

**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 MODULAR SPACE INTERMEDIATE HOLDINGS, INC.,  
MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE  
GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES  
CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS,  
INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**MOTION RECORD  
(Returnable January 25, 2017)**

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Inc., ModSpace Government Financial Services,  
Inc., ModSpace Financial Services Canada, Ltd.  
and Resun Chippewa, LLC**

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<b>AND TO:</b>	<b>PITNEY BOWES GLOBAL FINANCIAL SERVICES</b> 5500 Explorer Drive Mississauga ON L4W 5C7

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# Tab 1

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND  
MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
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AMENDED**

**NOTICE OF MOTION  
(returnable January 25, 2017)**

**MODULAR SPACE CORPORATION ("MSC")** will make a motion before a Judge presiding over the Commercial List on January 25, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Ave., Toronto, Ontario.

**THE MOTION WILL BE HEARD ORALLY.**

**THE MOTION IS FOR:**

1. An Order substantially in the form of the draft Order attached at Tab 3 of the Motion Record for, among other things:
  - (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this motion is properly returnable on January 25, 2017;
  - (b) approving the Preliminary Report of Alvarez & Marsal Canada Inc. ("A&M"), in its capacity as the proposed information officer of the

Debtors dated December 24, 2016 (the “**Preliminary Report**”) and approving the activities of A&M as described in the Preliminary Report;

- (c) approving the First Report of A&M in its capacity as the Court-appointed information officer (the “**Information Officer**”) dated January 20, 2017 (the “**First Report**”) and approving the activities of A&M as described in the First Report;
- (d) recognizing and enforcing a final order (i) approving post-petition financing (the “**DIP Financing**”); (ii) granting liens and super-priority administrative status to the DIP Financing expenses; (iii) authorizing use of the DIP Financing proceeds to pay all outstanding US pre-filing obligations; (iv) granting adequate protection to certain of the Debtors’ pre-filing secured creditors (the “**Final DIP Order**”);
- (e) recognizing and enforcing an order authorizing the Debtors’ assumption of the restructuring support agreement dated as of December 20, 2016 (the “**RSA Order**”);
- (f) recognizing and enforcing an order approving the Debtors’ entry into and performance under a stock purchase and backstop agreement dated as of December 28, 2016 and authorizing them to pay certain fees and expenses in connection with that agreement (the “**SPBA Order**”);
- (g) recognizing and enforcing a final order authorizing the Debtors to pay pre-Petition wages, compensation and employee benefits (the “**Final Wages Order**”);
- (h) recognizing and enforcing a final order authorizing, but not directing, the Debtors to maintain their existing bank accounts, cash management system and authorizing the continuation of (and administrative expense priority status of) intercompany transactions (the “**Final Cash Management Order**”);



- (i) recognizing and enforcing a final order with respect to utility providers:
    - (i) approving the Debtors' form of adequate assurance of payment; (ii) establishing procedures to resolve objections by utility companies; and (iii) restraining utility companies from discontinuing, alternating or refusing service (the "**Final Utilities Order**");
  - (j) recognizing and enforcing a final order establishing notification procedures and approving restrictions on certain transfers of or claims for worthlessness with respect to equity securities (the "**Final NOL Order**"); and
  - (k) recognizing and enforcing an order authorizing the Debtors to employ and pay certain professionals in the ordinary course of business, *nunc pro tunc*, to December 21, 2016 (the "**OCP Order**").
2. Such further and other relief as counsel may request and this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. on December 21, 2016, MSC, Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC (collectively, the "**Companies**") commenced insolvency proceedings by filing voluntary petitions with the US Court under Chapter 11 of Title 11 of the United States Code (the "**US Proceedings**");
2. on December 22, 2016, the US Court made various orders in the US Proceedings (the "**First Day Orders**"), including an order authorizing MSC to act as foreign representative of the US Proceedings and an interim order authorizing the Companies to obtain debtor-in-possession financing (the "**Interim DIP Order**");
3. on December 27, 2016, this Honourable Court made an order recognizing the First Day Orders;

4. on January 17 and 18, 2017, the US Court made various orders (the “**Second Day Orders**”), including orders authorizing the retention of various professionals, approving certain agreements and making a final order with respect to the debtor-in-possession financing;
5. MSC seeks an order of this Honourable Court, among other things, recognizing the Second Day Orders to ensure consistency between the US Proceedings and these proceedings and to ensure that the Companies can continue their efforts towards the restructuring and implementing the pre-packaged restructuring plan;
6. A&M, in its capacity as Information Officer, has carried out its duties in a reasonable and prudent manner;
7. the provisions of the CCAA, including Part IV thereof;
8. rules 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990. Reg. 194, as amended; and
9. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Affidavit of David Orlofsky sworn January 20, 2017 (the “**Second Orlofsky Affidavit**”);
2. the First Report of A&M dated January 20, 2017;
3. the Preliminary Report of A&M dated December 24, 2016;
4. the Affidavit of David Orlofsky sworn December 23, 2016;
5. the following Orders of the US Court made in the US Proceedings, copies of which are attached to the Second Orlofsky Affidavit:

- (a) the Final DIP Order;
- (b) the RSA Order;
- (c) the SPBA Order;
- (d) the Final Wages Order;
- (e) the Final Cash Management Order;
- (f) the Final Utilities Order;
- (g) the Final NOL Order; and
- (h) the OCP Order.

6. such further and other evidence as counsel may advise and this Court may permit.

January 20, 2017

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Canada, Ltd. and Resun Chippewa, LLC

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
PROCEEDINGS COMMENCED AT TORONTO

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**NOTICE OF MOTION**  
**(Returnable January 25, 2017)**

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# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**AFFIDAVIT OF DAVID ORLOFSKY  
(Sworn January 20, 2017)**

I, **DAVID ORLOFSKY**, of the City of Hoboken in the State of New Jersey, **MAKE OATH  
AND SAY** as follows:

1. I am a Senior Managing Director of Zolfo Cooper LLP ("**Zolfo**"), financial advisor to Modular Space Corporation ("**MSC**") and various related companies, and as such have personal knowledge of the matters deposed to in this Affidavit, or where I do not possess such personal knowledge, I have stated the source of my information, and in all such cases I believe that both the information and the resulting statement to be true.
2. Since July 2016, I have served as financial advisor to MSC and related companies, Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., Resun Chippewa, LLC (with MSC, collectively, the "**US Debtors**") and ModSpace Financial Services Canada, Ltd. ("**ModSpace Canada**" and, together with the US Debtors, the "**ModSpace Group**"). In this capacity, I have worked closely with the ModSpace Group personnel,



reviewed the ModSpace Group's documents and become familiar with the ModSpace Group's day-to-day operations, business affairs and books and records.

## **Introduction**

3. The ModSpace Group has reached an agreement with its primary secured creditors for a pre-packaged plan (the "**Plan**") that has been filed in the United States and is expected to be implemented in the proceedings (the "**US Proceedings**") before the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
4. On December 21, 2016, the members of the ModSpace Group each filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 ("**Chapter 11**") of the United States Code (the "**US Code**") (collectively, the "**Petitions**" and each a "**Petition**") with the US Court.
5. On December 22, 2016, the US Court made various orders (the "**First Day Orders**"), including orders appointing MSC as foreign representative of the ModSpace Group and authorizing the ModSpace Group to obtain debtor-in-possession financing on an interim basis.
6. On December 27, 2016, this Court made orders, among other things, recognizing the First Day Orders within Canada (the "**Recognition Orders**"). Attached hereto and marked as **Exhibit "A"** is a copy of the Initial Recognition Order, the Supplemental Order and the Endorsement made by Mr. Justice Newbould on December 27, 2016.
7. On December 23, 2016, I swore an Affidavit in these proceedings in support of the application for the Recognition Orders (the "**First Orlofsky Affidavit**"). The First Orlofsky Affidavit sets out in greater detail the background to this matter and the First Day Orders. Attached hereto and marked as **Exhibit "B"** is a true copy of the First Orlofsky Affidavit (without Exhibits).
8. In support of the Petitions, I caused to be filed with the US Court a declaration (the "**First Day Declaration**"). The First Day Declaration sets out in greater detail, among other things, the history of the ModSpace Group and the challenges leading to the US

Proceedings. Attached hereto and marked as **Exhibit “C”** is a true copy of the First Day Declaration.

9. This Affidavit is made in support of a motion by MSC, in its capacity as foreign representative of the ModSpace Group pursuant to the Debtors’ proceedings under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”), for an order granting certain relief, including, *inter alia*:
  - (a) abridging the time for service of the materials such that this motion is properly returnable on January 25, 2017;
  - (b) recognizing and enforcing in Canada certain orders (as set out below) of the US Court made in the US Proceedings; and
  - (c) approving the preliminary report and the first report of Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as the Court-appointed information officer in these proceedings and the activities of A&M as described in those reports.

### **The Second Day Orders**

10. As part of the second day motions (the “**Second Day Motions**”) that were filed on December 29, 2016 and heard by the US Court on January 17 and 18, 2017, the US Court made several orders (collectively, the “**Second Day Orders**”). The Second Day Orders made by the US Court include, *inter alia*:
  - (a) a final order made January 18, 2017 (i) approving post-petition financing (the “**DIP Financing**”); (ii) granting liens and super-priority administrative status of the DIP Financing expenses; (iii) authorizing use of the DIP Financing proceeds to pay certain US pre-filing obligations; (iv) granting adequate protection to certain of the Debtors’ pre-filing secured creditors (the “**Final DIP Order**”). Attached hereto and marked as **Exhibit “D”** is a true copy of the Final DIP Order;
  - (b) an order made January 17, 2017 authorizing the Debtors’ assumption of the restructuring support agreement dated as of December 20, 2016 (the “**RSA**”

**Order**”). Attached hereto and marked as **Exhibit “E”** is a true copy of the RSA Order;

- (c) an order made January 17, 2017 approving the Debtors’ entry into and performance under a stock purchase and backstop agreement dated as of December 28, 2016 and authorizing them to pay certain fees and expenses in connection with that agreement (the “**SPBA Order**”). Attached hereto and marked as **Exhibit “F”** is a true copy of the SPBA Order;
- (d) a final order made January 17, 2017 authorizing the ModSpace Group to pay pre-Petition wages, compensation and employee benefits (the “**Final Wages Order**”). Attached hereto and marked as **Exhibit “G”** is a true copy of the Final Wages Order;
- (e) a final order made January 18, 2017 authorizing, but not directing, the ModSpace Group to maintain their existing bank accounts, cash management system and authorizing the continuation of (and administrative expense priority status of) intercompany transactions (the “**Final Cash Management Order**”). Attached hereto and marked as **Exhibit “H”** is a true copy of the Final Cash Management Order;
- (f) a final order made January 17, 2017 with respect to utility providers: (i) approving the ModSpace Group’s form of adequate assurance of payment; (ii) establishing procedures to resolve objections by utility companies; and (iii) restraining utility companies from discontinuing, alternating or refusing service (the “**Final Utilities Order**”). Attached hereto and marked as **Exhibit “I”** is a true copy of the Final Utilities Order;
- (g) a final order made January 17, 2017 establishing notification procedures and approving restrictions on certain transfers of or claims for worthlessness with respect to equity securities (the “**Final NOL Order**”). Attached hereto and marked as **Exhibit “J”** is a true copy of the Final NOL Order;

- (h) an order made January 17, 2017 authorizing the Debtors to employ and pay certain professionals in the ordinary course of business, *nunc pro tunc*, to December 12, 2016 (the “**OCP Order**”). Attached hereto and marked as **Exhibit “K”** is a true copy of the OCP Order;
- (i) various orders authorizing, but not directing, the Debtors’ retention and payment of professionals used in the ordinary course of business, *nunc pro tunc*, to December 21, 2016, including the following:
  - (i) an order authorizing the Debtors’ engagement of Cleary Gottlieb Steen & Hamilton LLP as US counsel for the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**Cleary Retention Order**”);
  - (ii) an order authorizing the Debtors’ engagement of Young Conaway Stargatt & Taylor LLP as US co-counsel for the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**Young Conaway Retention Order**”);
  - (iii) an order authorizing the Debtors’ engagement of Borden Ladner Gervais LLP as Canadian counsel for the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**BLG Retention Order**”);
  - (iv) an order authorizing the Debtors’ engagement of Zolfo Cooper LLC as bankruptcy consultants and special financial advisors to the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**Zolfo Retention Order**”);
  - (v) an order authorizing the Debtors’ engagement of Lazard Middle Market LLC and Larzard Freres & Co LLC as investment bankers to the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**Lazard Retention Order**”); and
  - (vi) an order authorizing the Debtors’ engagement of Kurtzman Carson Consultants LLC as administrative advisor for the ModSpace Group, *nunc pro tunc*, to December 21, 2016 (the “**KCC Retention Order**” and,

together with the Cleary Retention Order, the Young Conaway Retention Order, the BLG Retention Order, the Zolfo Retention Order and the Lazard Retention Order, the “**Retention Orders**”).

### **The Final DIP Order**

11. The Final DIP Order grants on a final basis substantially the same relief granted on an interim basis in the DIP Financing Order (as defined in the First Orlofsky Affidavit)
12. Pursuant to the Final DIP Order:
  - (a) the US Debtors were authorized to borrow up to US\$568,000,000, subject to borrowing base and availability reserves, pursuant to a US revolving loan facility;
  - (b) ModSpace Canada was authorized to borrow up to US\$200,000,000, subject to borrowing base and availability reserves, pursuant to a Canadian revolving loan facility; and
  - (c) the US Debtors were authorized to borrow under a US term loan in the amount of the unpaid principal balance under the pre-December 21, 2016 ABL Facility owed to the U.S. Term Lender (as both terms are defined in the interim order made by the US Court on December 22, 2016 approving post-Petition financing) pursuant to a US term loan in the amount of up to US\$25,000,000;

(collectively, the “**DIP Financing**”)

on such terms and conditions set out in the applicable post-petition credit agreement and related documents (collectively, the “**DIP Financing Documents**”).

13. The DIP Financing is being provided by a syndicate of lenders (the “**DIP Lenders**”) pursuant to the DIP Financing Documents. The DIP Lenders consist of the syndicate of lenders that provided the ModSpace Group with its pre-Petition financing.
14. Pursuant to the DIP Financing Documents, and consistent with the pre-Petition financing terms, the US Debtors guarantee the obligations of ModSpace Canada under the DIP

Financing Documents, but ModSpace Canada does not guarantee the obligations of the US Debtors. Similarly, the assets of the US Debtors provide security to the DIP Lenders for the obligations of the US Debtors and ModSpace Canada, but the assets of ModSpace Canada provide security only for the obligations of ModSpace Canada.

15. The US Court also ordered that the DIP Financing be secured by security interests and liens in accordance with the US Code and that the amounts owed under the DIP Financing would constitute super-priority claims in priority to certain other obligations and liabilities of the ModSpace Group.
16. The Final DIP Order authorizes the US Debtors to use advances under the DIP Financing to repay pre-Petition amounts owed by them to the pre-Petition US ABL Lenders (as defined in the DIP Financing Documents). However, ModSpace Canada is not authorized to use advances under the DIP Financing to repay pre-Petition amounts owed by it. The Final DIP Order permits ModSpace Canada to use certain of its Cash Collateral (as that term is defined in the Final DIP Order) to repay pre-Petition amounts owed by it to the pre-Petition Canadian ABL Lenders (as defined in the DIP Financing Documents). The DIP Financing Documents provide that proceeds of Accounts or Rental Equipment (as each is defined in the DIP Financing Documents) of ModSpace Canada shall first be applied as set out in the Final DIP Order (as above) until all pre-Petition amounts owed by ModSpace Canada have been repaid, before being applied to the obligations of ModSpace Canada under the DIP Financing.
17. Pursuant to the terms of the DIP Financing Documents, the ModSpace Canada portion of the DIP Financing funded in Canadian dollars will incur interest on the unpaid principal, from the date of the advance until paid in cash at the “Canadian Prime Rate” (or “Canadian BA Rate”, if selected by ModSpace Canada) plus 3.5% (or 4.5% if the “Canadian BA Rate” is selected). The ModSpace Canada portion of the DIP Financing funded in US dollars will incur interest on the unpaid principal from the date of the advance until paid in cash at a rate per annum equal to the “Canadian Base Rate” (or the “LIBOR Rate”, if selected by ModSpace Canada), plus 3.5% (or 4.5% if the “LIBOR Rate” is selected). If an “Event of Default” (as defined in the DIP Financing Documents)

occurs under the DIP Financing Documents, the interest rate is increased by 2% over the rate that would otherwise apply.

18. Based on my experience in restructuring matters, and the other efforts made by the ModSpace Group with respect to financing (further details of which are set out below), I believe that these costs and fees are market for similar levels of financing in similar circumstances.
19. Since the Plan is part of a pre-packaged restructuring, the DIP Lenders are providing a robust financing package, including the DIP Financing and exit facilities under a fully consensual restructuring and reorganization deal in an expedited manner. All of the affected parties have considered the terms of the DIP Financing, including its pricing and terms, and found that same are reasonable and in line with the market. Based on my experience in restructuring matters and my discussions with representatives of the ModSpace Group, I believe that no other alternatives available would achieve this level of financing at this pricing within the time period anticipated for this restructuring and exit.
20. The ModSpace Group explored alternative sources of interim financing, including considering a proposal submitted by the Ad Hoc Group of Noteholders (as defined below). This alternative structure would have been more expensive and since the existing lenders were opposed to this financing approach, it likely would have led to at least some litigation (particularly regarding the use of cash collateral, among other potential issues, including the existing lenders opposing priming charges). Further, this alternative structure did not include exit financing.
21. In the ordinary course of business, the ModSpace Group, and most of its competitors, use asset-based loans (“ABL”) to finance their working capital needs, both because their assets are high value and because an ABL facility provides a less expensive source of funding. The ModSpace Group’s business plan is based on this lower cost of capital. Accordingly, the financing options available to the ModSpace Group are effectively limited to commercial banks with an ABL component. The DIP Financing is being provided by a syndicate of 13 lenders, most of whom are typical ABL lenders to the

modular space industry, including the three largest lenders (Bank of America, Wells Fargo and JP Morgan). Since this is a large facility, any alternate structure would be widely syndicated, likely to many of the same lenders, such that any alternate financing is likely to be comprised of the same lenders and made on similar terms.

22. Finally, in the summer of 2016, the ModSpace Group was exploring a potential merger. In the course of those discussions, it received financing proposals. While those proposals were for different deals, based on the terms and prices obtained in the course of those discussions, and my experience in restructuring matters, I believe that the pricing and cost of the DIP Financing is reasonable and in line with market pricing and terms.
23. The US Court was satisfied that the Final DIP Order was necessary to permit the orderly continuation and operation of the ModSpace Group, to maintain business relationships and satisfy its business and operational needs (including payroll and other expenses incurred in the ordinary course of business) and to fund the administration of the US Proceedings and the ModSpace Group's efforts to restructure and implement the Plan.
24. The US Court was also satisfied that the ModSpace Group would not be able to obtain financing on more favourable terms and would not be able to obtain adequate unsecured credit under the US Code.
25. The US Court was further satisfied that the DIP Financing was a sound exercise of the ModSpace Group's business judgment.
26. MSC seeks recognition of the Final DIP Order from this Honourable Court, and submits that such recognition is necessary to ensure the financing remains available and that the ModSpace Group can meet its obligations and continue its efforts to restructure and to implement the Plan. The DIP Financing is an important component of the pre-packaged restructuring agreed upon by the ModSpace Group and its primary financial stakeholders.

#### **The RSA Order**

27. On December 20, 2016, the ModSpace Group, Bank of America, N.A., as administrative agent (the "ABL Agent"), the Ad Hoc Group of Noteholders and Calera VI, LLC, and its



affiliates (collectively, “**Calera**”) entered into a restructuring support agreement (the “**RSA**”) in support of the Plan.

28. Pursuant to the RSA, each of the ModSpace Group, the ABL Agent, the Ad Hoc Group of Noteholders and Calera agreed, *inter alia*, to support, and take all commercially reasonable action to facilitate, the implementation of the Plan, including the DIP Financing. The ABL Agent and the Ad Hoc Group of Noteholders further consented to the ModSpace Group commencing the Chapter 11 proceedings and these proceedings to the adequate protection in the DIP Financing Documents and to the Final DIP Order.
29. Following execution of the RSA, the ModSpace Group began a pre-Petition solicitation of the Plan to the ABL Lenders, the holders of Secured Notes, Calera and the ModSpace Group’s equity holders. Based on the RSA, the ModSpace Group will have sufficient members of each class entitled to vote on the Plan to secure those classes accepting the Plan.
30. Pursuant to the RSA Order, the ModSpace Group and the other parties to the RSA are authorized to perform under the RSA, including taking all actions, executing all documents and making all payments that may be necessary to give effect to the RSA and the relief granted in the RSA Order.
31. In making the RSA Order, the US Court determined that the RSA represented a valid exercise of the ModSpace Group’s business judgment.

#### **The SPBA Order**

32. On December 28, 2016, the Debtors entered into a stock purchase and backstop agreement with certain noteholders (the “**SPBA**”).
33. As described in greater detail in the First Orlofsky Affidavit, the Plan includes a rights offering (the “**Rights Offering**”) expected to raise approximately US \$90 million. In the event that the Rights Offering is under-subscribed and it does not raise sufficient funds, the SPBA ensures the ModSpace Group will have the liquidity necessary to implement the Plan.

34. In particular, under the SPBA, if a portion of the Rights Offering is not fully subscribed, certain noteholders have agreed to purchase equity interests in the reorganized entity. In exchange for this commitment, these noteholders will receive a commitment premium and reimbursement of expenses. The form of the commitment premium is equity in the reorganized entity equal to 5% of the aggregate amount of the total equity interests of the reorganized entity.
35. The ModSpace Group determined that the SPBA was reasonable and necessary to ensure it was able to implement the Plan.
36. Pursuant to the SPBA Order, the US Court approved the Debtors entering into the SPBA and authorized them to execute, deliver and implement the SPBA, including performing the obligations contemplated under the SPBA and paying the costs and expenses associated with the SPBA.

#### **Final Wages Order**

37. The Final Wages Order grants on a final basis substantially the same relief granted on an interim basis in the Wages Order (as defined in the First Orlofsky Affidavit).
38. Pursuant to the Final Wages Order, the US Court authorized the ModSpace Group to, *inter alia*, pay pre-Petition wages and other amounts owed to its employees, to continue all employee benefit programs and to pay all withholding obligations as such obligations are due.
39. In granting the Final Wages Order, the US Court was satisfied that failure to make payments for these obligations to the ModSpace Group employees (and for withholdings related to those employees) would threaten the ModSpace Group's ability to operate and its efforts to restructure and to implement the Plan. The US Court was further satisfied that authorizing payments of these amounts was a sound exercise of the ModSpace Group's business judgment.

40. MSC seeks recognition of the Final Wages Order from this Honourable Court to ensure that all ModSpace Group employees and government entities receiving withholdings are treated consistently.

#### **Final Cash Management Order**

41. The Final Cash Management Order grants on a final basis substantially the same relief granted on an interim basis in the Cash Management Order (as defined in the First Orlofsky Affidavit).
42. Pursuant to the Final Cash Management Order, the US Court authorized the ModSpace Group to continue to operate its existing cash management system (including maintaining existing bank accounts), to maintain its existing business forms (such as cheques), and to continue to perform intercompany transactions consistent with past practice.
43. In granting the Final Cash Management Order, the US Court was satisfied that the existing system was essential to the ModSpace Group's ongoing operations and restructuring efforts and that there would be no prejudice to the ModSpace Group continuing to use pre-printed business forms without modification to identify the members of the ModSpace Group as debtors in possession.
44. The US Court was also satisfied that the intercompany transactions should continue because the system was largely automated and if the intercompany transactions were discontinued, the existing cash management system and related administrative controls would be disrupted. In making the Final Cash Management Order, the US Court was further satisfied that disrupting the intercompany transactions would cause irreparable harm to the ModSpace Group. Particulars of such intercompany transactions involving ModSpace Canada are set out below.
45. MSC seeks recognition of the Final Cash Management Order from this Honourable Court to ensure that the ModSpace Group's finances, which are highly integrated, can continue in the ordinary course and to ensure the efficient administration of the ModSpace Group as it works to restructure and implement the Plan.

### **Final Utilities Order**

46. The Final Utilities Order grants on a final basis substantially the same relief granted on an interim basis in the Utilities Order (as defined in the First Orlofsky Affidavit). The Final Utilities Order and the Utilities Order includes 39 Canadian utilities providers (listed at Schedule 1 to the Final Utilities Order).
47. Pursuant to the Final Utilities Order:
- (a) the US Court approved adequate assurance of payment for certain utility providers, establishing procedures for resolving claims by utility providers and prohibiting the utility providers from terminating service solely on the basis of the commencement of the US Proceedings; and
  - (b) the ModSpace Group has created a segregated account for utilities for the benefit of all of the utility companies listed on the Utilities Order (including the Canadian providers).
48. In making the Final Utilities Order, the US Court was satisfied that continued service was reasonable, appropriate and necessary to maintain the ModSpace Group's operations while it continues its efforts to restructure and to implement the Plan.
49. MSC seeks recognition of the Final Utilities Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings. MSC also seeks recognition of the Final Utilities Order from this Honourable Court to ensure Canadian utility providers are treated consistently with the US utility providers.

### **Final NOL Order**

50. The Final NOL Order grants on a final basis substantially the same relief granted on an interim basis in the NOL Order (as defined in the First Orlofsky Affidavit).
51. Pursuant to the Final NOL Order, the US Court, *inter alia*, established notification procedures and approved restrictions on certain transfers of (or declarations of

worthlessness for US federal or state tax purposes with respect to) equity securities of Modular Space Holdings Inc. (“MSH”). In particular,

- (a) each “Substantial Equityholder”,<sup>1</sup> except as set out in the NOL Order, must serve MSH with a notice setting out the amount of stock of which it has tax ownership;
- (b) any entity that is not, as of the Filing Date, a Substantial Equityholder that wishes to purchase stock must deliver a notice regarding the proposed acquisition;
- (c) any Substantial Equityholder that wishes to purchase additional stock must deliver a notice regarding the proposed acquisition;
- (d) any Substantial Equityholder that wishes to sell stock must deliver a notice regarding the proposed sale; and
- (e) if the ModSpace Group does not file an objection to the proposed acquisitions or transfers set out at subparagraphs (b), (c) and (d) above within 21 days, the transaction may proceed. If the ModSpace Group files an objection, the transaction will be subject to approval from the US Court.

52. Similarly, parties wishing to make a declaration of worthlessness for tax purposes must deliver notices in accordance with the Final NOL Order, to which the ModSpace Group will have 30 days to object before the declaration of worthlessness can become effective. If the ModSpace Group objects, the declaration of worthlessness will not be permitted without further order of the US Court.

53. In making the Final NOL Order, the US Court determined that unrestricted trading of the MSH equity securities could limit the ModSpace Group’s ability to restructure and to implement the Plan (by limiting the ModSpace’s Group’s ability to use its tax benefits, including net operating losses) and that, accordingly, establishing procedures and restrictions was reasonable in the circumstances. The restrictions and notification

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<sup>1</sup> Defined in the NOL Order as an entity with tax ownership of at least 1,015,735 shares of Class A Stock representing approximately 4.75% of the issued and outstanding shares of Class A Stock or at least 166,208 shares of Common Stock, representing approximately 4.75 of the issued and outstanding shares of Common Stock.

procedures are not an injunction on trading, but rather designed to monitor trading and to allow the ModSpace Group to assess the impact trading may have on its tax attributes.

### **The OCP Order**

54. The OCP Order authorizes the Debtors to employ and pay certain professionals in the ordinary course of their business *nunc pro tunc* to December 21, 2016.
55. Pursuant to the OCP Order, the Debtors are authorized to retain, pay compensation to, and reimburse the expenses of certain professionals (“OCPs”), including three Canadian law firms (listed at Exhibit I of the OCP Order), who provide services to the Debtors in the ordinary course of business without requiring those professionals to file applications with the US Court.
56. The OCP Order sets out two classifications of OCPs, approving a fee cap of US \$50,000 per month over a rolling three-month period for “Tier One OCPs” and a fee cap of US \$100,000 per month on average over a rolling three-month period for “Tier Two OCPs”. The OCP Order also sets out the method through which the Debtors can retain additional OCPs not specified in Exhibit I to the OCP Order. The three Canadian OCPs are Tier One OCPs.
57. In granting the OCP Order, the US Court was satisfied that granting the relief sought therein was in the best interests of the Debtors, their estates, their creditors and the parties in interest.
58. MSC seeks recognition of the OCP Order from this Honourable Court and submits that such recognition is necessary to ensure that the services provided by the Debtors’ Canadian OCPs can continue on the same uninterrupted basis, on the same retention and payment policies as the Debtors’ US OCPs.

### **Intercompany Transactions**

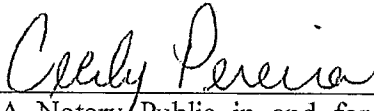
59. As set out in further detail in the First Orlofsky Affidavit, ModSpace Canada benefits from services provided by MSC, including guaranteeing ModSpace Canada’s obligations under the ABL Facility (as defined in the First Day Declaration). In exchange for these

services, ModSpace Canada pays MSC a monthly management fee and guarantor fee (the “**Management Fee**”) of approximately US\$600,000.

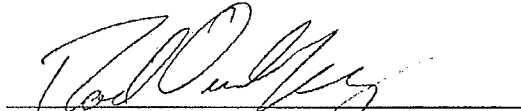
60. As noted in the First Orlofsky Affidavit, the Management Fee has continued in the ordinary course. ModSpace Canada expects to pay the Management Fee in the coming days.

61. This Affidavit is sworn in support of a motion brought by the Foreign Representative for the relief set out in paragraph 9 of this Affidavit and for no other or improper purpose.

SWORN BEFORE ME at the City of  
New York, in the State of New York, this     )  
20th day of January 2017                         )  
   )  
   )  
   )



A Notary Public in and for the State of     )  
New York   )

  
\_\_\_\_\_  
**DAVID ORLOFSKY**

**Cecily Pereira**  
**Notary Public, State of New York**  
**No. 01PE6278148**  
**Qualified in New York County**  
**My Commission Expires March 8, 2017**



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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

PROCEEDINGS COMMENCED AT TORONTO

**AFFIDAVIT OF DAVID ORLOFSKY  
(Sworn January 20, 2017)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide St. W.  
Toronto, Ontario  
M5H 4E3

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LSUC# 69967K

Lawyers for Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Modular Space Corporation, Resun Modspace, Inc., Modspace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC



# Tab A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT  
OF DAVID ORLOFSKY SWORN BEFORE ME  
ON THIS 20 DAY OF JANUARY, 2017

Cecily Pereira  
A Notary Public for the State of New York

**Cecily Pereira**  
**Notary Public, State of New York**  
**No. 01FE6278148**  
**Qualified in New York County**  
**My Commission Expires March 8, 2017**



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

THE HONOURABLE

)

TUESDAY, THE 27<sup>TH</sup>

MR. JUSTICE NEWBOULD

)

DAY OF DECEMBER, 2016

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

**AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC.,  
MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE  
GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES  
CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS,  
INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**INITIAL RECOGNITION ORDER  
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by Modular Space Corporation, in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of David Orlofsky sworn December 23, 2016, the preliminary report dated December •, 2016 of Alvarez & Marsal Canada Inc., in its capacity as the proposed information officer and upon being provided with copies of the documents required by s.46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative, counsel for Alvarez & Marsal Canada Inc., in its capacity as proposed information officer (the "**Information Officer**"), counsel for Bank of America N.A., as Administrative Agent for the lenders under the Debtors' Post-Petition Credit Agreement (collectively, the "**DIP Lender**"), counsel for the Ad Hoc Group of Noteholders and upon no one appearing for any other parties although duly served as appears from the Affidavit of Service of Evita Ferreira sworn December 23, 2016:

#### **SERVICE**

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

#### **FOREIGN REPRESENTATIVE**

2. THIS COURT ORDERS AND DECLARES that the Foreign Representative is the "foreign representative" as defined in section 45 of the CCAA of the Debtors in respect of the jointly administered insolvency proceedings (the "**Foreign Proceeding**") of Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") under Chapter 11 of Title 11 of the United States Code.

#### **CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING**

3. THIS COURT DECLARES that the centre of its main interests for each of the Debtors is the United States of America, and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

## **STAY OF PROCEEDINGS**

4. THIS COURT ORDERS that until otherwise ordered by this Court:
- (a) all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;
  - (b) further proceedings in any action, suit or proceeding in Canada against any Debtor are restrained; and
  - (c) the commencement of any action, suit or proceeding in Canada against any Debtor is prohibited.

## **NO SALE OF PROPERTY**

5. THIS COURT ORDERS that, except with leave of this Court, each of the Debtors is prohibited from selling or otherwise disposing of:
- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
  - (b) any of its other property in Canada that does not relate to the business.

## **GENERAL**

6. THIS COURT ORDERS that within 7 days from the date of this Order, or as soon as practicable thereafter, the Information Officer shall cause to be published a notice substantially in the form attached to this Order as Schedule "A", once a week for two consecutive weeks, in *The Globe and Mail* (National Edition).
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

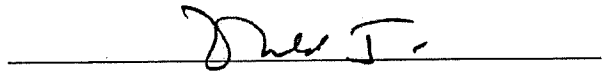
8. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 10:00 am on the date of this Order.

9. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors and the Foreign Representative and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

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

DEC 27 2016

PER / PAR:



**Schedule "A"**  
**Form of Newspaper Notice**

**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 MODULAR SPACE INTERMEDIATE HOLDINGS, INC.,  
MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE  
GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES  
CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS,  
INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED**

**NOTICE OF INITIAL RECOGNITION ORDER**

**PLEASE BE ADVISED** that this Notice is being published pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"), granted on December 27, 2016 (the "**Initial Recognition Order**").

**PLEASE TAKE NOTICE** that on December 21, 2016, Modular Space Intermediate Holdings, Inc., Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services Inc., ModSpace Financial Services Canada, Ltd., Resun Chippewa, LLC and Modular Space Holdings, Inc. (collectively, the "**Chapter 11 Debtors**") each filed voluntary petitions under chapter 11 of title 11 of the United States Code (collectively, the "**Chapter 11 Proceedings**") in United States Bankruptcy Court for the District of Delaware (the "**US Court**"). In connection with the Chapter 11 Proceedings, the Chapter 11 Debtors have appointed Modular Space Corporation ("**MSC**") as their foreign representative of the estates of the Chapter 11 Debtors (the "**Foreign Representative**"). The Foreign Representative's address is 1200 Swedesford Road, Berwyn, PA 19312610. The Debtors carry on business in Canada through ModSpace Financial Services Canada Ltd.

**PLEASE TAKE FURTHER NOTICE** that the Initial Recognition Order and a Supplemental Order (together, the "**Recognition Orders**") have been issued by the Canadian Court under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA Recognition Proceedings**"), and, among other things: (i) recognize the Chapter 11 Proceedings as a foreign main proceeding; (ii) recognizes MSC as the Foreign Representative of the Chapter 11 Proceedings; (iii) recognize certain orders granted by the US Court in the Chapter 11 Proceedings; (iv) stays claims against the Chapter 11 Debtors, their property and their directors and officers in Canada; (v) prohibit the commencement of any such proceedings in Canada



absent further order of the Canadian Court; and (vi) appoints Alvarez & Marsal Canada Inc. as the Information Officer with respect to the CCAA Recognition Proceedings.

**PLEASE TAKE FURTHER NOTICE** that counsel for the Foreign Representative is:

**Borden Ladner Gervais LLP**

Bay Adelaide Centre, East Tower,  
22 Adelaide St W, Toronto, ON,  
Canada M5H 4E3

Attention: Roger Jaipargas  
Phone: 416-367-6266  
Fax: 416-367-6749  
Email: [RJaipargas@blg.com](mailto:RJaipargas@blg.com)

**PLEASE TAKE FURTHER NOTICE** that persons who wish to receive a copy of the Recognition Orders or obtain any further information in respect thereof or in respect of the matters set forth in this Notice, should contact the Information Officer at the address below:

**Alvarez & Marsal Canada Inc. (solely in its capacity as Information Officer)**

Royal Bank Plaza, South Tower,  
200 Bay Street, Suite 2900  
P.O. Box 22

Toronto ON M5J 2J1  
Attention: Jenny Poulos  
Phone: 416-847-5166  
Fax: 416-847-5201  
Email: [jpoulos@alvarezandmarsal.com](mailto:jpoulos@alvarezandmarsal.com)

**PLEASE TAKE FURTHER NOTICE** that the motions, orders and notices filed with the US Court in the Chapter 11 Proceedings are available at <http://www.kccllc.net/modspace>

**Kurtzman Carson Consultants LLC**

2335 Alaska Avenue  
El Segundol, California 90245

Attention: Evan Gershbein  
Phone: 310-823-9000  
Email: [egershbein@kccllc.com](mailto:egershbein@kccllc.com)

**PLEASE FINALLY NOTE** that the Recognition Orders, and any other orders that may be granted by the Canadian Court, can be viewed at [www.alvarezandmarsal.com/modspace](http://www.alvarezandmarsal.com/modspace)

DATED AT TORONTO, ONTARIO this \_\_\_ day of December, 2016.

**Alvarez & Marsal Canada Inc.**  
**(solely in its capacity as Information Officer of the Chapter 11 Debtors and not in its personal or corporate capacity)**

Court File No.: CV-16-11656-00CL

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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN  
MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN  
CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

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

PROCEEDINGS COMMENCED AT TORONTO

**INITIAL RECOGNITION ORDER**

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Lawyers for Modular Space Holdings, Inc., Modular Space Intermediate Holdings,  
Inc., Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government  
Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun  
Chippewa, LLC

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

THE HONOURABLE ) TUESDAY , THE 27<sup>TH</sup>  
 )  
MR. JUSTICE NEWBOULD ) DAY OF DECEMBER, 2016

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

**AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS,  
INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC.,  
MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE  
FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND  
MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

THIS APPLICATION, made by Modular Space Corporation ("**Modular Space Corporation**"), in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of David Orlofsky sworn December 23, 2016 (the "**Orlofsky Affidavit**"), the preliminary report of Alvarez & Marsal Canada Inc., in its capacity as proposed information officer dated December 24, 2016, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Foreign Representative, counsel for the proposed information officer, counsel for Bank of America N.A., as Administrative Agent for the lenders under the Debtors' Post-Petition Credit

Agreement (collectively, the "**DIP Lender**"), counsel for the Ad Hoc Group of Noteholders, no one appearing for any other parties although duly served as appears from the affidavit of service of Evita Ferreira sworn December 23, 2016, and on reading the consent of Alvarez & Marsal Canada Inc. to act as the information officer:

### **SERVICE**

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

### **INITIAL RECOGNITION ORDER**

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated December 27, 2016 (the "**Recognition Order**") or in the Orlofsky Affidavit.

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

### **RECOGNITION OF FOREIGN ORDERS**

4. THIS COURT ORDERS that the following orders (collectively, the "**Foreign Orders**") of the United States Bankruptcy Court for the District of Delaware made in the Foreign Proceeding are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) an order recognizing Modular Space Corporation as the foreign representative of the Debtors;
- (b) an order permitting the joint administration of the Chapter 11 cases of the Debtors in the Foreign Proceeding;

- (c) an order authorizing the Debtors to pay pre-petition wages, compensation and employee benefits;
- (d) an interim order authorizing, but not directing, the Debtors to maintain their existing bank accounts, cash management system and authorizing the continuation of (and administrative expense priority status of) intercompany transactions;
- (e) an interim order (i) approving post-petition financing (the “**DIP Financing**”); (ii) granting liens and super-priority administrative expense claim status to pre-petition secured parties; and (iii) modifying the automatic stay; and (iv) scheduling the final hearing (the “**Interim Financing Order**”);
- (f) an order authorizing the Debtors to retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent *nunc pro tunc* to December 21, 2016;
- (g) an order authorizing the payment of pre-petition taxes and fees;
- (h) an interim order (i) approving the Debtors form of adequate assurance of payment; (ii) establishing procedures to resolve objections by utility companies; and (iii) restraining utility companies from discontinuing, alternating or refusing service;
- (i) an order (i) confirming the enforcement and applicability of the automatic stay pursuant to Section 362 of the United States Code and (ii) confirming the Debtors authority with respect to post-petition operations;
- (j) an order establishing notification procedures and approving restrictions on certain transfers of or claims for worthlessness with respect to the Debtors’ equity securities;
- (k) an order authorizing the Debtors to pay their pre-petition unsecured creditors in the ordinary course of business;

- (l) an order establishing bar dates for filing proofs of claim for Modular Space Intermediate Holdings, Inc. and Modular Space Holdings, Inc., approving the form and manner for filing proofs of claim and the manner for notice of same;
- (m) an order (i) scheduling a combined disclosure statement approval and plan confirmation hearing; (ii) establishing a plan and disclosure statement objection date and related procedures; (iii) approving solicitation and related procedures; (iv) approving the notice procedures; (v) approving notice and objection procedures for the assumption, assignment and rejection of executory contracts and unexpired leases; and (vi) extending the time, and upon confirmation, waiving the requirements that statements and schedules be filed and a creditors' meeting be convened; and
- (n) an order approving procedures for rights offering and related forms and authorizing the Debtors to conduct the rights offering in connection with the Debtors' joint plan of reorganization pursuant to Chapter 11,

provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in these proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada. Copies of the Foreign Orders are attached as Exhibits "C" to "P" to the Orlofsky Affidavit.

#### **APPOINTMENT OF INFORMATION OFFICER**

5. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. (the "**Information Officer**") is hereby appointed as an officer of this Court, with the powers and duties set out herein and in the Recognition Order.

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

6. THIS COURT ORDERS that, subject to paragraph 20, until such date as this Court may order (the "**Stay Period**") no proceeding or enforcement process in any court or tribunal in Canada (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtors or affecting their business (the "**Business**") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated

including all proceeds thereof (the "**Property**"), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors and affecting the Business in Canada, except with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as

may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

10. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at least once every three months with respect to the status of these proceedings and the status of the Foreign Proceeding, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals



as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;

- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceeding, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the

information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the relevant Debtors may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized to pay the accounts of the Information Officer and counsel for the Information Officer and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, retainers in the amounts of \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

18. THIS COURT ORDERS that the Information Officer and its legal counsel, if any, shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$300,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

#### **INTERIM FINANCING**

20. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the Post-Petition

Credit Agreement dated December 22, 2016 (as may be amended, supplemented or restated from time to time, the “**DIP Financing Agreement**”) and by the Interim Financing Order, provided however that the DIP Lender's Charge, with respect to the Property in Canada, shall have the priority set out in paragraphs 21 and 24 hereof and further provided that the DIP Lender's Charge shall not be enforced unless the DIP Lender delivers a Default Notice, as that term is defined in the U.S. Interim Financing Order, and otherwise complies with the procedure set out in paragraph 18 of the U.S. Interim Financing Order.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

21. THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – the Administration Charge to the maximum amount of \$300,000

Second – the DIP Lender's Charge.

22. THIS COURT ORDERS that notwithstanding any other provision of this Order or the Recognition Order:

- (a) the DIP Lender may, but is not required to, take such steps from time to time as it may deem necessary or appropriate to file, register, or record the DIP Lender's Charge or any of the related documents;
- (b) the DIP Lender may administer the DIP Financing in accordance with, and subject to, the terms and conditions of the DIP Financing Agreement and the Interim Financing Order;
- (c) upon the occurrence of an Event of Default (as defined in the DIP Financing Agreement), provided the DIP Lender is authorized to do so pursuant to the Interim Financing Order, and subject to any notice requirements in the Interim Financing Order, the DIP Lender may exercise its rights and remedies under the DIP Financing Agreement and the Interim Financing Order, subject to and in accordance with the terms and conditions thereof in respect of the Property of the Debtors located in Canada without further application to this Court;

- (d) the Debtors are hereby authorized and directed to make all such payments under the DIP Financing Agreement, including amounts under their pre-filing asset-based revolving credit facility (the "**Pre-Filing ABL Facility**") and interest thereon, and the lenders under the Pre-Filing ABL Facility shall be entitled to apply receipts and deposits (not including any deposits on account of any advances made under the DIP Financing Agreement) made to the Debtors' bank accounts in Canada against the indebtedness of the Debtors pursuant to the Pre-Filing ABL Facility whether such indebtedness arose before or after the date of this Order and for this purpose the operation of the blocked account agreements to which the Debtors are parties in connection with the Pre-Filing ABL Facility remain unaffected by this Order and the Recognition Order.

23. THIS COURT ORDERS that the filing, registration or perfection of the DIP Lender's Charge and the Administration Charge (together, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

24. THIS COURT ORDERS that the Charges (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

25. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Charges, unless the Debtors also obtain the prior written consent of the DIP Lender and the Information Officer.

26. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii)

any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors to the Chargees pursuant to this Order, the payments made under the Pre-Filing ABL Facility pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

27. THIS COURT ORDERS that any Charges created by this Order over leases of real property in Canada shall only be a charge in the applicable Debtor's interest in such real property leases.

#### **SERVICE AND NOTICE**

28. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil

Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL:

[www.alvarezandmarsal.com/modspace](http://www.alvarezandmarsal.com/modspace)

29. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

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

31. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.

32. 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 of America, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, 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 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or

desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

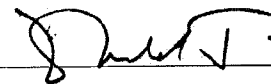
33. THIS COURT ORDERS that each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

34. THIS COURT ORDERS that the Guidelines for Court-to-Court Communications in Cross-Border Cases developed by the American Law Institute and attached as **Schedule "A"** hereto is adopted by this Court for the purposes of these recognition proceedings.

35. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer, the DIP Lender and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

36. THIS COURT ORDERS that, notwithstanding paragraph 35, no Order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the DIP Financing Agreement and the DIP Lender's Charge unless notice of a motion for such Order is served in accordance with paragraph 35 above and is returnable no later than the date of the hearing for the Final DIP Financing Order (as defined in the DIP Financing Agreement), or the Debtors, the Foreign Representative and the DIP Lender consent to such Order.

37. THIS COURT ORDERS that this Order shall be effective as of 10:00 AM on the date of this Order.



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LE / DANS LE REGISTRE NO:

DEC 27 2016

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**Schedule "A"**

**Guidelines for Court-to-Court Communications in Cross-Border Cases developed by the  
American Law Institute**



THE AMERICAN LAW INSTITUTE

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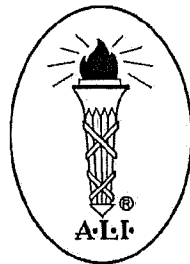
TRANSNATIONAL INSOLVENCY:  
COOPERATION AMONG  
THE NAFTA COUNTRIES

PRINCIPLES OF  
COOPERATION AMONG  
THE  
NAFTA COUNTRIES

**Guidelines Applicable to Court-to-Court Communications in  
Cross-Border Cases**

*As Adopted and Promulgated*  
BY  
THE AMERICAN LAW INSTITUTE  
AT WASHINGTON, D.C.

May 16, 2000



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**Guidelines**  
**Applicable to Court-to-Court Communications**  
**in Cross-Border Cases**

***Introduction:***

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States because of the very different rules governing communications with and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all of these Guidelines for communications by a *sindico* with foreign administrators or courts.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's

consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

#### **Guideline 1**

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

#### **Guideline 2**

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

#### **Guideline 3**

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

#### **Guideline 4**

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

#### **Guideline 5**

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and

should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

#### **Guideline 6**

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

#### **Guideline 7**

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties

in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

#### **Guideline 8**

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and
- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

#### **Guideline 9**

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.

- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

#### **Guideline 10**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

#### **Guideline 11**

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

#### **Guideline 12**

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction (“Non-Resident

Parties”). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

#### **Guideline 13**

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

#### **Guideline 14**

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

#### **Guideline 15**

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

#### **Guideline 16**

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.



### **Guideline 17**

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
PROCEEDINGS COMMENCED AT TORONTO

**SUPPLEMENTAL ORDER**

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Court File No.: CV-16-11656-00CL  
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

December 27, 2016

I am satisfied that the proceedings in Delaware are foreign proceedings, that the COMI of the Company is in the U.S. & thus the foreign proceedings are foreign main proceedings. The DIP loan order & its terms should be recognized and I am satisfied that the proceeds of the DIP loan taken down by the Canada debt will not be used to pay pre-filing debt. The administrator's charges is reasonable.

TOR01: 6621689: v1

to go.

25 Dec 16

ONTARIO

SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

APPLICATION RECORD  
(Returnable December 27, 2016)

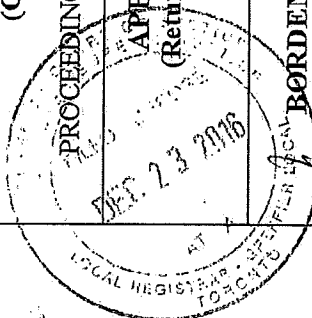
Volume 1 of 3

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# Tab B

THIS IS EXHIBIT "B" TO THE AFFIDAVIT  
OF DAVID ORLOFSKY SWORN BEFORE ME  
ON THIS 20 DAY OF JANUARY, 2017

Cecily Pereira  
A Notary Public for the State of New York

**Cecily Pereira**  
**Notary Public, State of New York**  
**No. 01FE6278148**  
**Qualified in New York County**  
**My Commission Expires March 8, 2017**



**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 MODULAR SPACE INTERMEDIATE HOLDINGS, INC.,  
MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE  
GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES  
CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS,  
INC. (THE "DEBTORS")**

**APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**AFFIDAVIT OF DAVID ORLOFSKY  
(Sworn December 23, 2016)**

**I, DAVID ORLOFSKY, of the City of Hoboken in the State of New Jersey, MAKE OATH  
AND SAY as follows:**

1. I am a Senior Managing Director of Zolfo Cooper LLP ("**Zolfo**"), financial advisor to Modular Space Corporation ("**MSC**") and various related companies, and as such have personal knowledge of the matters deposed to in this Affidavit, or where I do not possess such personal knowledge, I have stated the source of my information, and in all such cases I believe that both the information and the resulting statement to be true.
2. I have worked at Zolfo for over 17 years and have provided both interim management and advisory services to various clients in a variety of restructuring matters, including as the Chief Restructuring Officer and interim Chief Financial Officer of large companies in the course of their restructuring proceedings.
3. Since July 2016, I have served as financial advisor to MSC and related companies, Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., Resun Chippewa, LLC

(with MSC, collectively, the “**US Debtors**”) and ModSpace Financial Services Canada, Ltd. (“**ModSpace Canada**” and, together with the US Debtors, the “**ModSpace Group**”). In this capacity, I have worked closely with the ModSpace Group personnel, reviewed the ModSpace Group’s documents and become familiar with the ModSpace Group’s day-to-day operations, business affairs and books and records.

## **Introduction**

4. On December 21, 2016 (the “**Filing Date**”), the members of the ModSpace Group each filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 (“**Chapter 11**”) of the United States Code (the “**US Code**”) (collectively, the “**Petitions**” and each a “**Petition**”) with the United States Bankruptcy Court for the District of Delaware (the “**US Court**”). Attached hereto and marked as **Exhibit “A”** is a true copy of the filed Petitions. The ModSpace Group has requested that the Petitions be jointly administered for procedural purposes only.
5. I am not aware of any other insolvency proceedings involving the ModSpace Group other than the proceedings before the US Court commenced by the Petitions (the “**US Proceedings**”) and these proceedings.
6. In support of the Petitions, I caused to be filed with the US Court a declaration (the “**First Day Declaration**”). The First Day Declaration sets out in greater detail, among other things, the history of the ModSpace Group and the present challenges leading to the US Proceedings. Attached hereto and marked as **Exhibit “B”** is a true copy of the First Day Declaration.
7. As detailed below, the ModSpace Group has reached an agreement with its primary secured creditors for a pre-packaged plan that has been filed in the United States. The plan will involve a swap of approximately US\$400 million in secured debt in exchange for equity. Under the plan, Canadian unsecured creditors having valid claims will be unaffected and will receive payment in the ordinary course. To the extent Canadian creditors are not repaid in full during the course of these proceedings, their claims will remain due and owing following conclusion of the plan and exit from the restructuring

proceedings in the US and Canada. Disputed claims, in particular outstanding litigation claims, will not be paid in the ordinary course and will be stayed during the course of the US Proceedings.

8. This Affidavit is made in support of an application by MSC, in its capacity as foreign representative of the Debtors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), for an order granting certain relief, including, *inter alia*:
  - (a) abridging the time for service of the materials such that this application is properly returnable on December 28, 2016;
  - (b) declaring that MSC is a "foreign representative" as defined in section 45 of the CCAA in respect of the jointly administered insolvency proceedings;
  - (c) recognizing the US Proceedings under Chapter 11 of the US Code and declaring the US Proceedings as a foreign main proceeding with respect to each member of the ModSpace Group, including ModSpace Canada;
  - (d) recognizing and enforcing certain orders (as set out below) of the US Court made in the US Proceedings;
  - (a) staying all proceedings that might be taken against the ModSpace Group under the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended, or the *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, as amended;
  - (e) restraining further proceedings and any action, suit or proceeding against the ModSpace Group;
  - (f) prohibiting the commencement of any action, suit or proceeding against the ModSpace Group;
  - (g) granting the Court-ordered charges, namely the Administration Charge and the DIP Lenders Charge (as each is defined below); and



- (h) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer in these proceedings.

### **The First Day Motions**

- 9. As part of the first day motions (the “**First Day Motions**”) that were heard by the US Court on December 22 , 2016, the US Court made several orders (collectively, the “**First Day Orders**”). The First Day Orders made by the US Court include, *inter alia*:
  - (a) an order recognizing MSC as the foreign representative of the ModSpace Group, which is attached hereto and marked as **Exhibit “C”** (the “**Foreign Representative Order**”);
  - (b) an order permitting the joint administration of the Chapter 11 cases of the ModSpace Group in the US Proceedings, which is attached hereto and marked as **Exhibit “D”** (the “**Joint Administration Order**”);
  - (c) an order authorizing the ModSpace Group to pay pre-Petition wages, compensation and employee benefits which is attached hereto and marked as **Exhibit “E”** (the “**Wages Order**”);
  - (d) an interim order authorizing, but not directing, the ModSpace Group to maintain their existing bank accounts, cash management system and authorizing the continuation of (and administrative expense priority status of) intercompany transactions which is attached hereto and marked as **Exhibit “F”** (the “**Cash Management Order**”);
  - (e) an interim order: (i) approving post-Petition financing; (ii) granting liens and super-priority administrative expense claim status to pre-Petition secured parties; (iii) modifying the automatic stay; and (iv) scheduling the final hearing which is attached hereto and marked as **Exhibit “G”** (the “**DIP Financing Order**”);
  - (f) an order authorizing the ModSpace Group to retain Kurtzman Carson Consultants LLC (“**KCC**”) as Claims and Noticing Agent, *nunc pro tunc*, to the Filing Date which is attached hereto and marked as **Exhibit “H”** (the “**KCC Order**”);

- (g) an order authorizing the payment of pre-Petition taxes and fees which is attached hereto and marked as **Exhibit “I”** (the “**Taxes Order**”);
- (h) an interim order with respect to utilities providers: (i) approving the ModSpace Group’s form of adequate assurance of payment; (ii) establishing procedures to resolve objections by utility companies; and (iii) restraining utility companies from discontinuing, alternating or refusing service which is attached hereto and marked as **Exhibit “J”** (the “**Utilities Order**”);
- (i) an order: (i) confirming the enforcement and applicability of the automatic stay pursuant to Section 362 of the Code; and (ii) confirming the ModSpace Group’s authority with respect to post-Petition operations which is attached hereto and marked as **Exhibit “K”** (the “**Automatic Stay Order**”);
- (j) an interim order establishing notification procedures and approving restrictions on certain transfers of or claims for worthlessness with respect to equity securities which is attached hereto and marked as **Exhibit “L”** (the “**NOL Order**”);
- (k) an interim order authorizing the ModSpace Group to pay its pre-Petition unsecured creditors in the ordinary course of business which is attached hereto and marked as **Exhibit “M”** (the “**Unsecured Creditors Order**”);
- (l) an order establishing bar dates for filing proofs of claim, approving the form and manner for filing proofs of claim and the manner for notice of same which is attached hereto and marked as **Exhibit “N”** (the “**Claims Order**”);
- (m) an order (i) scheduling a combined disclosure statement approval and plan confirmation hearing; (ii) establishing a plan and disclosure statement objection date and related procedures; (iii) approving solicitation and related procedures; (iv) approving the notice procedures; (v) approving notice and objection procedures for the assumption, assignment and rejection of executory contracts and unexpired leases; and (vi) extending the time, and upon confirmation, waiving the requirements that statements and schedules be filed and a creditors’

meeting be convened which is attached hereto and marked as **Exhibit “O”** (the **“Solicitation Procedures Order”**); and

- (n) an order approving procedures for rights offering and related forms and authorizing the ModSpace Group to conduct the rights offering in connection with the ModSpace Group’s joint plan of reorganization pursuant to Chapter 11 which is attached hereto and marked as **Exhibit “P”** (the **“Rights Offering Procedures Order”**).

*Foreign Representative Order and the Joint Administration Order*

- 10. The US Court made the Foreign Representative Order appointing MSC as the foreign representative of the ModSpace Group to, among other things, seek recognition of the US Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the assistance of this Court in aiding and supporting the US Proceedings.
- 11. Pursuant to the Joint Administration Order, the US Court directed that the Chapter 11 cases of each member of the ModSpace Group would be administered jointly, including having one court file and one service list.
- 12. In granting the Foreign Representative Order and the Joint Administration Order, the US Court was satisfied that each order was necessary for the Chapter 11 proceedings and the efficient administration of the US Proceedings. MSC seeks recognition of the Foreign Representative Order and the Joint Administration Order so that these proceedings can be managed efficiently and in a manner consistent with the US Proceedings.

*Wages Order*

- 13. The US Court granted the Wages Order authorizing the ModSpace Group to, *inter alia*, pay pre-Petition wages and other amounts owed to its employees, to continue all employee benefit programs and to pay all withholding obligations as such obligations are due.

14. In granting the Wages Order, the US Court was satisfied that failure to make payments for these obligations to the ModSpace Group employees (and for withholdings related to those employees) would threaten the ModSpace Group's ability to operate and its efforts to restructure and to implement the restructuring plan. The US Court was further satisfied that authorizing payments of these amounts was a sound exercise of the ModSpace Group's business judgment.
15. MSC seeks recognition of the Wages Order from this Honourable Court to ensure that all ModSpace Group employees, and government entities receiving withholdings, are treated consistently.

***Cash Management Order***

16. The US Court made the Cash Management Order, which authorizes the ModSpace Group to continue to operate its existing cash management system (including maintaining existing bank accounts), to maintain its existing business forms (such as cheques), and to continue to perform intercompany transactions consistent with past practice.
17. In granting the Cash Management Order, the US Court was satisfied that the existing system was essential to the ModSpace Group's ongoing operations and restructuring efforts, and that there would be no prejudice to the ModSpace Group continuing to use pre-printed business forms without modification to identify the members of the ModSpace Group as debtors in possession.
18. The US Court was also satisfied that the intercompany transactions should continue because the system was largely automated, and if the intercompany transactions were discontinued, the existing cash management system and related administrative controls would be disrupted. In making the Cash Management Order, the US Court was further satisfied that disrupting the intercompany transactions would cause irreparable harm to the ModSpace Group.
19. MSC seeks recognition of the Cash Management Order from this Honourable Court to ensure that the ModSpace Group finances, which are highly integrated, can continue in

the ordinary course and to ensure the efficient administration of the ModSpace Group as it works to restructure and implement its restructuring plan.

***DIP Financing Order***

20. Pursuant to the DIP Financing Order:

- (a) the US Debtors were authorized to borrow up to US\$568,000,000, subject to a borrowing base and availability reserves, pursuant to a US revolving loan facility (with up to US\$55,000,000 of this amount available prior to entry of the final DIP Financing Order);
- (b) ModSpace Canada was authorized to borrow up to US\$200,000,000, subject to a borrowing base and availability reserves, pursuant to a Canadian revolving loan facility (with up to US\$6,000,000 of this amount available prior to entry of the final DIP Financing Order); and
- (c) the US Debtors were authorized to borrow, subject to the entry of the final DIP Financing Order, under a US term loan in the amount of the unpaid principal balance under the pre-Filing Date ABL Facility owed the U.S. Term Lender (as both terms are defined in the DIP Financing Order) pursuant to a US term loan in the amount of up to US\$26,257,000, with no funds available under this facility prior to entry of the final DIP Financing Order

(collectively the “**DIP Financing**”)

on such terms and conditions set out in the applicable post-petition credit agreement and related documents (collectively, the “**DIP Financing Documents**”).

21. The DIP Financing is being provided by a syndicate of lenders (the “**DIP Lenders**”) pursuant to the DIP Financing Documents. The DIP Lenders consist of the syndicate of lenders that provided the ModSpace Group with its pre-Petition financing. Taking into account the borrowing base and reserve requirements under the DIP Financing Documents, ModSpace Canada had approximately US\$8.5 million of availability under the DIP Financing as of the Filing Date.

22. Pursuant to the DIP Financing Documents, and consistent with the pre-Petition financing terms, the US Debtors guarantee the obligations of ModSpace Canada under the DIP Financing Documents, but ModSpace Canada does not guarantee the obligations of the US Debtors. Similarly, the assets of the US Debtors provide security to the DIP Lenders for the obligations of the US Debtors and ModSpace Canada, but the assets of ModSpace Canada provide security only for the obligations of ModSpace Canada.
23. The US Court also ordered that the DIP Financing be secured by security interests and liens in accordance with the US Code and that the amounts owed under the DIP Financing would constitute super-priority claims in priority to all other obligations and liabilities of the ModSpace Group.
24. The DIP Financing Order authorizes the US Debtors to use advances under the DIP Financing to repay pre-Petition amounts owed by them. However, ModSpace Canada is not authorized to use advances under the DIP Financing to repay pre-Petition amounts owed by it. The DIP Financing Order permits ModSpace Canada to use certain Cash Collateral (as that term is defined in the DIP Financing Order) to repay pre-Petition amounts owed by it. The DIP Financing Documents provide that proceeds of Accounts or Rental Equipment (as each is defined in the DIP Financing Documents) shall first be applied as set out in the DIP Financing Order (as above) until all pre-Petition amounts owed by ModSpace Canada have been repaid, before being applied to the obligations of ModSpace Canada under the DIP Financing.
25. Pursuant to the terms of the DIP Financing Documents, the ModSpace Canada portion of the DIP Financing funded in Canadian dollars will incur interest on the unpaid principal, from the date made until paid in cash at the “Canadian Prime Rate” (or “Canadian BA Rate”, if selected by ModSpace Canada) plus 3.5% (or 4.5% if the “Canadian BA Rate” was selected). The ModSpace Canada portion of the DIP Financing funded in US dollars will incur interest on the unpaid principal from the date made until paid in cash at a rate per annum equal to the “Canadian Base Rate” (or the “LIBOR Rate”, if selected by ModSpace Canada), plus 3.5% (or 4.5% if the “LIBOR Rate” was selected). If an “Event

of Default” (as defined in the DIP Financing Documents) exists under the DIP Financing Documents, the interest rate is increased by 2% over the rate that would otherwise apply.

26. Based on my experience in restructuring matters, and the other efforts made by the ModSpace Group with respect to financing (further details of which are set out below), I believe that these costs and fees are market for similar levels of financing in similar circumstances.
27. Since the reorganization plan is a pre-packaged restructuring, the DIP Lenders are providing a robust financing package, including the DIP Facilities and exit facilities under a fully consensual restructuring and reorganization deal in an expedited manner. All of the affected parties have considered the terms of the DIP Financing, including its pricing and terms, and found that they are reasonable and in line with the market. Based on my experience in restructuring matters, and my discussions with representatives of the ModSpace Group, I believe that no other alternatives available would achieve this level of financing at this pricing within the time period anticipated for this restructuring and exit.
28. The ModSpace Group explored alternative sources of interim financing, including considering a proposal submitted by the Ad Hoc Group of Noteholders (as defined below). This alternative structure would have been more expensive and since the ABL Lenders were opposed to this financing approach, it likely would have led to at least some litigation (particularly regarding the use of cash collateral, among other potential issues, including the ABL Lenders opposing priming charges). Further, this alternative structure did not include exit financing.
29. In the ordinary course of business, the ModSpace Group, and most of its competitors, use asset-based loans (“ABL”) to finance their working capital needs, both because their assets are high value and because ABL provide a less expensive source of funding. The ModSpace Group’s business plan is based on this lower cost of capital. Accordingly, the financing options available to the ModSpace Group are effectively limited to commercial banks with an ABL component. The DIP Financing is being provided by a syndicate of 13 lenders, most of whom are typical ABL lenders to the modular space industry,

including the three largest lenders (Bank of America, Wells Fargo and JP Morgan). Since this is a large facility, any alternate structure would be widely syndicated, likely to many of the same lenders, such that any alternate financing is likely to be comprised of the same lenders and made on similar terms.

30. Finally, in the summer of 2016, the ModSpace Group was exploring a potential merger. In the course of those discussions, it received financing proposals. While those proposals were for different deals, based on the terms and prices obtained in the course of those discussions, and my experience in restructuring matters, I believe that the pricing and cost of the DIP Financing is reasonable and in line with market pricing and terms.
31. The US Court was satisfied that the DIP Financing Order was necessary to permit the orderly continuation and operation of the ModSpace Group, to maintain business relationships and satisfy its business and operational needs (including payroll and other expenses incurred in the ordinary course of business) and to fund the administration of the US Proceedings and the ModSpace Group's efforts to restructure and implement the restructuring plan.
32. The US Court was also satisfied that the ModSpace Group would not be able to obtain financing on more favourable terms and would not be able to obtain adequate unsecured credit under the US Code.
33. The US Court was further satisfied that the DIP Financing was a sound exercise of the ModSpace Group's business judgment.
34. MSC seeks recognition of the DIP Financing Order from this Honourable Court, and submits that such recognition is necessary to ensure the financing remains available and that the ModSpace Group can meet its obligations and continue its efforts to restructure and to implement the restructuring plan. The DIP Financing is an important component of the pre-packaged restructuring agreed upon by the ModSpace Group and its primary financial stakeholders.



### *KCC Order*

35. Pursuant to the KCC Order, the US Court appointed KCC as claims and noticing agent for the ModSpace Group in order to administer the claims of the ModSpace Group's creditors.
36. In making the KCC Order, the US Court determined that the appointment of KCC as claims and noticing agent was reasonable and appropriate to ensure the efficient and effective administration and determination of claims against the ModSpace Group.
37. MSC seeks recognition of the KCC Order from this Honourable Court to ensure consistency in the administration of these proceedings and the US Proceedings. However, MSC does not propose that the role of KCC supplant or replace the proposed role of A&M as information officer in these proceedings.

### *Taxes Order*

38. Pursuant to the Taxes Order, the US Court authorized the ModSpace Group, in its discretion, to pay any pre-Petition taxes and fees owed to various taxation authorities. The Taxes Order includes the Canada Revenue Agency, 8 taxation authorities (municipal and Provincial) throughout Canada and 9 worker's compensation divisions (the specific entities are listed at Exhibit A to the Taxes Order). The Taxes Order does not contemplate staying or reducing the amounts owed to any of the taxation authorities (other than the ModSpace Group's ordinary rights to contest the amounts).
39. In making the Taxes Order, the US Court determined that it was appropriate and necessary for the ModSpace Group to have discretion to pay pre-Petition taxes and fees to facilitate its continued operations and avoid potential disruptions to the ModSpace Group's operations.
40. MSC seeks recognition of the Taxes Order from this Honourable Court, and submits that such recognition is necessary to ensure the efficient and consistent administration of the ModSpace Group's operations and stability throughout its efforts to restructure and to implement the restructuring plan. MSC also seeks recognition of the Taxes Order from

this Honourable Court to ensure that Canadian taxation authorities are treated consistently with the US taxation authorities.

*Utilities Order*

41. Pursuant to the Utilities Order, the US Court approved adequate assurance of payment for certain utility providers, establishing procedures for resolving claims by utility providers and prohibiting the utility providers from terminating service solely on the basis of the commencement of the US Proceedings. The Utilities Order includes 39 Canadian utilities providers (listed at Schedule 1 to the Utilities Order).
42. Pursuant to the Utilities Order, the ModSpace Group will create a segregated account for utilities for the benefit of all of the utilities companies listed on the Utilities Order (including the Canadian providers).
43. In making the Utilities Order, the US Court was satisfied that continued service was reasonable, appropriate and necessary to maintain the ModSpace Group's operations while it continues its efforts to restructure and to implement the restructuring plan.
44. MSC seeks recognition of the Utilities Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings. MSC also seeks recognition of the Utilities Order from this Honourable Court to ensure Canadian utilities providers are treated consistently with the US utilities providers.

*Automatic Stay Order*

45. Pursuant to the Automatic Stay Order, the US Court enforced and restated the automatic stay of the US Code and the ModSpace Group's right to continue operations, including authorization to satisfy all ordinary course business obligations incurred after the Filing Date.
46. In making the Automatic Stay Order, the US Court determined that enforcing and restating the stay provisions of the US Code was appropriate and necessary to maintain

the ModSpace Group's operations while it continues its efforts to restructure and to implement the restructuring plan.

47. MSC seeks recognition of the Automatic Stay Order from this Honourable Court and submits that such recognition is necessary to ensure consistency between these proceedings and the US Proceedings.

***NOL Order***

48. Pursuant to the NOL Order, the US Court, *inter alia*, established notification procedures and approved restrictions on certain transfers of (or declarations of worthlessness for US federal or state tax purposes with respect to) equity securities of Modular Space Holdings, Inc. ("**Holdings**"). In particular,
- (a) each "Substantial Equityholder",<sup>1</sup> except as set out in the NOL Order, must serve Holdings with a notice setting out the amount of stock of which it has tax ownership;
  - (b) any entity that is not, as of the Filing Date, a Substantial Equityholder that wishes to purchase stock must deliver a notice regarding the proposed acquisition;
  - (c) any Substantial Equityholder that wishes to purchase additional stock must deliver a notice regarding the proposed acquisition;
  - (d) any Substantial Equityholder that wishes to sell stock must deliver a notice regarding the proposed sale; and
  - (e) if the ModSpace Group does not file an objection to the proposed acquisitions or transfers set out at subparagraphs (b), (c) and (d) above within 21 days, the transaction may proceed. If the ModSpace Group files an objection, the transaction will be subject to approval from the US Court.

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<sup>1</sup> Defined in the NOL Order as an entity with tax ownership of at least 1,015,735 shares of Class A Stock representing approximately 4.75% of the issued and outstanding shares of Class A Stock or at least 166,208 shares of Common Stock, representing approximately 4.75 of the issued and outstanding shares of Common Stock.

49. Similarly, parties wishing to make a declaration of worthlessness for tax purposes must deliver notices in accordance with the NOL Order, to which the ModSpace Group will have 30 days to object before the declaration of worthlessness can become effective. If the ModSpace Group objects, the declaration of worthlessness will not be permitted without further order of the US Court.
50. In making the NOL Order, the US Court determined that unrestricted trading of the Holdings equity securities could limit the ModSpace Group's ability to restructure and to implement the restructuring plan (by limiting the ModSpace's Group's ability to use its tax benefits, including net operating losses) and that, accordingly, establishing procedures and restrictions was reasonable in the circumstances. The restrictions and notification procedures are not an injunction on trading, but rather designed to monitor trading and to allow the ModSpace Group to assess the impact trading may have on its tax attributes.
51. Since ModSpace Canada is a wholly owned subsidiary, and Holdings does not have any presence in Canada, the NOL Order does not affect ModSpace Canada or its stakeholders.

*Unsecured Creditors Order*

52. Pursuant to the Unsecured Creditors Order, the US Court authorized, but did not direct, the ModSpace Group to pay their general unsecured creditors for pre-Petition claims in the ordinary course of business. Under the Unsecured Creditors Order, the ModSpace Group is permitted to pay the unsecured creditors with undisputed claims in accordance with their pre-existing payment terms and timelines (subject to the terms of the DIP Financing Order and the DIP Financing Documents). This is a vital aspect of the restructuring as all creditors with valid claims are being treated as unaffected and paid in the ordinary course.
53. In making the Unsecured Creditors Order, the US Court was satisfied that potential payment of the ModSpace Group's unsecured creditors was reasonable in the circumstances, in particular in light of the pre-packaged plan of reorganization which provides for payment in full of all unsecured creditors. The US Court was also satisfied

that it was appropriate and necessary to authorize payment of pre-Petition unsecured claims.

***Claims Order***

54. Pursuant to the Claims Order, the US Court approved timelines and procedures for the filing and assessment of claims against Holdings and Intermediate. In particular, the Claims Order established a deadline of 4:00pm (Eastern Time) on January 18, 2017 for general unsecured claims (other than government entities) and 4:00 pm (Eastern Time) on June 26, 2017 for government creditors.
55. The claims of certain entities and parties were excluded from application of the Claims Order, including the ABL Lenders (as defined in the First Day Declaration), the holders of Secured Notes (as defined below), creditors of Holdings pursuant to an Agreement of Indemnity dated February 12, 2012 and pursuant to an Amended and Restated Management Agreement dated March 30, 2007, claims for reimbursement under the restructuring and support agreement dated December 20, 2016 (the “RSA”) (described in further detail below), claims of directors of Holdings or Modular Space Intermediate Holdings, Inc. (“**Intermediate**”) with respect to claims related to insurance or indemnity and any claims by other members of the ModSpace Group against Holdings or Intermediate. There are no known creditors in Canada that are excluded from the Unsecured Creditors Order.
56. The Claims Order does not establish any claims deadlines or bar dates for creditors of ModSpace Canada. Holdings and Intermediate have no known creditors in Canada.

***Solicitation Procedures Order***

57. Pursuant to the Solicitation Procedures Order, the US Court:
  - (a) scheduled a combined hearing on the adequacy of the ModSpace Group’s disclosure statement (the “**Disclosure Statement**”) and confirmation of its pre-packaged Chapter 11 plan (the “**Plan**”) for February 7, 2017;

- (b) established a deadline of January 25, 2017 for objections as to the adequacy of the Disclosure Statement and confirmation of the Plan;
- (c) approved the solicitation procedures for votes to accept the Plan and procedures for tabulating the votes;
- (d) approved the form and manner of notice for the hearing to confirm the Plan;
- (e) approved notice and objection procedures for the assumption, assignment and rejection of executory contracts and unexpired leases; and
- (f) provided that:
  - (i) the deadline to file schedules of assets and liabilities and statements of financial affairs shall be extended March 6, 2017 (and that if the Plan is confirmed by March 6, 2017, such filings are not required); and
  - (ii) the meeting of creditors shall not be convened until March 6, 2017 (and that if the Plan is confirmed by March 6, 2017, such a meeting is not required).

58. Prior to the Filing Date, the ModSpace Group began soliciting votes for approval of the Plan and providing notice of the hearing for the Disclosure Statement and confirmation of the Plan under the terms set out in the Solicitation Procedures Order.

59. In making the Solicitation Procedures Order, the US Court conditionally approved the Disclosure Statement as providing adequate information under the US Code, and that the Solicitation Procedures Order was in the best interests of the ModSpace Group, their creditors and other stakeholders.

***Rights Offering Procedure Order***

60. Pursuant to the Rights Offering Procedure Order, the US Court approved various procedures for the conduct of, and participation in, the Rights Offering (as defined below). In particular:

- (a) the Rights Offering will begin January 11, 2017 and will expire on February 8, 2017 (the “**Exercise Period**”); and
- (b) payments made pursuant to the Rights Offering are to be held in a segregated account, and if the Rights Offering is not consummated, the funds returned, without interest, after the earlier of February 23, 2017 or the date the ModSpace Group announces it is no longer pursuing the Rights Offering.

- 61. The Rights Offering is a critical component of the ModSpace Group’s pre-packaged restructuring plan, as set out below, and the procedures set out in the Rights Offering Procedures Order ensure that the ModSpace Group can meet the timelines and requirements under the RSA and the restructuring plan.
- 62. In making the Rights Offering Procedure Order, the US Court determined that the Exercise Period was a reasonable period of time for the holders of Secured Notes to make a decision as to whether to participate in the Rights Offering or not.

#### **The Business of the ModSpace Group**

- 63. The ModSpace Group provides a range of building products, including office trailers, classrooms, portable storage units and other modular units and construction projects. The ModSpace Group works with a range of industries, including commercial, construction, education, government, healthcare, industrial, energy, franchise and retail and sports and entertainment. ModSpace Canada’s operations have been adversely affected by the price of oil, which has reduced the need for its products, which are frequently used in oil and gas projects.
- 64. Further details of the history and business of the ModSpace Group (including the circumstances leading to the Chapter 11 Petitions) are set out in the First Day Declaration.

#### **Corporate Structure of the ModSpace Group**

- 65. Details of the ModSpace Group, their incorporating jurisdiction and the location of their head office are as follows:

<b>Name</b>	<b>Jurisdiction of Registered Office</b>	<b>Location of Head Office/Headquarters</b>
Modular Space Holdings, Inc.	Delaware	Berwyn, Pennsylvania
Modular Space Intermediate Holdings, Inc.	Delaware	Berwyn, Pennsylvania
Modular Space Corporation	Delaware	Berwyn, Pennsylvania
Resun ModSpace, Inc.	Delaware	Berwyn, Pennsylvania
ModSpace Government Financial Services, Inc.	Delaware	Berwyn, Pennsylvania
ModSpace Financial Services Canada, Ltd.	Alberta	Berwyn, Pennsylvania
Resun Chippewa, LLC	Delaware	Berwyn, Pennsylvania

66. Further details of the corporate structure of the ModSpace Group, including an organization chart and the ownership structure are set out in the First Day Declaration.

### **Centre of Main Interest**

#### *The US Debtors*

67. The ModSpace Group's operations are based in the United States.
68. The US Debtors each have their registered office and conduct all operations in the United States. The US Debtors have no assets or operations in Canada and the US Debtors have no Canadian creditors or employees.
69. All material decisions with respect to business and operations of the US Debtors are directed by management located in the United States (in particular, the head office in Berwyn, Pennsylvania), including without limitation, all decisions regarding administration, finances, human resources, strategic planning, management, communication and accounting.



*ModSpace Canada*

70. ModSpace Canada has its registered and records office in Calgary, Alberta. Attached hereto and marked as **Exhibit “Q”** is a true copy of the Alberta Corporate Registry search for ModSpace Canada, obtained from the Alberta Corporate Registry on or about December 20, 2016.
71. ModSpace Canada is also extra-provincially registered in Ontario, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Manitoba, Saskatchewan and British Columbia.
72. One of ModSpace Canada’s two directors, Paul A. D. Mingay, is a resident of Toronto, Ontario and a partner with Borden Ladner Gervais LLP (“**BLG**”), Canadian counsel to the ModSpace Group, and the other director is a resident of Berwyn, Pennsylvania.
73. In the twelve months ended September 30, 2016, the ModSpace Canada represented approximately 14% of the ModSpace Group’s consolidated revenue and approximately 21% of the ModSpace Group’s total adjusted EBITDA. Based on the consolidated financial statements ended September 30, 2015 (as described below and attached as Exhibit S), the ModSpace Group consolidated revenue for that period was approximately \$454 million, with ModSpace Canada representing approximately \$94 million (21% of revenue) over that period.
74. Based on the audited and consolidated financial statements of the ModSpace Group prepared by PricewaterhouseCoopers dated January 13, 2016, I verily believe that as of September 30, 2015, the assets of ModSpace Canada represented approximately 20% of the ModSpace Group’s total assets and the liabilities of ModSpace Canada represented approximately 13% of the ModSpace Group’s total liabilities.
75. The Canadian assets and operations of ModSpace Canada can be summarized as follows:
  - (a) Attached hereto and marked as **Exhibit “R”** is a diagram of the ModSpace Group’s cash management system. ModSpace Canada maintains the following Canadian bank accounts:

- (i) one account (the “**Canada Receipts Account**”) with the Royal Bank of Canada (“**RBC**”), which receives payments from customers and carries an incremental cash balance at the end of each day (as it is swept by transfer daily with the funds applied to the outstanding balance of ModSpace Canada’s pre-Filing Date revolving loan facility). As of December 20, 2016, the Canada Receipts Account had a balance of CDN\$10,000;
  - (ii) one account with RBC which is used for payments to trade creditors and general funding disbursements, which is funded daily based on liquidity needs (the “**Funding Account**”) which, as of December 20, 2016, had a balance of CDN\$1,400,000;
  - (iii) three accounts with RBC, which are zero balance accounts funded for specific disbursements (one for employee reimbursements for travel and lodging expenses, one for employee benefit claims, payroll taxes and company credit cards and one for accounts payable such as vendor payments) which are credited directly from the Canadian Funding Account; and
  - (iv) two US dollar accounts with RBC, which as of December 20, 2016, collectively had balance of approximately US\$200,000 (one of the two is a zero balance account funded by the other);
- (b) it also maintains a US dollar bank account with the Bank of America (“**BofA**”) in Atlanta, Georgia which is used for general corporate purposes and which had a zero balance as of December 20, 2016;
- (c) it operates the 15 Canadian branch and service centre locations, which are located in Chilliwack, British Columbia, Prince George, British Columbia, Airdrie, Alberta, Edmonton, Alberta, Saskatoon, Saskatchewan, two locations in Regina, Saskatchewan, Winnipeg, Manitoba, Sarnia, Ontario, Brampton, Ontario, Ottawa, Ontario, Ville De Chateauguay, Quebec, St. Romauld, Quebec, Dartmouth, Nova Scotia and St. Johns/Paradise, Newfoundland;

- (d) it operates five storage centres, which are located in Edmonton, Alberta (two storage locations), Saskatoon, Saskatchewan, Prince George, British Columbia and Blaketown, Nova Scotia;
- (e) it owns ten properties for branch and service centre locations in Canada (two located in Alberta, one located in Saskatchewan, one located in Manitoba, one located in British Columbia, two located in Quebec, two located in Ontario and one located in Nova Scotia);
- (f) it is a party to ten real property leases for branch, service centre and storage property locations in Canada (three located in Alberta, two located in Saskatchewan, two located in British Columbia, two located in Newfoundland, and one located in Ontario);
- (g) it owns the ModSpace Group assets (i.e. modular units) that are located in Canada, excluding goodwill, accounts receivable and cash, valued at approximately US\$190 million; and
- (h) it employs 60 Canadian employees (59 salaried employees and one hourly employee). The Canadian employees are located throughout Canada at ModSpace Canada's branch and service centre locations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland.

76. None of the ModSpace Canada employees are members of any unions.

77. ModSpace Canada administers a defined contribution pension plan for its employees (the "DCPP"), whereby eligible employees are permitted to set aside a portion of their earnings in certain investments. ModSpace Canada automatically contributes 2% of an employee's total compensation each pay period, regardless of the employee's contributions, and will match 50 cents on the dollar of employee contributions up to 4% (in total ModSpace Canada contributions). Matching contributions vest automatically. Sun Life Assurance Company of Canada is the plan provider.

78. On average, ModSpace Canada withholds approximately US\$12,243 each month for employees participating in the DCP, and contributes approximately US\$12,145 each month in matching contributions.
79. As of the Filing Date, there were no outstanding amounts owed in withholdings or matching contributions under the DCP. As part of the First Day Motions, the ModSpace Group received authorization to continue the DCP in the ordinary course.
80. As of December 20, 2016, ModSpace Canada owed approximately US\$100,000 to its employees for commissions earned but unpaid. Pursuant to the Wages Order, the ModSpace Group received approval from the US Court to pay the outstanding commissions and ModSpace Canada anticipates paying these commissions in the ordinary course of business.
81. Any amounts owed to any ModSpace Canada employees, including for vacation pay, severance pay, reimbursements for expenses and disbursements (including housing expenses) are expected to be paid in the ordinary course in accordance with the Wages Order.
82. ModSpace Canada also has assets located in the United States, including the bank account with BofA, referred to above, and certain modular units.
83. Each ModSpace Canada branch office has a regional sales staff and administrative staff. Each ModSpace Canada service centre employs maintenance personnel responsible for site installation, preventive maintenance, cleaning, repairs, refurbishment, delivery and pick-up. However, a significant portion of these tasks are outsourced to subcontractors. The services and functions of the ModSpace Canada storage locations are fully outsourced.
84. ModSpace Canada is a wholly owned subsidiary of MSC. MSC oversees the operations of ModSpace Canada and provides significant direction to and oversight of ModSpace Canada's operations and assets.

85. ModSpace Canada's head office is located in Berwyn, Pennsylvania, although ModSpace Canada has limited management personnel located at an office in Brampton, Ontario. ModSpace Canada has a Senior Vice President (the "SVP"). The SVP is considered a senior executive of ModSpace Canada and the ModSpace Group. ModSpace Canada had previously had a Human Resources Manager based in Brampton, Ontario, but this role was eliminated in early December 2016.
86. The SVP based in Brampton, Ontario is responsible for day-to-day sales, operations and administrative functions in Canada. The SVP also prepares the budget for ModSpace Canada. The SVP reports directly to the Chief Executive Officer and the Chief Financial Officer of MSC based in Berwyn, Pennsylvania. All strategic, financial and corporate decisions (including the budget for ModSpace Canada) are subject to approval of the Chief Executive Officer and Chief Financial Officer of MSC based in Berwyn, Pennsylvania. The SVP's compensation (through bonuses) is based on the overall financial performance of the ModSpace Group.
87. Since early December 2016, all human resources functions for ModSpace Canada have been managed and directed from Berwyn, Pennsylvania, under the direction of the Vice President of Human Resources of MSC.
88. All of ModSpace Canada's treasury and financial decisions, including borrowing and setting prices are made by the Chief Financial Officer of MSC based in Berwyn, Pennsylvania. All Canadian locations provide financial data and information to the head office in Berwyn, Pennsylvania, which consolidates the information and uses it to make these financial decisions.
89. All of ModSpace Canada's strategic decisions are made by the SVP, in conjunction with the Chief Executive Officer and the Chief Financial Officer of MSC based in Berwyn, Pennsylvania. The Chief Executive Officer and Chief Financial Officer of MSC rely on the expertise of the SVP, and give deference to the SVP's opinion, but the ultimate and final decisions are made by the Chief Executive Officer and the Chief Financial Officer of MSC.

90. All accounts payable and accounts receivable (including collections) are managed from the ModSpace Group head office in Berwyn, Pennsylvania.

*ModSpace Canada is fully integrated in the US management of the ModSpace Group*

91. The ModSpace Group operations, including ModSpace Canada, are highly integrated, and all corporate decisions are made in Berwyn, Pennsylvania by MSC on behalf of the ModSpace Group (including ModSpace Canada).
92. Other than the SVP, all of the senior management of the ModSpace Group, including ModSpace Canada, are resident in the United States. The SVP is based in Brampton, Ontario. As noted above, the SVP reports to and takes direction from the ModSpace Group Chief Executive Officer and Chief Financial Officer based in Berwyn, Pennsylvania.
93. The marketing of the ModSpace Group, including ModSpace Canada, is directed by an eight-person marketing team based in MSC's head office in Berwyn, Pennsylvania. The marketing team is responsible for promoting the ModSpace Group brand (including ModSpace Canada), generating sales leads and supporting sales efforts by producing point-of-sale materials. ModSpace Canada has no marketing personnel or employees outside the marketing team based in Berwyn, Pennsylvania.
94. All information technology ("IT") services for ModSpace Canada are provided from the ModSpace Group's head office in Berwyn, Pennsylvania. ModSpace Canada has no IT personnel or employees outside the IT team based in Berwyn, Pennsylvania.
95. The ModSpace Group employs an internal general counsel, based in Berwyn, Pennsylvania, who acts for and advises all members of the group, including ModSpace Canada.
96. The cash management system of ModSpace Canada is fully integrated with the ModSpace Group and is based in Berwyn, Pennsylvania.
97. All of ModSpace Canada's asset management, capital expenditure and planning decisions are made by the Chief Financial Officer of MSC based in Berwyn, Pennsylvania. Such

decisions are made with input from the Canadian branch locations, but all final determinations are made by MSC at the ModSpace Group head office in Berwyn, Pennsylvania.

98. As noted above, the majority of the ModSpace Canada bank accounts are zero-balance accounts funded based on anticipated liquidity needs. The determination of funding for the ModSpace Canada bank accounts is made by the controller of the ModSpace Group based in Berwyn, Pennsylvania. Accordingly, ModSpace Canada is wholly dependent on the ModSpace Group for its funding requirements.
99. As noted in the First Day Declaration, the ABL Facility is a global credit facility for the ModSpace Group, including ModSpace Canada. The ABL Facility made available a US dollar facility for the US Debtors and a Canadian dollar and US dollar facility for ModSpace Canada. Under the ABL Facility, certain of the US Debtors guarantee the obligations of ModSpace Canada, but ModSpace Canada does not guarantee the obligations of any of the US Debtors. Similarly, the assets of the US Debtors provide security to the lenders under the ABL Facility for the obligations of the US Debtors and ModSpace Canada, but the assets of ModSpace Canada provide security only for the obligations of ModSpace Canada.
100. The ABL Facility is administered by the ModSpace Group finance department based in Berwyn, Pennsylvania.
101. Based on the forgoing, I verily believe that the ModSpace Group, including ModSpace Canada, is managed from Berwyn, Pennsylvania from a corporate, strategic and management perspective and that significant creditors would recognize Berwyn, Pennsylvania as the centre of ModSpace Canada's operations.

### **Intercompany Transactions**

102. In light of the integrated and consolidated nature of the ModSpace Group, MSC makes a number of payments on behalf of the US Debtors that do not have bank accounts. Those US Debtors perform intercompany transactions to reimburse MSC. Similarly, ModSpace Canada benefits from services performed by MSC on behalf of ModSpace Canada and

the US Debtors (other than Holdings and Intermediate) guarantee of the ModSpace Canada obligations under the ABL Facility (as defined in the First Day Declaration). Accordingly, ModSpace Canada pays a monthly management fee and guarantor fee (together, the “**Management Fees**”).

103. The Management Fees are approximately US\$600,000 per month, and are not subject to tax. The Management Fees, when paid, are applied against the outstanding balance on the ABL Facility.
104. All intercompany transactions are booked by the ModSpace Group head office in Berwyn, Pennsylvania.
105. The ModSpace Group expects that such intercompany transactions, including the monthly management and guarantor fee from ModSpace Canada to MSC, will continue in the ordinary course of business. Based on my review of the ModSpace Group’s books and records, I verily believe that such intercompany transactions (including the Management Fee) are reasonable and necessary in the circumstances, and that the ModSpace Group’s operations would be irreparably harmed if such transactions were prohibited. The Cash Management Order specifically authorizes and approves the continuation of intercompany transactions, including payment of the Management Fee, in the ordinary course of business.

*August 2016 Loan Payment*

106. In June 2008, MSC, as lender, and ModSpace Canada, as borrower, entered into an agreement for MSC to provide ModSpace Canada with a revolving credit facility of CDN\$250,000,000. This agreement was set to expire on June 20, 2018. In August 2016, ModSpace Canada repaid this facility in full (approximately US\$2.1 million or CDN\$2.8 million) in order to provide liquidity to MSC and the US Debtors. As of December 20, 2016, the balance of this facility remained zero (although the facility remains open).



### *Other Intercompany Transactions*

107. Other than the MSC loan, which was repaid in the summer of 2016, and the monthly management and guarantor fees paid by ModSpace Canada to MSC, there are no intercompany transactions involving ModSpace Canada.

### **ModSpace Canada's Finances**

108. In the twelve months ended September 30, 2016, the ModSpace Canada represented approximately 14% of the ModSpace Group's consolidated revenue and approximately 21% of the ModSpace Group's total adjusted EBITDA. Based on the consolidated financial statements ended September 30, 2015 (as described below and attached as Exhibit S), the ModSpace Group consolidated revenue for that period was approximately \$454 million, with ModSpace Canada representing approximately \$94 million (21% of revenue) over that period.
109. Attached hereto and marked as **Exhibit "S"** is a true copy of the consolidated financial statements ended September 30, 2015 for Holdings and its subsidiaries, including MSC and ModSpace Canada. There is no separate reporting of ModSpace Canada's results and finances, except to the extent aspects of the attached consolidated statements include the figures for various subsidiaries, including ModSpace Canada.
110. Attached hereto and marked as **Exhibit "T"** is a true copy of the cash flow and budget for the ModSpace Group (on a consolidated basis) during the restructuring proceedings, along with the cash flow and budget for ModSpace Canada alone.

### **ModSpace Group's Creditors**

111. As noted above and in the First Day Declaration, the ABL Facility is a global credit facility for the ModSpace Group. Accordingly, a significant creditor of the ModSpace Group is common to all members of the group, including ModSpace Canada. However, there is otherwise little overlap between the creditors of ModSpace Canada and the creditors of the ModSpace Group.

112. ModSpace Canada owes approximately US\$60.1 million to the ABL Lenders (as defined in the First Day Declaration), the primary secured creditors of the ModSpace Group. The US Debtors owe the ABL Lenders approximately US\$533 million.
113. If the ABL Lenders were to require repayment in full of the amounts owed by ModSpace Canada (approximately US\$60.1 million), ModSpace Canada would be unable to repay the full amount owed.
114. The ModSpace Group and its creditors, including the ABL Lenders, have entered into an agreement for a restructuring of the ModSpace Group's operations, including ModSpace Canada. The participation of ModSpace Canada is an important component of this consensual restructuring and pre-packaged restructuring plan that will allow the entire ModSpace Group to restructure and continue its operations.
115. The US Debtors are guarantors under the Secured Notes, but ModSpace Canada has not issued any guarantees with respect to the Secured Notes.
116. Other than the lenders under the ABL Facility, ModSpace Canada has a limited number of secured creditors.
  - (a) As shown on the PPR Searches (as defined below), ModSpace Canada is subject to security interest registrations in favour of PHH Vehicle Management Services Inc. and Element Fleet Management Inc. Although there are registrations in favour of PHH Vehicle Management Services Inc. and Element Fleet Management Inc., all amounts owed to these companies have been paid as of the Filing Date; and
  - (b) ModSpace Canada leases forklifts from Pitney Bowes Global Financial Services ("PBG"), and owes approximately US\$95 under those leases. ModSpace Canada expects to pay PBG in the ordinary course of business throughout these proceedings.
117. ModSpace Canada has approximately 260 unsecured creditors that are owed approximately US\$1.2 million. These include approximately US\$320,000 to

manufacturers and equipment providers, approximately US\$20,000 to shippers and approximately US\$820,000 to maintenance, refurbishment and construction service providers.

118. The US Debtors are also indebted pursuant to Secured Notes (as defined in the First Day Declaration). The Secured Notes are secured, in part, by a pledge of the stock of ModSpace Canada.
119. The ModSpace Canada Canadian creditors are to be paid in the ordinary course of business in accordance with the Unsecured Creditors Order. Some of ModSpace Canada's unsecured creditors may have their claims reinstated so that their debt and obligation will be owed by the reorganized entity following completion of the restructuring plan. No Canadian creditors or creditors of ModSpace Canada will have their claims extinguished or expunged as part of the restructuring plan.

#### **Environmental Claims**

120. Based on the nature of the ModSpace Group's assets and operations, there are no known or expected environmental claims or issues.

#### **Searches**

121. I am advised by Roger Jaipargas, a partner with BLG, and do verily believe, that searches were conducted of the personal property registries for ModSpace Canada (each, a "**PPR Search**" and collectively, the "**PPR Searches**") for each of the Provinces in which ModSpace Canada is registered. In particular:
  - (a) Attached hereto and marked as **Exhibit "U"** is a true copy of the Quebec PPR Search as of December 1, 2016;
  - (b) Attached hereto and marked as **Exhibit "V"** is a true copy of the Alberta PPR Search as of December 12, 2016;
  - (c) Attached hereto and marked as **Exhibit "W"** is a true copy of the Ontario PPR Search dated December 13, 2016, current December 12, 2016;

- (d) Attached hereto and marked as **Exhibit "X"** is a true copy of the Nova Scotia PPR Search as of December 13, 2016;
- (e) Attached hereto and marked as **Exhibit "Y"** is a true copy of the New Brunswick PPR Search as of December 13, 2016;
- (f) Attached hereto and marked as **Exhibit "Z"** is a true copy of the Newfoundland and Labrador PPR Search as of December 13, 2016;
- (g) Attached hereto and marked as **Exhibit "AA"** is a true copy of the Prince Edward Island PPR Search as of December 13, 2016;
- (h) Attached hereto and marked as **Exhibit "BB"** is a true copy of the Manitoba PPR Search as of December 12, 2016;
- (i) Attached hereto and marked as **Exhibit "CC"** is a true copy of the Saskatchewan PPR Search as of December 14, 2016; and
- (j) Attached hereto and marked as **Exhibit "DD"** is a true copy of the British Columbia PPR Search as of December 15, 2016.

122. In addition, on or about December 20, 2016 BLG conducted PPR Searches for each of the US Debtors:

- (a) Attached hereto and marked as **Exhibit "EE"** is a true copy of the Quebec PPR Search as of December 20, 2016;
- (b) Attached hereto and marked as **Exhibit "FF"** is a true copy of the Alberta PPR Search as of December 20, 2016;
- (c) Attached hereto and marked as **Exhibit "GG"** is a true copy of the Ontario PPR Search dated December 20, 2016 current December 19, 2016;
- (d) Attached hereto and marked as **Exhibit "HH"** is a true copy of the Nova Scotia PPR Search as of December 20, 2016;

- (e) Attached hereto and marked as **Exhibit “II”** is a true copy of the New Brunswick PPR Search as of December 20, 2016;
- (f) Attached hereto and marked as **Exhibit “JJ”** is a true copy of the Newfoundland and Labrador PPR Search as of December 20, 2016;
- (g) Attached hereto and marked as **Exhibit “KK”** is a true copy of the Prince Edward Island PPR Search as of December 20, 2016;
- (h) Attached hereto and marked as **Exhibit “LL”** is a true copy of the Manitoba PPR Search as of December 20, 2016;
- (i) Attached hereto and marked as **Exhibit “MM”** is a true copy of the Saskatchewan PPR Search as of December 20, 2016; and
- (j) Attached hereto and marked as **Exhibit “NN”** is a true copy of the British Columbia PPR Search as of December 20, 2016.

### **The Restructuring Plan**

- 123. The US Debtors’ creditors include holders of senior secured second lien notes (the **“Secured Notes”**). Further information regarding the Secured Notes and the ModSpace Group’s other creditors are set out in the First Day Declaration.
- 124. Beginning in the summer of 2016, the US Debtors held various meetings with certain restricted holders of the Secured Notes (the **“Ad Hoc Group of Noteholders”**) with a view to obtaining an equity investment acceptable to the Ad Hoc Group of Noteholders. Further details of the discussions between the US Debtors and the Ad Hoc Group of Noteholders are set out in the First Day Declaration.
- 125. On November 3, 2016, the US Debtors, Ad Hoc Group of Noteholders and Calera Capital Advisors LP (**“Calera”**), the largest equity holder of Holdings, entered into a term sheet contemplating a consensual restructuring that would be implemented in accordance with the Plan.

126. To that end, the ModSpace Group, a syndicate of lenders (the “**ABL Lenders**”) led by Bank of America, N.A. as administrative agent, the Ad Hoc Group of Noteholders and Calera entered into the RSA for a consensual restructuring under Chapter 11 of the US Code.
127. Further details of the RSA and the Plan are set out in the First Day Declaration.
128. The key terms of the Plan include:
- (a) the ABL Lenders will provide post-petition financing for the ModSpace Group’s operations during the Chapter 11 proceedings;
  - (b) all general unsecured claims are to be reinstated to the extent they are not paid prior to the emergence of the ModSpace Group from the Chapter 11 proceedings and these proceedings;
  - (c) claims arising under the ModSpace Group’s indenture for the Secured Notes would receive: (i) a *pro rata* share of equity in a reorganized entity; (ii) the right to participate in an offering of US\$90 million of equity in the reorganized entity (the “**Rights Offering**”), and (iii) in exchange for agreeing to back-stop the Rights Offering, certain members of the Ad Hoc Group of Noteholders would receive a backstop fee;
  - (d) the remaining equity in the reorganized entity, after the *pro rata* distribution to holders of Secured Notes and the rights offering will be distributed *pro rata* to the ModSpace Group’s existing equity holders, along with certain warrants; and
  - (e) the existing agreement between the ModSpace Group and the ABL Lenders will be amended, restated, modified and assumed by the reorganized ModSpace Group pursuant to the exit financing (discussed below).
129. Pursuant to the RSA, the ModSpace Group will receive exit financing to support the Plan and the ongoing working capital requirements of the ModSpace Group following its reorganization. The exit financing will amend the existing facilities with the ABL Lenders.

130. Further details of the exit financing are set out in the First Day Declaration. Pursuant to the exit financing, the ModSpace Group will obtain approximately US\$719.5 million in revolving credit in commitments and term loans under the modified facilities with the ABL Lenders. ModSpace Canada will obtain approximately US\$149 million of these commitments, including a US\$20 million sub-limit for letters of credit and a US\$15 million sub-limit for swing-line loans.
131. The proceeds of the Rights Offering will also be used to aid in the ModSpace Group's exit from the Chapter 11 proceedings and these proceedings.
132. Based on my experience in restructuring matters, I believe that the reorganization plan represents the best prospect for the ModSpace Group to restructure, and that doing so will improve the ModSpace Group's balance sheet and position the ModSpace Group to continue as a competitive enterprise.

***Restructuring Support Agreement***

133. On December 20, 2016, the ModSpace Group, Bank of America N.A. as administrative agent (the "ABL Agent"), the Ad Hoc Group of Noteholders and Calera entered into the RSA in support of a pre-packaged Chapter 11 plan of reorganization. Attached hereto and marked as **Exhibit "OO"** is a true copy of the RSA.
134. Pursuant to the RSA, each of the ModSpace Group, the ABL Agent, the Ad Hoc Group of Noteholders and Calera agreed, *inter alia* to support, and take all commercially reasonable action to facilitate, the implementation of the restructuring plan, including the DIP Financing. The ABL Agent and the Ad Hoc Group of Noteholders further consented to the ModSpace Group commencing the Chapter 11 proceedings and these proceedings, and to the adequate protection in the DIP Financing Documents and the DIP Financing Order.
135. Following execution of the RSA, the ModSpace Group began a pre-Petition solicitation of the Plan to the ABL Lenders, the holders of Secured Notes, Calera and the ModSpace Group's equity holders.

## Litigation

ModSpace Canada is a party to two litigation proceedings in Canada. While the orders sought would stay these litigation proceedings so that the ModSpace Group can focus on its restructuring and implementation of the Plan (over what is expected to be a short time) it is not the intention of the ModSpace Group to deal with the claims, as set out below, in these proceedings.

### *Champion Home Builders, Inc.*

136. Champion Home Builders, Inc. (“**Champion**”) commenced an action against ModSpace Canada in the Supreme Court of Newfoundland and Labrador in 2014.
137. This action involves a contractual dispute. ModSpace Canada entered into a subcontract with Liannu Limited Partnership (“**Liannu**”) to provide modular units for the Muskrat Falls hydroelectric dam in Labrador. ModSpace Canada contracted with Champion to provide certain of the modular units. Liannu identified deficiencies in the units and charged ModSpace Canada for costs to correct the deficiencies and for delay costs. ModSpace Canada asserts that the deficiencies and the delays are the result of Champion’s failure to adhere to the agreed-upon specifications and production deadlines.
138. Champion seeks payment of approximately CDN\$935,000, allegedly representing the amount owed to Champion under a contract. ModSpace Canada has defended this action and has filed a counterclaim against Champion for approximately CDN\$13.1 million, representing costs incurred by ModSpace Canada as a result of deficiencies in Champion’s work, Champion’s failure to adhere to the specifications and requirements of its subcontract and resulting costs and damages.
139. The pleadings in this action have closed, but the parties have not yet exchanged documents or conducted examinations for discovery.

### *Mobilfab, Inc.*

140. Mobilfab, Inc. (“**Mobilfab**”) commenced an action against ModSpace Canada in the Superior Court of Quebec in 2015.



141. Mobilfab seeks payment of approximately CDN\$2,400,000, allegedly representing the balance due for goods supplied by Mobilfab in relation to the Muskrat Falls hydroelectric dam project in Labrador.
142. On January 21, 2016, ModSpace Canada filed an application to dismiss the Mobilfab claim on various grounds, including for lack of jurisdiction and *forum non conveniens* (the “**Dismissal Application**”). In particular, ModSpace Canada argued that the action involved the same parties, issues and facts as the Champion litigation in Newfoundland.
143. The Dismissal Application was originally scheduled for a hearing in April 2016, but has been postponed pending clarification of the status of the Champion litigation in Newfoundland.
144. The Mobilfab action in Quebec is currently stayed until adjudication of the Dismissal Application.

#### **Information Officer**

145. MSC, as foreign representative of the ModSpace Group, seeks the appointment of A&M as information officer (the “**Information Officer**”) in these proceedings. A&M is a licensed trustee-in-bankruptcy and I am advised by Alan Hutchens of A&M, and do verily believe, that Mr. Hutchens and other professionals at A&M have experience in numerous cross-border insolvencies, including those involving operations and businesses in the United States.
146. In light of the complex corporate and financial structure of the ModSpace Group, the stakeholders located in Canada (including ModSpace Canada’s employees) and the amount of the debt owed by the ModSpace Group, MSC, as foreign representative, believes that the appointment of the Information Officer is appropriate in the circumstances to ensure that both this Honourable Court and ModSpace Canada’s creditors and stakeholders are kept informed of these proceedings and the Chapter 11 proceedings.

147. I understand that A&M consents to its appointment as information officer in these proceedings. Attached hereto and marked as **Exhibit “PP”** is a true copy of the executed Consent of A&M to act as information officer.

#### **Administration Charge**

148. MSC, as foreign representative of the ModSpace Group, seeks the granting of an administration charge over the assets of the ModSpace Group in Canada with respect to the fees and disbursements of A&M, the proposed information officer, and its counsel, Torys LLP, to a maximum of \$300,000 (the “**Administration Charge**”).
149. Based on my experience in restructuring matters, I verily believe that the appointment of A&M as information officer is reasonable in the circumstances to ensure that both the Canadian Court and Canadian creditors are kept informed of these proceedings and the US Proceedings.
150. Based on my experience in restructuring matters, I verily believe that the granting of the Administration Charge, and the amount of the charge, is appropriate, fair and reasonable in the circumstances, particularly in light of the complexity of the ModSpace Group’s business operations and the proposed role of A&M.
151. I understand that A&M requires the Administration Charge as security for their fees in order to act in this matter and that A&M requires that the Administration Charge represent a first charge, including in priority to any charge granted for interim financing.

#### **DIP Lender’s Charge**

152. As described above, pursuant to the DIP Financing Order, the US Court authorized the ModSpace Group to borrow on an interim financing facility and that the funds borrowed under that facility would have super-priority over the assets of the ModSpace Group, in priority to all of the ModSpace Group’s creditors.
153. Based on my review of the ModSpace Group’s cash flows and the terms of the pre-packaged restructuring plan, I believe that the DIP Financing is required. Based on my review of the DIP Financing Documents, I believe that the lenders will not advance funds

under the DIP Financing without a priority charge to secure repayment of the DIP Financing.

SWORN BEFORE ME at the City of  
New York, in the State of New York, this )  
23<sup>rd</sup> day of December, 2016 )  
)  
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)  
)

Cecily Pereira  
A Notary Public in and for the State of )  
New York )

David Orlofsky  
**DAVID ORLOFSKY**



**Cecily Pereira**  
**Notary Public, State of New York**  
**No. 01PE6278148**  
**Qualified in New York County**  
**Commission Expires March 8, 2017**

Court File No.: CV-16-11656-00CL

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

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

PROCEEDINGS COMMENCED AT TORONTO

**AFFIDAVIT OF DAVID ORLOFSKY  
(Sworn December 23, 2016)**

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Bay Adelaide Centre, East Tower  
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Toronto, Ontario  
M5H 4E3

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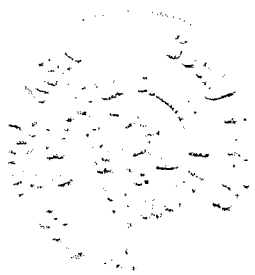
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Lawyers for Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Modular Space Corporation, Resun Modspace, Inc., Modspace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC

# Tab C

THIS IS EXHIBIT "C" TO THE AFFIDAVIT  
OF DAVID ORLOFSKY SWORN BEFORE ME  
ON THIS 20 DAY OF JANUARY, 2017

Cecily Pereira  
A Notary Public for the State of New York



**Cecily Pereira**  
**Notary Public, State of New York**  
**No. 01PE6278148**  
**Qualified in New York County**  
**My Commission Expires March 8, 2017**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

----- x  
 In re: : Chapter 11  
 :  
 MODULAR SPACE HOLDINGS, INC., et al., : Case No. 16-12825 (\_\_\_\_)  
 :  
 Debtors.<sup>1</sup> : Joint Administration Pending  
 :  
 ----- x

**DECLARATION OF DAVID ORLOFSKY, SENIOR MANAGING DIRECTOR OF  
ZOLFO COOPER LLP, IN SUPPORT OF CHAPTER 11 PETITIONS AND  
FIRST DAY PLEADINGS**

I, David Orlofsky, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information and belief:<sup>2</sup>

1. I am a Senior Managing Director of Zolfo Cooper LLP ("Zolfo Cooper"), financial advisor to Modular Space Holdings, Inc. ("Holdings"), the ultimate parent of the other debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "Debtors" or "ModSpace"). To enable the Debtors to minimize the adverse effects of these Chapter 11 Cases (as defined below) on their business, the Debtors intend to request various types of relief in "first day" applications and motions (collectively, the "First Day Pleadings"). I submit this declaration in support of the Debtors' (a) voluntary petitions for relief under chapter 11 of Title 11 of the

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<sup>1</sup> The Debtors and the last four digits of their respective United States Tax Identification Number, or similar foreign identification number, as applicable, are as follows: Modular Space Holdings, Inc. (8595); Modular Space Intermediate Holdings, Inc. (1161); Modular Space Corporation (5284); Resun ModSpace, Inc. (0701); ModSpace Government Financial Services, Inc. (8573); ModSpace Financial Services Canada, Ltd. (CRA BN 0001); and Resun Chippewa, LLC (6773). The address of the Debtors' corporate headquarters is 1200 Swedesford Road, Berwyn, PA 19312.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan (as defined below).

United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and (b) the First Day Pleadings. I am authorized to submit this declaration (the “Declaration”) on behalf of the Debtors.

2. I have worked at Zolfo Cooper for over 17 years and have provided both interim management and advisory services to various clients in a variety of restructuring matters, including as the Chief Restructuring Officer (“CRO”) and interim Chief Financial Officer (“CFO”) of RCS Capital, CRO of Preferred Sands, CRO of Mark IV Industries, interim Chief Operating Officer and CFO of Malden Mills, and as the financial advisor to Friendly’s Ice Cream, among others.

3. I have served as a financial advisor to the Debtors since July 2016 and during that time I have worked closely with the Debtors’ personnel. As a result of my extensive work with ModSpace, my review of relevant documents and my discussions with other members of the Debtors’ management teams, I am familiar with the Debtors’ day-to-day operations, business affairs and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto. Except as otherwise stated, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors’ senior management, my review of relevant documents or my opinion, and based on my experience and knowledge of the Debtors’ operations and financial conditions. In making this Declaration, I have relied in part on information and materials that the Debtors’ personnel and advisors have gathered, prepared, verified and provided to me, in each case under my ultimate supervision, at my direction and for my use in preparing this Declaration.

4. This Declaration is divided into two parts. Part I of this Declaration provides background information about the Debtors, their business operations, their corporate and capital



structures and the circumstances surrounding the commencement of these Chapter 11 Cases. Part II sets forth the relevant facts in support of the balance of the First Day Pleadings.

**PART I**  
**BACKGROUND**

**A. Chapter 11 Filings**

5. On December 21, 2016 (the "Petition Date"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases") with this Court. The Debtors have requested that the Chapter 11 Cases be jointly administered for procedural purposes only.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. To date, no creditors' committee has been appointed in these Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. Modular Space Corporation ("MSC") is the main operating company within the Debtors' corporate structure. Debtor ModSpace Financial Services Canada, Ltd. ("MFSC") is the operating entity for the Debtors' business in Canada. MFSC is a wholly-owned subsidiary of MSC and all material decisions regarding MFSC and its operations are made by MSC personnel in the United States. As a result, the center of main interests for MFSC is located in the United States. An ancillary proceeding under Part IV of the Companies' Creditor Arrangement Act (Canada) ("CCAA") has been commenced in Toronto, Ontario, Canada before the Ontario Supreme Court of Justice (Commercial List) (the "Canadian Court").

**B. The Debtors' Business**

9. ModSpace is the largest U.S.-owned provider of temporary and permanent modular buildings, and is among the largest suppliers in the U.S. and Canada of temporary modular space and permanent modular construction. ModSpace provides a full range of buildings and storage products including office trailers, mobile offices, temporary classrooms, modular office complexes and portable storage units, and works with clients across many industries, including commercial, construction, education, government, military, healthcare, industrial, energy, retail, and sports and entertainment. ModSpace generates significant free cash flow and is viewed as a leader within its industry. ModSpace has a stable and highly regarded management team. This is a classic example of a good company with a bad balance sheet.

10. ModSpace was founded in June 1986 as Resun Leasing, Inc. ("Resun"), which was based in Dulles, Virginia. From the late 1980s through the 1990s, Resun expanded its geographic scope in response to growing demand for modular products in the Southern and Western U.S. markets. ModSpace was formed in 2007 when Resun acquired GE Capital Corporation's Modular Space U.S. and Canadian operations. Resun then changed its name to Modular Space Corporation and relocated its global corporate headquarters to Berwyn, Pennsylvania.

11. In the twelve months ending September 30, 2016, approximately 86% of ModSpace's consolidated revenue and 79% of ModSpace's total adjusted EBITDA were generated by its U.S. operations, while the remaining 14% of ModSpace's consolidated revenue and 21% of ModSpace's total adjusted EBITDA were generated by ModSpace's Canadian operations. ModSpace is seeking certain relief from the Bankruptcy Court in order to support the ongoing operations of its entire global enterprise, which in turn will preserve value on a global basis for the benefit of ModSpace and its stakeholders.

12. Delivery and installation of modular units are generally affected by annual winter weather conditions in the northern United States and Canada from November to March, resulting in seasonal fluctuations in ModSpace's business volume. Accordingly, the third and fourth quarters of each fiscal year<sup>3</sup> (early April through late September) are typically ModSpace's strongest financial quarters. During the same period, ModSpace focuses on refurbishing and maintaining its existing asset fleet, resulting in increased working capital requirements.

13. Inventory and Products. ModSpace offers a wide range of mobile and modular products to meet the differing needs of its diverse customer base, including multi-unit complexes which have flexible and configurable footprints to, single-, double- or triple-wide units, classroom units, and storage units. The fleet comprises approximately 69,000 units with an average age of 10.5 years and a gross book value of approximately \$1.4 billion. The majority of the ModSpace fleet consists of single-sized units (approximately 31% of the total fleet), double- and triple-wide units (approximately 23%) and complexes (approximately 29%). Utilization as of fiscal September 2016 was approximately 71.0%, with a slightly higher utilization rate of 72.4% in the United States offset by a lower utilization rate in Canada of 66.1%.

14. ModSpace partners with prominent U.S. and Canadian manufacturers to develop and build its modular buildings. Since 1999, ModSpace has pioneered a number of groundbreaking modular units. The ePlex<sup>®</sup>, the first modular complex to use interchangeable building modules to allow for variably sized buildings, has become the industry standard for modular complexes. The HQ<sup>®</sup>, an 8'x20' complex-able ground-level office module with removable and reconfigurable wall panels, is ideal for commercial applications requiring elevated fire ratings.

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<sup>3</sup> The Debtors' fiscal year end is September 30.

15. ModSpace's units are owned by one of two ModSpace entities. If a unit is certificated (that is, if a certificate of title was issued for the unit), it is owned by MSC or its subsidiary, Resun ModSpace, Inc.; if a unit is not certificated, it is owned by the special-purpose entity Resun Chippewa, LLC and leased to MSC under a master lease agreement, which is periodically updated.

16. On average, the economic life of a modular asset is 20 years (longer if the asset is properly maintained and refurbished) with an estimated residual value of 50% of the original cost. The initial capital investment for each unit is partially offset by accelerated depreciation and tax benefits, and the annual maintenance costs per unit average approximately \$1,100.

17. Leasing and Related Services. ModSpace's core business focuses on leasing and related services for modular buildings (both standalone units and building complexes), as well as ancillary products such as steps, decks and ramps. In connection with its leases, ModSpace also offers certain products and services such as furnishings, wall partitions and site services, which are contracted through the lease agreement and are fulfilled by primarily by third-party service providers or contractors and, in a minority of cases, with in-house resources. These business lines produce substantial stable and recurring revenue streams. The leasing and servicing revenue stream accounted for approximately 80% of ModSpace's gross revenue for the twelve months ending September 30, 2016, and approximately 90% of ModSpace's gross margin for the same period.

18. ModSpace currently has approximately 28,000 lease contracts with \$124 million of future lease revenue under contracts, primarily through 2017. Leases are often structured as operating leases with terms ranging from one month to five or more years. The typical contract terms range from six to 18 months for single-sized units, and 12 months or more for modular

complexes. The average effective lease term is approximately 25 months, providing ModSpace with a base of predictable recurring revenue. Leases also provide early termination and damage reimbursement charges.

19. Sale of Used and New Products. ModSpace also generates revenue through the sale of used and new modular units, which yields both the value of the unit and the fees from its delivery and installation. Used units typically garner resale values in excess of 120% of net book value. Sales of used and new units generated approximately 20% of ModSpace's gross revenue for the twelve months ending September 30, 2016, and approximately 10% of ModSpace's gross margin for the same period.

20. New building sales benefit customers with customized facilities and ModSpace with increased purchasing power, overhead absorption and the flexibility to maintain a national, experienced construction services team. The latter, comprised of Project Managers, Construction Managers, Estimators and Design Professionals, is critical to the modular complex leasing business segment and creates a strong differentiator relative to its competitors and drives competitive advantage. New projects vary in size and time and, therefore, impact on ModSpace's cash flow.

21. Used building sales allow ModSpace to manage the mix, age and geographic distribution of its unit fleet, and to monetize the residual value of its existing modular units. ModSpace's ability to realize high resale values stems from its commitment to fleet asset maintenance and a robust sales and marketing platform including an industry leading on-line showroom.

22. Geographic Scope – Branches and Service Centers. ModSpace has two operating segments in the United States and Canada. These include approximately 82 branch and service

centers throughout North America and approximately 639 employees in total. ModSpace is a leader in many of the markets where it competes.

23. ModSpace's expansive geographic footprint and hub-and-spoke branch network provide cost-effective, local support to customers, and allow ModSpace to realize economies of scale, deploy fleet assets per regional demand, and serve large customers with national coverage. The broad branch network also provides proximity to customers and project sites – a critical factor in controlling transportation costs – and supports ModSpace's high standard of post-delivery service and maintenance.

24. Each branch includes a regional sales staff and administrative staff, and is supported by one to four service centers. Branches and service centers each may have maintenance personnel and drivers responsible for site installation, preventative maintenance, cleaning, repairs, refurbishment, delivery and pick-up. A significant portion of these tasks is typically outsourced to sub-contractors. Operations managers head each branch and service center, and report directly to district operation directors. Branches and service centers generally have storage lots to manage inventory levels.

25. Of the 142 locations occupied by ModSpace as of the Petition Date, 41 were owned and 101 were leased. ModSpace also maintains a refurbishment center, further enhancing ModSpace's ability to repair, maintain and refurbish its units, thus extending their useful lives. It serves as the main hub for the refurbishment, repurposing and recoding of ModSpace's units in core Eastern and Central U.S. markets.

26. Customers, Marketing, and Sales. ModSpace's client base spans many industries and includes numerous Fortune 500 companies. ModSpace benefits from low customer concentration with substantial end-market diversity. Approximately 90% of ModSpace's

customers (by gross book value) are concentrated in the construction, commercial and energy industries. ModSpace's top ten individual customers (by gross book value) typically come from the energy and construction industries.

27. ModSpace employs both a sales force and a marketing team, working in concert and supported by a customer relationship management system that tracks and measures their activities at the corporate level. The eight-person marketing team positions and promotes ModSpace's brand, generates sales leads, and supports selling efforts with point-of-sale materials.

28. The sales team is divided into three sub-teams: inside sales team, field-based sales force and vertical markets team. The inside sales team supports the needs of sophisticated transactional customers by delivering quick response times, one-call quotes and seamless coordination with operation teams to confirm product availability and delivery date. The inside sales team also responds to online quote requests and staffs the live chat sales function. In order to deliver customized support to larger customers with more complicated projects and specialized needs, ModSpace's field-based sales force leverages its extensive industry knowledge and technical expertise to coordinate with ModSpace's construction services team. Working together, the field-based sales force and construction services teams provide accurate, detailed project proposals and professional renderings, and assist customers with finding solutions to meet their specific needs. Finally, the vertical markets team focuses on the distinct needs of ModSpace's national accounts, as well as customers in the healthcare, government, franchise and sports and entertainment sectors.

**C. The Debtors' Corporate and Capital Structures**

**(a). Corporate Structure**

29. A corporate organization chart depicting the ownership structure of the Debtors and their non-debtor affiliates is attached hereto as Exhibit A.

30. Holdings, a Delaware corporation, is a holding company that is the direct or indirect parent company of each of the other Debtors and non-debtor affiliates. Holdings is the direct parent of Modular Space Intermediate Holdings, Inc., a Delaware corporation and holding company, which is in turn the direct parent of MSC (the “Issuer”). Each of the remaining Debtors, and certain non-debtor affiliates, are wholly-owned subsidiaries of MSC.

31. The majority of ModSpace’s day-to-day U.S. operations are conducted and managed by MSC. Specifically, MSC (a) operates the various U.S. branch locations, (b) is party to all of ModSpace’s U.S. real property leases, (c) owns a substantial portion of ModSpace’s U.S.-based certificated units and (d) employs all of ModSpace’s U.S. employees.

32. Likewise, ModSpace’s day-to-day Canadian operations are conducted by MFSC. MFSC (a) operates the Canadian branch locations, (b) owns ModSpace’s Canadian real property, (c) is party to ModSpace’s Canadian real property leases, (d) owns ModSpace’s Canada-based units and (e) employs ModSpace’s Canadian employees. Notably, however, administrative and back-office operations of MFSC are conducted from ModSpace’s global headquarters in Berwyn, PA, and the majority of the directors and officers of MFSC reside in the United States. MFSC also owns certain assets, including a bank account and certain modular units, located within the United States.

**(b). Capital Structure**

33. As of the Petition Date, as further set forth below, ModSpace had approximately \$984.2 million of outstanding long term debt and \$37.7 of accrued interest consisting of the following, each as further described below:



(i) approximately \$609.2 million of outstanding debt under an asset-based revolving credit facility, including \$3.2 million of funded letters of credit, plus accrued interest of approximately \$2.3 million as of the Petition Date; and

(ii) approximately \$375 million of 10.25% Senior Secured Second Lien Notes due 2019, plus outstanding and accrued interest of approximately \$35.4 million as of the Petition Date.

34. The ABL Facility. On June 6, 2011, MSC, Resun ModSpace, Inc. and ModSpace Government Financial Services, Inc., together with certain of their subsidiaries and affiliates, as the U.S. borrowers (the “U.S. Borrowers”) (and, as applicable, the “U.S. Guarantors”), MFSC, as Canadian borrower (the “Canadian Borrower”) (and, as applicable, the “Canadian Guarantors”) entered into a secured asset-based revolving credit facility (the “ABL Facility”) pursuant to that certain Third Amended and Restated Credit Agreement (as amended, amended and restated, modified, supplemented or restated and in effect from time to time, the “ABL Credit Agreement”) <sup>4</sup> among, *inter alia*, the U.S. Borrowers, the U.S. Guarantors, the Canadian Borrower, the Canadian Guarantors, Bank of America, N.A. as administrative agent (the “ABL Agent”) and other lenders party thereto (the “ABL Lenders”).

35. Under the ABL Facility, the amount that may be borrowed under the facility is limited to the lesser of (a) \$600 million in the case of U.S. Borrowers and \$200 million in the case of the Canadian Borrower (with a borrower’s option to increase the aggregate commitments with up to an additional \$250 million upon satisfaction of certain conditions) and (b) a borrowing base calculated through designated percentages of eligible accounts receivable, eligible progress billings, eligible insurance receivables, eligible rental equipment and eligible real estate of the

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<sup>4</sup> Any summary of an agreement in this Declaration is qualified in its entirety by the terms of that agreement.

respective borrowers and, as applicable, the Canadian Guarantors, less, in each case, customary reserves.

36. The U.S. Borrowers' obligations under the ABL Credit Agreement are guaranteed by each of the U.S. Borrowers' U.S. subsidiaries (but not by any Canadian entity), subject to certain customary exceptions with respect to, among others, immaterial subsidiaries and foreign subsidiaries. The U.S. Borrowers' obligations are secured by a first priority security interest in substantially all of the assets of the U.S. Borrowers and their U.S. subsidiaries, subject to certain customary exceptions and limitations.

37. The Canadian Borrower's obligations under the ABL Credit Agreement are secured by a first priority security interest in substantially all of the assets of the Canadian Borrower, subject to certain customary exceptions and limitations. Although MFSC has no subsidiaries, any subsequently formed or acquired subsidiaries would be required to guarantee the outstanding Canadian obligations, subject to certain customary exceptions with respect to, among others, immaterial subsidiaries and foreign subsidiaries.

38. The ABL Facility matured on June 6, 2016, and, as described below, the Debtors subsequently entered into the Forbearance Agreement (defined below) with the ABL Lenders. Pursuant to that agreement and its subsequent amendments, (a) with respect to U.S. Revolving Loans, the U.S. Prime Rate, plus a spread of 3.50%, and (b) with respect to Canadian Revolving Loans, the Canadian Prime Rate (with respect to Loans made in Canadian Dollars) or the Canadian Base Rate (with respect to Loans made in U.S. Dollars), plus a spread of 3.50% (as such capitalized terms are defined in the First Lien Credit Agreement). As of the Petition Date, ModSpace had approximately \$609.2 million outstanding under the ABL Facility comprised of

approximately \$549.1 million on account of U.S. Borrowers and approximately \$60.1 million on account of Canadian Borrower.

39. The Secured Notes: 10.25% Senior Secured Second Lien Notes due 2019. On February 25, 2014, MSC issued \$375.0 million aggregate principal amount of senior secured second lien notes (the "Secured Notes"). Under the terms of the governing indenture (as amended, amended and restated, modified, supplemented or restated and in effect from time to time, the "Indenture"), Issuer is required to pay fixed-rate interest at a rate of 10.25% semi-annually on January 31 and July 31 of each year. The Secured Notes mature on January 31, 2019.

40. Each of the Issuer's U.S. subsidiaries guarantees the outstanding obligations under the Secured Notes, but the Canadian entities do not guarantee such outstanding obligations. The Secured Notes are secured by a second priority security interest in substantially all of the assets of the Issuer and each of the Issuer's U.S. subsidiaries. The security interests of the Secured Notes in such assets are subordinated in each instance to any security interests of the ABL Lenders in such assets pursuant to an Intercreditor Agreement (as amended, amended and restated, modified, supplemented or restated and in effect from time to time, the "Intercreditor Agreement") dated as of February 25, 2014 among, inter alia, the ABL Agent, Wells Fargo Bank, National Association ("Wells Fargo") in its capacity as trustee and as collateral agent under the Secured Notes, and acknowledged and agreed to by Issuer and certain of its affiliates.<sup>5</sup> However, the Secured Notes are secured by a pledge of 65% of the stock of MFSC, which is an asset of Issuer.

41. As of the Petition Date, MSC had approximately \$410.4 million outstanding in principal and accrued interest under the Secured Notes.

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<sup>5</sup> On November 3, 2016, MSC, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., Resun Chippewa, LLC, Modular Space Intermediate Holdings, Inc., Wilmington Savings Fund Society, FSB ("WSFS"), and Wells Fargo, entered into an agreement through which Wells Fargo resigned as trustee under the Indenture and WSFS became the successor trustee.

42. Intercompany Credit Agreement. On June 20, 2008, MSC, as lender, entered into an intercompany credit agreement (the “Intercompany Credit Agreement”) providing a revolving credit facility in the maximum principal amount of Canadian \$250,000,000 to MFSC, as borrower. Although the Intercompany Credit Agreement does not expire until June 20, 2018, all amounts outstanding were paid in full as of August 2016, since which time the intercompany balance has been, and remains, \$0.

**D. Events Leading to the Chapter 11 Cases**

43. ModSpace’s business has historically been driven by several macro-economic factors, including commercial office vacancy rates, employment levels, non-residential construction starts and commodity prices. With the widespread adoption of modular buildings in the energy and mining industries, oil and commodity prices became further key indicators of demand.

44. Given these economic drivers, it is not surprising that the 2007 economic recession heavily affected ModSpace’s business, with utilization levels falling from approximately 80% in mid-2007 to a low of approximately 61% in early 2012. The reduction in utilization and correlated reduction in rental prices and margins was the result of an unprecedented drop in non-residential construction compounded by the effect of significant increases in unemployment levels across the United States and Canada. Origination levels troughed in 2010 and began improving as capital investments drove (modest) improvements in non-residential construction. Gradual improvements in employment levels also improved the demand for modular products. Investment in the oil and gas industry accelerated the demand for modular products, particularly in Western Canada, Texas and other geographies rich in shale oil production. The oil driven momentum began a significant reversal in November of 2014 as the price per barrel of oil dropped from \$100 levels to sub-\$40 levels. Today, the Canadian business unit is experiencing a contraction in

earnings owing to the impact of the energy and commodity markets on product demand while the U.S. business has returned to targeted utilization levels for most asset classes and is now focused on driving rental prices which remain at a discount to historical norms. The blended portfolio utilization level was to 71.0% in Q4 FY2016.

45. In the summer and fall of 2015, ModSpace began to explore refinancing options in light of the approaching ABL Facility maturity date, including, among others, a refinancing with existing lenders as well as a potential first-in, last-out financing facility. Ultimately, however, ModSpace was unable to reach mutually agreeable terms with its existing ABL Lenders and determined that a refinancing was potentially achievable through a merger transaction, which ModSpace was simultaneously exploring.

46. William Scotsman Merger Transaction. On March 16, 2016, ModSpace entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among Holdings, MSC, Crystal Merger Sub, Inc., a Delaware corporation and a wholly-owned non-debtor subsidiary of MSC, and Williams Scotsman International, Inc. ("William Scotsman"), an unaffiliated Delaware corporation. Pursuant to the Merger Agreement, ModSpace would acquire the North American modular operations of William Scotsman (the "Merger Transaction"), resulting in the merger of two of North America's leading providers of modular spaces. The Merger Transaction was expected to result in significant synergies through operational integration, and would further offer the merged entity an opportunity to right-size its capital structure and provide nearly \$500 million of new capital (assuming a transaction closing date of June 30, 2016 and a resulting ABL facility of \$1.5 billion). The Merger Agreement could be terminated by either party for failure to close any time after August 12, 2016. The parties had agreed that ModSpace's existing management team was going to lead the merged entity.

47. Consummation of the Merger Transaction was expected to require approximately \$1.75 billion of cash, which ModSpace planned to fund utilizing a new ABL facility combined with a new equity raise, a new bond offering or both. Shortly after the execution of the Merger Agreement, ModSpace engaged Morgan Stanley to advise it and launch an equity raise process to fund the Merger Transaction. Morgan Stanley contacted multiple parties who agreed to execute non-disclosure agreements to explore the equity raise, and management presentations were conducted throughout April and May 2016.

48. ABL Facility Defaults and Maturity. On December 30, 2015, ModSpace, the ABL Lenders, and the ABL Agent had entered into that certain Agreement Regarding Events of Default pursuant to which the ABL Lenders and ABL Agent agreed to suspend the applicability of certain events of default relating to ModSpace's failure to timely deliver certain audit opinion materials as required under the ABL Credit Agreement. The parties subsequently entered into multiple amendments which, among other things, extended the suspension period, set forth certain merger and contingency planning milestones, and triggered cash dominion for the U.S. Borrowers and the Canadian Borrower under the ABL Facility beginning on March 31, 2016.

49. While ModSpace was still pursuing the Merger Transaction, and in connection with the maturity of the ABL Facility described above, ModSpace, the ABL Lenders and the ABL Agent entered into a forbearance and extension agreement (the "Forbearance Agreement"), which has been amended and extended through and including December 19, 2016. The Forbearance Agreement contained covenants requiring ModSpace to achieve milestones (on parallel pathways) with respect to both the Merger Transaction and an alternative stand-alone restructuring effort. With respect to the Merger Transaction, between late May and early June, 2016, ModSpace successfully accomplished the first three merger milestones, whereby ModSpace issued a process

letter, obtained non-binding expressions of interests regarding the equity raise, prepared bond offering materials and met with rating agencies.

50. Shortly after June 23, 2016, when the United Kingdom voted to exit the European Union, certain potential equity investors advised ModSpace that they would not be pursuing the Merger Transaction further as their respective investment committees failed to approve the transaction. Morgan Stanley cited execution risks associated with the integration plan and other financial concerns as the primary factors leading the committees' decisions. Despite the failure to satisfy certain merger milestones, ModSpace continued to work diligently towards raising the needed capital to close the Merger Transaction.

51. In late July, ModSpace received two additional equity investment proposals, both of which were contingent on the satisfactory completion of significant additional due diligence. ModSpace held a meeting with certain restricted holders of the Secured Notes (such holders, the "Ad Hoc Group of Noteholders") and their advisors on August 4, 2016, seeking feedback on the two equity investment proposals. Following such meeting, the Ad Hoc Group of Noteholders advised that the proposed economic terms of the two equity investment proposals were unacceptable, and that it would prefer to undertake a restructuring and recapitalization transaction.

52. After due consideration of the Merger Transaction, including the related execution risk, ModSpace determined not to proceed with the Merger Transaction. On August 13, 2016, William Scotsman terminated the Merger Agreement pursuant to its terms, and shortly thereafter, ModSpace did the same. Consequently, ModSpace shifted its focus to the stand-alone restructuring milestones and process. ModSpace had already engaged Lazard Middle Market LLC and Lazard Frères & Co. LLC (collectively, "Lazard") in late May for this purpose.

Subsequent to Lazard's engagement, the Company engaged Zolfo Cooper, LLC on July 13, 2016 to assist with the restructuring process.

53. Secured Notes Default. The Ad Hoc Group of Noteholders began forming as early as May 2016 and retained Moelis & Company as financial advisor and Dechert LLP as legal advisor. On August 1, 2016, an interest payment of approximately \$19 million became due to holders of the Secured Notes. Given the uncertainty then surrounding the Merger Transaction, ModSpace elected not to make the interest payment, but rather utilized a 30-day grace period under the Indenture to discuss a potential broader-scale restructuring, recapitalization or other transaction with the holders of Secured Notes.

54. By August 2016, the Ad Hoc Group of Noteholders included eight entities holding, in the aggregate, approximately 72% of the issued and outstanding Secured Notes. On August 4, 2016, six members of the Ad Hoc Group of Noteholders (holding, in the aggregate, approximately 62% of the issued and outstanding Secured Notes) executed non-disclosure agreements and, as described above, met with ModSpace's management team and its advisors to discuss, among other things, the equity proposals received in connection with the proposed Merger Transaction. Following the meeting, the Ad Hoc Group of Noteholders expressed its preference to proceed with a stand-alone restructuring or recapitalization transaction. Throughout August and September 2016, the Ad Hoc Group of Noteholders and certain investment funds owned or managed by Calera Capital Advisors LP (including Calera Capital Partners II, LP, Calera VI, LLC, Calera XI, LLC, Calera Capital Offshore Partners II, LP, Calera Capital Partners III, LP, and any other investment funds owned or managed by Calera Capital Advisors LP that hold common stock of Holdings, "Calera"), the majority equity holder of Holdings exchanged a number of recapitalization proposals and proposed alternative transaction structures.



55. On November 3, 2016, the discussions between the Debtors, Ad Hoc Group of Noteholders and Calera culminated in agreement to a term sheet (as amended from time to time through December 9, 2016, the “Term Sheet”), contemplating a consensual restructuring to be effectuated by a plan of reorganization. In furtherance of this agreement, on December 20, 2016, the Debtors, the ABL Lenders, the Ad Hoc Group of Noteholders<sup>6</sup> and Calera reached an agreement on a recapitalization of ModSpace, memorialized in a restructuring support agreement (the “RSA” or “Restructuring Support Agreement”) in support of a prepackaged chapter 11 plan of reorganization (as may be amended or modified, the “Plan”).

56. Following execution of the RSA, the Debtors commenced a prepetition solicitation of the Plan to the ABL Lenders, the Noteholders, Calera Capital Advisors L.P., as holders of the Management Agreement Claims, and the Debtors’ equityholders (the “Equityholders”) – the only classes of claims or interests entitled to vote will pursue a consensual chapter 11 reorganization pursuant to the terms of the Plan. The Debtors also intend to seek recognition in Canada of MFSC’s Chapter 11 Case.

#### **E. The Proposed Restructuring**

57. The RSA and the Plan contemplate a prompt emergence from bankruptcy with the following key terms:

- the ABL Lenders will provide the Debtors with post-petition financing to fund their operations during the pendency of the Chapter 11 Cases;
- administrative expense claims and prepetition priority claims will be paid in full in cash upon emergence;
- claims arising under the Debtors’ prepetition Indenture will receive:

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<sup>6</sup> Together with any Noteholder that subsequently agrees to be bound by the terms of the RSA, hereinafter the “Consenting Noteholders.”

- their pro rata share of 9,122,999 shares of equity of a reorganized entity, to be determined in accordance with the Plan, which will own, directly or indirectly, 100% of the equity interests in Modular Space Corporation as of the Effective Date (the “Reorganized Entity”) and the right to participate in an offering of \$90 million of equity in the Reorganized Entity (the “Rights Offering”) pursuant to which they may subscribe to purchase their pro rata share of an additional 18,317,500 shares of equity in the Reorganized Entity; and
- In exchange for their agreement to backstop the Rights Offering, on the terms and conditions set forth in the Backstop Commitment Agreement, certain members of the Ad Hoc Group of Noteholders will receive a backstop fee in an aggregate amount equal to 5% of the equity offered in the Rights Offering, or 915,875 shares of equity in the Reorganized Entity.
- Existing equity interests in Holdings will receive:
  - their pro rata share of 877,001 shares of equity in the Reorganized Entity; and
  - their pro rata share of two tranches of warrants, which may be exercised in exchange for an aggregate of 1,250,000 shares of equity in the Reorganized Entity.
- In the event of an Alternative Transaction (defined below), the holder of the Management Agreement Claims against Modular Space Corporation will be entitled to receive a distribution in the event of a Qualifying Liquidity Event (as defined in the Plan).
- the issuance of equity in the Reorganized Entity to holders of Notes and existing equity interests in Holdings will be subject to dilution by equity compensation issued in connection with a management incentive program (a “MIP”), equity issued to the former independent directors pursuant to the Plan, or other issuance of additional new equity securities on or after the effective date;
- The ABL Credit Agreement will be amended, restated, modified and assumed by the reorganized Debtors pursuant to the Exit Credit Facility (defined below); and
- Subject to an Alternative Transaction (defined below), each holder of all other allowed claims will receive treatment that renders such allowed claims unimpaired (either through reinstatement or satisfaction of such claim).

58. On or about the Petition Date the Debtors will file a motion seeking to set bar dates for general unsecured claims and claims of governmental units (subject to certain exclusions) against Holdings and Intermediate only. The proposed order excludes general unsecured claims held by (i) any ABL Lender or ABL Agent with respect to claims arising under or in connection

with the ABL Credit Facility (ii) any Noteholder or Trustee with respect to claims arising under or in connection with the Indenture, other Senior Secured Note Documents (as defined in the Indenture) or the Intercreditor Agreement; (iii) any entity holding a claim against Holdings in respect of that certain Agreement of Indemnity dated as of February 12, 2012 by and among the parties thereto; (iv) any entity holding a claim against Holdings in respect of that certain Amended and Restated Management Services Agreement dated as of March 30, 2007 by and among the parties thereto; (v) any entity holding claims under the Restructuring Support Agreement, including, without limitation, claims for payment or reimbursement of professional fees and expenses reimbursable under the Restructuring Support Agreement and the Plan; (vi) any director or officer of Holdings or Intermediate solely with respect to (a) claims arising under or in connection with any existing director and officer liability insurance or agreement or (b) claims for advancement, indemnification and/or contribution arising as a result of such director's or officer's services to Holdings or Intermediate; and (vii) any Debtor holding a claim against Holdings or Intermediate.

59. If any Holdings Claims (as defined in the Disclosure Statement) are filed against Holdings and/or Intermediate prior to the Bar Date, and such claims (i) have not been expunged, disallowed, extinguished, withdrawn or otherwise disposed of either by order of the Court or otherwise (including without limitation the potential satisfaction of the Holdings Claims by the Consenting Interest Holders in their sole discretion) and (ii) the Majority Noteholders have not agreed that such Holdings Claims are facially without merit as against Holdings or Intermediate (which agreement shall not be unreasonably withheld or delayed), the Noteholders reserve the right to direct the Debtors to withdraw the Plan for Holdings and modify the Plan for Intermediate to provide no recoveries for the General Unsecured Claims (the "Alternative Transaction"). The Alternative Transaction would have no impact on the recoveries of creditors at any Debtors other

than Holdings and Intermediate, with the exception of the Management Agreement Claims which would not be entitled to a distribution in the event of a Qualifying Liquidity Event as described in the Plan.

60. In the event of an Alternative Transaction, in lieu of other treatment provided for in the Plan for Existing Holdings Equity Interests and the Management Agreement Claims, the holders of such interests and claims will have an opportunity to participate in the Noteholder Plan Settlement as outlined in the Plan, pursuant to which they could receive their pro rata share of 877,001 shares of equity in the Reorganized Entity in exchange for their Management Agreement Claims and granting contractual releases to the Released Parties.

61. Irrespective of the ultimate structure of the Reorganized Debtors, the U.S. Borrowers (and, as applicable, the U.S. Guarantors) and the Canadian Borrower (and, as applicable, the Canadian Guarantors) seek to amend and restate the ABL Credit Agreement by and among the U.S. Borrowers, the U.S. Guarantors, the Canadian Borrower, the Canadian Guarantors, and the banks serving as lenders (the "Exit Lenders") pursuant to such agreement (as amended and restated, the "Exit Credit Facility" or "Fourth Amended and Restated Credit Agreement"). The Fourth Amended and Restated Credit Agreement will provide exit financing to support the plan contemplated by the Restructuring Support Agreement and the ongoing working capital requirements of the reorganized Debtors in the approximate amount of \$719.5 million in revolving credit commitment and term loans:

- up to approximately \$496 million in senior secured domestic revolving facility for the U.S. Borrowers (including a \$40,000,000 sub-limit for letters of credit and a \$40,000,00 sub-limit for swingline loans);

- (ii) up to approximately \$149 million (including a \$20,000,000 sub-limit for letters of credit and a \$15,000,00 sub-limit for swingline loans) in senior secured Canadian revolving facility for the Canadian Borrower;
- (iii) a term loan consisting of converted pre-petition obligations owed to KKR Financial CLO 2005-1, Ltd., KKR Financial CLO 2005-2, Ltd. and KKR Financial CLO 2006-1, Ltd. (collectively, "KKR"), which shall not exceed approximately \$27 million minus an amount equal to the product of \$60,000,000 multiplied by a percentage, (x) the numerator of which is the balance of the portion of all debts, liabilities and obligations of the U.S. Borrowers, the U.S. Guarantors, the Canadian Borrower and the Canadian Guarantor under the ABL Credit Agreement (the "Existing Obligations") owed to KKR at any time (the "KKR Existing Obligations") immediately prior to the closing of the revolving credit facilities (the "Facilities") and (y) the denominator of which is the sum of \$603 million plus the balance of the KKR Existing Obligations on the Effective Date of a pre-packaged or pre-arranged plan of reorganization in accordance with the Restructuring Support Agreement, which is to be applied to the KKR Existing Obligations immediately prior to the closing of the Facilities; and
- (iv) a term loan consisting of converted pre-petition existing obligations owed to pre-petition domestic lenders other than KKR, which shall not exceed approximately \$106 million minus an amount equal to the product of \$60,000,000 multiplied by a percentage, (x) the numerator of which is \$603 million and (y) the denominator of which is the sum of \$603 million plus the balance of the KKR Existing Obligations immediately prior to the closing of the Facilities, which is to be applied to the Existing

Obligations owed to pre-petition domestic lenders other than KKR immediately prior to the closing of the Facilities of approximately \$57 million.

62. The senior secured domestic facilities will be secured by duly perfected, first priority liens in favor of the ABL Agent (for the benefit of the Exit Lenders) upon all assets of each U.S. Borrower and each U.S. Guarantor, whether real or personal, tangible or intangible, now existing or hereafter created, acquired or arising, and wherever located and 65% of the equity interests of any foreign subsidiaries, including without limitation, the Canadian Borrower. The senior secured Canadian facility will be secured by duly perfected, first priority liens in favor of the ABL Agent (for the benefit of the Canadian Exit Lenders) upon all assets of each Borrower and Guarantor (including the U.S. Borrowers and U.S. Guarantors), whether real or personal, tangible or intangible, now existing or hereafter created, acquired or arising, and wherever located. The effectiveness of the Fourth Amended and Restated Credit Agreement and the obligation of the Exit Lenders to fund thereunder are conditioned upon, among other things, the consummation of the Plan and Rights Offering.

63. The Plan will significantly delever the Debtors' balance sheet and allow the Debtors to continue the successful operation of their businesses. Because the Plan provides more value to creditors than would have been possible under a liquidation of the Debtors' businesses, the Debtors anticipate confirming the Plan within a short timeframe. The Debtors believe that the swift emergence contemplated under the Plan will enhance the Debtors' ability to continue to focus on providing services to its clients.

## **PART II**

### **FIRST DAY PLEADINGS**

64. In furtherance of ModSpace's restructuring efforts, the Debtors will file First Day Pleadings substantially contemporaneously with this Declaration, and respectfully request that

this Court enter the proposed orders granting the relief requested in such First Day Pleadings. I believe that the relief sought in each of the First Day Pleadings (a) is vital to the Debtors' transition to, and operation in, chapter 11 with minimal interruption or disruption to their businesses or loss of productivity or value, and (b) constitutes a critical element in maximizing value during these Chapter 11 Cases.

65. The First Day Pleadings that are sought to be heard at the First Day hearing in these Chapter 11 Cases are:

- a. Debtors' Motion for Order Directing Joint Administration of Cases Pursuant to Bankruptcy Rule 1015(b) and Local Bankruptcy Rule 1015-1;
- b. Debtors' Motion for Interim and Final Orders Under Bankruptcy Code Sections 105(a), 363(b), 541, 507(a) 1107(a) and 1008 and Bankruptcy Rule 6003, Authorizing Debtors to Pay Prepetition Wages, Compensation and Employee Benefits;
- c. Debtors' Motion for Interim and Final Orders Pursuant to Bankruptcy Code Sections 105(a), 345(b), 363, 503(b) 1107 and 1008, Bankruptcy Rule 6003 and 6004, and Local Bankruptcy Rule 2015-2 (I) Authorizing Continued Maintenance of Prepetition Bank Accounts and Payment of Related Prepetition Obligations, (II) Authorizing Continued Use of Existing Cash Management System, (III) Authorizing Continued Use of Existing Business Forms, (IV) Authorizing the Continuation of, and Accordance of Administrative Expense Priority Status to, Intercompany Transactions and Granting the Debtors a Waiver of the Requirements Ccontained in Section 345(b) of the Bankruptcy Code on an Interim and Final Basis;
- d. Debtors' Motion for Interim and Final Orders (1) Approving Post-Petition Financing, (2) Granting Liens and Providing Superpriority Administrative Expense Claim Status Pursuant to 11 U.S.C. §§ 363 and 364, (3) Granting Adequate Protection to Pre-Petition Secured

Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 (3) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362 and (4) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001(C);

e. Debtors' Motion For Entry of an Order Authorizing the Debtors to Pay Prepetition Claims of General Unsecured Creditors in the Ordinary Course of Business;

f. Motion of Debtors, Pursuant to Sections 105(a) and 107(b) of the Bankruptcy Code, for Entry of an Order Authorizing Debtors to File Under Seal the Fee Letters Relating to Postpetition Financing Motion;

g. Debtors' Application for Entry of Order Pursuant to Section 156(c) of Title 28 of the United States Code, Bankruptcy Code Section 105(a), Bankruptcy Rule 2002, and Local Bankruptcy Rule 2002-1(f) Authorizing Debtors to Employ and Retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date;

h. Motion of Debtors for Order Pursuant to Sections 105(a), 363(b), 507(a), 541, 1107(a) and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, Authorizing Payment of Prepetition Taxes and Fees;

i. Debtors' Motion for Interim and Final Orders Pursuant to Bankruptcy Code Sections 105(a) and 366 (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies and (III) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Service;

j. Debtors' Motion for Order under Bankruptcy Code Section 1505 Authorizing Modular Space Corporation to Act as Foreign Representative on Behalf of the Debtors' Estates;



k. Debtors' Motion for an Order (I) Confirming the Enforcement and Applicability of Section 362 of the Bankruptcy Code and (II) Confirming the Debtors' Authority with Respect to Postpetition Operations;

l. Debtors' Motion under Bankruptcy Code Sections 105, 362 and 541 for an Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of the Debtors' Parents' Equity Securities;

m. Debtors' Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures, (III) Approving Solicitation and Related Procedures, (IV) Approving the Notice Procedures, (V) Approving Notice and Objection Procedures for the Assumption, Assignment and Rejection Of Executory Contracts and Unexpired Leases and (VI) Extending the Time and, Upon Confirmation, Waiving the Requirements that Statements and Schedules Be Filed and a Creditors' Meeting Be Convened;

n. Debtors' Motion for Entry of an Order (A) Establishing Bar Dates for Filing Proofs of Claim, (B) Approving Manner For Filing Proofs Of Claim, (C) Approving Notice Thereof, and (D) Granting Related Relief; and

o. Debtors' Motion for an Order Approving Procedures for Rights Offering and Related Forms and Authorizing the Debtors to Conduct the Rights Offering in Connection with the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code.

66. I have reviewed each of the First Day Pleadings (including the exhibits and schedules attached thereto) listed above, and, to the best of my knowledge, I believe that the facts set forth in the First Day Pleadings are true and correct. If I were called upon to testify, I could

and would, based on the foregoing, testify competently to the facts set forth in each of the First Day Pleadings.

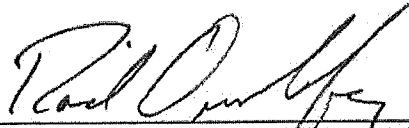
67. Furthermore, as a result of my personal knowledge, information supplied to me by other members of ModSpace's management and from my colleagues that perform services for the Debtors, from my review of relevant documents, or upon my opinion based upon my experience, discussions with the Debtors' advisors and knowledge of ModSpace's operations and financial condition, I believe the relief sought in the First Day Pleadings is necessary for the Debtors to effectuate a smooth transition into chapter 11 bankruptcy, to avoid irreparable harm to their businesses and estates, and is in the best interests of the Debtors' creditors, estates and other stakeholders.

68. Accordingly, for the reasons stated herein and in each of the First Day Pleadings filed concurrently or in connection with the commencement of these Chapter 11 Cases, I believe that the relief sought in the First Day Pleadings should be granted by the Court in its entirety, together with such other and further relief for the Debtors as this Court deems just and proper, in the most expeditious manner possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed: December 21, 2016  
New York, New York

By:

  
Name: David Orlofsky  
Title: Senior Managing Director, Zolfo Cooper LLP

**EXHIBIT A**

**Corporate Organizational Chart**

# ModSpace Corporate Structure

