

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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:  
In re: : Case No. 12-47498  
: Chapter 15  
**AZURE DYNAMICS CORPORATION, et al.,**<sup>1</sup> : Honorable Walter Shapero  
:  
Applicants in Foreign Proceedings. : (Jointly Administered)  
:  
Obj. Deadline: August 6, 2012 (4:00 p.m. EDT)

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**MOTION FOR AN ORDER ENFORCING THE ORDER OF THE  
CANADIAN COURT APPROVING THE EMPLOYEE  
RETENTION PLAN FOR THE AZURE GROUP**

Ernst & Young Inc. is the court-appointed monitor (the “**Monitor**”) and authorized foreign representative of Azure Dynamics Corporation (“**AZD**”), Azure Dynamics Inc., Azure Dynamics Incorporated and Azure Dynamics Limited (together the “**Azure Group**”) in proceedings (the “**Canadian Proceedings**”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “**CCAA**”), pending before the Supreme Court of British Columbia (the “**Canadian Court**”).

On June 15, 2012, the Canadian Court entered an order (the “**Canadian ERP Order**”) approving, *inter alia*, an employee retention plan (the “**ERP**”) for the Azure Group.<sup>2</sup> A

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<sup>1</sup> The applicants in these chapter 15 cases are: Azure Dynamics Corporation (Case No. 12-47498); Azure Dynamics Inc. (Case No. 12-47501); Azure Dynamics Incorporated (Case No. 12-47496); Azure Dynamics Limited (Case No. 12-47502).

<sup>2</sup> The Canadian ERP Order also provides for an extension of the stay of proceedings in the Canadian Proceedings to July 16, 2012. By its order dated May 5, 2012 (the “**Recognition Order**”) [Dkt. No. 57], this Court granted recognition of the Canadian Proceedings as “foreign main proceedings” and enforced the Order Made After Application of the Canadian Court dated March 26, 2012 (the “**Initial Order**”), including the stay of proceedings contained therein, and any amendments or extensions thereof that may subsequently be granted by the Canadian Court. Accordingly, by this Motion the Monitor is only seeking recognition and enforcement of the portion of the Canadian ERP Order approving the ERP.

copy of the Canadian ERP Order is attached hereto as **Exhibit 6**. A copy of the ERP is attached as Schedule B to the Canadian ERP Order.

The details of the ERP are further discussed in the *Third Report of the Monitor* dated June 4, 2012 (the “**Third Monitor’s Report**”), which report the Monitor caused to be filed and served in these cases on June 7, 2012 [Dkt. No. 61]. The Canadian ERP Order authorizes and directs the Azure Group, with the assistance and under the supervision of the Monitor, to implement the ERP. The Monitor believes that the ERP approved by the Canadian ERP Order is crucial to the ultimate success of the Azure Group’s restructuring efforts.

By this motion (the “**Motion**”), the Monitor respectfully requests that this Court enter an order pursuant to sections 1507, 1509, 1525(a) and 105(a) of the Bankruptcy Code in the form annexed hereto as **Exhibit 1** (the “**Proposed ERP Order**”) giving full force and effect in the United States to the Canadian ERP Order. In support thereof, the Monitor respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. This court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue in this District is proper pursuant to 28 U.S.C. §§ 1410(1) and (3). The statutory predicates for the relief requested herein are sections 1507, 1509, 1525(a) and 105(a) of the Bankruptcy Code.

### **BACKGROUND**

2. This Court is respectfully referred to the Chapter 15 Petitions and the *Affidavit of Stephen Lee* (the “**Lee Affidavit**”) in support of the application of the Azure Group under the CCAA, sworn and submitted to the Canadian Court on March 26, 2012, and annexed

as Exhibit B to the declaration of Lisa J. P. Kraidin made and filed with this Court on March 26, 2012 [Dkt. No. 6], for a complete description of the Canadian Proceedings, the Azure Group's business, corporate organization, current indebtedness and capital structure, and the circumstances leading to the commencement of the above-referenced chapter 15 cases.

### **The ERP**

3. As described in greater detail in the Third Monitor's Report, the Azure Group, in consultation with the Monitor, developed the ERP in order to retain the current employees of the Azure Group and to provide incentives to senior management to implement a Successful Transaction<sup>3</sup> as part of the sale and investment solicitation process (the "**SISP**"),<sup>4</sup> which process is designed to provide a framework for the Azure Group to identify and effectively negotiate with potential purchasers and/or investors (the "**Interested Parties**").

4. The ERP reflects the Azure Group's recognition that its employee base and associated human capital is a critical asset that has a direct impact on the Azure Group's going-concern value. The Monitor agrees with this view and has worked with the Azure Group to develop the ERP to provide the Azure Group with the means to retain critical employees at a time of uncertainty about their future employment prospects and provide appropriate incentives to key management to administer the SISP and implement a successful transaction for the benefit of all stakeholders.

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<sup>3</sup> "**Successful Transaction**" means either a combination of:

- (i) a sale of all or substantially all of the assets of the Azure Group, in one more transactions; or
- (ii) an investment in the Azure Group to fund a plan of compromise and arrangement acceptable to the requisite majorities of creditors under applicable Canadian law and approved by the Canadian Court.

<sup>4</sup> This Court is respectfully referred to the Second Report of the Monitor dated April 18 2012 (the "**Second Monitor's Report**"), which report the Monitor caused to be filed and served in these cases on April 30, 2012 [Dkt. No. 47], for a full description of the SISP. On April 23, 2012, the Canadian Court entered an order (the "**Canadian SISP Order**") that, *inter alia*, approved the SISP. On the motion of the Monitor, this Court recognized and gave full force and effect to the Canadian SISP Order in the United States by its Order dated June 16, 2012 [Dkt. 64].

5. To accomplish these objectives, the ERP is structured to include three separate components:

- (a) a retention plan (the “**Retention Plan**”) applicable to non-management employees;
- (b) a management incentive plan (the “**Management Incentive Plan**”) applicable to management-level employees; and
- (c) an executive compensation plan (the “**Executive Compensation Plan**”) applicable to certain executives.

6. Further, as discussed more fully below, the Canadian Court has approved the grant of a priority charge over the Azure Group's Property to secure payments contemplated by the ERP (the “**ERP Charge**”).

### **The Retention Plan**

7. The Azure Group has determined, and the Monitor agrees, that the Retention Plan is critical to the ultimate success of the Azure Group's restructuring efforts. Alternative employers are aggressively courting the Azure Group's engineering personnel, and significant staff reductions, carried out as an austerity measure, have rendered the remaining staff critical to the Azure Group's operations. The Retention Plan is designed to incentivize the Azure Group's non-management employees, many of whom have highly technical skills that are in high demand in the industry, to remain as employees at the Azure Group through to a final disposition of the Canadian Proceedings.

8. The Retention Plan is only applicable to non-management employees of the Azure Group and provides for a two-tranche payment to eligible employees in an amount not

to exceed C\$500,000. The first tranche payment was made to eligible employees on June 30, 2012. The second tranche payment will be disbursed three (3) business days following the earlier of: (i) the date on which a Successful Transaction is implemented; (ii) the date on which the Canadian Proceedings are terminated; and (iii) August 31, 2012. The allocation of the amounts payable under the first tranche is outlined in the schedules annexed to the ERP. The allocation of amounts payable under the second tranche will be determined by the Board of Directors of AZD, prior to the payment date.

### **The Management Incentive Plan**

9. The purpose of the Management Incentive Plan is to incentivize certain management-level employees to dedicate their time and attention to the SISP. As noted above, these employees are not participating in the Retention Plan, and will not receive funds under the Management Incentive Plan unless there is a Successful Transaction. This is intended to align the interests of these employees with all other stakeholders in the Azure Group by promoting their efforts to maximize overall enterprise value.

10. The Management Incentive Plan provides for a payment to management-level employees (the “**Management Incentive Amount**”) of ten percent (10%) of the amount by which the Gross Value of a Successful Transaction<sup>5</sup> exceeds the sum of (i) the aggregate secured claims of Johnston Controls, Inc. and Silicon Valley Bank (as determined by a Canadian Court-approved claims process), and (ii) the aggregate claims secured by the priority charges approved by the Canadian Court in the Initial Order as of the date of the implementation of a Successful

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<sup>5</sup> “**Gross Value of a Successful Transaction**” means:

- (i) For an asset sale, the consideration paid by the purchaser including the purchase price (net of adjustments) and the value of any obligations assumed; and
- (ii) For an investment, the imputed enterprise value of the Azure Group as of the date of implementation of the Successful Transaction.

Transaction. These employees will receive 75% of the Management Incentive Amount only after a Successful Transaction is implemented and the remaining 25% of the Management Incentive Amount three (3) months following implementation of a Successful Transaction.

### **The Executive Compensation Plan**

11. The purpose of the Executive Compensation Plan is to incentivize certain executives (individually “**Executive**” and collectively the “**Executives**”) to continue to diligently administer the SISP and to achieve the goal of closing a Successful Transaction. The funds available for distribution under the Executive Compensation Plan are equal to 50% of the aggregate Annual Total Compensation<sup>6</sup> of the Executives up to a maximum amount of C\$650,000.

12. The Executives are entitled to participate in the Executive Compensation Plan provided in each case that:

- (a) the Executive was employed by the Azure Group on the date the Canadian Court approved the ERP, June 15, 2012;
- (b) a Successful Transaction is implemented;
- (c) the Executive has not resigned or been terminated for cause prior to the implementation of a Successful Transaction; and
- (d) in connection with a Successful Transaction the Executive’s employment is terminated without cause and he is either not offered employment by the purchaser or continuing entity (as

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<sup>6</sup> “**Annual Total Compensation**” means the Executives’ annual base salary, bonus, RRSP top-up entitlement, health benefits and car allowance as of June 15, 2012.

the case may be) or is offered employment on Inferior Terms (as defined in the ERP).

### **The ERP Charge**

13. To secure payments under the ERP the Canadian Court has approved the ERP Charge. The ERP Charge is bifurcated into:

- (a) a charge in respect of the entitlements under the Retention Plan and the Management Incentive Plan that ranks in priority to all claims, liens, charges, and encumbrances (the “**Encumbrances**”) other than the Administration Charge (as defined in the Initial Order); and
- (b) a charge in respect of entitlements under the Executive Compensation Plan that ranks in priority to the Encumbrances, other than the priority charges provided for in the Initial Order, the DIP Charge (as defined in the order of the Canadian Court dated April 13, 2012, approving the terms of a debtor-in-possession financing agreement), and the enforceable Encumbrances, in favor of the Azure Group’s secured creditors.

14. In the Third Monitor’s Report, the Monitor recommended approval of the ERP and the ERP Charge to the Canadian Court. The Monitor now seeks enforcement of the Canadian ERP Order in these ancillary cases.

## **RELIEF REQUESTED**

15. By this Motion, the Monitor respectfully requests the entry of an order giving full force and effect in the United States to the Canadian ERP Order pursuant to sections 1507, 1509, 1525(a) and 105(a) of the Bankruptcy Code.

16. Enforcement of the Canadian ERP Order is needed to ensure that remaining employees will be incentivized to continue providing the highly technical and specialized customer support functions required by the Interested Parties throughout the pendency of the Azure Group's restructuring and that the Executives will continue to work diligently towards concluding the SISP and closing a Successful Transaction.

17. Section 1525(a) of the Bankruptcy Code provides that, "consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative." 11 U.S.C. § 1525(a). Further, section 1507(a) provides that, upon recognition, subject to the specific limitations stated elsewhere in chapter 15, "the court may provide additional assistance to a foreign representative."

18. In addition, section 1509 of the Bankruptcy Code provides that "if the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of [chapter 15] . . . a court in the United States shall grant comity or cooperation to the foreign representative." 11 U.S.C. § 1509(b)(3). This provision has been interpreted to reflect a strong policy favoring the grant of comity after the recognition of a foreign proceeding so long as granting comity does not contravene a fundamental public policy of the United States. *See CT Inv. Mgmt. Co., LLC v. Carbonell & Grupo Costamex*, 2012 U.S. Dist. LEXIS 3356, at \*11-12 (S.D.N.Y. Jan. 6, 2012) ("Once a foreign proceeding has been recognized by a U.S. bankruptcy court, it is mandatory that U.S. courts extend comity to a



foreign representative's request for a grant of comity unless granting such request would contravene U.S. public policy."); see also *In re Condor Ins. Ltd.*, 601 F.3d 319, 324 (5th Cir. 2010) (noting that "U.S. courts must grant comity and cooperation to the foreign representative" after recognition); *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 565 (E.D. Va. 2010) ("Put another way, §§ 1509 (b) (3) and 1506, read *in pari materia*, provide that comity shall be granted following the U.S. recognition of a foreign proceeding under chapter 15, subject to the caveat that comity shall not be granted when doing so would contravene fundamental U.S. public policy.").

19. The relief sought by this Motion does not contravene any fundamental public policy of the United States. The primary aim of the ERP and its component parts is to incentivize key employees of the Azure Group to continue working to preserve and enhance the going-concern value of the Azure Group's business at a time of great uncertainty and, in the case of the Management Incentive Plan, to implement a transaction that would benefit all stakeholders. The importance of incentivizing critical employees to continue working towards the successful reorganization of a bankrupt entity has long been recognized by courts in the United States, and plans providing for enhanced remuneration for such employees are routinely approved in plenary cases so long as they comply with the requirements set forth in section 503(c) of the Bankruptcy Code.<sup>7</sup> See e.g., *In re Velo Holdings Inc.*, Case No. 12-11384, 2012 WL 2015870 at 1 (Bankr. S.D.N.Y. June 6, 2012); *In re Mesa Air Grp.*, No. 10-10018, 2010 WL 3810899 at 4 (Bankr. S.D.N.Y. Sept. 24, 2010); *In re Dana Corp.*, 358 B.R. 567 (Bankr. S.D.N.Y.).

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<sup>7</sup> In ancillary cases under the Bankruptcy Code, such as this one, the specific requirements of section 503(c) do not apply. See 11 U.S.C. § 103(a) ("Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(0), 555 through 557, and 559 through 562 apply in a case under chapter 15.").

20. In an ancillary case the relevant inquiry is whether recognition and enforcement of the ERP would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. Courts have consistently held that section 1506’s public policy exception should be narrowly construed. Thus, comity should be granted even where the foreign law and/or procedures are not identical to U.S. law and/or procedures. *See e.g., In re RSM Richter Inc. v. Aguilar (In re Ephedra Prods. Liab. Litig.)*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (granting comity in a chapter 15 case to a Canadian court’s claims resolution procedure in a CCAA proceeding that did not provide for jury trial of personal injury claims); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010) (granting comity in a chapter 15 case to a CCAA plan of arrangement that included third-party releases that arguably could not be granted in a U.S. bankruptcy proceeding).<sup>8</sup>

21. Enforcement of the Canadian ERP Order in the Azure Group’s chapter 15 cases is entirely consistent with, and warranted by, longstanding principles of international comity. Relief similar to that requested herein has also been granted before in this circuit. *See e.g., In re Bilrite Rubber (1984) Inc.*, No. 09-31423 (Bankr. N.D. Ohio Apr. 2, 2009) (recognizing and enforcing a Canadian court order approving an employee “retention program” with amounts owing under the program to be secured as part of the priority administrative charge provided for in the debtors’ CCAA proceeding).

22. Even outside of the chapter 15 context, it is well settled that a foreign judgment “should generally be accorded comity if ‘its proceedings are according to the course of

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<sup>8</sup> As Judge Cardozo observed long ago, expressing a sentiment that has been consistently reaffirmed up until the present day: “[w]e are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.” *Ackermann v. Levine*, 788 F.3d 830 (2d Cir. 1986) (reaffirming the narrowness of the public policy except to enforcement of foreign judgments) (quoting *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 110-11 (1918) (Cardozo, J.)).

a civilized jurisprudence,' i.e., fair and impartial.” *In re RSM Richter Inc. v. Aguilar (In re Ephedra Prods. Liab. Litig.)*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (citing *Hilton v. Guyot*, 159 U.S. 113 (1895)). Significantly for this case, in light of the fact that the Azure Group’s Foreign Main Proceedings are located in Canada, courts have routinely observed that “when the foreign proceeding is in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings.” *In re Bd. of Dirs. of Hopewell Int’l Ins. Ltd., Inc.*, 238 B.R. 25, 67 (Bankr. S.D.N.Y. 1999), *aff’d*, 238 B.R. 699 (S.D.N.Y. 2002) (internal quotations and citations omitted). Comity principles are even more compelling in proceedings under chapter 15, a statute expressly created to further international comity and cooperation. *See* 11 U.S.C. §1501; *In re Atlas Shipping A/S*, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009) (chapter 15 “specifically contemplates that the court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief.”).

23. The Monitor is of the view that the implementation of the ERP is critical to the ultimate success of the Azure Group’s restructuring efforts and that recognition and enforcement of the Canadian ERP Order would further the goals underlying chapter 15 of the Bankruptcy Code and in no way contravene a fundamental public policy of the United States.

24. Finally, the Canadian Court has expressly requested the aid and recognition of this Court to give effect to the Canadian ERP Order in the United States and to assist the Monitor in carrying out the terms of the Canadian ERP Order. See the Canadian ERP Order at ¶ 9. Accordingly, the Monitor respectfully requests that this Court enter the Proposed

Order giving full force and effect to the Canadian ERP Order in the United States, pursuant to sections 1507, 1509, 1525(a) and 105(a) of the Bankruptcy Code.

**NOTICE**

25. Notice of this Motion shall be served by the Monitor by U.S. mail, first-class postage prepaid or by overnight courier upon (i) the United States Trustee for the Eastern District of Michigan, (ii) all known creditors and all other parties against whom relief is sought (or their counsel), including any such parties (or counsel) that have addresses outside of the United States, and (iii) any other parties that have filed a notice of appearance in this case.

26. The Monitor respectfully requests that any objections to the entry of the Proposed ERP Order must be made in writing pursuant to the Bankruptcy Code and the Bankruptcy Rules and describe the basis thereof, which objection or response must be filed with this Court and served upon counsel for the Monitor by no later than August 6, 2012, at 4:00 p.m. (EDT). Notices to counsel for the Monitor should be addressed to Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, Attention: Ken Coleman, Lisa J. P. Kraidin, and Rowena White; and Pepper Hamilton LLP, Suite 1800, 4000 Town Center, Southfield, Michigan, 48075, Attention: Robert S. Hertzberg and Deborah Kovsky-Apap.

WHEREFORE, the Monitor respectfully requests that the Court enter the Proposed ERP Order attached hereto as **Exhibit 1** and grant such other relief as this Court determines is fair and equitable under the circumstance.

Dated: July 18, 2012

**ALLEN & OVERY LLP**

Ken Coleman  
Lisa J. P. Kraidin  
Rowena White  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone (212) 610-6300  
Facsimile (212) 610-6399  
ken.coleman@allenoverly.com  
lisa.kraidin@allenoverly.com  
rowena.white@allenoverly.com

-and-

**PEPPER HAMILTON LLP**

/s/Deborah Kovsky-Apap  
Robert S. Hertzberg (P30261)  
Deborah Kovsky-Apap (P68258)  
Suite 1800  
4000 Town Center  
Southfield, Michigan 48075  
Telephone (248) 359-7300  
Facsimile (248) 359-7700  
hertzbergr@pepperlaw.com  
kovskyd@pepperlaw.com

*Attorneys for Ernst & Young Inc., as  
Monitor and Foreign Representative of the  
Azure Group*

**Exhibit 1**

**Proposed ERP Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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 :  
 In re: : Case No. 12-47498  
 : Chapter 15  
**AZURE DYNAMICS CORPORATION, et al.**<sup>1</sup> : Honorable Walter Shapero  
 :  
 Applicants in Foreign Proceedings. : (Jointly Administered)  
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**ORDER ENFORCING ORDER OF THE CANADIAN COURT APPROVING  
THE EMPLOYEE RETENTION PLAN FOR THE AZURE GROUP**

The *Motion for an Order Enforcing the Order of the Canadian Court Approving the Employee Retention Plan for the Azure Group* (the “**Motion**”) was brought by Ernst & Young Inc., the court-appointed monitor (the “**Monitor**”) and authorized foreign representative of Azure Dynamics Corporation, Azure Dynamics Inc., Azure Dynamics Incorporated and Azure Dynamics Limited (together, the “**Azure Group**”) in proceedings (the “**Canadian Proceedings**”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “**CCAA**”), pending before the Supreme Court of British Columbia (the “**Canadian Court**”).

By the Motion, the Monitor requested that this Court enter an order giving full force and effect in the United States to the Canadian Court’s *Order Made After Application* entered in the Canadian Proceedings on June 15, 2012 (the “**Canadian ERP Order**”) approving the employee retention plan (the “**ERP**”), which plan is attached as Schedule B to the Canadian

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<sup>1</sup> The applicants in these chapter 15 cases are: Azure Dynamics Corporation (Case No. 12-47498); Azure Dynamics Inc. (Case No. 12-47501); Azure Dynamics Incorporated (Case No. 12-47496); Azure Dynamics Limited (Case No. 12-47502).

ERP Order and is described in detail in the *Third Report of the Monitor* dated June 4, 2012 (the “**Third Monitor’s Report**”) [Dkt. No. 61]. The Canadian ERP Order is attached as Exhibit 6 to the Motion. The Canadian ERP Order authorizes and directs the Azure Group, with the assistance and under the supervision of the Monitor, to implement the ERP.

The Court has considered and reviewed the Motion, the Canadian ERP Order, the ERP, and the Third Monitor’s Report. Based on the foregoing, and sufficient and proper notice of the Motion and the relief requested therein having been provided, and it appearing that the relief requested in the Motion is in the best interests of the Azure Group and the other parties in interest in these chapter 15 cases, and any objections filed having been withdrawn or overruled, after due deliberation and sufficient cause appearing therefore:

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is granted.
2. The Canadian ERP Order, including any extensions or amendments thereto, is hereby given full force and effect in the United States.
3. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

The Motion and all other filings in this case shall be made available upon request at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020 to the attention of Joseph Badtke-Berkow, (212) 610-6300, joseph.badtke-berkow@allenoverly.com.



**Exhibit 2**

**Notice of Motion and Opportunity to Object**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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	:	
In re:	:	Case No. 12-47498
	:	Chapter 15
<b>AZURE DYNAMICS CORPORATION, et al.</b> <sup>1</sup>	:	Honorable Walter Shapero
	:	
Applicants in Foreign Proceedings.	:	(Jointly Administered)
	:	
	x	

**NOTICE OF MOTION FOR AN ORDER ENFORCING THE ORDER OF THE  
CANADIAN COURT APPROVING THE EMPLOYEE  
RETENTION PLAN FOR THE AZURE GROUP**

**PLEASE TAKE NOTICE** that on July 18, 2012, Ernst & Young Inc., the court-appointed monitor (the “**Monitor**”) and authorized foreign representative of Azure Dynamics Corporation, Azure Dynamics Inc., Azure Dynamics Incorporated and Azure Dynamics Limited (together, the “**Azure Group**”) in proceedings (the “**Canadian Proceedings**”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “**CCAA**”), pending before the Supreme Court of British Columbia (the “**Canadian Court**”), filed its *Motion for an Order Enforcing the Order of the Canadian Court Approving the Employee Retention Plan for the Azure Group* (the “**Motion**”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “**Bankruptcy Court**”) seeking entry of an order giving full force and effect in the United States to the Canadian Court’s *Order Made After Application* entered in the Canadian Proceedings on June 15, 2012 (the “**Canadian Order**”).

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Bankruptcy Court to grant the Monitor’s Motion, or you want the Bankruptcy Court to consider your views on the Motion, by **August 6, 2012 at 4:00 p.m. (EDT)** you or your attorney must:

1. File a written objection or response to the Motion explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court’s electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:<sup>2</sup>

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<sup>1</sup> The applicants in these chapter 15 cases are: Azure Dynamics Corporation (Case No. 12-47498); Azure Dynamics Inc. (Case No. 12-47501); Azure Dynamics Incorporated (Case No. 12-47496); Azure Dynamics Limited (Case No. 12-47502).

<sup>2</sup> A response must comply with F. R. Civ. P. 8(b), (c) and (e).

**United States Bankruptcy Court**  
Theodore Levin Courthouse  
231 West Lafayette Street  
Detroit, MI 48226

2. Serve a copy of any objection or response upon:

**Allen & Overy LLP**  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: Ken Coleman, Lisa J.P. Kraidin and Rowena White

-and-

**Pepper Hamilton LLP**  
Suite 1800, 4000 Town Center  
Southfield, Michigan 48075  
Attn: Robert Hertzberg and Deborah Kovsky-Apap

**PLEASE TAKE FURTHER NOTICE** that if an objection or response is timely filed and served, the clerk may schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

**PLEASE TAKE FURTHER NOTICE** that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.

*[Intentionally left blank]*

Dated: July 18, 2012

**ALLEN & OVERY LLP**

Ken Coleman  
Lisa J.P. Kraidin  
Rowena White  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone (212) 610-6300  
Facsimile (212) 610-6399  
ken.coleman@allenoverly.com  
lisa.kraidin@allenoverly.com  
rowena.white@allenoverly.com

-and-

**PEPPER HAMILTON LLP**

/s/ Deborah Kovsky-Apap  
Robert S. Hertzberg (P30261)  
Deborah Kovsky-Apap (P68258)  
Suite 1800  
4000 Town Center  
Southfield, Michigan 48075  
Telephone (248) 359-7300  
Facsimile (248) 359-7700  
hertzbergr@pepperlaw.com  
kovskyd@pepperlaw.com

*Attorneys for Ernst & Young Inc., as Monitor and  
Foreign Representative of the Azure Group*

**Exhibit 3**

**Required Brief**

Not applicable

**Exhibit 4**

**Certificate of Service**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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In re:	: Case No. 12-47498
	: Chapter 15
<b>AZURE DYNAMICS CORPORATION, et al.,<sup>1</sup></b>	: Honorable Walter Shapero
	:
Applicants in Foreign Proceedings.	: (Jointly Administered)
	:
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**CERTIFICATE OF SERVICE**

The Azure Group has engaged GCG, Inc. (“GCG”) to act as its noticing agent in the Azure Group’s chapter 15 cases. GCG will serve the Motion as provided for in the Motion and file a subsequent proof of service with the Court after it has performed the service.

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<sup>1</sup> The applicants in these chapter 15 cases are: Azure Dynamics Corporation (Case No. 12-47498); Azure Dynamics Inc. (Case No. 12-47501); Azure Dynamics Incorporated (Case No. 12-47496); Azure Dynamics Limited (Case No. 12-47502).

Dated: July 18, 2012

**ALLEN & OVERY LLP**

Ken Coleman  
Lisa J.P. Kraidin  
Rowena White  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone (212) 610-6300  
Facsimile (212) 610-6399  
ken.coleman@allenoverly.com  
lisa.kraidin@allenoverly.com  
rowena.white@allenoverly.com

-and-

**PEPPER HAMILTON LLP**

/s/ Deborah Kovsky-Apap  
Robert S. Hertzberg (P30261)  
Deborah Kovsky-Apap (P68258)  
Suite 1800  
4000 Town Center  
Southfield, Michigan 48075  
Telephone (248) 359-7300  
Facsimile (248) 359-7700  
hertzbergr@pepperlaw.com  
kovskyd@pepperlaw.com

*Attorneys for Ernst & Young Inc., as  
Monitor and Foreign Representative  
of the Azure Group*



**Exhibit 5**

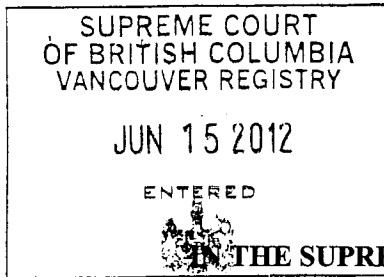
**Affidavits**

Not applicable

**Exhibit 6**

**Documentary Exhibits**

Canadian ERP Order



No. S122223  
Vancouver Registry

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
AZURE DYNAMICS CORPORATION,  
AZURE DYNAMICS INC., AZURE DYNAMICS INCORPORATED and AZURE  
DYNAMICS LIMITED

PETITIONERS

**ORDER MADE AFTER APPLICATION**

BEFORE ) THE HONOURABLE JUSTICE FITZPATRICK ) June 8, 2012  
)  
)  
)  
)

ON THE APPLICATION OF the Petitioners coming on for hearing at Vancouver, British Columbia on April 23, 2012 and on hearing Vicki Tickle and Stuart Brotman, counsel for the Petitioners, Geoffrey Thompson, counsel for Ernst & Young Inc., and those counsel listed in Schedule "A" hereto;

THIS COURT ORDERS that:

1. The time for service of this Notice of Application and the materials referred to therein be and is hereby abridged and the Notice of Application is properly returnable today.
2. The stay of proceedings provided for in the March 26, 2012 Order of this Court (the "Initial Order"), as extended from time to time, be and is hereby extended until 11:59 p.m. (Vancouver time) on July 16, 2012.
3. The employee retention plan in the form attached hereto as Schedule "B" is hereby approved.
4. The employees of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "ERP Charge") on the Property (as that term is defined in the Initial Order) as security for the Petitioners' obligations to make payments to its employees under and in accordance with the ERP.
5. The filing, registration or perfection of the ERP Charge shall not be required, and the ERP Charge shall be effective as against the Property and shall be valid and enforceable for all purposes notwithstanding that the ERP Charge is not filed, registered or perfected.

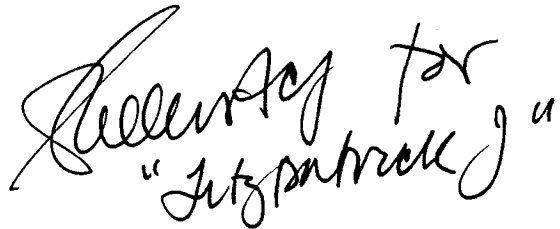
6. The ERP Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, other than the following Encumbrances which shall rank in priority to the ERP Charge as follows:
  - (a) any deemed trusts provided for in paragraph 37(2) of the CCAA;
  - (b) insofar as and to the extent that the ERP Charge secures the Petitioners’ obligations pursuant to the Retention Plan and the Management Incentive Plan (as both those terms are defined in the ERP), the Administration Charge (as that term is defined in the Initial Order) shall rank in priority to the ERP Charge; and
  - (c) insofar as and to the extent that the ERP Charge secures the Petitioners’ obligations pursuant to the Executive Compensation Plan (as that term is defined in the ERP), the following Encumbrances shall rank in priority to the ERP Charge:
    - (i) the Directors’ Charge, the Intercompany Charges and the Administration Charge (as those terms are defined in the Initial Order);
    - (ii) the DIP Charge (as that term is defined in the Order of this Court dated April 13, 2012); and
    - (iii) the Encumbrances in favour of Silicon Valley Bank, Johnson Controls Advanced Power Solutions, LLC, Ford Motor Company, Financialinx Corporation, T4 Group Limited, Hitachi Corporation of America, Citicapital Commercial Leasing Corporation, US Bancorp, Var Resources, Inc., Hansel Ford, Inc., Dell Financial Services L.P., Dell Financial Services L.L.C. and Vendor Lease Management Group, to the extent such Encumbrances would be enforceable as against a trustee in bankruptcy of any of the Petitioners.
7. The ERP and the ERP Charge shall not be rendered invalid or unenforceable 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 the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**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; or (iv) any negative covenants, prohibitions or other similar provisions with respect the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:
  - (a) neither the ERP nor the creation of the ERP Charge shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which any of them is a party; and
  - (b) any payments made by the Petitioners pursuant to the ERP and the granting of the ERP Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

8. To the extent the ERP Charge creates a charge over any leases of real property in Canada, such charge shall only be a charge in the Petitioners' interest in such real property leases.
9. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any Federal or State Court or administrative body in the United States of America, including the United States Bankruptcy Court for the Eastern District of Michigan and the High Court of England and Wales, Chancery Division, Companies Court, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.
10. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



\_\_\_\_\_  
Signature of Vicki Tickle  
Lawyer for the Petitioners



"Jutzpatrick"

BY THE COURT

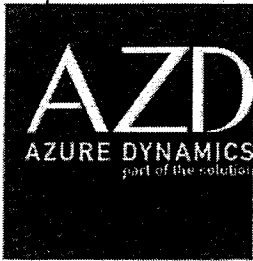


\_\_\_\_\_  
REGISTRAR

**SCHEDULE "A"**

**List of Counsel**

<b>Name</b>	<b>Party</b>
Jordan Schultz	Board of Directors of the Petitioners
William Skelly	Residual Asset Management Inc. (the DIP Lender)
David Preger and Michael Weinczok (both by telephone)	Johnson Controls Inc., Johnson Controls-SAFT Advance Power Solutions LLC and Johnson Controls Advance Power Solutions LLC
Steven Dvorak	VIA Motors Inc.
Mario Forte (by telephone)	Silicon Valley Bank



SCHEDULE "B"

**CCAA EMPLOYEE RETENTION PROGRAM**

May 25, 2012

On March 26, 2012, Azure Dynamics Corporation ("AZD"), Azure Dynamics Inc., Azure Dynamics Incorporated and Azure Dynamics Limited (collectively, the "Azure Group") commenced proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA Proceedings"), and obtained an initial order (the "Initial Order") thereunder from the Supreme Court of British Columbia (the "Court").

The CCAA Proceedings have created uncertainty among the employees of the Azure Group as to the future viability of the Azure Group and their prospects for continued employment. Since the commencement of the CCAA Proceedings, Azure Group employees have been actively recruited by competitors and other prospective employers who are exploiting this uncertainty to their advantage. Seven employees have resigned from the Azure Group since the CCAA Proceedings commenced and a number of existing employees have received offers of employment.

In the course of the CCAA Proceedings, the Azure Group has undertaken a process to solicit a sale or investment transaction that would permit the Azure Group to continue as a going concern. In this context, a successful transaction (a "Successful Transaction") means either or a combination of:

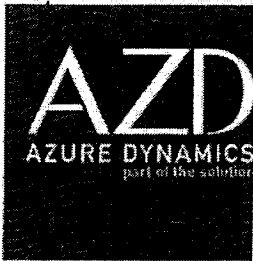
1. a sale of all or substantially all of the assets of the Azure Group, in one or more transactions; or
2. an investment in the Azure Group to fund a plan of compromise and arrangement acceptable to the requisite majorities of creditors and approved by the Court.

For the purposes of the Employee Retention Program (the "ERP") discussed in this letter and described in the attached Schedules, a Successful Transaction will be deemed implemented when the sale transaction closes (in the case of a sale contemplated in paragraph 1 above) or when the plan of compromise and arrangement is implemented in accordance with its terms (in the case of an investment to fund a plan of compromise and arrangement contemplated in paragraph 2 above).

VANCOUVER  
3900 North  
Fraser Way  
Burnaby, BC  
Canada V5J 5H6  
T 604.224.2421  
F 604.419.6362

UK  
UNIT 10, The IO  
Centre, Arlington  
Business Park,  
Gunnels Wood Road,  
Stevenage HRT  
SG1 2BD United Kingdom  
T 44(0)1438729811

[www.azuredynamics.com](http://www.azuredynamics.com)



Management and the Board of Directors of AZD (the "Board") believe that retention of the existing employees of the Azure Group is critical to maximizing the value of the Azure Group to potential purchasers and investors and that the sale or investment solicitation process ("SISP") will require the continued focus and dedication of senior management to achieve a Successful Transaction. To that end, the Azure Group has determined to pay all employees who are employed on June 15, 2012 their 2011 annual bonus entitlement, as permitted by the Initial Order, and to also implement the ERP described below and in the attached schedules.

The objectives of the ERP are to: (i) encourage the retention of the current employees in two stages, firstly, through to the completion of the SISP, and secondly, through to implementation of a Successful Transaction; and (ii) provide incentives to senior management to administer the SISP and implement a Successful Transaction in accordance with the objectives and interests of the Azure Group and its stakeholders.

The ERP is comprised of three program elements, each of which shall operate independently of each other. The terms of each of these program elements are set out in the attached schedules, as follows:

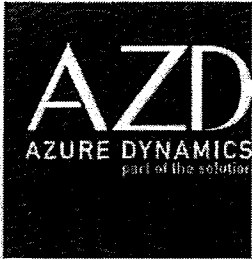
- Schedule "A" – The Retention Plan
- Schedule "B" – The Management Incentive Plan
- Schedule "C" – The Executive Compensation Plan

The implementation of the ERP is conditional on the Court making an Order (the "ERP Approval Order") approving the ERP and granting a priority charge (the "ERP Charge") in favour of the beneficiaries of the ERP in the assets of the Azure Group, in an aggregate amount sufficient to secure payment of all entitlements under the ERP.

The priority of the ERP Charge will be bifurcated such that:

- a) the charge in respect of the entitlements under the Retention Plan and the Management Incentive Plan will rank in priority to all claims, liens, charges and encumbrances ("Encumbrances") other than the Administration Charge (as defined in the Initial Order); and





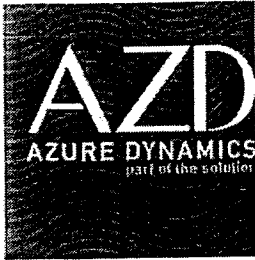
b) the charge in respect of the entitlements under the Executive Compensation Plan will have priority over all Encumbrances, other than the Charges (as defined in the Initial Order), the DIP Charge (as defined in the Order of the Court dated April 13, 2012 (the “DIP Order”)) and the enforceable Encumbrances in favour of Silicon Valley Bank (“SVB”), Johnson Controls Advanced Power Solutions, LLC (“JCI”) and the other Encumbrances listed in Schedule “D”.

The Azure Group will bring a motion for the ERP Approval Order as soon as possible. The court-appointed monitor, Ernst & Young Inc. (the “Monitor”) is satisfied that the ERP is necessary and appropriate in the circumstances and has confirmed that it will recommend approval of the ERP to the Court.

Yours truly,

**AZURE DYNAMICS CORPORATION**

Per:   
\_\_\_\_\_  
Ron Iacobelli, Interim CEO



## SCHEDULE "A" – THE RETENTION PLAN

*Capitalized terms not otherwise defined in this Schedule "A" shall have the meanings ascribed thereto in the letter titled CCAA Employee Retention Program, dated May 25, 2012 (the "ERP Letter").*

### **Purpose:**

The purpose of this Retention Plan is to provide for the retention of the non-management employees of the Azure Group until the outcome of the SISP and the CCAA Proceedings is known.

### **Retention Amount:**

This Retention Plan shall be in the amount \$500,000 (the "Retention Amount").

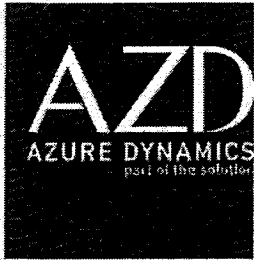
### **Eligibility:**

All individuals, other than the Executives (defined below), who (a) are employees of the Azure Group on June 15, 2012, and (b) who have not resigned or had their employment terminated for cause prior to the relevant installment payment date shall be eligible to receive installment payments under this Retention Plan (the "Eligible Employees"). For certainty, [REDACTED] (the "Executives") shall not be eligible to receive payments under this Retention Plan.

### **Payment:**

The Retention Amount will be paid to the Eligible Employees in two installments, as follows:

1. **First Installment:** On June 30, 2012, the maximum amount of \$250,000 will be paid to the Eligible Employees in accordance with the allocation set out in the attached Appendix "A1".
2. **Second Installment:** On the Second Installment Date, the balance of the Retention Amount after deducting the aggregate amount paid to Eligible Employees under this First Installment, will be paid to the Eligible Employees in accordance with an allocation to be determined by the Board.



**“Second Installment Date”** means the date that is three (3) business days following the earlier of:

- a) the date on which a Successful Transaction is implemented;
- b) the date on which the CCAA Proceedings are terminated; and
- c) August 31, 2012.

**Allocation:**

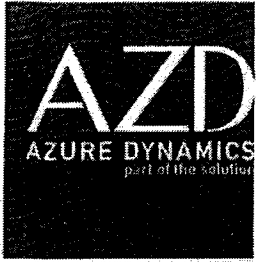
Applicable withholdings will be deducted from the amounts allocated to Eligible Employees and the amounts paid to Eligible Employees under this Retention Plan will be net of such withholdings.

The determination of the Board with respect to the allocation of the Second Installment will be final and binding on the Eligible Employees. No Eligible Employee will have any claim or recourse against the Monitor or any member of the Board in respect of any matter relating to this Retention Plan or the ERP.

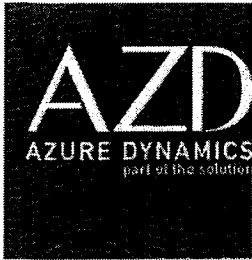
If an individual who would otherwise be an Eligible Employee has resigned or had his or her employment terminated for cause on or before the date of payment of any installment under this Retention Plan, the entitlement of such individual to receive installments under this Retention Plan shall cease upon the date of resignation or termination and the individual will not receive and will have no claim for any installments payable on or after the date of resignation or termination.

**Security**

Payment of the Retention Amount shall be secured by the ERP Charge and shall have the priority set out in the ERP Letter.



**Appendix "A1" – First Installment Allocation**



## SCHEDULE "B" – THE MANAGEMENT INCENTIVE PLAN

*Capitalized terms not otherwise defined in this Schedule "B" shall have the meanings ascribed thereto in the letter titled CCAA Key Employee Retention Program, dated May 25, 2012 (the "ERP Letter").*

### Purpose:

The purpose of the Management Incentive Plan is to incentivize certain management-level employees to dedicate their time and attention to the SISP and implementation of a Successful Transaction and to promote the alignment of such employees' personal interests with the interests of the Azure Group.

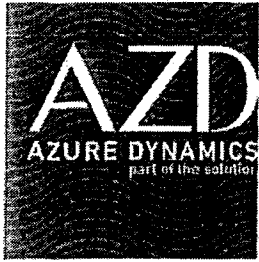
### Incentive Amount:

The amount of this Management Incentive Plan (the "Management Incentive Amount") shall be ten percent (10%) of the amount by which the Gross Value of a Successful Transaction (defined below) exceeds the sum of:

3. the aggregate secured claims of SVB and JCI (as determined in a Court-approved claims process or otherwise determined by the Court) (collectively, the "Secured Claims"), as at the date the Secured Claims are, or are expected to be, discharged by payment of cash, release of collateral, or otherwise; plus
4. the aggregate claims secured by the Charges (as defined in the Initial Order) and the DIP Charge (as defined in the DIP Order), in each case as determined by the Monitor, as at the date of implementation of the Successful Transaction.

"Gross Value of a Successful Transaction" is to be calculated by the Monitor, to the satisfaction of the Board, as follows:

5. In the case of a sale of all or substantially all of the assets of the Azure Group, the gross consideration to be paid by the purchaser for the assets, including:
  - a) The purchase price (including any portion of the purchase price payable post-closing, and net of all adjustments); and
  - b) The value of any obligations assumed by the purchaser; and



6. In the case of an investment in the Azure Group to fund a plan of compromise and arrangement, the imputed enterprise value of the Azure Group as at the date of implementation of the Successful Transaction.

**Calculation of Management Incentive Amount**

The Management Incentive Amount will be calculated by the Monitor as soon as reasonably possible following implementation of the Successful Transaction.

**Eligibility:**

“Eligible Employees” in this Management Incentive Plan means each of [REDACTED] and such other employees as the Board may determine prior to Court approval of the ERP, provided in each case that he or she is employed by the Azure Group on the date the Court grants the ERP Approval Order and has not resigned or had his or her employment terminated for cause prior to the date of implementation of the Successful Transaction.

**Payment:**

The Management Incentive Amount will be paid to Eligible Employees in installments as follows:

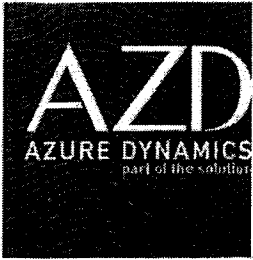
7. **First Installment:** An amount equal to 75% of the Management Incentive Amount will be paid on the date that is three (3) business days following the later of: (a) the date of implementation of the Successful Transaction, and (b) the date on which the Monitor has calculated the Management Incentive Amount to the satisfaction of the Board.

8. **Second Installment:** An amount equal to 25% of the Management Incentive Amount will be paid on the date that is ninety (90) days following the date of implementation of the Successful Transaction.

**Allocation:**

The allocation of the Management Incentive Amount as among the Eligible Employees shall be determined by the Board. The determinations of the Board with respect to the Management Incentive Amount and the allocation thereof will be final and binding on the Eligible Employees.

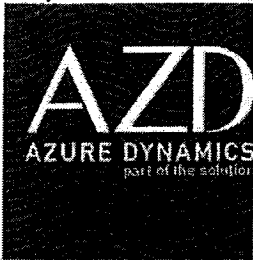
No Eligible Employee will have any claim or recourse against the Monitor or any member of the Board in respect of any matter relating to this Management Incentive Plan or the ERP.



Applicable withholdings will be deducted from the amounts allocated to Eligible Employees and the amounts paid to Eligible Employees under this Management Incentive Plan will be net of such withholdings.

**Security and Priority:**

Payment of the Management Incentive Amount shall be secured by the ERP Charge and shall have the priority set out in the ERP Letter.



## SCHEDULE "C" – THE EXECUTIVE COMPENSATION PLAN

*Capitalized terms not otherwise defined in this Schedule "C" shall have the meanings ascribed thereto in the letter titled CCAA Key Employee Retention Program, dated May 25, 2012 (the "ERP Letter").*

### **Purpose:**

The purpose of the Executive Compensation Plan is to incentivize certain executives of the Azure Group to engage in the SISF without regard to their respective self interests.

### **Executive Amount:**

The amount of this Executive Compensation Plan shall be 50% of the aggregate Annual Total Compensation of the Executives (as defined herein), to a maximum amount of \$650,000 (the "Executive Amount"), where "Annual Total Compensation" of an Executive means his annual base salary, bonus, RRSP top-up entitlement, health benefits and car allowance as of the date the Court grants the ERP Approval Order.

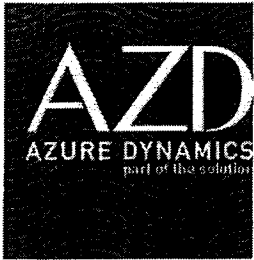
### **Eligibility:**

Each of Ron Iacobelli, Stephen Lee, Nick Bouchon, Jim Mancuso and Mike Elwood (each an "Executive") shall be entitled to participate in this Executive Compensation Plan provided, in each case, that:

- a) he is employed by the Azure Group on the date the Court grants the ERP Approval Order;
- b) a Successful Transaction is implemented;
- c) he has not resigned and his employment has not been terminated for cause prior to the date on which the Successful Transaction is implemented; and
- d) in connection with the Successful Transaction his employment with the Azure Group is terminated without cause and he is either not offered employment by the purchaser or continuing entity (as the case may be) or is offered employment by the purchaser or continuing entity on Inferior Terms (as defined herein).

"Inferior Terms" with respect to an offer of employment made to any Executive means terms of employment that are materially inferior in aggregate to the terms of employment of such Executive at the time of implementation of the Successful Transaction having regard to, *inter alia*, compensation, term, degree and range of duties and responsibilities, and position within the organization. For certainty, a





temporary offer of employment by the purchaser or continuing entity to assist with transition, that is otherwise on substantially the same terms as the Executive's employment with the Azure Group will be deemed to be on Inferior Terms if the duration of such employment is or is expected to be less than six (6) months, or such longer period as the Board may agree.

**Entitlement and Payment:**

To receive payment under the Executive Compensation Plan, an Executive must (a) apply, by letter to the Board no later than fourteen (14) days following implementation of the Successful Transaction, or such later date as the Board may accept having regard to the circumstances and the status of employment discussions between the Executive and the purchaser or continuing entity, and (b) waive any claim or entitlement he might have for or in respect of termination pay and severance pay. If the Board determines that an Executive is eligible to receive payment under this Executive Compensation Plan, payment of such Executive's entitlement in the amount of 50% of his Annual Total Compensation will be made within three (3) business days of such determination being communicated to the eligible Executive.

Applicable withholdings will be deducted from all amounts payable to the Executives under this Executive Compensation Plan and the Executives entitled to receive payment under this Executive Compensation Plan will receive the amount of their entitlement less all applicable withholdings.

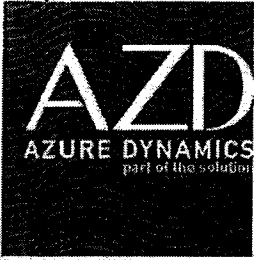
**Dispute Resolution:**

In the event that an Executive disputes the determination of the Board as to entitlement to payment hereunder, the dispute shall be referred to a single arbitrator acceptable to the Board and the Executive for determination. Any such arbitration shall be conducted in accordance with the *Commercial Arbitration Act* (British Columbia).

No Executive will have any claim or recourse against the Monitor or any member of the Board in respect of any matter relating to this Executive Compensation Plan or the ERP.

**Security and Priority:**

Payment of entitlements under the Executive Compensation Plan shall be secured by the ERP Charge and shall have the priority set out in the ERP Letter.



**Schedule "D" – Encumbrances with Priority Over Charge for Executive Compensation Amounts**

**Schedule "D" – Encumbrances with Priority Over Charge for Executive Compensation Amounts**

Encumbrances in favour of Silicon Valley Bank, Johnson Controls Advanced Power Solutions, LLC, Ford Motor Company, Financialinx Corporation, T4 Group Limited, Hitachi Corporation of America, Citicapital Commercial Leasing Corporation, US Bancorp, Var Resources, Inc., Hansel Ford, Inc., Dell Financial Services L.P., Dell Financial Services L.L.C. and Vendor Lease Management Group, to the extent such Encumbrances would be enforceable as against a trustee in bankruptcy of any of the companies comprising the Azure Group.

