (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation ("Inscape New York") (FEIN 7231).

“Order”) pursuant to sections 105(a), 362, 1517, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”): (i) recognizing the Canadian Proceedings as “foreign main proceedings” or, in the alternative, as “foreign nonmain proceedings” pursuant to section 1517 of the Bankruptcy Code; (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings; (iii) recognizing and enforcing the initial order issued on January 12, 2023 by the Canadian Court (the “Initial CCAA Order”) and the amended and restated initial order issued on January 20, 2023 by the Canadian Court (the “Amended Initial CCAA Order,” and, together with the Initial CAA Order, the “Initial CCAA Orders”); and (iv) granting a stay of execution against the Debtors’ assets and certain other actions against the Debtors or their assets, solely within the territorial jurisdiction of the United States, and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases (as defined below) pursuant to sections 1520(a)(1), 1521(a), and 105(a) of the Bankruptcy Code.

PRELIMINARY STATEMENT

The Company, which has been in operation for approximately 130 years, is in the business of designing, manufacturing and selling office furniture and architectural walls to customers across North America and Europe. Over the last decade, the Company’s business has experienced declining financial performance. These challenges were exacerbated by the impact of the COVID-19 pandemic and its detrimental effect on the entire office furniture industry. The Company is currently operating at a net loss and no longer has access to sufficient working capital. As a result, the Company is insolvent, is unable to meet its obligations as they become due, and is in need of protection from its creditors. Without access to capital, the significant losses incurred by the Company can no longer be sustained and, despite the Company’s best efforts, its value continues to erode.

After consultation with its advisors and with Alvarez & Marsal Canada Inc., the monitor appointed by the Canadian Court (the “Monitor”),² the Company believes it is in the best interests of all of its stakeholders to pursue a strategy that focuses on liquidating the Company’s assets and ultimately effecting an orderly wind up of the affairs of its business through a court-supervised CCAA process. Accordingly, on January 11, 2023, the Company filed the Canadian Proceedings before the Canadian Court. On the date hereof, the Foreign Representative filed these chapter 15 cases (the “Chapter 15 Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on behalf of the Debtors as part of a multi-jurisdictional process to aid the Company in effectuating an orderly cross-border liquidation under the protections offered by the CCAA. The purpose of the Chapter 15 Cases is twofold: (i) to grant recognition to the Initial CCAA Orders and other orders that are entered by the Canadian Court and to the Canadian Proceedings generally as foreign main proceedings and (ii) to grant a stay against creditor recovery efforts or attempts to obtain possession of property of the Debtors in the United States. With this Court’s cooperation and assistance, the Debtors (with the oversight of the Monitor) will seek to maximize proceeds available for distribution to their creditors on an orderly, timely, and cost-effective basis.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P). Section 1401(1) of title 28 of the United States Code provides that “[a] case under chapter 15 of title 11 may be commenced in the district court of the United States for the district . . . in which the debtor has its principal place of business or principal assets in the United States.” 28 U.S.C. § 1410(1). Venue is proper

² The Monitor functions as an independent observer of the CCAA Proceedings and, among other things, (i) monitors the Debtors’ ongoing operations and (ii) reports to the Canadian Court on any major events affecting the Debtors.

in this district pursuant to 28 U.S.C. § 1410(1) because Inscape New York (a) is a New York corporation and (b) maintains its principal U.S. retail sales showroom in New York City. Further, each of the Debtors has property located in New York consisting of an undrawn retainer in a non-interest bearing account located with Citibank in New York, New York held for each of the Debtors by Willkie Farr & Gallagher LLP, as counsel to the Debtors (the “Retainer Account”). Such funds remain in the Retainer Account as of the date hereof and are the Debtors’ property (subject to rights under the engagement letter and the Initial CCAA Orders), providing a sufficient basis for venue in New York. *See In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (holding that deposits in a New York bank account and an attorney retainer on deposit in New York “whether considered alone or together . . . provide a sufficient basis for jurisdiction and venue in New York”); *In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 413-16 (Bankr. S.D.N.Y. 2014) (holding that a New York bank account over which a chapter 15 debtor possessed power to direct disbursement of funds was property sufficient to establish venue for chapter 15 case in New York).

2. The statutory predicates for the relief requested herein are sections 105(a), 1504, 1507, 1515, 1517, and 1521 of the Bankruptcy Code.

BACKGROUND³

I. The Debtors' Business, Corporate Structure, and Prepetition Assets and Liabilities

A. The Debtors' Business

3. As described in the Ehgoetz Declaration, the Company is in the business of designing, manufacturing and selling office furniture and architectural walls. The Company's business began in 1888 as a New York-based full-service provider of office furniture under the name Office Specialty. In the early 1900s, Office Specialty moved to Canada and eventually relocated to Holland Landing, a community in the town of East Gwillimbury, north of Toronto. Office Specialty Inc. became public on the Toronto Stock Exchange ("TSX") in 1997 and ultimately changed its name to Inscape Corporation. Today, the Company operates under two primary brand names, Inscape and Office Specialty.

4. The Company operates within the contract office furniture market, only producing products for customers based on firm purchase orders. As further described below, the Company's products are manufactured and produced out of two manufacturing facilities and are used to fulfill orders in Canada and in the United States.

5. Among other things, the Company designs, manufactures and distributes cubicles, movable walls, filing cabinets, bookcases and other ergonomic furniture for customers across North America and Europe, marketing its products to both the commercial and consumer markets. The Company has two divisions: (i) the "furniture" division, which provides storage, benching, and seating solutions; and (ii) the "wall" division, which provides architectural and

³ The factual statements in this background section are drawn from the Affidavit of Eric Ehgoetz, dated January 11, 2023, filed in support of the Initial CCAA Order in the Canadian Proceedings (the "Ehgoetz Affidavit") and the second Affidavit of Eric Ehgoetz, dated January 17, 2023, filed in support of the Amended Initial CCAA Order (the "Second Ehgoetz Affidavit"). The Ehgoetz Affidavit is attached as Ex. B and the Second Ehgoetz Affidavit is attached as Ex. C to the Declaration of Eric Ehgoetz in Support of Verified Petition for Entry of an Order Recognizing Foreign Main Proceedings and Granting Additional Relief (the "Ehgoetz Declaration").

movable partition walls for office spaces. The Company's design and manufacturing business operates out of two leased facilities: (i) a facility in Holland Landing, East Gwillimbury, Ontario, Canada; and (ii) a facility in Jamestown, New York. The Company also maintains leased premises for showrooms in Chicago, Washington, and New York City.

B. Corporate Structure

6. The Company's corporate structure is comprised of three legal entities:

a. Inscape is a corporation incorporated pursuant to the laws of the Province of Ontario, Canada. Its registered office is located at 67 Toll Road, Holland Landing, Ontario, Canada. Inscape is a publicly traded entity regulated by the Ontario Securities Commission. Its shares are traded on the TSX under the symbol "INQ."

b. Inscape Delaware is a holding company incorporated under the laws of the State of Delaware with a registered office located at 15 Tiffany Avenue, Jamestown, New York. Inscape Delaware is a wholly-owned subsidiary of Inscape.

c. Inscape New York is an operating company incorporated under the laws of the State of New York with a registered office of 15 Tiffany Avenue, Jamestown, New York. Inscape New York is a wholly-owned subsidiary of Inscape Delaware.

7. Eric Ehgoetz is the Chief Executive Officer and Jon Szczur is the Chief Financial Officer of each of the Debtors.

C. Employees and Pension Plans

8. As of January 9, 2023, the Company had a total of 218 employees in Canada and the United States. Of those employees, (i) Inscape New York employs 23 individuals, of which 9 are hourly employees and 14 are salaried employees and (ii) Inscape Delaware employs 11 individuals, all of which are salaried sales staff. Approximately 9 of Inscape New York's employees are unionized and are members of Local Union No. 112 of the Sheet Metal Workers'

International Association (“SMW”). Inscape New York and SMW are party to a collective agreement dated June 1, 2017, which was renewed effective June 1, 2021 for a five-year term.

9. The Company offers certain benefits to employees including life insurance, healthcare coverage, and dental health care coverage. As of the commencement of the Canadian Proceedings, the Company was current on payroll and source deductions.

10. The Company maintains a total of four pension plans for its employees, two of which are in the United States and administered by Inscope New York: (i) a defined benefit pension plan for certain employees with service frozen as of June 30, 1991 (for non-unionized employees) and as of August 15, 2013 (for unionized employees) and (ii) a defined contribution plan for salaried and hourly employees for which the Company's contributions were current as of the commencement of the Canadian Proceedings.

D. Leased Premises

11. As noted above, the Company operates its business out of manufacturing and warehouse facilities (where the office equipment and walls are designed and manufactured) as well as through showrooms (where the completed pieces of office furniture and walls are showcased for viewing in support of contract orders). In this regard, the Company leases five premises in total.

12. The Company operates its manufacturing business out of the following two locations: (i) a manufacturing and warehouse facility in Canada located in an approximately 313,000 square foot building at the leased premises municipally known as 67 Toll Road, East Gwillimbury, Ontario, Canada (the “Holland Landing Facility”); and (ii) a manufacturing and warehouse facility in the United States located in an approximately 30,000 square foot building at the leased premises municipally known as 15 Tiffany Avenue, Falconer, Jamestown, New York (“Jamestown Facility”).

13. The products manufactured at the Holland Facility in Ontario and at the Jamestown Facility in New York are used to fulfill customer orders in both the United States and Canada and upon completion, are shipped to the appropriate customer location in order to complete the orders.

14. The Company operates showrooms out of three locations: Chicago, New York City, and Washington D.C. The leased premises are as follows: (i) a Chicago showroom located at 800 W. Fulton Market Street, 8th Floor, Chicago, Illinois (the “Chicago Showroom”); (ii) a New York showroom located at 414 West 14th Street, 6th Floor, New York, New York (the “New York Showroom”); and (iii) Washington D.C. showroom located 1090 Vermont Avenue, N.W., 11th Floor, Washington D.C. (the “Washington Showroom,” and, collectively with the Chicago Showroom and the New York Showroom, the “Showrooms”). Currently, the Company continues to occupy the Showrooms.

E. Cash Management System

15. In the ordinary course of business, the Company uses a centralized banking and cash management system (“Cash Management System”) to, among other things, collect funds and pay expenses associated with its operations. The Company’s funds are managed by the Company’s treasury team based in Canada. The Cash Management System is administered by the Company’s finance department at Inscape’s head office in Holland Landing, Ontario, Canada.

16. The Cash Management System has several functions, comprised of: (a) collection of accounts receivable from third parties; (b) disbursements to fund payroll and benefits, capital expenditures, maintenance costs, payments to inventory vendors and other service providers; and (c) intercompany cash transfers amongst Inscape, Inscape Delaware, and Inscape New York.

The Debtors have been authorized by the Canadian Court to continue to use the existing Cash Management System during the pendency of the Canadian Proceedings.

17. Generally, the Company's customers are invoiced as follows: (a) Canadian customers of the furniture segment are invoiced by Inscape; (b) U.S. customers of the furniture segment are invoiced by Inscape Delaware; and (c) all customers of the walls segment are invoiced by Inscape New York.

F. Prepetition Credit Facility

18. In the context of the Company's prepetition restructuring efforts, in the fall of 2022, Hilco Capital Limited ("Hilco"), through its subsidiary, HUK 116 Limited ("Hilco UK"), agreed to provide the Company with an interim loan to help fund ordinary course financial obligations.

19. Hilco UK (as lender), Inscape (as borrower), and Inscape New York and Inscape Delaware (as guarantors) are party to a credit agreement dated October 28, 2022 (the "Hilco Loan Agreement"). The Hilco Loan Agreement is governed by the laws of the Province of Ontario and the laws of Canada. Pursuant to the Hilco Loan Agreement, Hilco UK made available a revolving demand facility in the principal amount of \$5 million ("Hilco Loan Facility"), to be used for, among other purposes, the Company's working capital requirements. As of January 10, 2023, the total indebtedness outstanding under the Hilco Loan Facility was \$1,323,698.00, inclusive of interest, management fees and expenses.

20. Inscape is in default of certain of its obligations under the Hilco Loan Agreement due to financial results reported by the Company to Hilco UK which were not satisfactory to Hilco UK. Accordingly, on or about December 28, 2022, Hilco UK advised Inscape that it would not continue funding under the Hilco Loan Facility.

21. On January 10, 2023, Hilco UK (as lender), Inscape (as borrower), and Inscape New York and Inscape Delaware (as guarantors) entered into a Forbearance Agreement (the “Forbearance Agreement”), whereby Hilco UK has agreed to forbear from exercising its rights and remedies under the Hilco Loan Agreement and allow Inscape access to the Hilco Loan Facility in order to fund the CCAA Proceedings (the “Further Advances”), subject to the terms and conditions agreed upon therein. Pursuant to the Forbearance Agreement, among other things, Hilco UK has agreed to make Further Advances in accordance with the 16-week cash flow forecast that the Company has prepared with the assistance of the Monitor.

II. Events Preceding the Commencement of the Canadian Proceedings

A. Inscape’s Declining Financial Performance

22. The Company has operated at a net loss for the past five years. The following simple chart demonstrates the Company’s declining financial performance:

Audit Year	30-Apr-18	30-Apr-19	30-Apr-20	30-Apr-21	30-Apr-22	YTD Nov 2023
Sales						
Revenue	\$93,936,000	\$90,583,000	\$75,818,000	\$38,203,000	\$ 38,741,000	\$21,399,000
Net Loss	\$(2,992,000)	\$(8,746,000)	\$(5,406,000)	\$(891,000)	\$(839,000)	\$(15,337,000)
EBITDA	\$(2,454,000)	\$(4,708,000)	\$(1,609,000)	\$3,908,000	\$521,000	\$(11,943,000)

23. The Company’s Consolidated Audited Year End Financial Statements as of April 30, 2022 indicate that, as of April 30, 2022, the Company had total assets of approximately \$55,630,000 and total liabilities of approximately \$41,454,000. As of November 30, 2022, on a consolidated basis, the Company had (i) cash of approximately \$1,672,000, (ii) receivables in the

amount of approximately \$10,041,000, (iii) inventory in the amount of approximately \$5,445,000, and (iv) liabilities of approximately \$16,376,000, including accounts payable of approximately \$11,080,000.

24. Several factors have contributed to the Company's continued financial decline. The Company has faced a number of challenges as a result of the extended impact of the COVID-19 pandemic, which, given the work from home mandates in Canada and the United States, directly and detrimentally impacted the contract office furniture industry. This includes a dramatic decline in the size and sales mix of incoming orders and much lower than anticipated order volumes. Many of these challenges are reflected in (i) the slower than expected return-to-office by corporate employees throughout North America, (ii) varying degrees of hybrid/work from home policies, (iii) many companies instituting full-time work from home/virtual policies, and (iv) many companies transitioning to an entirely virtual office environment.

25. The Company has also suffered from a number of supply chain issues, including a shortage of production materials (*e.g.*, height adjustable bases and medium density fibreboard). These issues have perpetuated delays to the completion of existing customer projects and overall order fulfillment. Other general operating costs have increased dramatically over the last two years. Among other things, the Company has suffered from increases to the cost of steel, aluminum, petroleum-based products, and freight, all of which has had a negative impact on margins.

26. In light of the declining demand, the Company has become increasingly unable to sustain the high ongoing costs of running its business.

B. The Company's Attempts to Improve its Financial Situation

27. As a result of the aforementioned challenges, between March 2020 and December 2022, the Company's management implemented a number of cost-cutting measures and strategic initiatives in an effort to revitalize the Company's business and improve its financial performance and liquidity position.

28. The cost-cutting measures implemented by the Company included right-sizing its workforce and increasing automation, rationalizing excess space, refinancing the Company's debt, and expanding the availability of work from home furniture through online platforms. Most recently, in December, 2022, the Company terminated additional employees and further reduced spending on product research and development.

29. Beginning in early 2022, the Company also made a concerted effort to consider all of its strategic alternatives. In February of 2022, Inscape entered into a letter agreement with Stump & Co ("Stump"), a financial M&A advisory firm based in North Carolina specializing in the furniture industry, to formally seek potential strategic or financial buyers for the business. This effort proved unsuccessful, and the Company continued to struggle to meet its financial projections. By the end of the quarter ended July 31, 2022, the Company had incurred a net loss of \$6.2 million.

30. Despite these measures, the Company continues to face a liquidity crisis as it no longer has access to capital to complete its turnaround efforts, even as markets begin to recover, sales volumes begin to restore, and employees return to in-office work.

C. Hilco Engagement and Acquisition

31. In the summer of 2022, the Company engaged Hilco as part of its efforts to further explore restructuring opportunities. Hilco specializes in restructuring and refinancing

distressed companies across the globe. Among other service offerings, Hilco provides distressed companies with turnaround solutions to help maximize the value of a business, including by acquiring under-performing businesses and assets.

32. Throughout the month of August 2022, representatives of Hilco met with management of Inscape and conducted substantial due diligence on the Company's business and assets. Among other things, Hilco determined that the Company's equity value was extremely low, and significant financial investment was required for the Company to restructure. The Company worked directly with Hilco for several months to identify restructuring solutions for the business.

33. The decision was ultimately made by Hilco to submit an offer ("HUK Offer") to acquire all of the issued and outstanding subordinate voting shares of Inscape (the "SVS Shares") through a friendly take-over bid by a subsidiary of Hilco, HUK 121 Limited ("HUK"), pursuant to Canadian National Instrument 62-104 – Take-Over Bids and Issuer Bids ("NI 62-104").

34. On October 28, 2022, HUK and Inscape entered into a support agreement, pursuant to which HUK agreed to make the HUK Offer and the Company agreed to, among other things, support the HUK Offer and not solicit any competing proposals. The HUK Offer was launched on November 17, 2022 and, on December 23, 2022, the Company and HUK jointly announced that the conditions to the HUK Offer had been satisfied or waived and that the SVS Shares that had been deposited to the HUK Offer had been taken up by HUK. As a result, HUK currently owns 12,661,625 SVS Shares, representing approximately 88.05% of the issued and outstanding equity of Inscape.

D. The Canadian Proceedings

35. On January 11, 2023, the Debtors commenced the Canadian Proceedings to liquidate the Debtors' assets under the protections offered by the CCAA. Documents evidencing

the commencement of the Canadian Proceedings are attached as Exhibits A and B to the Ehgoetz Declaration.

36. Although each Debtor's respective management and board of directors remains in place, each Debtor's assets and affairs are subject to the supervision of the Canadian Court during the pendency of the Canadian Proceedings.

37. On January 12, 2023, following a hearing, the Canadian Court entered the Initial CCAA Order. The Initial CCAA Order, among other things, (i) commenced the Canadian Proceedings pursuant to the CCAA; (ii) appointed Alvarez & Marsal Canada Inc. as Monitor in the Canadian Proceedings; (iii) granted a stay of proceedings in favor of the Company and its directors and officers up to and including January 20, 2023; (iv) granted priority charges in favor of (a) professionals employed by the Debtors and the Monitor and (b) directors and officers of the Debtors; and (v) authorized the Debtors to continue utilizing the Cash Management System (as defined below).

38. On January 20, 2023, following a hearing, the Canadian Court entered the Amended Initial CCAA Order which, among other things, (i) granted an extension of the stay of proceedings up to and including March 9, 2023; (ii) approved a key employee retention plan for the Debtors' senior management team as well as certain other key employees; (iii) amended the amounts of the priority charges previously approved by the court and approved a charge for the key employee retention plan; and (iv) authorized and empowered Inscape to act as the foreign representative in respect of the Canadian Proceedings for the purposes of having such proceedings recognized in the United States.

RELIEF REQUESTED

39. The Foreign Representative seeks (i) recognition of the Canadian Proceedings under sections 1515, 1517 and 1520 of the Bankruptcy Code (provisional relief pursuant to

section 1519 is not being sought),⁴ (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings, (iii) recognizing and enforcing the Initial CCAA Orders, (iv) the grant of a stay of execution against the Debtors’ assets and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to sections 1520(a)(1), 1521(a) and 105(a) of the Bankruptcy Code, and (v) the grant of certain additional relief pursuant to section 1521 of the Bankruptcy Code. Accordingly, the Foreign Representative respectfully requests entry of the Order, substantially in the form attached hereto as **Exhibit A**, granting the following relief:

- (a) recognizing the Canadian Proceedings, pursuant to Bankruptcy Code section 1517, as foreign main proceedings or, in the alternative, as foreign nonmain proceedings, as such terms are defined in Bankruptcy Code section 1502(4) and 1502(5), respectively;
- (b) granting relief automatically and as of right upon recognition of the Canadian Proceedings as foreign main proceedings pursuant to section 1520(a), including, without limitation, section 362 of the Bankruptcy Code, which shall apply with respect to the Debtors and the Debtors’ property that is now or in the future located within the territorial jurisdiction of the United States;
- (c) granting certain additional relief pursuant to sections 1521 and 1507 (to the extent it is not granted automatically and as of right upon recognition of the Canadian Proceedings as foreign main proceedings pursuant to section 1520(a)), including an injunction prohibiting all persons and entities, other than the Foreign Representative and his representatives and agents, from:
 - i. execution against any of the Debtors’ assets;
 - ii. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors, which in either case

⁴ The Foreign Representative has elected not to seek provisional relief at this time because it is not aware of any imminent threat to the Debtors’ assets located in the United States. Should circumstances change or the Foreign Representative becomes aware of additional facts, however, the Foreign Representative reserves the right to seek the Court’s assistance to protect the Debtors’ assets.

is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;

- iii. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or any of their property or proceeds thereof;
- iv. transferring, relinquishing or disposing of any property of the Debtors to any person or entity other than the Foreign Representative;
- v. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities; and
- vi. declaring or considering the filing of the Canadian Proceedings or these Chapter 15 Cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and *provided, further*, that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or, to the extent applicable, this Court in these Chapter 15 Cases for relief from the injunctions contained in the Order;

- (d) granting comity to and giving full force and effect to the Canadian Proceedings; and
- (e) awarding the Foreign Representative such other relief as this Court deems just and proper.

BASIS FOR RELIEF

I. The Debtors Are Eligible for Chapter 15 Relief

40. To be eligible for chapter 15 relief, the Debtors must meet the general eligibility requirements under Bankruptcy Code section 109(a) as well as the more specific eligibility requirements under Bankruptcy Code section 1517(a). As demonstrated below, the Debtors meet all eligibility requirements.

A. The Debtors Meet the General Eligibility Requirements of Bankruptcy Code Section 109(a)

41. Bankruptcy Code section 103(a) provides that chapter 1, which includes section 109(a), “appl[ies] in a case under chapter 15.” 11 U.S.C. § 103(a). Thus, the Debtors must meet the eligibility requirements of Bankruptcy Code section 109(a) to obtain relief under chapter 15. The Second Circuit Court of Appeals has held that section 109(a) applies to a debtor in a foreign main proceeding under Chapter 15. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 250 (2d Cir. 2013). Section 109(a) provides that “[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.” In light of the foregoing, courts in this circuit have held that to be eligible for chapter 15, the debtor must have a presence in the United States.

42. Here, the Debtors satisfy section 109(a) on multiple fronts. As noted herein, the Debtors operate their business by designing, manufacturing, and selling office furniture and architectural walls in the United States and hold substantial property within the United States in the form of finished goods inventory. The Debtors maintain multiple places of business in the United States: (i) the New York Showroom (for which Inscape is a party to the lease); (ii) the Washington D.C. Showroom (for which Inscape Delaware is a party to the lease); (iii) the Chicago Showroom (for which Inscape Delaware is a party to the lease); and (iv) the Jamestown Facility (for which Inscape New York is a party to the lease). In addition, the Debtors’ U.S. inventory and equipment are located at the Jamestown Facility, the site of the Debtors’ manufacturing and warehouse in the United States.

43. Further, the Debtors each hold additional property in the United States. First, Inscape New York is the owner of several bank accounts with positive balances at Key Bank in

Cleveland, Ohio. Second, as previously stated herein, Willkie Farr & Gallagher LLP, as counsel to the Debtors, holds an undrawn retainer for each of the Debtors in the Retainer Account located with Citibank in New York, New York. Such funds remain in the Retainer Account as of the date hereof and are the Debtors' property (subject to rights under the engagement letter and the Initial CCAA Orders). For each of these reasons, the Debtors satisfy section 109(a) of the Bankruptcy Code.

B. The Debtors Meet the Specific Eligibility Requirements of Bankruptcy Code Section 1517(a)

44. Bankruptcy Code section 1517(a) provides that, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if (i) the foreign representative applying for recognition is a person or body; (ii) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; and (iii) the petition meets the requirements of section 1515." Each of the foregoing requirements has been satisfied, as described below.

(i) The Canadian Proceedings Are Foreign Main Proceedings or, in the Alternative, Foreign Nonmain Proceedings

45. In order to apply for recognition of the Canadian Proceeding under section 1515(a) of the Bankruptcy Code, Inscape must satisfy two principal requirements: (i) the Canadian Proceedings must qualify as "foreign proceedings" and (ii) Inscape must qualify as a "foreign representative." Both requirements are satisfied here.

a. The Chapter 15 Cases Concern Foreign Proceedings

46. Bankruptcy Code section 101(23) defines "foreign proceeding" as "a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of

the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.”

47. There can be little doubt the Canadian Proceedings satisfy the requirements of section 101(23): The Canadian Proceedings are collective judicial proceedings in which the assets and affairs are subject to the supervision of the Canadian Court. The CCAA provides for a controlled reorganization or liquidation designed to enable financially distressed companies to maximize company value.

48. In addition, many courts in this and other districts have held that Canadian restructuring proceedings under the CCAA satisfy section 101(23)’s requirements. *See, e.g., In re Nygard Holdings (USA) Ltd.*, No. 20-10828 (DSJ) (Bankr. S.D.N.Y. April 23, 2020) [Docket No. 40]; *In re Imperial Tobacco Canada Ltd.*, No. 19-10771 (JPM) (Bankr. S.D.N.Y. April 17, 2019) [Docket No. 40]; *In re U.S. Steel Canada, Inc.*, No. 17-11519 (MG) (Bankr. S.D.N.Y. July 31, 2017) [Docket No. 16]; *In re Sino-Forest Corp.*, No. 13-10361 (MG) (Bankr. S.D.N.Y. Apr. 15, 2013) [Docket No. 16]; *In re Metcalf & Mansfield Alt. Invs.*, No. 09-16709 (MG) (Bankr. S.D.N.Y. Jan. 5, 2010) [Docket No. 28]; *In re Canwest Global Commc’ns Corp.*, No. 09-15994 (SMB) (Bankr. S.D.N.Y. Nov. 3, 2009) [Docket No. 34]; *In re Baronet U.S.A. Inc.*, No. 07-13821 (JMP) (Bankr. S.D.N.Y. Jan. 10, 2008) [Docket No. 15]; *In re Lone Pine Res. Inc.*, No. 13-12487 (BLS) (Bankr. D. Del. Sept. 26, 2013) [Docket No. 18]; *In re Xentel Inc.*, No. 13-10888 (KG) (Bankr. D. Del. Apr. 12, 2013) [Docket No. 15].

b. The Chapter 15 Cases Have Been Commenced by a Duly Authorized Foreign Representative

49. The Foreign Representative is duly authorized to serve in its capacity as a foreign representative in these Chapter 15 Cases. The term “foreign representative” is defined under section 101(24) of the Bankruptcy Code as:

a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

50. Pursuant to the Amended Initial CCAA Order, the Court appointed Inscope as the Foreign Representative, authorized and empowered the Foreign Representative to act as a foreign representative in respect of the Canadian Proceedings,⁵ and authorized the Foreign Representative to file chapter 15 cases in the United States for the purpose of having the Canadian Proceedings recognized.⁶ Moreover, pursuant to section 1516(a) of the Bankruptcy Code, the Foreign Representative is presumed to be the foreign representative because it was identified as such in the Amended Initial CCAA Order. Accordingly, the Foreign Representative is a proper “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. *See In re U.S. Steel Canada Inc.*, 571 B.R. 600, 612 (Bankr. S.D.N.Y. 2017) (holding that U.S Steel Canada Inc., a debtor, “is qualified to be the foreign representative.”); *see also In re Just Energy Group Inc.*, No. 21-30823 (MI) (Bankr. S.D. Tex. Apr. 2, 2021) [Docket No. 81].

c. The Debtors' Center of Main Interests Is Canada

51. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. 11 U.S.C. §§ 1517(b)(1), 1502(4).

52. Although “center of main interests” (“COMI”) is not defined in the Bankruptcy Code, courts have held the term “COMI” generally equates with the concept of ‘principal place

⁵ See Amended Initial CCAA Order at ¶ 47 (“THIS COURT ORDERS that . . . Inscope Corporation . . . is hereby authorized and empowered to act as the foreign representative . . . in respect of the within proceedings for the purposes of having these proceedings recognized in a jurisdiction outside of Canada.”).

⁶ See Amended Initial CCAA Order at ¶ 48 (“THIS COURT ORDERS that the Foreign Representative is hereby authorized to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including the United States pursuant to Chapter 15 of Title 11 of the United States Code 11 U.S.C. §§ 101-1532.”).

of business’ in the United States.” *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 72 (Bankr. S.D.N.Y. 2011) (quoting *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 634 (E.D. Cal. 2006)); see also *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 48 (Bankr. S.D.N.Y. 2008) (using COMI and “principal place of business” interchangeably). Stated differently, courts have generally found the COMI to be where the debtor conducts its regular business and, therefore, is a place ascertainable by third parties. See *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 136 (2d Cir. 2013) (“[t]he relevant principle . . . is that COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties”); *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37 (Bankr. S.D.N.Y. 2008); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008). In the absence of evidence to the contrary, the debtor’s registered office is presumed to be the center of the debtor’s main interests. 11 U.S.C. § 1516(c).

53. In undertaking a COMI analysis, courts may consider “any relevant activities, including liquidation activities and administrative functions . . . , the location of the debtor’s headquarters, the location of those who actually manage the debtor . . . , the location of the debtor’s primary assets, the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.” *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (citing *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013)). In addition, courts “may consider the location of the debtor’s ‘nerve center,’ ‘including from where the debtor’s activities are directed and controlled.’” *Suntech*, 520 B.R. at 416 (quoting *Fairfield Sentry Ltd.*, 714 F.3d at 138 n.10). Notably, the analysis of a foreign

debtor's center of main interests is a flexible one, as "courts do not apply any rigid formula or consistently find one factor dispositive." *In re Betcorp Ltd.*, 400 B.R. 266, 290 (Bankr. D. Nev. 2009).

54. The Foreign Representative submits that the Debtors have their center of main interests in Canada and, thus, the Canadian Proceedings qualify as "foreign main proceedings" as defined in section 1502(4) of the Bankruptcy Code for the following reasons: (i) Inscope is incorporated in Canada and the Company's main headquarters and registered office are located at the Holland Landing Facility in Canada, where the Debtors' principal design, manufacturing, and warehouse facility is also located; (ii) Inscope is a public company traded on the TSX and must comply with the reporting requirements of the Canadian Securities Administrators (which serves the same role as the Securities and Exchange Commission in the United States); (iii) the Debtors have approximately 184 of their 218 employees in Canada and pay payroll taxes to the Canadian government; (iv) the board of directors of each of the Debtors holds all board meetings in Canada, and the members of each Debtor's board of directors are Canadian; (v) the Company's strategic decision-making and management functions occur in Canada, where senior management is located; (vi) personnel who perform centralized administrative functions for the entire enterprise are located in Canada; (vii) the Cash Management System revolves around its main operating accounts located at RBC in Canada; and (viii) many of the Company's principal contracts are governed by Canadian law, including the Hilco Loan Agreement, which is governed by the laws of the Province of Ontario and the laws of Canada. In short, there is no question that the "nerve center" of the Company is located in Canada.

55. Notably, the non-Canadian status of two of the Debtors is not an impediment to the COMI analysis. Courts have previously recognized CCAA proceedings for non-Canadian

subsidiaries as “foreign main proceedings,” given that they, as is the case here, were part of a jointly-administered CCAA proceeding with their Canadian parent. *See, e.g., In re The John Forsyth Shirt Co. Ltd.*, Case No. 13-10526 (SCC) (Bankr. S.D.N.Y. Mar. 18, 2013) [Docket No. 24]; *In re Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS) (Bankr. D. Del. Dec. 1, 2015) [Docket No. 97]; *In re Talon Sys. Inc.*, Case No. 13-11811 (KJC) (Bankr. D. Del. Aug. 30, 2013) [Docket No. 49]; *In re Arctic Glacier Int’l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Mar. 16, 2012) [Docket No. 70]; *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. March 5, 2012) [Docket No. 89]; *In re Angiotech Pharm., Inc.*, Case No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) [Docket No. 83]. In addition, given the additional information regarding Debtors’ operational and functional integration through centralized management, accounting, cash management, and sales that has been presented herein, the center of main interests for all of the Debtors is clearly in Canada.

d. *In the Alternative, the Canadian Proceedings Should Be Recognized as Foreign Nonmain Proceedings*

56. In the alternative, were this Court to deny recognition of the Canadian Proceedings as foreign main proceedings, it should grant recognition of the Canadian Proceedings as foreign nonmain proceedings. Pursuant to the Bankruptcy Code, a “foreign nonmain proceeding” is defined as a “foreign proceeding” pending in a country where the debtor has an “establishment” within the meaning of section 1502. 11 U.S.C. § 1517(b)(2). “Establishment” is broadly defined in the Bankruptcy Code as “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(2). To satisfy this definition, a debtor must have “a seat for local business activity in the foreign country” and this activity must have a “local effect on the marketplace.” *In re Mood Media Corp.*, 569 B.R. 556, 561-62 (Bankr. S.D.N.Y. 2017). Here, the Holland Landing Facility, the Company’s largest

manufacturing and warehouse facility (i) is located in Canada, (ii) produces all furniture for the furniture segment of the Company's business, and (iii) has over 180 employees. The Foreign Representative submits that it cannot be disputed that the Holland Landing Facility is a "seat for local business activity" in Canada that has a local effect on the marketplace, given that the products manufactured at the Holland Landing Facility are used to fulfill certain customer orders in Canada. Further, because, as described above, the Debtors are operationally and functionally integrated, the Court can easily determine that each of the Debtors carries out non-transitory economic activity in Canada through the Company's Holland Landing Facility.⁷ For these reasons, the Foreign Representative submits that the Court should find that each of the Debtors has an "establishment" in Canada within the meaning of Bankruptcy Code section 1502(2) and, if the Canadian Proceedings are not recognized as foreign main proceedings, recognize the Canadian Proceedings as foreign nonmain proceedings.

(ii) The Petitions Meet the Requirements of Bankruptcy Code Section 1515

57. These Chapter 15 Cases were duly and property commenced by filing the chapter 15 petitions and this Verified Petition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including: (i) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (ii) a list containing (a) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (b) all parties to litigation pending in the United States in which the Debtors are a party at the time of the filing of the chapter 15 petitions, and (c) all entities against whom provisional relief is being sought under section 1519 of the

⁷ As noted in paragraph 17, *supra*, generally the Company's customers are invoiced as follows: (a) Canadian customers of the furniture segment are invoiced by Inscape; (b) U.S. customers of the furniture segment are invoiced by Inscape Delaware; and (c) all customers of the walls segment are invoiced by Inscape New York. This business practice of each Debtor invoicing different groups of customers for the benefit of the entire enterprise further supports the contention of the Foreign Representative that each of the Debtors has "a local effect on the marketplace" in Canada.

Bankruptcy Code, which is inapplicable here since the Debtors are not seeking provisional relief at this time; (iii) a statement identifying all foreign proceedings with respect to the Debtors that are known to the Foreign Representative; and (iv) certified copies of the Initial CCAA Orders.

58. Having filed the above-referenced documents and because the Court is entitled to presume the authenticity of such documents filed in connection with chapter 15 petitions and the Verified Petition under section 1516(b) of the Bankruptcy Code, the requirements of section 1515 of the Bankruptcy Code have been met.

II. The Relief Requested Is Consistent with United States Public Policy and the Policy Behind the Bankruptcy Code

59. The purpose of chapter 15 is set forth in section 1501 and includes: (i) cooperation between courts of the United States and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (ii) greater legal certainty for trade and investment; (iii) fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor; (iv) protection and maximization of the value of the debtor's assets; and (v) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. *See* 11 U.S.C. § 1501. Recognition of the Canadian Proceedings as foreign main proceedings will facilitate an orderly and equitable cross-border wind-down of the Debtors' business. Such orderly administration is demonstrably consistent with the public policy of the United States and the Bankruptcy Code.

60. Recognition of the Canadian Proceedings would also promote the fair and efficient administration of a cross-border liquidation procedure that protects the interests of all creditors and interested parties. By recognizing the Canadian Proceedings and granting the relief requested, the process of resolving claims against the Debtors would be centralized in Canada.

Claims would be treated in accordance with a court-approved distribution order that comports with Canadian law, and any disputes would be subject to the uniform jurisdiction of one tribunal, the Canadian Court.

CONCLUSION

WHEREFORE the Foreign Representative respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: January 23, 2023
New York, New York

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

By:

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EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹	)	Case No. 23-
)	
Debtors in a Foreign Proceeding.	)	(Joint Administration Requested)
)	

**ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

A hearing having been held (the “Hearing”) to consider the chapter 15 petitions for each of the above-captioned debtors (the “Debtors”) and the Verified Petition, filed on January 23, 2023 (the “Verified Petition,” and together with the chapter 15 petitions, the “Petitions”)² of Inscape Corporation, the duly authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (the “Debtors”) for entry of an order pursuant to sections 105(a), 362, 1517, 1520 and 1521 of the Bankruptcy Code: (i) recognizing the Canadian Proceedings as foreign main proceedings pursuant to sections 1517 and 1520 of the Bankruptcy Code, (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings, (iii) recognizing and enforcing the Initial CCAA Orders, (iv) granting a stay of execution against the Debtors’ assets and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to sections 1520(a)(1), 1521(a) and 105(a) of the Bankruptcy Code, and (v) granting certain additional relief pursuant to section 1521 of the Bankruptcy Code; and upon this Court’s

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: (i) Inscape Corporation (“Inscape”) (BN 1738), (ii) Inscape Inc., a Delaware Corporation (“Inscape Delaware”) (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation (“Inscape New York”) (FEIN 7231).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Verified Petition or the Initial CCAA Orders (as defined in the Verified Petition), as applicable.

review and consideration of the Petitions, the Declaration of Eric Ehgoetz, filed contemporaneously therewith, and the evidence admitted at the Hearing to consider the Petitions; and due and proper notice of the Petitions having been provided; and no other or further notice being necessary or required; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law:³

- a. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- b. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).
- c. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).
- d. The Foreign Representative is the duly appointed “foreign representative” of the Debtors, as such term is defined in 11 U.S.C. § 101(24).
- e. These Chapter 15 Cases were properly commenced pursuant to 11 U.S.C. §§ 1504, 1509 and 1515.
- f. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Fed. R. Bankr. P. 1007(a)(4) and 2002(q).
- g. The Debtors have satisfied the eligibility requirements of 11 U.S.C. §§ 109(a) and 1517(a).

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, or any of the following conclusions of law constitute findings of fact, they are adopted as such.

- h. The Canadian Proceedings currently pending before the Canadian Court and provisions made thereunder for the protection, administration and distribution of the Debtors' assets, are "foreign proceedings," as such term is defined in 11 U.S.C. § 101(23).
- i. The Canadian Proceedings are entitled to recognition by this Court pursuant to 11 U.S.C. § 1517.
- j. The Canadian Proceedings are pending in the country where the Debtors' center of main interests is located, are "foreign main proceedings," as such term is defined in 11 U.S.C. § 1502(4), and are entitled to recognition as "foreign main proceedings" pursuant to 11 U.S.C. § 1517(b)(1).
- k. The Foreign Representative is entitled to all the relief provided pursuant to 11 U.S.C. § 1520, without limitation.
- l. The Foreign Representative is further entitled to all relief expressly set forth in 11 U.S.C. §§ 1521(a)-(b).
- m. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted under 11 U.S.C. §§ 1517, 1520, and 1521.

Now therefore, it is hereby ORDERED:

- 1. The Motion is GRANTED in its entirety.
- 2. The Canadian Proceedings are granted recognition as foreign main proceedings pursuant to 11 U.S.C. §§ 1517(a) and 1517(b)(l).

3. All relief afforded foreign main proceedings pursuant to 11 U.S.C. § 1520 is hereby granted.

4. The Initial CCAA Orders, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation, staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

5. Pursuant to 11 U.S.C. § 1520(a)(1), 11 U.S.C. § 362, including, without limitation, the automatic stay authorized by 11 U.S.C. § 362, shall apply with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States.

6. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

7. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and its representatives and agents are hereby enjoined (to the extent they have not been stayed under section 1520(a)) from:

- a. execution against any of the Debtors' assets;
- b. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors,

which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;

- c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or any of their property or proceeds thereof;
- d. transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities; and
- f. declaring or considering the filing of the Canadian Proceedings or these Chapter 15 Cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and *provided further* that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or this Court in these Chapter 15 Cases, as applicable, for relief from the injunctions contained in the Order.

8. Pursuant to 11 U.S.C. § 1521(a)(5), the administration or realization of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of the Debtors in the United States.

9. The Canadian Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States.

10. The Foreign Representative, the Debtors and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the local rules of this Court.

11. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under 11 U.S.C. §§ 306 and 1510.

12. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

13. A copy of this Order shall be served (i) within three business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by United States mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), the Office of the United States Trustee, and such other entities as the Court may direct and (ii) by posting on the Monitor's website at <https://www.alvarezandmarsal.com/InscapeCorporation>. Such service shall constitute good and sufficient service and adequate notice for all purposes.

14. The Court shall retain jurisdiction with respect to: (i) the enforcement, amendment or modification of this order; (ii) any requests for additional relief or any adversary proceeding brought in or through these Chapter 15 Cases; and (iii) any request by an entity for relief from the provisions of this order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

Dated: New York, New York
_____, 2023

UNITED STATES BANKRUPTCY JUDGE

**This is Exhibit "D" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 28th day of February, 2023**

DocuSigned by:

Monica Faleim

A COMMISSIONER FOR TAKING AFFIDAVITS

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Counsel to the Foreign Representative

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹	)	Case No. 23-10074
)	
Debtors in a Foreign Proceeding.	)	(Jointly Administered)
)	

**SUPPLEMENT TO VERIFIED PETITION FOR ENTRY OF
ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

Inscape Corporation is the authorized foreign representative ("Foreign Representative") of the above-captioned debtors (the "Debtors" or the "Company"), which are the subject of jointly-administered proceedings under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") in the Ontario Superior Court of Justice, in Toronto, Ontario, Canada (the "Canadian Proceedings" and such court, the "Canadian Court"). On January 23, 2023 (the "Chapter 15 Commencement Date"), the Foreign Representative filed (i) chapter 15 petitions for each of the Debtors and (ii) a verified petition (the "Verified Petition")² respectfully seeking entry of an order (the "Order") pursuant to sections 105(a), 362, 1517, and 1520 of title 11 of the

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Employer Identification Number ("FEIN") or Canada Revenue Agency Business Number ("BN"), are: (i) Inscape Corporation ("Inscape") (BN 1738), (ii) Inscape Inc., a Delaware Corporation ("Inscape Delaware") (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation ("Inscape New York") (FEIN 7231).

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Verified Petition.

United States Code (the “Bankruptcy Code”): (i) recognizing the Canadian Proceedings as “foreign main proceedings” or, in the alternative, as “foreign nonmain proceedings” pursuant to section 1517 of the Bankruptcy Code; (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings; (iii) recognizing and enforcing the initial order issued on January 12, 2023 by the Canadian Court (the “CCAA Commencement Date” and together with the Chapter 15 Commencement Date, the “Commencement Dates”) and the amended and restated initial order issued on January 20, 2023 by the Canadian Court; and (iv) granting a stay of execution against the Debtors’ assets and certain other actions against the Debtors or their assets, solely within the territorial jurisdiction of the United States, and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to section 1520(a)(1) of the Bankruptcy Code.

On February 21, 2023, the Court held a hearing to consider the relief requested in the Verified Petition (the “Hearing”). At the Hearing, the Court requested additional information from the Foreign Representative and continued the Hearing to March 1, 2023. Accordingly, the Foreign Representative respectfully submits this supplement to the Verified Petition (this “Supplement”) in further support of the relief requested by the Verified Petition. Concurrently herewith, the Foreign Representative has filed the Supplemental Declaration of Eric Ehgoetz in Support of Verified Petition for Entry of an Order Recognizing Foreign Main Proceedings and Granting Additional Relief (the “Supplemental Ehgoetz Declaration”).

BASIS FOR RELIEF

I. Each of the Debtors Meets the Requirements of Section 1517(a) of the Bankruptcy Code.

1. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if (i) the foreign representative applying

for recognition is a person or body; (ii) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; and (iii) the petition meets the requirements of section 1515. *See* 11 U.S.C. § 1517(a). The Verified Petition, which is incorporated herein by reference, sets forth the bases for satisfaction of such requirements. By this Supplement, the Foreign Representative seeks to supplement the record with additional evidence which demonstrates that the Canadian Proceedings for (i) Inscap New York and (ii) Inscap Delaware for which the Foreign Representative seeks recognition are each foreign main proceedings within the meaning of section 1502(4) of the Bankruptcy Code, or alternatively, that they are each foreign nonmain proceedings within the meaning of section 1502(5) of the Bankruptcy Code.

A. The Canadian Proceedings Are Foreign Main Proceedings Because Each Debtor's Center of Main Interests is Canada.

2. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. 11 U.S.C. §§ 1517(b)(1), 1502(4).

3. Although “center of main interests” (“COMI”) is not defined in the Bankruptcy Code, courts have held the term “COMI” generally equates with the concept of ‘principal place of business’ in the United States.” *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 72 (Bankr. S.D.N.Y. 2011) (quoting *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006)); *see also In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 48 (Bankr. S.D.N.Y. 2008) (using COMI and “principal place of business” interchangeably). Stated differently, courts have generally found the COMI to be where the debtor conducts its regular business and, therefore, is a place ascertainable by third parties. *See Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 130 (2d Cir. 2013) (“*Fairfield Sentry*”) (“The

relevant principle . . . is that COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties”); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008) (“*Bear Sterns II*”). This Court has observed that in *Fairfield Sentry*, the Second Circuit clarified that while “the ‘nerve center’ concept does not control, ‘...to the extent that the concepts are similar, a court may certainly consider a debtor’s ‘nerve center,’ including from where the debtor’s activities are directed and controlled, in determining a debtor’s COMI.” *In re Serviços De Petróleo Constellation S.A.*, 613 B.R. 497, 509 (Bankr. S.D.N.Y. 2020) (citing *Fairfield Sentry*, 714 F.3d at 138 n.10).

4. In the absence of evidence to the contrary, the debtor’s registered office is presumed to be the debtor’s COMI. 11 U.S.C. § 1516(c). However, this presumption is rebuttable where other factors suggest that the true COMI of the debtor lies elsewhere. *See, e.g., Bear Stearns II*, 389 B.R. at 335 (“[S]ection 1516(c) creates no more than a rebuttable evidentiary presumption, which may be rebutted notwithstanding a lack of party opposition”); *see also In re Serviços De Petróleo Constellation S.A.*, 613 B.R. at 507. This Court has stated that the presumption that the location of a debtor’s registered office is the debtor’s COMI “is not a preferred alternative where there is a separation between a corporation’s jurisdiction of incorporation and its real seat.” *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 703 (Bankr. S.D.N.Y. 2017) (citing *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. at 128 (emphasis added) (citation omitted)). “[T]he section 1516 presumption exists for the purposes of speed and convenience, and to save stakeholders costs in straightforward cases, but does not tie the hands of a court to examine the facts more closely in any instances where the court regards the issues to be sufficiently material to warrant further inquiry.” *In re Basis Yield Alpha Fund (Master)*, 381 B.R. at 52.

5. In *In re Suntech Power Holdings Co.*, 520 B.R. 399 (Bankr. S.D.N.Y. 2014) (“*Suntech*”), this Court set forth a list of factors that courts consider when determining the location of a debtor’s COMI, stating that:

The following non-exclusive group of factors guides the [COMI] analysis, “but consideration of these specific factors is neither required nor dispositive,” . . . [v]arious factors, singly or combined, could be relevant to such a determination: the location of the debtor’s headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

Suntech, 520 B.R. at 416 (quoting *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007)).

6. In addition, when determining a debtor’s COMI, courts “may consider the location of the debtor’s ‘nerve center,’ ‘including from where the debtor’s activities are directed and controlled’” *Suntech*, 520 B.R. at 416 (quoting *Fairfield Sentry*, 714 F.3d at 138 n.10). The analysis of a foreign debtor’s COMI is a flexible one, as “courts do not apply any rigid formula or consistently find one factor dispositive.” *In re Betcorp Ltd.*, 400 B.R. 266, 290 (Bankr. D. Nev. 2009).

7. Courts in the Second Circuit, including this Court, have held that a debtor’s COMI should be determined based on its activities at or around the time of the filing of the chapter 15 petition. *In re Mod. Land (China) Co., Ltd.*, 641 B.R. 768, 781 (Bankr. S.D.N.Y. 2022) (“A Chapter 15 debtor’s COMI is determined as of the filing date of the Chapter 15 petition, without regard to the debtor’s historic operational activity.”); *see also In re Olinda Star Ltd.*, 614 B.R. 28, 41 (Bankr. S.D.N.Y. 2020) (“The Second Circuit has made clear that COMI is determined as of the time of the chapter 15 filing, without regard to a debtor’s historical operational activity.”)

(citing *Fairfield Sentry*, 714 F.3d 127, 137 (2d Cir. 2013) (“[A] debtor's COMI should be determined based on its activities at or around the time the Chapter 15 petition is filed.”)).

8. The Foreign Representative submits that consideration of each of the *Suntech* factors supports the conclusion that each Debtor has its COMI in Canada and, thus, the Canadian Proceedings for each Debtor qualify as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code. In particular, the evidence establishes that, while Inscape New York and Inscape Delaware are incorporated in New York and Delaware, respectively, and have their registered office in Jamestown, New York, the principal place of business, the headquarters, the “nerve center,” and, thus, the center of main interests for each of these debtors is Canada.

9. While each of the *Suntech* factors is presented separately for Inscape New York and Inscape Delaware below, it is important to emphasize that the reality is that the Company, as a whole, was operated and administered as a single, highly integrated enterprise. Thus, while Inscape New York and Inscape Delaware were separately incorporated entities, as a practical matter, they were effectively treated as business divisions within the same enterprise, and their status as separate entities was important principally for intercompany accounting purposes. Thus, the management and the employees of the Company not only viewed it as a single enterprise, but held the Company out to its creditors, vendors and other parties as such. The Foreign Representative respectfully submits that it would have been “ascertainable” to creditors or other third parties that the Company, including Inscape New York and Inscape Delaware, would seek to wind down its affairs in a single, integrated insolvency proceeding in Canada.

Location of the Debtor’s Headquarters

10. The location of the headquarters for Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) is the Company’s main headquarters at Holland Landing in

Canada. All business and operations-related functions for all three Debtors occur exclusively at the Holland Landing headquarters, and personnel who perform centralized administrative functions for the three Debtors are located exclusively at the Holland Landing headquarters. The functions performed at the main headquarters for each of these entities include, but are not limited to: customer service, supply chain/procurement, accounting, financing, financial reporting and securities compliance. Importantly, as of the filing of the Canadian Proceedings and these Chapter 15 Cases (as well as the present), all of the key contacts for Inscape New York and Inscape Delaware's customers and vendors have been (or are) located in Canada, and no employees of Inscape New York or Inscape Delaware have performed (or perform) any of the aforementioned operational and administrative functions from the United States. All books and records of Inscape, Inscape New York and Inscape Delaware have been and remain located at the Holland Landing headquarters, and Inscape, Inscape New York and Inscape Delaware have received and continue to receive most of their mail at the Holland Landing headquarters. Further, the Cash Management System, which, among other things, collects funds and pays expenses associated with the operations of all three Debtors, is administered by the finance department located exclusively at the main headquarters at Holland Landing.

The Location of Those Who Actually Manage the Debtor

11. Senior management and other key staff of Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) are located in Canada at the Holland Landing headquarters. Eric Ehgoetz is the CEO and Jon Szczur is the CFO of all three Debtors, and there is no additional senior management for Inscape New York or Inscape Delaware. Inscape, the Canadian parent entity, employs the following members of senior management, who perform tasks on behalf of all three Debtors: Dennis Dyke, Vice President of Manufacturing & Supply Chain;

Kacey Neille-Ennis, Director of Human Resources; Kerry Bray, Director of Finance; Vincent Hardy, Assistant Corporate Controller; and Rebecca Montinaro, Director of Customer Service and Logistics. No members of senior management of Inscape New York, Inscape Delaware, or Inscape are located in the United States, and none works from an office in the United States at any time. Both U.S. and Canadian customers and vendors are and have at all relevant times been aware that (i) management of each of the Debtors, including the U.S. entities, and (ii) the key contacts for customers and vendors of each of the Debtors are located in Canada.

12. As of the Chapter 15 Commencement Date, only two U.S.-based salaried employees worked at the Jamestown Facility to assist with wind-down manufacturing processes and finishing up of “punch-items” to fully complete certain existing orders, and neither was an executive: (i) Tom Skinner, Senior Engineering & Specification Manager of the Walls Division and (ii) Jason Youngberg, Plant Manager for the Walls Division. Both Mr. Skinner and Mr. Youngberg were the only full time employees of Inscape New York as of the Chapter 15 Commencement Date. As of such date, Inscape New York also had approximately six hourly employees retained to complete certain wind-down activities. While, prior to the Commencement Dates, the Jamestown Facility served as a U.S. manufacturing facility for the “walls” division of the Company, all decisions relating to operations or business at such facility was directed to the appropriate personnel in Canada and overseen directly by Mr. Ehgoetz, as CEO, and Mr. Szczur, as CFO, in Canada.

13. Similarly, prior to the CCAA Commencement Date, Inscape Delaware employed approximately twelve U.S. sales personnel, and such employees reported directly to management located in Canada (i.e., the CEO); customers and vendors were aware that all key Company

contacts were located in Canada. Inscape Delaware had no employees as of the Chapter 15 Commencement Date.

14. With respect to the boards of directors of the Debtors, at all relevant times, Eric Ehgoetz, CEO, and Jon Szczur, CFO, were and are the sole directors of Inscape New York and Inscape Delaware. Inscape's sole director is Eric Ehgoetz, CEO. Both Mr. Ehgoetz and Mr. Szczur are Canadian citizens, reside in Canada, and work exclusively at the Holland Landing headquarters. All board meetings for each Debtor's board of directors have been held exclusively in Canada.

The Location of the Debtor's Primary Assets

15. Inscape New York consists solely of the "walls" manufacturing facility located in Jamestown, New York, which produced architectural and movable partition walls for office spaces. This facility operated from leased premises (leased by Inscape New York and guaranteed by Inscape, the Canadian parent Debtor) and included machinery and equipment assets valued at approximately \$350,000. The Jamestown Facility is no longer operating. In addition, Inscape New York is owed approximately \$1.1 million in receivables from customers. In order to collect such amounts, all work associated with collection efforts – including, but not limited to, invoicing, accounting, and collection support – is performed at the main headquarters in Canada by employees of Inscape.

16. Inscape Delaware has no material assets.

The Location of the Majority of the Debtor's Creditors or of a Majority of the Creditors Who Would Be Affected by the Case

17. Inscape New York and Inscape Delaware are guarantors under the Hilco Loan Agreement, dated October 28, 2022, by and among HUK 116 Limited, as lender; Inscape, as borrower; and Inscape New York and Inscape Delaware, as guarantors. Pursuant to the Hilco Loan

Agreement, HUK 116 Limited made available the Hilco Loan Facility to be used for, among other purposes, the Company's working capital requirements. As of the Chapter 15 Commencement Date, the total secured indebtedness under the Hilco Loan Facility is C\$2.6 million. As such, HUK 116 Limited, a Canadian company, is the largest creditor of each of the U.S. entities and has a security interest in substantially all of such entities' assets. Accordingly, HUK 116 Limited, a Canadian company, is the creditor who will be most affected by the outcome of the Debtors' cases.

18. The second largest creditor of Inscape New York and Inscape Delaware is Inscape, the parent Debtor, who has its registered office at Holland Landing in Canada. Both Inscape New York and Inscape Delaware have intercompany payables to Inscape in the approximately amounts of \$19 million (for Inscape New York) and \$26.6 million (for Inscape Delaware).

19. Inscape Delaware has no other creditors and is primarily a holding company. Inscape New York has approximately \$1.2 million in trade liabilities, and the majority of its trade creditors are located in the United States. All creditors of each of the Debtors will be given notice of, and a full and fair opportunity to participate in, the claims process in Canada, which process will be administered by the Monitor. All claims allowance and distributions will be maintained by the Court Officer of the Canadian Court.

20. The Pension Benefit Guaranty Corporation (the "PBGC") is a U.S. creditor who will be affected by these Chapter 15 Cases. The Foreign Representative has reached an agreement with the PBGC with respect to the termination liability claims that it seeks to assert against the Debtors. Pursuant to this agreement, which the PBGC has authorized the Foreign Representative to present to the Court, the Foreign Representative and the PBGC have agreed that the PBGC's termination liability claims will be recognized and enforceable in the Canadian Proceedings and that such liability will be joint and several unsecured claims against all three Debtors: Inscape,

Inscape New York, and Inscape Delaware. The quantum of the PBGC's claims will be resolved under U.S. law as part of the claims process in the Canadian Proceedings, and the Foreign Representative has cooperated with, and intends to continue to cooperate with, the PBGC in providing the requisite information necessary to calculate the amount of such termination liability claims.

The Jurisdiction Whose Law Would Apply to Most Disputes

21. The Hilco Loan Agreement, the principal contract to which Inscape New York and Inscape Delaware are parties, is governed by Canadian law.

22. Inscape Delaware serves as a co-tenant for the Chicago Showroom; such lease is governed by Illinois law. Inscape Delaware serves as tenant for the Washington Showroom; such lease is governed by the laws of the District of Columbia. Inscape New York serves as tenant for the Jamestown Facility; such lease is governed by New York law. The Debtors have been working with their landlords in each of these locations in order to address and attempt to resolve lease termination issues and to keep their landlords apprised of the status of these Chapter 15 Cases and of the Canadian Proceedings.

23. The substantial majority of Inscape Delaware and Inscape New York's ordinary trade receivables arose from purchase orders, as opposed to fulsome contracts with their customers. Each invoice provided to a customer stated that "[t]he invoice and the agreement of purchase and sale arising here shall be governed by and constructed in accordance with the laws of Ontario."

24. There are no other material contracts or leases to which Inscape New York or Inscape Delaware is a party.

The Location of the Debtor's "Nerve Center"

25. The "nerve center" of Inscape New York and Inscape Delaware (as well as Inscape, the Canadian parent) is and has always been located in Canada at the main headquarters at Holland Landing. At the main headquarters, management of each Debtor directs and controls its activities and makes all strategic decisions for Inscape New York, Inscape Delaware and Inscape. As of the Commencement Dates, direction and control of all liquidation activities for each of the three Debtors was taking place at Holland Landing in Canada. Since sales in the United States are no longer taking place, Inscape New York and Inscape Delaware are effectively shell companies and have no operations. The U.S. entities have no "nerve center" in the United States, and all activities relating to the liquidation of these entities is taking place in Canada. As such, the "real seat" of each of the Debtors' is Canada, and not the jurisdiction of incorporation or registered office location of Inscape New York or Inscape Delaware.

26. Accordingly, the following facts weigh heavily to support a finding that the COMI for all three Debtors is Canada: (i) the location of the headquarters of all three entities is in Canada, notwithstanding the location of the registered office of Inscape New York and Inscape Delaware; (ii) the location of all members of management and of the boards of directors of all three entities is in Canada, and no strategic decision-making, operational planning, or meetings of the entities' boards of directors take place in the United States; (iii) the largest creditor of all three entities is a Canadian entity and its associated loan agreement, the Hilco Loan Agreement, is governed by Canadian law; (iv) all decision-making for each of the three entities is made by management in Canada, including with respect to U.S. manufacturing and sales (when sales were conducted in the U.S. prior to the Commencement Dates); (v) creditors of each entity are aware that all key customer contacts and customer service for the Company are located in Canada; (vi) all administrative

functions for the three entities are performed in Canada, including customer service, supply chain/procurement, accounting and finance, among other functions; (vii) as of the Commencement Dates, all liquidation activities for the three entities are directed from Canada; and (viii) Inscape New York and Inscape Delaware are primarily shell companies with very few tangible assets in the United States, and their true “nerve center” is in Canada. While the Foreign Representative acknowledges that certain trade creditors of Inscape New York are located in the United States, it submits that no single *Suntech* factor is dispositive in the analysis, and the vast majority of the *Suntech* factors weigh heavily in favor of a finding that the COMI for Inscape New York is Canada. As previously stated, the Foreign Representative will ensure that all U.S. creditors will be given a full and fair opportunity to participate in the claims process in Canada. For all of the foregoing reasons, there is little question that the COMI of Inscape New York, Inscape Delaware, and Inscape is Canada.

II. The Requested Relief Is Consistent with United States Public Policy and the Policy Behind the Bankruptcy Code

27. The purpose of chapter 15 is set forth in section 1501 of the Bankruptcy Code and includes: (i) cooperation between courts of the United States and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (ii) the fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor; and (iii) the protection and maximization of the value of the debtor’s assets. *See* 11 U.S.C. § 1501. The Foreign Representative respectfully submits that each of these purposes will be served by recognizing the Canadian Proceedings of each Debtor as a foreign main proceeding, and that the interests of the Debtors’ creditors and other interested entities would not be protected by requiring the U.S. entities to administer their liquidation proceedings separately in the United States.

28. Recognition of the Canadian Proceedings of each of the three Debtors as foreign main proceedings will facilitate the orderly and equitable cross-border wind-down of the Debtors' businesses. The Debtors and their professionals are diligently and conscientiously seeking to maximize the value of their remaining assets, ninety percent of which are located in Canada, in order to distribute such value to their creditors. Practically speaking, because the Debtors operated as a single, integrated enterprise, their ability to maximize the liquidation value of their assets requires them to continue to be administered jointly. For example, the Debtors are seeking to collect on a number of sizable accounts receivable from customers; in order to do so, however, the Debtors have been working to resolve certain remaining concerns by such customers which require providing additional or replacement products manufactured from the Canadian facility, as well as other resources from Canada, regardless of where these receivables were originally "booked".

29. Moreover, in light of the minimal assets of the Debtors remaining to be monetized, the Debtors and their professionals are especially sensitive to the fact that distributions to unsecured creditors – if any – will depend on administering the insolvency proceedings of the Debtors as efficiently as possible. Requiring Inscape New York and Inscape Delaware to be liquidated in plenary proceedings in the United States separate from the main proceeding in Canada for Inscape Corporation would, even in the best case where the U.S. entities' proceedings were administered as efficiently as possible, require the Debtors to hire separate primary restructuring counsel (one firm in Canada to represent Inscape and another in the United States to represent Inscape New York and Inscape Delaware) and to employ the resources of a Canadian monitor (who serves as a "watchdog" over the administration of the Canadian proceeding) with its counsel, the U.S. Trustee, and a U.S. committee of unsecured creditors with its counsel, as well as the concentrated resources of both the Canadian and U.S. courts.

30. Furthermore, instead of a single claims administration and distribution process, if the Debtors were liquidated in separate Canadian and U.S. liquidation proceedings, it would result in separate procedures for the submission and resolution of claims against each of the entities – not only would this create the risk of additional confusion and burden on creditors, many of whom (because of the integrated nature of these businesses) are likely to submit claims against multiple Debtors on both sides of the border, but it would result in inefficiency and delay as two sets of Debtor professionals review overlapping sets of claims and seek to coordinate the resolution of these claims processes on different timelines. The Debtors are genuinely concerned that these additional costs may transform these cases from ones that provide some modest distributions to unsecured creditors to ones where such creditors do not stand to receive any distribution. Additionally, as the claims processes will dictate the timing and nature of distributions in the cases, the separate administration of these proceedings would result in delays. The Foreign Representative respectfully submits that the interests of creditors for the U.S. and Canadian entities will be disserved by the separate administration of these liquidation cases, which will result in greater administrative expenses, less integrated liquidation of the Debtors’ assets, less efficient administration of the claims and distribution process, and greater costs and delays in the overall resolution of the Debtors’ proceedings.

31. Bankruptcy courts in the United States have routinely recognized and granted comity to insolvency proceedings in Canada, recognizing the long history of cooperation between the two jurisdictions and the integrity of, and due process afforded to creditors and other parties in, Canadian insolvency proceedings.³ This Court has observed that “the U.S. and Canada share

³ See, e.g., *In re Nygard Holdings (USA) Ltd.*, No. 20-10828 (DSJ) (Bankr. S.D.N.Y. April 23, 2020) [Docket No. 40]; *In re Imperial Tobacco Canada Ltd.*, No. 19-10771 (JPM) (Bankr. S.D.N.Y. April 17, 2019) [Docket No. 40]; *In re U.S. Steel Canada, Inc.*, No. 17-11519 (MG) (Bankr. S.D.N.Y. July 31, 2017) [Docket No. 16]; *In re Sino-Forest Corp.*, No. 13-10361 (MG) (Bankr. S.D.N.Y. Apr. 15, 2013) [Docket

the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.” *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) (citations omitted); *EMA GARP Fund v. Banro Corp.*, 2019 WL 773988, at *6 (S.D.N.Y. 2019) (“Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.”); *E&L Consulting, Ltd. v. Doman Industries Ltd.*, 360 F. Supp. 2d 465, 470 (E.D.N.Y. 2005) (“Canada’s bankruptcy procedure under the [CCAA] satisfies the standards of procedural fairness established under the law of this circuit.” (citing *Tradewell, Inc. v. American Sensors Elecs.*, 1997 WL 423075 (S.D.N.Y. July 28, 1997))).

32. Creditors and other parties who are located in the United States will not be prejudiced by the fact that the administration of Inscope New York and Inscope Delaware’s liquidation proceedings is occurring in Canada. Canadian insolvency law does not favor local creditors over foreign creditors, whether located in the United States or elsewhere. Creditors will have the ability to file pleadings and submit claims in the Canadian Proceedings from the United States, and may appear at hearings in the Canadian Proceedings by remote video or telephonic means. As previously noted, as a practical matter, having all three Debtors’ cases administered jointly in Canada will likely result in greater efficiency, less confusion, lower costs, and faster recoveries to creditors than the separate liquidation of the Canadian and U.S. Debtors.

No. 16]; *In re Metcalf & Mansfield Alt. Invs.*, No. 09-16709 (MG) (Bankr. S.D.N.Y. Jan. 5, 2010) [Docket No. 28]; *In re Canwest Global Commc’ns Corp.*, No. 09-15994 (SMB) (Bankr. S.D.N.Y. Nov. 3, 2009) [Docket No. 34]; *In re Baronet U.S.A. Inc.*, No. 07-13821 (JMP) (Bankr. S.D.N.Y. Jan. 10, 2008) [Docket No. 15]; *In re Lone Pine Res. Inc.*, No. 13-12487 (BLS) (Bankr. D. Del. Sept. 26, 2013) [Docket No. 18]; *In re Xentel Inc.*, No. 13-10888 (KG) (Bankr. D. Del. Apr. 12, 2013) [Docket No. 15].

33. For each of the foregoing reasons, the orderly and efficient administration of all three Debtors' cases in jointly administered proceedings in Canada is demonstrably consistent with the public policy of the United States and the Bankruptcy Code.

III. In the Alternative, the Canadian Proceedings Should Be Recognized as Foreign Nonmain Proceedings.

34. In the alternative, were this Court to deny recognition of the Canadian Proceedings of any of the Debtors as foreign main proceedings, it should grant recognition of such proceedings as foreign nonmain proceedings. Pursuant to the Bankruptcy Code, a "foreign nonmain proceeding" is defined as a "foreign proceeding" pending in a country where the debtor has an "establishment" within the meaning of section 1502. 11 U.S.C. § 1517(b)(2). "Establishment" is broadly defined in the Bankruptcy Code as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). To satisfy this definition, a debtor must have "a seat for local business activity in the foreign country" and this activity must have a "local effect on the marketplace." *In re Mood Media Corp.*, 569 B.R. 556, 561-62 (Bankr. S.D.N.Y. 2017); *see also In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016) (holding that in order to have an establishment in a country a debtor must "conduct business in that country."). Here, the Holland Landing Facility, the Company's largest manufacturing and warehouse facility (i) is located in Canada and (ii) produces all furniture for the furniture segment of the Company's business. The Foreign Representative submits that it cannot be disputed that the Holland Landing Facility is a "seat for local business activity" in Canada that has a local effect on the marketplace.

35. The Holland Landing Facility serves as an "establishment" in Canada for all three Debtors. As noted above, at all relevant times, management for each of the three Debtors were physically located at the Holland Landing Facility and regularly dealt with, and continue to deal with, creditors, vendors and other counterparties for all three Debtors. Moreover, furniture

produced at the Holland Landing Facility was sold (i) to U.S. customers, who were invoiced by Inscape Delaware⁴ and (ii) to Canadian customers, who were invoiced by Inscape. Additionally, prior to the CCAA Commencement Date, Inscape sales employees that were located at the Holland Landing Facility, sold on Inscape New York's behalf the walls products manufactured by Inscape New York to Canadian customers, which were then directly invoiced by Inscape New York.

36. For these reasons, the Foreign Representative submits that the Court should find that each of the Debtors has an "establishment" in Canada within the meaning of Bankruptcy Code section 1502(2) and, if the Canadian Proceedings are not recognized as foreign main proceedings, recognize the Canadian Proceedings as foreign nonmain proceedings.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: February 27, 2023
New York, New York

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

By: /s/ Weston T. Eguchi
Weston T. Eguchi
Jamie M. Eisen
Courtenay W. Cullen

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

Counsel for the Foreign Representative

⁴ As noted in paragraph 17 of the Verified Petition, generally, the Company's customers are invoiced as follows: (a) Canadian customers of the furniture segment are invoiced by Inscape; (b) U.S. customers of the furniture segment are invoiced by Inscape Delaware; and (c) all customers of the walls segment are invoiced by Inscape New York.

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	Chapter 15
)	
Inscape Corporation, <i>et al.</i> , ¹	)	Case No. 23-10074
)	
Debtors in a Foreign Proceeding.	)	(Jointly Administered)
)	

**ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

A hearing having been held (the “Hearing”) on February 21, 2023 and March 1, 2023 to consider the chapter 15 petitions for each of the above-captioned debtors (the “Debtors”) and the Verified Petition, filed on January 23, 2023 (the “Verified Petition,” and together with the chapter 15 petitions, the “Petitions”)² of Inscape Corporation, the duly authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (the “Debtors”) for entry of an order pursuant to sections 105(a), 362, 1517, and 1520 of the Bankruptcy Code: (i) recognizing the Canadian Proceedings as foreign main proceedings pursuant to sections 1517 and 1520 of the Bankruptcy Code, (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings, (iii) recognizing and enforcing the Initial CCAA Orders, and (iv) granting a stay of execution against the Debtors’ assets and applying section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to section 1520(a)(1) of the Bankruptcy Code; and the Foreign Representative having filed its Supplement to the Verified Petition (the “Supplement”), together

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: (i) Inscape Corporation (“Inscape”) (BN 1738), (ii) Inscape Inc., a Delaware Corporation (“Inscape Delaware”) (FEIN 1804), and (iii) Inscape (New York) Inc., a New York Corporation (“Inscape New York”) (FEIN 7231).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Verified Petition or the Initial CCAA Orders (as defined in the Verified Petition), as applicable.

with the Supplement Declaration of Eric Ehgoetz (the “Supplemental Declaration”) on February 27, 2023; and upon this Court’s review and consideration of the Petitions, the Declaration of Eric Ehgoetz, filed contemporaneously therewith, the Supplement, the Supplemental Declaration, and the evidence admitted at the Hearing to consider the Petitions; and due and proper notice of the Petitions having been provided; and no other or further notice being necessary or required; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law:³

- a. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- b. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).
- c. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1).
- d. The Foreign Representative is the duly appointed “foreign representative” of the Debtors, as such term is defined in 11 U.S.C. § 101(24).
- e. These Chapter 15 Cases were properly commenced pursuant to 11 U.S.C. §§ 1504, 1509 and 1515.
- f. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Fed. R. Bankr. P. 1007(a)(4) and 2002(q).
- g. The Debtors have satisfied the eligibility requirements of 11 U.S.C. §§ 109(a) and 1517(a).

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, or any of the following conclusions of law constitute findings of fact, they are adopted as such.

- h. The Canadian Proceedings currently pending before the Canadian Court and provisions made thereunder for the protection, administration and distribution of the Debtors' assets, are "foreign proceedings," as such term is defined in 11 U.S.C. § 101(23).
- i. The Canadian Proceedings are entitled to recognition by this Court pursuant to 11 U.S.C. § 1517.
- j. The Canadian Proceedings are pending in the country where the Debtors' center of main interests is located, are "foreign main proceedings," as such term is defined in 11 U.S.C. § 1502(4), and are entitled to recognition as "foreign main proceedings" pursuant to 11 U.S.C. § 1517(b)(1).
- k. The Foreign Representative is entitled to all the relief provided pursuant to 11 U.S.C. § 1520, without limitation.
- l. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted under 11 U.S.C. §§ 1517 and 1520.

Now therefore, it is hereby ORDERED:

- 1. The Motion is GRANTED in its entirety.
- 2. The Canadian Proceedings are granted recognition as foreign main proceedings pursuant to 11 U.S.C. §§ 1517(a) and 1517(b)(1).
- 3. All relief afforded foreign main proceedings pursuant to 11 U.S.C. § 1520 is hereby granted.
- 4. The Initial CCAA Orders, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby

given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation, staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

5. Pursuant to 11 U.S.C. § 1520(a)(1), 11 U.S.C. § 362, including, without limitation, the automatic stay authorized by 11 U.S.C. § 362, shall apply with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States.

6. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

7. The Canadian Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States.

8. The Foreign Representative, the Debtors and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the local rules of this Court.

9. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under 11 U.S.C. §§ 306 and 1510.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative is not subject to any stay in the

implementation, enforcement or realization of the relief granted in this Order; and (iii) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

11. A copy of this Order shall be served (i) within three business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by United States mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), the Office of the United States Trustee, and such other entities as the Court may direct and (ii) by posting on the Monitor's website at <https://www.alvarezandmarsal.com/InscapeCorporation>. Such service shall constitute good and sufficient service and adequate notice for all purposes.

12. The Court shall retain jurisdiction with respect to: (i) the enforcement, amendment or modification of this order; (ii) any requests for additional relief or any adversary proceeding brought in or through these Chapter 15 Cases; and (iii) any request by an entity for relief from the provisions of this order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

Dated: New York, New York
_____, 2023

UNITED STATES BANKRUPTCY JUDGE

**This is Exhibit "E" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 28th day of February, 2023**

DocuSigned by:

Monica Fakeim

A COMMISSIONER FOR TAKING AFFIDAVITS



February 22, 2023

Clifton Prophet
Direct 416 862 3509
clifton.prophet@gowlingwlg.com
File No. T1031749

SENT BY E-MAIL:

lellis@millerthomson.com;
dward@millerthomson.com

Miller Thomson LLP
40 King Street West, Suite 5800
Toronto, ON M5H 4A9

Attention: Larry Ellis and David Ward

Dear Mr. Ellis and Mr. Ward:

Re: Inscape

We are writing to you on behalf of our clients, the director and officers of Inscape Corporation and affiliates (“**Inscape**”).

Recently we were sent the attached grievance request by Local 1-500 of the United Steelworkers (the “**USW**”). As you will observe, it alleges that Inscape and its directors are in violation of statutory and collective agreement obligations to pay vacation monies owing.

On behalf of our clients we require Inscape to immediately pay all amounts claimed for vacation pay by all employees. Further, and in accordance with paragraphs 21 and 22 of the Order of Justice Conway dated January 20, 2023 (the “**ARIO**”), we hereby demand full indemnification of our clients for all amounts incurred in relation to any unpaid obligations of Inscape for which the director and officers are liable. The indemnity obligations of Inscape in accordance with the ARIO and at law include all costs and legal fees currently being incurred and to be incurred and any ultimate liability that exists. These claims are entitled to priority over all other claims against Inscape and its assets, including those of Hilco Capital, save and except the claims of the beneficiaries of the Administrative Charge (see paragraphs 35 and 37 of the ARIO).

Please confirm as soon as possible that Inscape has paid all amounts owing for the vacation pay claimed by the USW.

Yours truly,

Gowling WLG (Canada) LLP

A handwritten signature in blue ink, appearing to read "C. Prophet", is written over a faint, larger signature.

Clifton Prophet
CP/adc
Attachment

Gowling WLG (Canada) LLP
1 First Canadian Place, 100 King Street West,
Suite 1600, Toronto, Ontario M5X 1G5 Canada

gowlingwlg.com

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at gowlingwlg.com/legal.

cc: Steve Graff, Aird & Berlis (sgraff@airdberlis.com)
Kyle Plunkett, Aird & Berlis (kplunkett@airdberlis.com)
Stephen Moore, Alvarez & Marsal (smoore@alvarezandmarsal.com)
Matthew Holt, Hilco Capital (matthew.holt@hilcocapital.com)

55538597\1



LOCAL 1-500 - IWA Council

GRIEVANCE REQUEST OF

Local1-500 & All Union Members

☐ personal ☒ policy ☐ group

Barry Jagminas , Michael Arthurs ,Mike Salmon

1-500

1223

Jan 2,2023

NAME OF STEWARDS

SUB- LOCAL

REFERENCE #

DATE

Step 2 - LIST COMPLAINT:

Contend the Company and its Directors are in violation of the Collective Agreement Article 18 and any and all other relevant Articles, The Employment Standards Act (ESA) and any other applicable Legislation, Laws or Acts when they failed to pay out all vacation monies owing and accrued after issuing permanent layoff notices.

Settlement Requested – Full Redress including but not limited, to immediate payment of vacation pay (with interest) owing to bargaining unit employees by the Company and/or its Directors. The Union will seek an order pursuant to Part XX of the ESA

Step 2 - SUPERVISORS ANSWER:

NAME OF SUPERVISOR:

DATE OF REPLY :

NAME OF UNION STEWARD:

DATE ACKNOWLEDGED:

REFER TO NEXT STEP ☐

Step 3 - COMPANY'S DECISION:

NAME OF MANAGEMENT:

DATE OF REPLY :

NAME OF UNION STEWARD:

DATE ACKNOWLEDGED:

REFER TO NEXT STEP ☐

FINAL DISPOSITION OF CASE

ARB ☐ MEDATE ☐ ☐ DATE: _____SETTLED ☐ DATE: _____WITHDRAWN ☐ DATE: _____

DATE..... SIGNATURE OF LOCAL OFFICER.....

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF ERIC EHGOETZ
(SWORN FEBRUARY 28, 2023)

MILLER THOMSON LLP

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Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 8 TH
)	
)	
JUSTICE CONWAY	)	DAY OF MARCH, 2023

B E T W E E N :

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.

Applicants

ORDER
(STAY EXTENSION)

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by Zoom videoconference,

ON READING the notice of motion dated February 28, 2023, the affidavit of Eric Ehgoetz sworn February 28, 2023 ("**Ehgoetz Affidavit**"), the second report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and such other parties listed on the Counsel Slip, and no one appearing for any other party although duly served as appears from the affidavit of service of Maureen McLaren, sworn February 28, 2023,

DEFINED TERMS

1. **THIS COURT ORDERS** that all terms capitalized but not defined herein shall have the meanings ascribed to such terms in the amended and restated initial order of Justice Conway dated January 20, 2023 (“**Amended and Restated Initial Order**”).

SERVICE

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

EXTENSION OF STAY

3. **THIS COURT ORDERS** that until and including April 21, 2023 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

GENERAL

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

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

6. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER
(MARCH 8, 2023)

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Lawyers for the Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at TORONTO

MOTION RECORD OF THE APPLICANTS
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