

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MNP CORPORATE FINANCE INC.

Plaintiff

and

SIMPLY GREEN HOME SERVICES INC. and
CROWN CREST FUNDING CORP. IN ITS CAPACITY AS TRUSTEE OF
CROWN CREST CAPITAL TRUST

Defendants

NOTICE OF INTENT TO DEFEND

The Defendants intend to defend this action.

October 4, 2017

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MNP CORPORATE FINANCE INC.
Plaintiff

-and- SIMPLY GREEN HOME SERVICES INC. et al.
Defendants

Court File No. CV-17-582744

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF INTENT TO DEFEND

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**ONTARIO
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B E T W E E N:

MNP CORPORATE FINANCE INC.

Plaintiff

and

SIMPLY GREEN HOME SERVICES INC. and CROWN CREST FUNDING
CORP. in its capacity as trustee of CROWN CREST CAPITAL TRUST

Defendants

STATEMENT OF DEFENCE

1. The Defendants deny all of the allegations in the Statement of Claim, except as expressly admitted herein.

The Parties

2. The Defendant, Simply Green Home Services Inc. (“**Simply Green**”), is a corporation incorporated pursuant to the laws of Ontario. It carries on business as a leading provider of energy conservation equipment to Canadian households.

3. The Defendant, Crown Crest Capital Trust (“**CCCT**”), is a special purpose trust established in December 2015 as a funding vehicle to finance consumer rental contracts originated by Simply Green. Its purpose is to finance, acquire, and hold such contracts and other securitizable assets. CCCT funds its activities with, among other things, borrowed funds.

4. The Defendant, Crown Crest Funding Corp. (“**CCFC**”), is a corporation incorporated pursuant to the laws of Ontario. It acts as a trustee for CCCT.

5. Simply Green, CCCT, and CCFC are collectively referred to herein as “**SGHS**”.

6. The Plaintiff, MNP Corporate Finance Inc. (“**MNP**”), is a corporation incorporated pursuant to the laws of Alberta. It is a financial advisory firm that advises clients on a range of corporate transactions.

Background

7. Simply Green is in the business of renting and leasing energy conservation equipment to residential consumers, including heating, cooling, air filtration, and water filtration systems as well as related products and services. It enters into long-term equipment rental contracts with consumers through a dedicated sales force that arranges for the procurement, installation, and servicing of the rented equipment. Consumers make regular payments under their equipment rental contracts, which are collected and administered by Simply Green and/or its related entities, typically for terms of at least 10 years.

8. In late 2015, Simply Green embarked on a strategy to expand its operations. It set up CCCT for the purpose of establishing a more reliable source of funding to finance, acquire, and hold the rental contracts originated by it.

9. In the interim, CCCT needed to obtain immediate, short-term financing. On December 3, 2015, CCCT acting through its trustee CCFC entered into an interim financing arrangement with Sprott Bridging Income Fund LP (“**Sprott**”).

10. The financing arrangement with Sprott was structured as a short-term bridge facility. It was intended to be replaced by a longer-term and less expensive form of financing.

11. In February 2016, Simply Green entered into a non-exclusive retainer agreement with MNP to assist in replacing the bridge facility with senior debt financing. The purpose of MNP's engagement was to carry out a capital-raising process that would, among other things, enhance CCCT's financial capacity and help to underwrite its expansion plans.

12. As part of its expansion plans, CCCT's objective was to use the senior debt financing to finance, acquire, and hold rental contracts originated by Simply Green (and other assets with regular revenue streams) on a cost-effective basis, with the ultimate objective of bundling them into securities that could be sold to public and institutional investors. By securitizing rental contracts and similar revenue-generating assets, CCCT and Simply Green would be able to create an ongoing and sustainable source of financing for their activities.

Terms of MNP's Engagement

13. The engagement letter entered into by Simply Green and MNP contemplated the following forms of capital to be raised by MNP:

- (a) A long-term, senior credit facility to be established for a value of up to CDN\$75 million with draws made from time to time and on terms to be established between parties (the "**Senior Facility**"); and
- (b) A revolving warehouse facility of up to CDN\$5 million with which to fund long-term rental agreements pending draws under the Senior Facility (the "**Warehouse Facility**").

14. The initial term of MNP's engagement was six months, to be renewed automatically on a month-to-month basis unless terminated by Simply Green or MNP. The engagement could be terminated at any time with or without cause by either Simply Green or MNP upon 15 days' notice to the other party.

15. The engagement letter provides for MNP's compensation based on a combination of a "monthly work fee" and a "completion fee". The monthly work fee was set at \$5,000 per month plus administrative fees and taxes until the end of the engagement.

16. MNP was also entitled to a completion fee on the successful closing of a Senior Facility or Warehouse Facility with a "Lender" or "Lenders" (as defined in the engagement letter). The completion fee was to be calculated based on a percentage of the aggregate of all amounts funded or committed to be funded by such Lender or Lenders as part of the transaction during the period the engagement letter remains in force and effect (the "**Funded Amounts**").

17. The percentage of the completion fee depends on whether the lender is an "Approved Lender" or "Lender" (as defined in the engagement letter). For an Approved Lender, the completion fee is 1.5% of the Funded Amounts for a Senior Facility or Warehouse Facility. For a Lender, the completion fee is 0.5% of the Funded Amounts for a Senior Facility or Warehouse Facility.

MNP Identifies Peoples Trust as a Potential Lender

18. Prior to the engagement letter being executed, MNP began the process of identifying potential lenders in consultation with Simply Green. Peoples Trust Company ("**PTC**"), whom

MNP had already contacted, emerged as a contender to offer senior debt financing with respect to the Senior Facility and the Warehouse Facility.

19. PTC is a financial institution based in Vancouver, British Columbia that provides various forms of residential and commercial financing to borrowers.

20. Negotiations with PTC for a credit facility commenced in April 2016 and carried on for many months. MNP was actively involved in the early negotiation process. It took a lead role in preparing and presenting term sheets, responding to PTC's proposals, and assisting SGHS to negotiate the terms of the transaction with PTC.

Peoples Trust Proposes a Purchase and Sale Agreement Instead of Debt Financing

21. On July 8, 2016, PTC delivered to SGHS its first draft of an agreement for a single credit facility. The draft agreement provided for loans to repay the Sprott bridge facility as well as other interim funding. It also established a mechanism for additional loans to be made in the future to fund new rental contracts originated by Simply Green. However, the draft agreement did not include a funding commitment from PTC. All future loans were to be at PTC's discretion.

22. SGHS responded with a proposal for PTC to provide a second long-term credit facility that would allow them to achieve a stable source for funding future rental contracts. PTC did not agree to this proposal.

23. Instead, on August 2, 2016, PTC revised its approach to the transaction. It advised that it was not prepared to offer senior debt financing or the type of long-term credit facility sought by SGHS. It proposed a new arrangement whereby PTC would finance Simply Green's new originations of rental contracts by purchasing such contracts outright.

24. Under this new arrangement, PTC would fund Simply Green's operations by purchasing rental contracts on its own account on an absolute basis, rather than providing CCCT with a loan or credit facility to acquire and hold the contracts for future securitization and sale to public and institutional investors. As part of this new arrangement, PTC would fully own the rental contracts it purchased and Simply Green would service and administer them for PTC's benefit.

25. PTC's proposal was not suitable. Among other things, PTC's purchases were to be completely discretionary. PTC could refuse to purchase contracts at any time for any reason, effectively depriving SGHS of ongoing funding. Moreover, the proposal did not permit CCCT to reacquire the rental contracts in the event that it decided to pursue its strategy to securitize those assets and sell them as securities to investors.

26. As a result, the concept of a sale of the rental contracts, as initially proposed by PTC, was not acceptable to SGHS. It was not consistent with the type of senior debt financing contemplated in the engagement letter. Nor was it consistent with SGHS's plans to securitize rental contracts for ultimate sale to investors. In addition, the lack of any commitment by PTC to purchase rental contracts meant that, at any time and without notice, SGHS could be forced to find a new long-term lender if PTC stopped acquiring contracts.

27. SGHS sought to negotiate changes to the proposal that would grant CCCT the right to repurchase the rental contracts that had been sold to PTC. This would enable CCCT to reacquire the rental contracts and then securitize them for sale to investors.

28. PTC's sales concept, combined with a repurchase right for CCCT, would not constitute traditional debt financing. However, SGHS understood and expected that it would result in the

economic equivalent of a term loan or, in effect, a “synthetic” term loan that could achieve its objectives. SGHS continued negotiations with PTC on that basis.

Peoples Trust Changes the Transaction at the Last Minute

29. PTC continued its due diligence on the transaction into November 2016. The deadline of December 2016 to replace the Sprott bridge facility was fast approaching.

30. On November 22, 2016, PTC delivered comments on the draft sales agreement deleting CCCT’s critical rights to repurchase rental contracts from PTC. This was the first time PTC had advised that the repurchase rights were problematic for it, even though the rights had been specified in the draft sales agreement since August 2016.

31. Given that the expiration of the Sprott bridge facility was imminent and that the negotiations with PTC were well advanced, SGHS – despite objection and intense last-minute negotiation – ultimately had no choice but to accept PTC’s restrictions on the repurchase rights. PTC did, however, concede certain limited repurchase rights for limited amounts. These limited rights fell far short of the repurchase rights that SGHS required.

Transactions Close and MNP Seeks Payment of Completion Fee

32. On December 1, 2016, CCCT by its trustee CCFC entered into a Warehouse Line of Credit Agreement with PTC (the “**Warehouse Agreement**”).

33. On the same day, CCCT also entered into a Sale and Servicing Agreement with PTC (the “**SSA**”).

Completion Fee Paid for the Warehouse Facility

34. The Warehouse Agreement establishes a revolving line of credit of up to \$30 million. On December 1, 2016, SGHS used this line of credit to repay and “take out” the Sprott bridge facility.

35. The line of credit is consistent with the type of Warehouse Facility contemplated in the engagement letter. Accordingly, Simply Green paid MNP a completion fee of \$450,000 in respect of this facility (representing 1.5% of the \$30 million in funding committed by PTC).

SSA Transaction Does Not Create a Loan or Credit Facility

36. Unlike the Warehouse Agreement, the SSA does not create a term loan, credit facility, or provide any debt financing whatsoever. Rather, the SSA creates a structure through which PTC may, at its sole option, purchase rental contracts originated by Simply Green. It does not commit PTC to any amount of funding. PTC has no obligation to make any purchases of rental contracts.

37. In both form and substance, the SSA does not resemble a loan or credit facility. PTC has no right to demand or require repayment of any amounts funded, as would be typical for a loan or credit facility. Likewise, the SSA does not incorporate any effective mechanism by which CCCT may “repay” any funded amounts.

38. At the time the SSA transaction closed and since then, SGHS has consistently made it clear to MNP that the SSA does not meet its current needs or its original expectation that MNP would raise senior debt financing, as contemplated under the engagement letter. In spite of this, MNP has persisted in seeking payment of a completion fee in respect of the SSA.

MNP Is Not Entitled to a Completion Fee for the SSA Transaction

39. The SSA is not a “Senior Facility” within the meaning of the engagement letter. SGHS does not owe MNP a completion fee in relation to it.

40. Contrary to the Plaintiff’s allegations, the SSA does not constitute a debt instrument. It does not create a borrower-lender relationship between PTC and CCCT. Rather, the SSA is a purchase and sale agreement. Among other things, the SSA:

- (a) defines PTC as a “Purchaser” and CCCT as a “Seller and Servicer” of assets;
- (b) makes clear in its preamble that, in form and substance, the transaction constitutes a purchase and sale agreement. The preamble states that “the Seller wishes to sell the Purchased Assets from time to time to the Purchaser and the Purchaser wishes to purchase the Purchased Assets from the Seller, on and subject to the terms and conditions of this Agreement”;
- (c) provides that, on purchasing rental contracts from the Seller, the Purchaser is the owner of those contracts and the associated revenue streams;
- (d) does not commit PTC to provide any loans of any kind to CCCT or to purchase any rental contracts except as it may agree from time to time;
- (e) does not provide for the payment of interest by CCCT to PTC;
- (f) does not have a maturity date;
- (g) does not grant PTC the right to demand or require repayment of any amounts paid as a purchase price;

- (h) does not provide CCCT with any retained interest in the rental contracts purchased by PTC, which PTC is permitted to sell to third parties without encumbrance or right of redemption by CCCT; and
- (i) does not grant CCCT a right to “repay” any funded amounts or redeem its interest in the rental contracts. CCCT may repurchase the rental contracts purchased by PTC only on restricted terms. The repurchase right is subject to a number of conditions, is not automatic, is deferred, and cannot be exercised except in limited circumstances.

41. The SSA does not have the characteristics of a loan or credit facility. It is a purchase agreement for which MNP cannot claim a completion fee.

No Amounts Funded or Committed to Be Funded under the SSA

42. In any event, the engagement letter provides that a completion fee is only owed on amounts funded or committed to be funded by a Lender or Lenders during the period it remains in force and effect.

43. Beyond the fact that the SSA is neither a loan nor a credit facility, no amounts have been committed to be funded by PTC to acquire rental contracts and no such amounts were in fact funded at the time MNP requested payment of a completion fee in relation to the SSA.

44. Further, the engagement letter has been terminated. SGHS pleads, and the fact is, that no amounts were funded or committed to be funded under the SSA as of that date.

MNP Is Not Entitled to Any Other Fees Claimed

45. MNP claims fees for financing allegedly obtained by CCCT from ECN Capital (“**ECN**”), a commercial finance company based in Toronto, Ontario. Contrary to the Plaintiff’s allegations, ECN has not advanced any financing to CCCT which would entitle MNP to compensation under the engagement letter.

46. MNP also claims fees in respect of an equity interest that PTC received in Crown Crest Capital Management Corp. (“**CCCMC**”), an affiliate of SGHS which, among other things, is a guarantor under the Warehouse Agreement and the SSA. Contrary to the Plaintiff’s allegations, PTC’s equity interest does not entitle MNP to any fees since PTC did not participate or otherwise invest in any “Offering” within the meaning of the engagement letter. Nor did the equity interest in CCCMC have any value when it was granted to PTC.

47. Accordingly, none of the additional fees claimed by MNP are properly owing to it.

SGHS Has Not Been Unjustly Enriched

48. SGHS denies that it has been unjustly enriched at MNP’s expense. MNP has been fully compensated for amounts to which it was entitled under the engagement letter.

MNP’s Claim for Quantum Meruit Has No Basis

49. The engagement letter sets out the complete terms of MNP’s engagement, including compensation for its services. SGHS is not required to reimburse or compensate MNP on a quantum meruit basis for labour, services, and resources expended by it.

MNP Has Not Suffered Any Damages

50. SGHS denies that it has caused MNP to suffer any losses or damages. To the extent that MNP has suffered damages (which is expressly denied), the amounts claimed are remote, excessive, and unsubstantiated.

51. SGHS further denies that it has acted in wilful disregard of their obligations or MNP's rights under the engagement letter. MNP is not entitled to an award of punitive or exemplary damages.

52. SGHS asks that this action be dismissed with costs.

October 31, 2017

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Lawyers for the Plaintiff

MNP CORPORATE FINANCE INC.
Plaintiff

-and- SIMPLY GREEN HOME SERVICES INC. et al.
Defendants

Court File No. CV-17-582744

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

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Lawyers for the Defendants

JANUARY 19, 2023

Court File No.: CV-17-582744

AMENDED THIS _____ PURSUANT TO
MODIFIÉ _____ CONFORMÉMENT À

ONTARIO

☒ RULE/LA RÈGLE 26.02 (B) SUPERIOR COURT OF JUSTICE

☐ THE ORDER OF _____
L'ORDONNANCE DU _____

DATED/FAIT LE _____ MNP CORPORATE FINANCE INC.

Judith Richards
Digitally signed by Judith Richards
Date: 2023.01.27 09:39:36 -05'00'
RECEIVED
SUPERIOR COURT OF JUSTICE

GREFFIER

COUR SUPÉRIEURE DE JUSTICE

Plaintiff

-and-

SIMPLY GREEN HOME SERVICES CORP. (f/k/a SIMPLY GREEN HOME SERVICES INC.) AND CROWN CREST FUNDING CORP. IN ITS CAPACITY AS TRUSTEE OF CROWN CREST CAPITAL TRUST

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: ~~September 14, 2017~~
January 19, 2023

Issued by:

Local Registrar

Address of Court Office:

Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, ON
M5G 1E6

TO: **SIMPLY GREEN HOME SERVICES CORP. (f/k/a SIMPLY GREEN HOME SERVICES INC.)**
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

AND TO: **CROWN CREST FUNDING CORP.**
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

AND TO: **CROWN CREST CAPITAL TRUST**
200 Yorkland Blvd., Suite 1201
Toronto, ON M2J 5C1

CLAIM

1. The plaintiff, MNP Corporate Finance Inc. (“MNP”), claims against the defendants, Simply Green Home Services Corp. (f/k/a Simply Green Home Services Inc.) (“**Simply Green**”) and Crown Crest Funding Corp. (“CCFC”) in its capacity as the trustee and/or representative of Crown Crest Capital Trust (collectively, the “**Defendants**”), jointly and severally, for the following relief:

- (a) damages in the amount of \$36,000,000 and/or such further or other amounts as may be proven at trial for breach of contract (specifically, the engagement letter between MNP and the Defendants dated February 23, 2016 (the “Engagement Letter”)), unjust enrichment and/or *quantum meruit*;
- ~~(b) a declaration that MNP is entitled to 1.5% and/or 0.5% of any additional or replacement debt facility that any of the Defendants obtain from an Approved Lender and/or any Lender or affiliated entity identified by MNP and not on the Excluded List (all as defined below) in accordance with terms of the engagement letter between MNP and the Defendants dated February 23, 2016 (the “Engagement Letter”);~~
- ~~(e)(b)~~ special damages in an amount to be particularized prior to trial;
- ~~(d)(c)~~ punitive and/or exemplary damages in the amount of \$1500,000;
- ~~(e)(d)~~ pre- and post-judgment interest at the agreed rate of 19.56% per annum (1.5% per month), on a compound basis, pursuant to the Engagement Letter (totaling over \$6,000,000), or, alternatively, on a compound basis in accordance with the

Defendants' actual rate of borrowing, or, in the further alternative, on a compound basis under the *Courts of Justice Act*, RSO 1990, s C43, as amended;

~~(f)~~(e) costs of this action on a full indemnity or other appropriate scale;

~~(g)~~(f) payment of HST and other applicable taxes on any sums awarded in favour of the plaintiff, including costs; and

~~(h)~~(g) such further and other relief as this Honourable Court may deem just.

The Parties

2. The plaintiff, MNP, is a company provincially incorporated pursuant to the laws of Alberta, which is extra-provincially registered in Ontario. It is a transaction advisory services firm, specializing in, among other things, corporate financings. At all material times, it acted as a financial advisor and professional services provider to the Defendants, including in connection with a senior debt financing (the “**Transaction**”).

3. The defendant, Simply Green, is a company provincially incorporated pursuant to the laws of Ontario. It is in the business of originating rental contracts, loans and other receivables relating to energy conservation equipment, including heating, cooling, air filtration and water filtration systems. It was at all material times the parent company of CCFC, Crown Crest Financial Corp., Crown Crest Capital Management Corp. and other related entities. Simply Green was a party to the Engagement Letter as well as, among other things, the Convertible Debentures (as defined below) and the January 2018 Warehouse Line of Credit (as defined below). It was also the ultimate beneficiary of all financings with Peoples Trust Company (“PTC”) facilitated by MNP, including the First Credit Facilities (as defined below), the

Concurrent Lease Agreements (as defined below), the Convertible Debentures (as defined below) and the January 2018 Warehouse Line of Credit (as defined below).

4. The defendant, the Crown Crest Capital Trust (the “**Crown Crest Trust**”), is a special purpose financing trust established by a Declaration of Trust dated December 1, 2015, as amended by an Amended and Restated Declaration of Trust dated November 29, 2016. The Crown Crest Trust is involved in purchasing or otherwise acquiring, holding, leasing, servicing, collecting, enforcing and disposing of pools of rental contracts, loans, other receivables and/or related assets originated by Simply Green and/or others, and funding such activities wholly or partially with borrowed funds, including borrowed funds obtained through the issuance of debt obligations. At all material times, the Crown Crest Trust, by its trustee, was a party to the Engagement Letter as well as the First Credit Facilities (as defined below) and certain Concurrent Lease Agreements (as defined below).

5. The defendant, CCFC, is a company provincially incorporated pursuant to the laws of Ontario. At all material times, it was the trustee and/or representative of the Crown Crest Trust.

Relevant Non-Parties

6. Crown Crest Financial Corp. is a company provincially incorporated pursuant to the laws of Ontario. It is a subsidiary of Simply Green. Crown Crest Financial Corp. is special purpose vehicle that holds pools of rental contracts, loans, other receivables and/or related assets originated by Simply Green and/or others for the benefit of Simply Green. It was a party to certain Concurrent Lease Agreements (as defined below) and the January 2018 Warehouse Line of Credit (as defined below).

~~6.7.~~ ~~Peoples Trust Company (“PTC”)~~ PTC is a financial institution federally regulated under the *Trust and Loan Companies Act*, S.C. 1991, c. 45, as amended. It is in the business of, among other things, providing credit facilities and advancing other forms of financing to corporations and other entities. At all material times, it was a party to the First Credit Facilities (as defined below), the Concurrent Lease Agreements (as defined below), the Convertible Debentures (as defined below), and the January 2018 Warehouse Line of Credit (as defined below), and it extended debt financing to the Defendants through each of these facilities.

Background

~~7.8.~~ Prior to entering into the Engagement Letter, CCFC, in its capacity as trustee of the Crown Crest Trust, with Simply Green and other related entities acting as guarantors, entered into a bridge financing facility (the “**Bridge Facility**”) with Sprott Bridging Income Fund LP (“**Sprott**”). The Defendants entered into the Engagement Letter with MNP because they required replacement credit facilities for the Bridge Facility for some or all of the following reasons, amongst others:

- (a) The Bridge Facility was a short-term, one-year demand loan, which was only intended to finance the Crown Crest Trust until it obtained alternative, more permanent financing;
- (b) The Bridge Facility was costly. Under the Bridge Facility, the Crown Crest Trust was required to pay interest at the rate of 13% per annum, which consumed a substantial portion of its profit;

- (c) The Crown Crest Trust had used all of the funding available under the Bridge Facility and Sprott was unwilling to increase the facility;
- (d) Sprott agreed to two extensions for repayment of the Bridge Facility. It advised that no further extensions would be granted and/or it formally called the Bridge Facility; and
- (e) The deadline for repayment of the Bridge Facility was the earlier of demand or December 7, 2016. Sprott advised that if the Bridge Facility was not fully repaid by December 7, 2016, it was going to enforce its underlying security, which, at that time, was the pool of rental contracts, loans, other receivables and/or related assets worth approximately \$25 million.

The Engagement Letter

8.9. On February 23, 2016, Simply Green and the Crown Crest Trust, by its trustee, “Crown Crest Capital Inc.” (which MNP believes is a misnomer in the Engagement Letter for CCFC), entered into the Engagement Letter with MNP, which sets out the scope and terms of MNP’s engagement as a financial advisor to the Defendants ~~in connection with the Transaction~~.

Purpose of Engagement

9.10. The Engagement Letter specifically provides, among other things, that:

“[Simply Green], on behalf of [the Crown Crest Trust], desires to embark on a capital raising process in order to upgrade and enhance [the Crown Crest Trust’s] financial capacity and to underwrite its longer term expansion plans...the capital raising process will relate to obtaining any or all of the following forms of capital to be used by [Simply Green], on behalf of [the Crown Crest Trust], to execute its medium-term growth plans over the next 12 months;

1. A long-term senior credit facility to be established for a value of up to CDN\$75 Million with draws made from time to time and **on terms to be established by the parties** (the “Senior Facility”).
2. A revolving warehouse facility of up to CDN\$5 Million with which to fund long term rental agreements pending draws under the Senior Facility (the “Warehouse Facility”).”

Scope of MNP’s Services

~~10.11.~~ Under the Engagement Letter, the Defendants acknowledged and agreed that: MNP’s approach to the Transaction would be “adaptive and flexible to fit the situation as it evolves”.
~~The Defendants further acknowledged and agreed that~~

- (a) MNP’s approach to the Transaction would be “adaptive and flexible to fit the situation as it evolves”;
- (b) MNP “provides no guarantee or warranty that the Transaction will be completed under the original terms and conditions contemplated by MNP and [Simply Green], on behalf of [the Crown Crest Trust], or at all”;
- (c) MNP “has not made any warranties or guarantees of any nature in respect of the success or satisfactory conclusion of a Transaction, including, but not limited to, any objectives which may be described in this Engagement Letter, or as to the economic and financial impacts or other results which may be obtained or experienced by [Simply Green], on behalf of the [Crown Crest Trust], as a result of the success or lack of success of the Services in achieving [Simply Green’s] objectives on behalf of the [the Crown Crest Trust]”;

- (d) the Defendants would retain "complete and final control of all key decisions", including, among other things, "approving agreements in principle" and "agreeing to the definitive loan, investment or other capital raising agreements"; and
- (e) the Engagement Letter "is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether oral or written."

MNP's Fees

~~11.12.~~ Under the Engagement Letter, the Defendants agreed to pay MNP, among other things, a completion fee, which was to be calculated at the closing of any Senior Facility or Warehouse Facility (as defined in the Engagement Letter) based on the aggregate of all amounts funded or committed to be funded, applying the following percentages depending on whether the lender was an "Approved Lender" or a "Lender" (as defined in the Engagement Letter):

Approved Lender	
Senior Facility	1.5%
Warehouse Facility	1.5%
Lender	
Senior Facility	0.5%
Warehouse Facility	0.5%

(the "Completion Fee").

~~12. The Defendants further agreed that, in the event an Approved Lender also participates in a "first loss" preferred unit or subordinated debt offering (the "Offering"), the Completion Fee will also include an amount equal to 3% of the amount invested by such Approved Lender.~~

13. ~~Under the Engagement Letter, the Completion Fee was required to be paid by Simply Green, on behalf of the Crown Crest Trust, to MNP on the closing date of the Transaction. PTC is an "Approved Lender" under the Engagement Letter, such that MNP is entitled to, among other things, a Completion Fee of 1.5% of the aggregate amounts funded or committed to be funded by PTC in accordance with the terms of the Engagement Letter.~~

The Trailer Clause under the Engagement Letter

13. Under the Engagement Letter, the Defendants further agreed that if at any time within twenty-four (24) months of MNP's engagement being terminated, the Crown Crest Trust receives debt financing from "an Approved Lender" or "any Lender or affiliated entity who had been identified by [MNP] and was not on the Excluded List" (all as defined in the Engagement Letter), MNP is entitled to the full amount of its Completion Fee. This obligation is separate and apart from, and in addition to, the Defendants' obligations to pay fees and expenses, including the Completion Fee regarding the SSA, incurred prior to the effective termination of MNP's engagement.

14. The Engagement Letter was terminated effective March 21, 2017. Accordingly, MNP's entitlement to a Completion Fee in respect of any debt financing from PTC extends until March 21, 2019 (the "**Tail Period**").

The First Credit Facilities, ~~PTC's equity interest and the ECN Financing~~

14.15. Shortly after the Engagement Letter was signed by the parties (and even beforehand given the Defendants' assurances that the Engagement Letter would soon be signed), MNP began taking steps to perform its obligations under the contract and provide the Defendants with the

services contemplated thereunder, including, among other things, reviewing the business and capital structure of the Crown Crest Trust, identifying potential lenders for the Transaction, approaching potential lenders to present the opportunity and assess their interest, presenting proposed financing term sheets to potential lenders and, ultimately, negotiating the terms of the Transaction with PTC, which is an “Approved Lender” under the Engagement Letter.

~~15.~~16. As a direct result of MNP’s efforts and contributions, the Crown Crest Trust, by its trustee, CCFC, entered into a Warehouse Line of Credit Agreement with PTC, with Crown Crest Capital Management Corp. (“CCCMC”) as guarantor, dated December 1, 2016 (the “**First Warehouse Facility**”). The Crown Crest Trust, by its trustee, CCFC, also entered into a Sales and Servicing Agreement with PTC, with CCCMC as guarantor, also dated December 1, 2016 (the “**SSA**” and, and together with the First Warehouse Facility, the “**First Credit Facilities**”).

~~16.~~17. The First Warehouse Facility provides the Crown Crest Trust with access to a demand revolving line of credit of up to \$30 million and the SSA provides it with access to take-out financing in excess of \$100 million.

~~17.~~18. While the First Credit Facilities are comprised of two separate and individual funding platforms, they are integrally related to, and intertwined with, one another. Combined, they create a funding mechanism whereby one single lender — PTC — provides both the short term revolving debt (through the First Warehouse Facility) and ongoing liquidity and take-out financing (through the SSA) to pay down draws made in the First Warehouse Facility, thereby freeing up fresh capital to fund the Defendants’ new and ongoing originations, as sought by the Defendants under the Engagement Letter.

~~18.~~19. Although the SSA is technically structured as a purchase and sale agreement, the SSA constitutes a debt instrument rather than a true sale, particularly when considered with all the terms of the SSA and the First Warehouse Facility, including, among other terms:

- (a) the provision of funds by PTC under the SSA at a “Discount Rate” (*i.e.*, an interest rate) determined by the prime rate of interest charged by the Bank of Montreal for its commercial loans;
- (b) PTC’s purchase of the lease assets under the SSA is deemed to be repayment under the First Warehouse Facility;
- (c) The First Credit Facilities each refer to one another in their repayment mechanics;
- (d) the Crown Crest Trust is obligated to repurchase defaulted rental contracts from PTC; and
- (e) the guarantees, cross-defaults, security and cross-collateralizations provisions of the First Credit Facilities.

~~19.~~20. Under the SSA, the risks and rewards of ownership of the underlying assets do not pass to PTC by virtue of the assignments contemplated in the SSA but, rather, remain with the Defendants. The terms of the SSA, including all of the conditions and continuing obligations of the Crown Crest Trust under the SSA, constitute a senior debt facility designed to provide access to long term capital, as contemplated under the Engagement Letter.

~~20.~~21. The fundamental nature of the SSA as a senior debt instrument is further supported by virtually all of the other surrounding circumstances, including but not limited to PTC being

referred to as “lender” and/or CCFC, in its capacity as trustee of the Crown Crest Trust, being referred to as “debtor” in several of the closing documents relating to the SSA, including in the general security agreement, guarantees, legal memoranda and board resolutions.

21-22. Importantly, the Defendants executed and closed the First Credit Facilities. Immediately upon doing so, on December 1, 2016, the Defendants used the First Warehouse Facility to pay out Sprott’s Bridge Facility, which was due (after two extensions had been granted). Had the Defendants not closed the First Credit Facilities, they would have been unable to retire the Bridge Facility, and this event could have bankrupted them or caused them financial harm and jeopardized their viability as a going concern. The Defendants ~~have since~~ then continued to use the First Credit Facilities for the financing of long term rental contracts, all of which aligns with the express purpose for which MNP was engaged by the Defendants.

22-23 In connection with the Credit Facilities, PTC was also granted a 10% equity interest in CCCMC.

23. ~~In or around December 2016, the Crown Crest Trust also secured additional financing in the amount of approximately \$33 million from ECN Capital (“ECN”), which is a Lender (as defined in the Engagement Letter). Pursuant to the terms of the Engagement Letter, MNP is also entitled to its Completion Fee in respect of this debt financing (the “ECN Financing”).~~

24. Although the Defendants have paid MNP a part of its Completion Fee (for the First Warehouse Facility), the Defendants have refused or otherwise failed to pay MNP its full Completion Fee, including for: (i) the SSA and the other facilities described below, (ii) PTC's equity interest in CCCMC, which it acquired in connection with an Offering, and (iii) the ECN Financing.

25. The Defendants were advanced over \$35,000,000 by PTC under the SSA, under at least 37 separate advances made by PTC between December 2016 and November 2017.

26. PTC identified such advances as a "loan" in its various funding notices issued to the Defendants, and set minimum repayment terms, further indicating that the SSA was, in fact, a credit facility and a form of debt financing.

The Concurrent Lease Agreements

27. Following the advances made by PTC under the SSA, some or all of the Defendants entered into additional senior long term credit facilities with PTC with substantially similar terms to the SSA, including:

- (a) a Concurrent Lease Agreement dated February 13, 2018 between the Crown Crest Trust, PTC and Simply Green (as amended and restated from time to time, including on November 30, 2018, December 31, 2018 and April 15, 2019);
- (b) a Concurrent Lease Agreement dated November 30, 2018 between the Crown Crest Trust, PTC and Simply Green (as amended and restated from time to time, including on December 31, 2018 and April 15, 2019); and
- (c) a Concurrent Lease Agreement dated January 19, 2018 between Crown Crest Financial Corp., PTC and Simply Green (as amended and restated from time to time, including on November 30, 2018, December 31, 2018 and April 15, 2019)
(collectively, the "Concurrent Lease Agreements")

28. While some of the business terms were updated in the Concurrent Lease Agreements relative to the SSA, the substance of the transactions underlying these agreements did not materially change when the form of the applicable agreements converted from the SSA to the Concurrent Lease Agreements, subject to one exception. In particular, the sole material change from the SSA to the Concurrent Lease Agreement format was the bifurcation of the ownership interest in the underlying consumer's financial obligations and the leased equipment. Pursuant to the Concurrent Lease Agreements, while the underlying consumer financial obligation to make payments was transferred to PTC, the equipment that was leased to each consumer was purportedly not transferred to PTC. Instead, PTC was granted a springing security interest in the underlying equipment, further removing PTC from having any actual property ownership rights.

29. From the time the Concurrent Lease Agreements were entered into up until March 21, 2019 (being the end of the Tail Period), a total of at least \$346,052,619.49 was advanced by PTC to the Crown Crest Trust and Crown Crest Financial Corp. under the Concurrent Lease Agreements. In particular, the Crown Crest Trust was advanced at least \$151,241,230.01 by PTC under the collective Concurrent Lease Agreements, and Crown Crest Financial Corp. was advanced at least \$194,811,389.48 by PTC under the collective Concurrent Lease Agreements.

30. The Defendants continue to benefit from their relationship with PTC, which MNP facilitated, and the Defendants continue to obtain financing from PTC for their ongoing operations and expansion plans.

The Convertible Debentures

31. PTC also advanced funds to Simply Green throughout the Tail Period under various convertible debentures, with such advances totaling \$12,500,000. In particular, Simply Green

was advanced the principal amount of \$10,000,000 by PTC under a convertible debenture dated January 19, 2018, with a further principal amount of \$2,500,000 advanced by PTC under a convertible debenture dated March 16, 2018 (collectively, and as amended from time to time, the "**Convertible Debentures**"). The Convertible Debentures are a form of debt financing provided by PTC for which MNP is entitled to a Completion Fee.

The January 2018 Warehouse Line of Credit

32. PTC also advanced funds to Simply Green and/or related entities through a second warehouse line of credit. In particular, Simply Green, Crown Crest Financial Corp. and PTC entered into a Warehouse Line Of Credit Agreement dated January 19, 2018 with a principal amount of \$1,308,571 (as amended from time to time, the "**January 2018 Warehouse Line of Credit**"). The January 2018 Warehouse Line of Credit is a form of debt financing provided by PTC for which MNP is entitled to a Completion Fee.

Breach of Contract

~~25-33.~~ Despite MNP's significant contributions toward negotiating and securing the First Credit Facilities for the Defendants (and the SSA in particular) as well as the Concurrent Lease Agreements, Convertible Debentures and the January 2018 Warehouse Line of Credit—~~ECN Financing that followed, all of which provided (and some of which continue to provide)~~ a useful and important source of funding that has enabled the continued operation, and success and expansion of their business, the Defendants have refused or otherwise failed to compensate MNP in accordance with the terms of the Engagement Letter. Specifically, the Defendants have failed to pay MNP ~~its full~~ the Completion Fees to which it is entitled, being including, without limitation:

- (i) 1.5% of all amounts funded ~~or committed to be funded~~ by PTC under the SSA, which amounts to approximately ~~\$1.5 million~~ \$525,000 (*i.e.*, 1.5% x ~~\$35,075,147.09~~ 100+ million);
- (ii) 1.5% of all amounts funded by PTC under the collective Concurrent Lease Agreements up until March 21, 2019, which amounts to approximately \$5,200,000 (*i.e.*, 1.5% x \$346,052,619.49);
- (ii) ~~3% of the value of PTC's 10% equity interest in CCCMC. The value of PTC's equity interest in CCCMC is not presently known to MNP, but it is within the knowledge of the Defendants; and~~
- (iii) ~~0.5% of all amounts funded or committed to be funded by ECN in connection with the ECN Financing, which amounts to approximately \$165,000 (*i.e.*, 0.5% of \$33 million).~~
- (iii) 1.5% of all amounts funded by PTC under the Convertible Debentures, which amounts to \$187,500 (*i.e.*, 1.5% x \$12,500,000)
- (iv) 1.5% of all amounts funded by PTC under the January 2018 Warehouse Line of Credit, which amounts to approximately \$20,000 (*i.e.*, 1.5% x \$1,308,571)

26.34. The Defendants' failure to pay the nearly \$6 million in full Completion Fees due and owing to MNP under the Engagement Letter with respect to the above-noted transactions, or any compensation whatsoever, constitutes a material breach of contract. The Defendants have failed to remedy their breach despite repeated requests and demands by MNP.

Unjust Enrichment

27.35. The Defendants have been unjustly enriched. They received sources of funding and substantial benefits (and continue to receive funding and substantial benefits) because of MNP's efforts and services in arranging and obtaining the First Credit Facilities and, in particular, the SSA, as well as facilitating the Concurrent Lease Agreements, the Convertible Debentures and the January 2018 Warehouse Line of Credit~~ECN Financing~~.

28.36. MNP has suffered a corresponding deprivation in that it contributed significant labour, services and other resources towards identifying potential lenders, establishing a relationship between the Defendants and PTC, negotiating the terms of the Transaction and securing the First Credit Facilities and, in particular, the SSA, as well as facilitating the Concurrent Lease Agreements, the Convertible Debentures and the January 2018 Warehouse Line of Credit, all of which the ECN Financing on behalf of the Defendants in order to established and enhanced (and some of which continue to establish and enhance) their Defendants' financial capacity and ability to underwrite their long term expansion plans, for which MNP was not properly compensated or, indeed, compensated at all.

29.37. There is no juristic reason for the Defendants' enrichment and MNP's corresponding deprivation. Rather, the Defendants' enrichment and MNP's corresponding deprivation directly results from the Defendants' breach of their contractual and other legal and equitable obligations owed to MNP. There is no juristic reason why the Defendants should not be held to account for their enrichment and for MNP's corresponding deprivation.

Quantum Meruit

30:38. In the alternative, MNP is entitled to be reimbursed and compensated for the labour, services and other resources it reasonably advanced and provided to the Defendants, at the request and encouragement of the Defendants, to secure the First Credit Facilities and, in particular, the SSA, amongst other things, including MNP having facilitated the Concurrent Lease Agreements, the Convertible Debentures and the January 2018 Warehouse Line of Credit.

31:39. The labour, services and other resources were not provided by MNP to the Defendants gratuitously but, rather, they were provided with the reasonable expectation of being compensated in accordance with the terms of the Engagement Letter.

32:40. The Defendants freely accepted the benefits advanced by MNP in circumstances where they knew, or ought to have known, of MNP's reasonable expectation in that regard.

~~Compensation Owing to MNP for the Defendants' Further Debt Financing~~

33: ~~Under the Engagement Letter, the Defendants further agreed that if at any time within twenty four (24) months of MNP's engagement being terminated, the Crown Crest Trust receives debt financing from "an Approved Lender" or "any Lender or affiliated entity who had been identified by [MNP] and was not on the Excluded List" (all as defined in the Engagement Letter), MNP is entitled to the full amount of its Completion Fee. This obligation is separate and apart from the Defendants' obligations to pay fees and expenses, including the Completion Fee regarding the SSA, PTC's equity interest in CCCMC and the ECN Financing, incurred prior to the termination of MNP's engagement.~~

34. ~~MNP has reason to believe that the Crown Crest Trust recently secured further debt financing from ECN, a Lender, in the amount of approximately \$250 million. Pursuant to the terms of the Engagement Letter, MNP is entitled to its Completion Fee in respect of this debt financing, amounting to approximately \$1.25 million (i.e., 0.5% of \$250 million).~~

35. ~~The Defendants may have also obtained, and/or may obtain within the relevant twenty-four (24) month period, additional or alternative debt financing for which MNP is entitled to compensation.~~

36. ~~MNP seeks an Order for compensation, and/or declaratory relief that it is entitled to compensation, at the rate stipulated in the Engagement Letter on any and all amounts advanced by ECN and/or any Approved Lender, Lender or affiliated entity who had been identified by MNP and is not on the Excluded List (all as defined in the Engagement Letter) within twenty-four (24) months of the termination of its engagement, in accordance with the terms of the Engagement Letter.~~

The Defendants' Recent Acquisition

37. ~~MNP has reason to believe that the Defendants have also recently completed an acquisition in the amount of approximately \$200 million, which has resulted in a major new shareholder of Simply Green and a newly constituted Board of Directors for the company.~~

38. ~~This transaction would not have occurred, and the Defendants' additional financing arrangements with ECN (and/or others) would not have been obtained, without MNP's significant contributions toward the Defendants' business, which secured their financing~~

~~relationship with PTC and caused or contributed toward the continued operation and success of their business.~~

Damages

~~39.41.~~ Because of the Defendants' breaches of their other contractual and other legal and equitable obligations owed to MNP, MNP has suffered significant damages for which the Defendants are jointly and severally responsible. MNP estimates that the full and just amount of its damages is approximately \$36,000,000, plus tax and significant interest, which continues to accrue and which on its own presently amounts to over \$6,000,000 (as particularized in more detail below)., ~~but full particulars of MNP's damages will be provided prior to trial.~~

~~40.42.~~ MNP has mitigated its damages.

Special Damages

~~41.43.~~ MNP has also incurred, and is continuing to incur, costs arising from the Defendants' unlawful conduct as set out above, which form part of its claim for special damages. Full particulars of MNP's special damages will ~~similarly~~ be provided prior to trial.

Punitive and/or Exemplary Damages and Costs on an Elevated Scale

~~42.44.~~ The actions of the Defendants as set out above were committed with willful, wanton and reckless disregard for their obligations and for the rights and interests of MNP. A material award of punitive and/or exemplary damages, and a costs award on a full or substantial indemnity basis, are appropriate and warranted in the circumstances.

Interest

45. The interest owed to MNP by the Defendants was negotiated between the parties, and is significant, particularly given the length of time that the Defendants have improperly retained and benefitted from amounts owing to MNP.

46. Under the Engagement Letter, the parties agreed that, among other things, interest shall be charged on the Defendants' unpaid accounts thirty days after the invoice date, and that interest shall be calculated and payable at the rate of 19.56% per annum (1.5% per month), compounded monthly.

47. Due to the Defendants' refusal and/or intentional failure to disclose the amounts funded by PTC under the SSA, the Concurrent Lease Agreements, the Convertible Debentures and the January 2018 Warehouse Line of Credit, and in all instances other than the SSA, to even disclose the existence of these facilities, MNP was unable to issue an invoice to the Defendants in a timely manner. However, after MNP compelled disclosure of the necessary information in the course of this litigation, it issued an invoice to the Defendants on November 1, 2021.

48. MNP claims interest at the rate of 19.56% per annum (1.5% per month), compounded monthly, from the date of each funding round by PTC. In the alternative, MNP claims interest at the rate of 19.56% per annum (1.5% per month), compounded monthly, from March 21, 2019 (the end of the Tail Period, being the date by which all PTC funding for which MNP is entitled to a Completion Fee was advanced by PTC) or such earlier or other date as the Court may deem just. In the further alternative, MNP claims interest at the rate of 19.56% per annum (1.5% per month), compounded monthly, thirty (30) days of the date of its invoice issued to the Defendants on November 1, 2021. In any event, MNP claims compound interest at the rate of the

Defendants' actual cost of borrowing or, alternatively, in accordance with the *Courts of Justice Act*, for any period preceding the time that interest begins to accrue at the agreed rate of 19.56% per annum (1.5% per month), compounded monthly. MNP relies on, among other things, section 130 of the *Courts of Justice Act*, RSO 1990, s C43, as amended.

49. As at the time of the delivery of this Amended Statement of Claim, the interest owed to MNP, which continues to accrue, totals over \$6,000,000.

Place of Trial

43.50. MNP proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

Date: ~~September 14, 2017~~
January 19, 2023

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MNP CORPORATE FINANCE INC.

Plaintiff

-and-

**SIMPLY GREEN HOME SERVICES CORP. (f/k/a SIMPLY
GREEN HOME SERVICES INC.) et al.**

Defendants

Court File No. CV-17-582744

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

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MNP Corporate Finance Inc.

AMENDED THIS 28 Feb/ 23 PURSUANT TO
MODIFIÉ CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02 (B)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED/FAIT LE _____

W. Camacho

Digitally signed by W. Camacho
Date: 2023.03.09 10:46:18 -05'00'

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-17-582744

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MNP CORPORATE FINANCE INC.

Plaintiff

and

SIMPLY GREEN HOME SERVICES CORP. (f/k/a SIMPLY GREEN HOME SERVICES INC.) and CROWN CREST FUNDING CORP. in its capacity as trustee of CROWN CREST CAPITAL TRUST

Defendants

AMENDED STATEMENT OF DEFENCE

1. The Defendants deny all of the allegations in the Statement of Claim, except as expressly admitted herein.

The Parties

2. The Defendant, Simply Green Home Services Corp., formerly known as Simply Green Home Services Inc. ("Simply Green"), is a corporation incorporated pursuant to the laws of Ontario. It carries on business as a leading provider of energy conservation equipment to Canadian households. The corporation's name was changed to Simply Green Home Services Corp. on or about October 9, 2020.

3. The Defendant, Crown Crest Capital Trust (“**CCCT**”), is a special purpose trust established in December 2015 as a funding vehicle to finance consumer rental contracts originated by Simply Green. Its purpose is to finance, acquire, and hold such contracts and other securitizable assets. CCCT funds its activities with, among other things, borrowed funds.

4. The Defendant, Crown Crest Funding Corp. (“**CCFC**”), is a corporation incorporated pursuant to the laws of Ontario. It acts as a trustee for CCCT.

5. Simply Green, CCCT, and CCFC are collectively referred to herein as “**SGHS**”.

6. The Plaintiff, MNP Corporate Finance Inc. (“**MNP**”), is a corporation incorporated pursuant to the laws of Alberta. It is a financial advisory firm that advises clients on a range of corporate transactions.

Background

7. Simply Green is in the business of renting and leasing energy conservation equipment to residential consumers, including heating, cooling, air filtration, and water filtration systems as well as related products and services. It enters into long-term equipment rental contracts with consumers through a dedicated sales force that arranges for the procurement, installation, and servicing of the rented equipment. Consumers make regular payments under their equipment rental contracts, which are collected and administered by Simply Green and/or its related entities, typically for terms of at least 10 years.

8. In late 2015, Simply Green embarked on a strategy to expand its operations. It set up CCCT for the purpose of establishing a more reliable source of funding to finance, acquire, and hold the rental contracts originated by it.

9. In the interim, CCCT needed to obtain immediate, short-term financing. On December 3, 2015, CCCT acting through its trustee CCFC entered into an interim financing arrangement with Sprott Bridging Income Fund LP (“**Sprott**”).

10. The financing arrangement with Sprott was structured as a short-term bridge facility. It was intended to be replaced by a longer-term and less expensive form of financing.

11. In February 2016, Simply Green entered into a non-exclusive retainer agreement with MNP to assist in replacing the bridge facility with senior debt financing. The purpose of MNP’s engagement was to carry out a capital-raising process that would, among other things, enhance CCCT’s financial capacity and help to underwrite its expansion plans.

12. As part of its expansion plans, CCCT’s objective was to use the senior debt financing to finance, acquire, and hold rental contracts originated by Simply Green (and other assets with regular revenue streams) on a cost-effective basis, with the ultimate objective of bundling them into securities that could be sold to public and institutional investors. By securitizing rental contracts and similar revenue-generating assets, CCCT and Simply Green would be able to create an ongoing and sustainable source of financing for their activities.

Terms of MNP's Engagement

13. The engagement letter entered into by Simply Green and MNP contemplated the following forms of capital to be raised by MNP:

- (a) A long-term, senior credit facility to be established for a value of up to CDN\$75 million with draws made from time to time and on terms to be established between parties (the “**Senior Facility**”); and
- (b) A revolving warehouse facility of up to CDN\$5 million with which to fund long-term rental agreements pending draws under the Senior Facility (the “**Warehouse Facility**”).

14. The initial term of MNP's engagement was six months, to be renewed automatically on a month-to-month basis unless terminated by Simply Green or MNP. The engagement could be terminated at any time with or without cause by either Simply Green or MNP upon 15 days' notice to the other party.

15. The engagement letter provides for MNP's compensation based on a combination of a “monthly work fee” and a “completion fee”. The monthly work fee was set at \$5,000 per month plus administrative fees and taxes until the end of the engagement.

16. MNP was also entitled to a completion fee on the successful closing of a Senior Facility or Warehouse Facility with a “Lender” or “Lenders” (as defined in the engagement letter). The completion fee was to be calculated based on a percentage of the aggregate of all amounts funded

or committed to be funded by such Lender or Lenders as part of the transaction during the period the engagement letter remains in force and effect (the “**Funded Amounts**”).

17. The percentage of the completion fee depends on whether the lender is an “Approved Lender” or “Lender” (as defined in the engagement letter). For an Approved Lender, the completion fee is 1.5% of the Funded Amounts for a Senior Facility or Warehouse Facility. For a Lender, the completion fee is 0.5% of the Funded Amounts for a Senior Facility or Warehouse Facility.

MNP Identifies Peoples Trust as a Potential Lender

18. Prior to the engagement letter being executed, MNP began the process of identifying potential lenders in consultation with Simply Green. Peoples Trust Company (“**PTC**”), whom MNP had already contacted, emerged as a contender to offer senior debt financing with respect to the Senior Facility and the Warehouse Facility.

19. PTC is a financial institution based in Vancouver, British Columbia that provides various forms of residential and commercial financing to borrowers.

20. Negotiations with PTC for a credit facility commenced in April 2016 and carried on for many months. MNP was actively involved in the early negotiation process. It took a lead role in preparing and presenting term sheets, responding to PTC’s proposals, and assisting SGHS to negotiate the terms of the transaction with PTC.

Peoples Trust Proposes a Purchase and Sale Agreement Instead of Debt Financing

21. On July 8, 2016, PTC delivered to SGHS its first draft of an agreement for a single credit facility. The draft agreement provided for loans to repay the Sprott bridge facility as well as other interim funding. It also established a mechanism for additional loans to be made in the future to fund new rental contracts originated by Simply Green. However, the draft agreement did not include a funding commitment from PTC. All future loans were to be at PTC's discretion.

22. SGHS responded with a proposal for PTC to provide a second long-term credit facility that would allow them to achieve a stable source for funding future rental contracts. PTC did not agree to this proposal.

23. Instead, ~~on August 2, 2016, PTC revised its approach to the transaction.~~ It PTC advised that it was not prepared to offer senior debt financing or the type of long-term credit facility sought by SGHS. It proposed a new arrangement whereby PTC would finance Simply Green's new originations of rental contracts by purchasing such contracts outright.

24. Under this new arrangement, PTC would fund Simply Green's operations by purchasing rental contracts on its own account on an absolute basis, rather than providing CCCT with a loan or credit facility to acquire and hold the contracts for future securitization and sale to public and institutional investors. As part of this new arrangement, PTC would fully own the rental contracts it purchased and Simply Green would service and administer them for PTC's benefit.

25. PTC's proposal was not suitable. Among other things, PTC's purchases were to be completely discretionary. PTC could refuse to purchase contracts at any time for any reason, effectively depriving SGHS of ongoing funding. Moreover, the proposal did not permit CCCT to

reacquire the rental contracts in the event that it decided to pursue its strategy to securitize those assets and sell them as securities to investors.

26. As a result, the concept of a sale of the rental contracts, as initially proposed by PTC, was not acceptable to SGHS. It was not consistent with the type of senior debt financing contemplated in the engagement letter. Nor was it consistent with SGHS's plans to securitize rental contracts for ultimate sale to investors. In addition, the lack of any commitment by PTC to purchase rental contracts meant that, at any time and without notice, SGHS could be forced to find a new long-term lender if PTC stopped acquiring contracts.

27. SGHS sought to negotiate changes to the proposal that would grant CCCT the right to repurchase the rental contracts that had been sold to PTC. This would enable CCCT to reacquire the rental contracts and then securitize them for sale to investors.

28. PTC's sales concept, combined with a repurchase right for CCCT, would not constitute traditional debt financing. However, SGHS understood and expected that it would result in the economic equivalent of a term loan or, in effect, a "synthetic" term loan that could achieve some of its objectives. SGHS continued negotiations with PTC on that basis.

Peoples Trust Changes the Transaction at the Last Minute

29. PTC continued its due diligence on the transaction into November 2016. The deadline of December 2016 to replace the Sprott bridge facility was fast approaching.

30. On November 22, 2016, PTC delivered comments on the draft sales agreement deleting CCCT's critical rights to repurchase rental contracts from PTC. This was the first time PTC had

advised that the repurchase rights were problematic for it, even though the rights had been specified in the draft sales agreement since August 2016.

31. Given that the expiration of the Sprott bridge facility was imminent and that the negotiations with PTC were well advanced, SGHS – despite objection and intense last-minute negotiation – ultimately had no choice but to accept PTC’s restrictions on the repurchase rights. PTC did, however, concede certain limited repurchase rights for limited amounts. These limited rights fell far short of the repurchase rights that SGHS required.

Transactions Close and MNP Seeks Payment of Completion Fee

32. On December 1, 2016, CCCT by its trustee CCFC entered into a Warehouse Line of Credit Agreement with PTC (the “**Warehouse Agreement**”).

33. On the same day, CCCT also entered into a Sale and Servicing Agreement with PTC (the “**SSA**”).

Completion Fee Paid for the Warehouse Facility

34. The Warehouse Agreement establishes a revolving line of credit of up \$30 million. On December 1, 2016, SGHS used this line of credit to repay and “take out” the Sprott bridge facility.

35. The line of credit is consistent with the type of Warehouse Facility contemplated in the engagement letter. Accordingly, Simply Green paid MNP a completion fee of \$450,000 in respect of this facility (representing 1.5% of the \$30 million in funding committed by PTC).

SSA Transaction Does Not Create a Loan or Credit Facility

36. Unlike the Warehouse Agreement, the SSA does not create a term loan, credit facility, or provide any debt financing whatsoever. Rather, the SSA creates a structure through which PTC may, at its sole option, purchase rental contracts originated by Simply Green. It does not commit PTC to any amount of funding. PTC has no obligation to make any purchases of rental contracts.

37. In both form and substance, the SSA does not resemble a loan or credit facility. PTC has no right to demand or require repayment of any amounts funded, as would be typical for a loan or credit facility. Likewise, the SSA does not incorporate any effective mechanism by which CCCT may “repay” any funded amounts.

38. At the time the SSA transaction closed and since then, SGHS has consistently made it clear to MNP that the SSA does not meet its current needs or its original expectation that MNP would raise senior debt financing, as contemplated under the engagement letter. In spite of this, MNP has persisted in seeking payment of a completion fee in respect of the SSA.

MNP Is Not Entitled to a Completion Fee for the SSA Transaction

39. The SSA is not a “Senior Facility” within the meaning of the engagement letter. SGHS does not owe MNP a completion fee in relation to it.

40. Contrary to the Plaintiff’s allegations, the SSA does not constitute a debt instrument. It does not create a borrower-lender relationship between PTC and CCCT. Rather, the SSA is a purchase and sale agreement. Among other things, the SSA:

- (a) defines PTC as a “Purchaser” and CCCT as a “Seller and Servicer” of assets;

- (b) makes clear in its preamble that, in form and substance, the transaction constitutes a purchase and sale agreement. The preamble states that “the Seller wishes to sell the Purchased Assets from time to time to the Purchaser and the Purchaser wishes to purchase the Purchased Assets from the Seller, on and subject to the terms and conditions of this Agreement”;
- (c) provides that, on purchasing rental contracts from the Seller, the Purchaser is the owner of those contracts and the associated revenue streams;
- (d) does not commit PTC to provide any loans of any kind to CCCT or to purchase any rental contracts except as it may agree from time to time;
- (e) does not provide for the payment of interest by CCCT to PTC;
- (f) does not have a maturity date;
- (g) does not grant PTC the right to demand or require repayment of any amounts paid as a purchase price;
- (h) does not provide CCCT with any retained interest in the rental contracts purchased by PTC, which PTC is permitted to sell to third parties without encumbrance or right of redemption by CCCT; and
- (i) does not grant CCCT a right to “repay” any funded amounts or redeem its interest in the rental contracts. CCCT may repurchase the rental contracts purchased by PTC only on restricted terms. The repurchase right is subject to a number of

conditions, is not automatic, is deferred, and cannot be cannot be exercised except in limited circumstances.

41. The SSA does not have the characteristics of a loan or credit facility. It is a purchase agreement for which MNP cannot claim a completion fee.

No Amounts Funded or Committed to Be Funded under the SSA

42. In any event, the engagement letter provides that a completion fee is only owed on amounts funded or committed to be funded by a Lender or Lenders during the period it remains in force and effect.

43. Beyond the fact that the SSA is neither a loan nor a credit facility, no amounts have been committed to be funded by PTC to acquire rental contracts and no such amounts were in fact funded at the time MNP requested payment of a completion fee in relation to the SSA.

44. Further, the engagement letter has been terminated effective March 21, 2017. SGHS pleads, and the fact is, that no amounts were funded or committed to be funded under the SSA as of that date.

MNP Not Entitled to Any Fees Under the Trailer Clause

45. SGHS denies that MNP is entitled to a Completion Fee in respect of any amounts provided by PTC to SGHS between March 21, 2017 and March 21, 2019 (the “Tail Period”).

46. The Tail Period only applies in circumstances in which SGHS has not yet received a Senior Facility or Warehouse Facility, as those terms are defined in the engagement letter. If the SSA is a Senior Facility (which is denied), then the Tail Period is inapplicable.

47. In any event, SGHS denies that the obligation to pay a completion fee during the Tail Period is “separate and apart” from the fee section in the engagement letter. The reference to “debt financing” in the tail provision is limited to the two forms of capital contemplated by the engagement letter: a Senior Facility or a Warehouse Facility (as defined above). None of the Convertible Debentures and Concurrent Lease Agreements referenced at paragraphs 27-31 of the Amended Statement of Claim is a Senior Facility or a Warehouse Facility. Therefore no fee is payable to MNP in respect of the Convertible Debentures and Concurrent Lease Agreements.

48. The Concurrent Lease Agreements are similar in structure and substance to the SSA. Like, the SSA for the same or similar reasons as the SSA, they are not debt or credit agreements or arrangements.

49. Further, the Warehouse Line Of Credit Agreement dated January 19, 2018 (the “**January 2018 Warehouse**”) did not result in any new funds committed to SGHS. No fee is payable in respect of the January 2018 Warehouse.

50. Moreover, neither of the Defendants was a party to the January 19, 2018 Warehouse or the January 19, 2018 CLA. These are agreements between PTC and Crown Crest Financial Corp., which is not a party to the Engagement Letter. The Plaintiff has no entitlement, under the Engagement Letter or otherwise, to any fees in respect of funds provided by PTC to Crown Crest Financial Corp.

~~MNP Is Not Entitled to Any Other Fees Claimed~~

~~45. MNP claims fees for financing allegedly obtained by CCCT from ECN Capital (“ECN”), a commercial finance company based in Toronto, Ontario. Contrary to the Plaintiff’s allegations, ECN has not advanced any financing to CCCT which would entitle MNP to compensation under the engagement letter.~~

~~46. MNP also claims fees in respect of an equity interest that PTC received in Crown Crest Capital Management Corp. (“CCCMC”), an affiliate of SGHS which, among other things, is a guarantor under the Warehouse Agreement and the SSA. Contrary to the Plaintiff’s allegations, PTC’s equity interest does not entitle MNP to any fees since PTC did not participate or otherwise invest in any “Offering” within the meaning of the engagement letter. Nor did the equity interest in CCCMC have any value when it was granted to PTC.~~

~~47. Accordingly, none of the additional fees claimed by MNP are properly owing to it.~~

SGHS Has Not Been Unjustly Enriched

48 51. SGHS denies that it has been unjustly enriched at MNP’s expense. MNP has been fully compensated for amounts to which it was entitled under the engagement letter.

MNP’s Claim for Quantum Meruit Has No Basis

49 52. The engagement letter sets out the complete terms of MNP’s engagement, including compensation for its services. SGHS is not required to reimburse or compensate MNP on a quantum meruit basis for labour, services, and resources expended by it.

MNP Has Not Suffered Any Damages

~~50~~ 53. SGHS denies that it has caused MNP to suffer any losses or damages. To the extent that MNP has suffered damages (which is expressly denied), the amounts claimed are remote, excessive, and unsubstantiated.

54. To the extent that any damages are owed to MNP (which is denied), SGHS denies that the 19.56% contractual interest rate applies.

55. In the alternative, if the contractual interest rate applies to Completion Fee payments (which is denied), interest did not begin accruing until 30 days after the Plaintiff issued an invoice to the Defendants on November 2, 2021.

56. To the extent that any damages are owed to MNP (which is denied), CCFC is solely liable for those damages. Simply Green is not liable for any damages. The engagement letter requires CCFC, not Simply Green, to pay MNP any Completion Fee.

~~54~~ 57. SGHS further denies that it has acted in wilful disregard of their obligations or MNP's rights under the engagement letter. MNP is not entitled to an award of punitive or exemplary damages.

~~52~~ 58. SGHS asks that this action be dismissed with costs.

~~October 31, 2017~~
February 26, 2023

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Plaintiff

-and-
Defendants

SIMPLY GREEN HOME SERVICES INC. et al.

Court File No. CV-17-582744

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AMENDED STATEMENT OF DEFENCE

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MNP CORPORATE FINANCE INC.

Plaintiff

- and -

SIMPLY GREEN HOME SERVICES CORP. (f/k/a SIMPLY GREEN HOME
SERVICES INC.) and CROWN CREST FUNDING CORP. in its capacity as
trustee of CROWN CREST CAPITAL TRUST

Defendants

REPLY

1. The plaintiff, MNP Corporate Finance Inc. ("**MNP**"), repeats and relies upon the allegations contained in the Amended Statement of Claim. Capitalized terms that are not defined in this pleading have the meanings ascribed to them in the Amended Statement of Claim.
2. MNP denies all of the allegations and defences contained in the Amended Statement of Defence. The new allegations and defences contained in the Amended Statement of Defence, which were pled and asserted by the Defendants for the first time over five years after the litigation was commenced, are in large part unresponsive to the allegations in the Amended Statement of Claim. They are also entirely unfounded and belied by not only the Defendants' own contemporaneous conduct and acknowledgements but also by their own admissions made in the course of this litigation.

3. Without in any way limiting the generality of the foregoing, MNP specifically:

- (a) Denies the allegations in paragraph 44 of the Amended Statement of Defence that no amounts were funded under the SSA as of March 21, 2017. At least \$21,433,538.68 was funded by PTC under the SSA as of March 21, 2017 through three separate funding advances from PTC respectively dated December 19, 2016, January 31, 2017 and February 27, 2017. The notices for these advances record the advances as “loans”.

In addition, the Defendants admitted on January 11, 2023 – over a month and a half before they issued their Amended Statement of Defence – that such funding was indeed advanced by PTC under the SSA as of March 21, 2017.

Further amounts were also advanced by PTC under the SSA following March 21, 2017. In particular, and as admitted by the Defendants, approximately \$35,000,000.00 was advanced by PTC under the SSA throughout the relevant period (ending March 21, 2019). Additional amounts totalling approximately \$350,000,000.00 were advanced by PTC under the various Concurrent Lease Agreements during the relevant period, as was also admitted by the Defendants.

MNP is entitled a fee of 1.5% on all of these advances, in addition to the other relief claimed in the Amended Statement of Claim – including 1.5% on all amounts advanced by PTC under the January 2018 Warehouse Line of Credit and the Convertible Debentures, interest on all amounts owing to MNP at the

contractually agreed upon rate of 19.56% per annum compounded monthly, special damages, punitive damages, and costs on a full indemnity basis.

- (b) Denies the allegations in paragraph 45 of the Amended Statement of Defence. Among other things, the Engagement Letter specifically provides that MNP is entitled to a fee of 1.5% on any "debt financing" advanced by an Approved Lender (*i.e.*, PTC) throughout the Tail Period.

The Defendants' own counsel specifically revised this section of the Engagement Letter prior to it being finalized to specifically provide for this language. Further, at and around the time of the Defendants' initial refusal to pay MNP the fee to which it is entitled in respect of the SSA, the Defendants' own counsel acknowledged MNP's entitlement to a fee of 1.5% on any debt financing advanced by PTC throughout the Tail Period, consistent with the terms of the Engagement Letter that they themselves revised.

The SSA and the Concurrent Lease Agreements are each long term senior credit facilities and debt financings for which MNP is entitled to a fee. The January 2018 Warehouse Line of Credit and Convertible Debentures are also debt financings for which MNP is entitled to a fee. The Defendants have acted in bad faith, including by, among other things: (i) obtaining the benefit of funding under the SSA, which was structured as an SSA by the Defendants' own counsel (since August 2016), without the Defendants raising any issue with the structure of the SSA or otherwise, including with respect to MNP's entitlement to a fee in respect

of the SSA, until it came time for the Defendants to pay MNP the fee to which it is entitled under the Engagement Letter; and (ii) obtaining the benefit of funding under all of the other facilities and not paying MNP its fee or even so much as disclosing the existence of these facilities until compelled to do so by MNP in the course of this litigation after multiple requests by MNP.

- (c) Denies the allegations in paragraph 46 of the Amended Statement of Defence, which wholly ignore the terms of the Engagement Letter and MNP's entitlement to a fee of 1.5% in respect of any debt financing advanced by PTC throughout the Tail Period.

The Defendants refused to pay MNP its fee in respect of the SSA upon closing the SSA while specifically acknowledging MNP's entitlement to a fee on any debt financing advanced by PTC throughout the Tail Period. The Defendants' new allegations in paragraph 46, made for the first time in their Amended Statement of Defence nearly six years after this litigation was commenced, that MNP cannot at once be entitled to a fee in the normal course that the Defendants themselves refused to pay and also a fee under the Tail Period, is contradicted by, among other things, both the express terms of the Engagement Letter (that the Defendants' counsel specifically revised) and the Defendants' counsel's acknowledgment of this entitlement after the SSA closed.

- (d) Denies the allegations in paragraph 47 of the Amended Statement of Defence, which, again, are contrary to the terms of the Engagement Letter providing for

MNP for to be paid a fee of 1.5% in respect of any debt financing advanced by PTC throughout the Tail Period. The Defendants' new allegations in paragraph 47, likewise made for the first time in their Amended Statement of Defence, that the fee entitlement in respect of any "debt financing" is somehow limited to a "Senior Facility" and a "Warehouse Facility" ignores not only the express terms of the Engagement Letter which provides for a fee for "any debt financing" during the Tail Period but also both the Defendants' own counsel's revisions in respect of that provision as well as the Defendants' own counsel's acknowledgement of the Defendants' obligation in this regard.

In any event, and in reply to the allegations at paragraphs 47 and 48 of the Amended Statement of Defence, the Concurrent Lease Agreements are not only debt financings but they are also long term senior credit facilities.

- (e) Denies the allegations at paragraph 49 of the Amended Statement of Defence, including because, among other things:
 - (i) Simply Green is a party to the Concurrent Lease Agreement involving Crown Crest Financial Corp.;
 - (ii) Simply Green is also a party to the January 2018 Warehouse Line of Credit involving Crown Crest Financial Corp.;
 - (iii) Crown Crest Financial Corp. is a subsidiary of Simply Green;
 - (iv) Crown Crest Financial Corp. is an alter ego of Simply Green;

- (v) Simply Green and Crown Crest Financial Corp. have the same directing mind and management. The sole director and officer of Crown Crest Financial Corp. is Lawrence Krimker, who is the founder, Chief Executive Officer and a director of Simply Green;
- (vi) PTC is the lender under both the Concurrent Lease Agreement involving Crown Crest Financial Corp. and the January 2018 Warehouse Line of Credit;
- (vii) Crown Crest Financial Corp., like the Defendants, had no prior relationship of any kind with PTC and only formed a relationship with PTC through and as a result of MNP's work on behalf of the Defendants;
- (viii) the Concurrent Lease Agreement involving Crown Crest Financial Corp. is virtually identical to the Concurrent Lease Agreements involving the Crown Crest Trust;
- (ix) the Defendants used Crown Crest Financial Corp. in an attempt to circumvent and/or limit their obligations to pay MNP a fee of 1.5% on any debt financing advanced by PTC throughout the Tail Period;
- (x) the Defendants acted deceptively, dishonestly and in bad faith, including by, among other things, diverting funding from PTC to Crown Crest Financial Corp. rather than the Crown Crest Trust with a view to avoiding having to pay MNP a fee of 1.5% on such funding;

- (xi) the Defendants have failed, and repeatedly refused, to produce documents relating the Concurrent Lease Agreements, including documents relating to the negotiation of the Concurrent Lease Agreements and, in particular, the Concurrent Lease Agreements between PTC, Simply Green and Crown Crest Financial Corp.;
 - (xii) the Defendants benefitted from the funding from PTC under the Concurrent Lease Agreement involving Crown Crest Financial Corp. and the January 2018 Warehouse Line of Credit; and
 - (xiii) it would be inequitable and unjust to condone the Defendants' improper and unlawful conduct by allowing them to avoid paying a fee to MNP in respect of the Concurrent Lease Agreement involving Crown Crest Financial Corp. and the January 2018 Warehouse Line of Credit from which they have benefitted.
- (f) Denies the allegations in paragraph 54 of the Amended Statement of Defence, including because the Defendants specifically agreed under the Engagement Letter to pay interest at the rate of 19.56% per annum, compounded monthly, on MNP's unpaid accounts. Further, the Defendants knew and understood that interest would be payable at this rate and they deliberately made a choice to avoid paying MNP while retaining the benefits of withheld amounts such that interest at the rate of 19.56% per annum, compounded monthly, is also the just and equitable interest rate that ought to be payable to MNP by the Defendants.

- (g) Denies the allegations in paragraph 55 of the Amended Statement of Defence, including because, among other things, the Defendants have concealed records and, with respect to the Concurrent Lease Agreements, January 2018 Warehouse Line of Credit and Convertible Debentures specifically, only disclosed even the existence of these facilities well after they were entered into and only when compelled to do so by MNP in the course of this litigation after multiple requests by MNP.

For instance, the January 2018 Convertible Debenture was disclosed to MNP in 2021 – over three years after it was entered into – and only when compelled to do so in the course of the litigation notwithstanding MNP's allegation in its Statement of Claim issued in 2017 that it is entitled to a fee of 1.5% on any debt financing with PTC. The Concurrent Lease Agreements and January 2018 Warehouse Line of Credit were similarly concealed and only belatedly disclosed by the Defendants when compelled, after multiple requests by MNP.

Additionally, the Defendants failed to produce financial information relating to all of these facilities and the SSA in a timely manner. For instance, the Defendants only disclosed their audited financial statements, which record all of these facilities as debt financings, in 2021. The Defendants were specifically obligated under the Engagement Letter to, among other things, keep MNP informed of developments relating to its engagement. The Defendants were (and are) also obligated under the *Rule of Civil Procedure* to produce all relevant records in

their possession, power and control. The Defendants continuously and repeatedly breached these obligations (and continue to do so).

By virtue of all of the Defendants' improper and unlawful conduct, including their breaches of the Engagement Letter, their breaches of the *Rules of Civil Procedure*, and their bad faith conduct both before and during the course of this proceeding, they frustrated MNP's ability to issue an invoice. The Defendants cannot now seek to benefit from their unlawful, improper and bad faith conduct by avoiding having to pay interest as of the dates the applicable funding was advanced by PTC. The Defendants have benefitted from the funds that were advanced by PTC, and from the amounts they have improperly withheld from MNP, and they ought to be held to their agreement to pay interest at the contractually agreed upon rate from the dates the applicable funding was first advanced by PTC. This is also the only just and equitable result.

- (h) Denies the allegations in paragraph 56 of the Amended Statement of Defence, including because the Defendants acted jointly and in concert, with a common design, with a view to both depriving MNP of its entitlements and harming MNP. In any event, the Engagement Letter specifically provides that, among other things: (i) Simply Green, on behalf of the Crown Crest Trust, is responsible to pay the applicable fees to MNP; and (ii) the Defendants are jointly and severally liable for MNP's unpaid accounts. The Defendants are jointly and severally liable for all amounts owing to MNP.

March 9, 2023

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MNP CORPORATE FINANCE INC.
Plaintiff

-and-

SIMPLY GREEN HOME SERVICES INC. et al.
Defendants

Court File No. CV-17-582744

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

REPLY

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP.,
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL LOMBARD
(Sworn November 15, 2023)

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TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM	)	FRIDAY, THE 17TH
	)	
JUSTICE B. CONWAY	)	DAY OF NOVEMBER, 2023

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL
MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY
GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

PEOPLES TRUST COMPANY

Applicant

AND

**CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST
FUNDING CORP., SIMPLY GREEN HOME SERVICES
INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST**

Respondents

AMENDED AND RESTATED INITIAL ORDER

(Amending Initial Order dated November 9, 2023)

THIS MOTION, made by Peoples Trust Company (“**PTC**” or the “**Applicant**”), for an order amending and restating the initial order of Justice Conway issued on November 9, 2023 (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario via videoconference.

ON READING the affidavit of Michael Lombard sworn November 6, 2023 and the Exhibits thereto, the affidavit of Katherine Yurkovich sworn November 9, 2023 and the Exhibits thereto (the “**Yurkovich Affidavit**”), the affidavit of Michael Lombard sworn November 15, 2023 and the Exhibits thereto, the consent of KPMG Inc. (“**KPMG**” or the “**Monitor**”) to act as Monitor; the pre-filing report of KPMG dated November 7, 2023 (the “**Pre-Filing Report**”) and the first report of KPMG, to be filed (the “**First Report**”), each in KPMG’s capacity as Monitor of Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Funding Corp., Simply Green Home Services Inc., Simply Green Home Services Corp., and Crown Crest Capital Trust (collectively, the “**Respondents**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this motion, and on hearing the submissions of counsel for PTC, counsel for the Respondents, counsel for KPMG, and those other parties listed on the counsel slip, no other party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn November 9, 2023.

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Respondents are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Respondents shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”)

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Respondents shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Respondents shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Respondents are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants with the consent of Monitor, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that, the Respondents shall be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system with the consent of the Monitor (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Respondents of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Respondents, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, the Respondents shall be entitled but not required to pay the following advances or expenses whether incurred prior to or after this Order, with the consent of the Monitor and subject to availability under and in an accordance with the Definitive Documents (as hereinafter defined):

- (a) all outstanding and future wages, salaries, employee and pension benefits, commissions, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Respondents in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing for goods or services supplied to the Respondents prior to the date of this Order by third-party suppliers or service providers, up to a maximum aggregate amount of \$750,000, if, in the opinion of the CRO (as hereinafter defined), such supplier or service provider is critical to the Business and the ongoing operations of the Respondents.

7. **THIS COURT ORDERS** that except as otherwise provided to the contrary herein, the Respondents shall be entitled but not required to, with the consent of the Monitor, pay all reasonable expenses incurred by the Respondents in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Respondents following the date of this Order.

8. **THIS COURT ORDERS** that the Respondents shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Respondents in connection with the sale of goods and services by the Respondents, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Respondents.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Respondents shall, with the consent of the Monitor, pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Respondents and the landlord from time to time ("**Rent**") with the consent of the Monitor, for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein and in the Definitive Documents, the Respondents are hereby directed, until further Order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Respondents to any of its creditors as of this date;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

(c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Respondents, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the Respondents' business or operations, and to dispose of redundant or non material assets not exceeding \$250,000 in any one transaction or \$2 million in the aggregate;
- (b) terminate the employment of such of the Respondents' employees or temporarily lay off such of the Respondents' employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Respondents' Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any materials refinancing,

all of the foregoing to permit the the Respondents, to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Respondents shall provide each of the relevant landlords with notice of the Respondents' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the applicable Respondent's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the CRO, on behalf of the applicable Respondent, or by further Order of this Court upon application by the CRO, on behalf

of the applicable Respondent, on at least two (2) days notice to such landlord and any such secured creditors. If the Respondents disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the CRO's claim, on behalf of the applicable Respondent, to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the CRO and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against any of the Respondents in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including February 16, 2024 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Respondents, the Monitor or the CRO (as defined below), or affecting the Business or the Property, except with the written consent of the Respondents and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **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 Respondents, the Monitor or the CRO (defined below), or affecting the Business or the Property,

are hereby stayed and suspended except with the written consent of the Respondents and the Monitor, or leave of this Court, provided that nothing in this Order shall:

- (a) empower the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **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 the Respondents, except with the written consent of the Respondents and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, call center services, collections services, equipment warranty and repair services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Respondents, 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 Respondents, and that the Respondents shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Respondents in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the

supplier or service provider and each of the Respondents and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Respondents. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **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 Respondents with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Respondents 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, until a compromise or arrangement in respect of the Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the Respondents or this Court.

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that KPMG Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Respondents with the powers and obligations set out in the CCAA or set forth herein and that the Respondents and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Respondents pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Respondents' receipts and disbursements, Business and dealings with the Property and, among other things, ensure all disbursements are consistent with the Cash Flow Statements (as defined in Pre-Filing Report), as amended from time to time, and subject to the variances permitted in the Definitive Documents;
- (b) exercise the consent rights set out in the Order in its sole discretion including without limitation the right to consent to any agreement, transaction payment or transfer referenced in paragraphs 6-7 above;
- (c) notify or otherwise contact, whether orally or in writing, customers of the Respondents, to advise of the commencement of these proceedings, and the continued obligation of such customers to make payments to the Respondents under existing agreements with, or otherwise assigned to, the Respondents;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) assist the Respondents, to the extent required by the Respondents or the DIP Lender (as defined below), in its dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Respondents and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) advise the Respondents in its preparation of the cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (g) advise the Respondents in their development of a Plan and any amendments to a Plan;

- (h) assist the CRO, to the extent required by the CRO, with the holding and administering of creditors' or shareholders' meetings for voting on a Plan;
- (i) 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 Respondents, to the extent that is necessary to adequately assess the Respondents' business and financial affairs or to perform its duties arising under this Order;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) give notice pursuant to the CRO Engagement Letter (as defined below) terminating for and on behalf of the Respondents the engagement of the CRO;
- (l) assist the Respondents in complying with the terms of the Definitive Documents;
- (m) provide information to the DIP Lender regarding the Business and affairs of the Respondents in response to reasonable requests thereof;
- (n) apply to this Court, on its own behalf or on behalf of the Respondents, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in these proceedings, including for advice and directions with respect to any matter; and
- (o) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor 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.

23. **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the Monitor to be liable for any employee-related liabilities or duties,

including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts, or any successor employer liabilities as provided for in section 11.8(1) of the CCAA.

24. **THIS COURT ORDERS** that nothing herein contained and nothing done by the Monitor in carrying out its duties hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as provided in s. 14.06(1.2) and s. 14.06(2) of the BIA to a "trustee" in relation to an insolvent person and its property. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Respondents and the DIP Lender with information provided by the Respondents in response to reasonable requests for information made in writing by such creditor addressed to the Monitor.

The Monitor 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 Monitor has been advised by the Applicant or the Respondents is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant or the Respondents, as applicable, may agree.

26. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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 and the Monitor shall not have any liability with respect to losses, claims, damages, indemnities or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities directly result from the gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant and counsel to the CRO shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the CRO shall be paid its fees in accordance with the CRO Engagement Letter, by the Respondents as part of the costs of these proceedings. The Respondents are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Respondents are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

28. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. **THIS COURT ORDERS** that the Monitor, the CRO, counsel to the Monitor, counsel to the CRO, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1.5 million as security for their professional fees and disbursements incurred

at the standard rates and charges of the Monitor and such counsel, and in the case of the CRO, as set out in the CRO Engagement Letter both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

APPOINTMENT OF CRO

30. **THIS COURT ORDERS** that the agreement dated as of November 8, 2023 pursuant to which the Respondents have engaged HWS Consulting Inc. to act as Chief Restructuring Officer (the “**CRO**”) through the services of Joe Prosperi and other employees or agents of HWS Consulting Inc., a copy of which is attached as **Exhibit A** to the Yurkovich Affidavit as may be amended by the parties thereto with the consent of the Monitor and the Applicant (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

31. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to oversee the Business and the Property, and otherwise exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter, which shall include the exercise of all consent rights and matters of discretion reserved to the Respondents under the terms of this Order, together with such other powers, responsibilities and duties as may be agreed upon by the CRO, the Monitor and the Applicant (collectively, the “**CRO Powers**”). For the avoidance of doubt, the CRO Powers shall include the authority to enter agreements or instruments on behalf of the Respondents. In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Respondents and not its personal or corporate capacity.

32. **THIS COURT ORDERS** that the CRO shall not be, or deemed to be a director, officer or employee of the Respondents.

33. **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the CRO to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts.

34. **THIS COURT ORDERS** that nothing herein contained and nothing done by the CRO in carrying out its duties hereunder shall result in, or be deemed to result in, the CRO being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the CRO shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under Environmental Legislation, provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the CRO is nevertheless found to be in possession of any Property, then the CRO shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as provided in s. 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property. The CRO shall not, as a result of this Order or anything done in pursuance of the CRO's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

36. **THIS COURT ORDERS** that the obligations of the Respondents to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Respondents.

37. **THIS COURT ORDERS** that, to the extent required by the Monitor or the DIP Lender, the CRO shall assist with the timely dissemination of financial and other information to the DIP Lender, its counsel, and the financial advisor to the DIP Lender of such information reasonably requested by the DIP Lender.

38. **THIS COURT ORDERS** that the Respondents shall not make any payment or transfer of money, without the consent of the CRO.

DIP FINANCING

39. **THIS COURT ORDERS** that the Respondents are hereby authorized and empowered to obtain and borrow under a credit facility from the Applicant (in such capacity, the "**DIP Lender**") in order to finance the Respondents' working capital requirements and restructuring costs, provided that borrowings under such credit facility shall not exceed \$15,000,000 unless permitted by further Order of this Court.

40. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Term Sheet between the Respondents and the DIP Lender dated as of November 9, 2023 (the "**DIP Agreement**"), filed as **Exhibit C** to the Yurkovich Affidavit.

41. **THIS COURT ORDERS** that the Respondents are hereby authorized and directed to execute and deliver the DIP Agreement, any drawdown notices under the DIP Agreement, and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Respondents are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **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, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may immediately exercise any and all of its rights and remedies against the Respondents or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Respondents and set off and/or consolidate any amounts owing by the DIP Lender to the Respondents against the obligations of the Respondents to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Respondents and for the appointment of a trustee in bankruptcy of the Respondents; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Respondents or the Property.

44. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Respondents under the CCAA, or any proposal filed by the Respondents under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$1.5 million); and

Second – DIP Lender's Charge (to the maximum amount of the Obligations (as defined under the DIP Agreement)).

46. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, 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.

47. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property 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.

48. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Respondents shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the DIP Lender's Charge, unless the Respondents also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

49. **THIS COURT ORDERS** that the Administration Charge, the DIP Agreement, the Definitive Documents and the DIP Lender's Charge 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**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made herein;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Respondents, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Respondents of any Agreement to which it is a party;
- (ii) 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 Respondents entering into the DIP Agreement or the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (iii) the payments made by the Respondents pursuant to this Order, the DIP Agreement or the Definitive Documents, 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.

50. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Respondents' interest in such real property leases.

SERVICE AND NOTICE

51. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any Respondent of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. **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: kpmg.com/ca/crowncrest

53. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Respondents and the Monitor 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 Respondents’ creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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.

54. **THIS COURT ORDERS** that the Applicant, the Respondents and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Respondents’ creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

GENERAL

55. **THIS COURT ORDERS** that the Respondents or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

56. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Respondents, the Business or the Property.

57. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Respondents, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Respondents 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 Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

58. **THIS COURT ORDERS** that each of the Applicant, the Respondents and the Monitor be at liberty and are 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

60. **THIS COURT ORDERS** that the Initial Order is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry and filing.

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT
CORP., CROWN CREST FINANCIAL CORP., MARBLE AMALCO
INC., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for Peoples Trust Company, the Applicant

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) ~~THURSDAY~~FRIDAY, THE ~~9~~17TH
JUSTICE B. CONWAY)
DAY OF NOVEMBER, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL
MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY
GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL
TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST
FUNDING CORP., SIMPLY GREEN HOME SERVICES
INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST

Respondents

AMENDED AND RESTATED INITIAL ORDER

(Amending Initial Order dated November 9, 2023)

THIS ~~APPLICATION~~MOTION, made by Peoples Trust Company (“PTC” or the “Applicant”), for an order amending and restating the initial order of Justice Conway issued on November 9, 2023 (the “Initial Order”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) was heard this day at 330 University Avenue, Toronto, Ontario via videoconference.

ON READING the affidavit of Michael Lombard sworn November 6, 2023 and the Exhibits thereto ~~(the “Lombard Affidavit”)~~, the affidavit of Katherine Yurkovich sworn November 9, 2023 and the Exhibits thereto (the “Yurkovich Affidavit”), the affidavit of Michael Lombard sworn November 15, 2023 and the Exhibits thereto, the consent of KPMG Inc. (“KPMG” or the “Monitor”) to act as Monitor; the pre-filing report of KPMG dated November 7, 2023 (the “Pre-Filing Report”) and the first report of KPMG, to be filed (the “First Report”), each in ~~its~~KPMG’s capacity as ~~proposed~~ Monitor of Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Funding Corp., Simply Green Home Services Inc., Simply Green Home Services Corp., and Crown Crest Capital Trust (collectively, the “Respondents”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this ~~application~~motion, and on hearing the submissions of counsel for PTC, counsel for the Respondents, counsel for KPMG, and those other parties listed on the counsel slip, no other party although duly served as appears from the affidavit of service of Katherine Yurkovich sworn November 6 , 2023.

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Respondents are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. ~~3.~~ THIS COURT ORDERS that the Respondents shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**")

POSSESSION OF PROPERTY AND OPERATIONS

4. ~~3.~~ **THIS COURT ORDERS** that the Respondents shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Respondents shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Respondents are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants with the consent of Monitor, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~4.~~ **THIS COURT ORDERS** that, the Respondents shall be entitled to continue to utilize the central cash management system currently in place or replace it with another substantially similar central cash management system with the consent of the Monitor (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Respondents of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Respondents, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. ~~5.~~ **THIS COURT ORDERS** that, the Respondents shall be entitled but not required to pay the following advances or expenses whether incurred prior to or after this Order, with the consent of the Monitor and subject to availability under and in an accordance with the Definitive Documents (as hereinafter defined):

- (a) all outstanding and future wages, salaries, employee and pension benefits, commissions, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) the fees and disbursements of any Assistants retained or employed by the Respondents in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing for goods or services supplied to the Respondents prior to the date of this Order by third-party suppliers or service providers, up to a maximum aggregate amount of \$750,000, if, in the opinion of the CRO (as hereinafter defined), such supplier or service provider is critical to the Business and the ongoing operations of the Respondents.

7. ~~6.~~ **THIS COURT ORDERS** that except as otherwise provided to the contrary herein, the Respondents shall be entitled but not required to, with the consent of the Monitor, pay all reasonable expenses incurred by the Respondents in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Respondents following the date of this Order.

8. ~~7.~~ **THIS COURT ORDERS** that the Respondents shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Respondents in connection with the sale of goods and services by the Respondents, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Respondents.

9. ~~8.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Respondents shall, with the consent of the Monitor, pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Respondents and the landlord from time to time ("**Rent**") with the consent of the Monitor, for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. ~~9.~~ **THIS COURT ORDERS** that, except as specifically permitted herein and in the ~~DIP Agreement~~ Definitive Documents, the Respondents are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Respondents to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Respondents, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the Respondents' business or operations, and to dispose of redundant or non material assets not exceeding \$250,000 in any one transaction or \$2 million in the aggregate;
- (b) terminate the employment of such of the Respondents' employees or temporarily lay off such of the Respondents' employees as it deems appropriate;
- (c) pursue all avenues of refinancing of the Respondents' Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any materials refinancing,

all of the foregoing to permit the the Respondents, to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Respondents shall provide each of the relevant landlords with notice of the Respondents' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal

and, if the landlord disputes the applicable Respondent's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the CRO, on behalf of the applicable Respondent, or by further Order of this Court upon application by the CRO, on behalf of the applicable Respondent, on at least two (2) days notice to such landlord and any such secured creditors. If the Respondents disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for un Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the CRO's claim, on behalf of the applicable Respondent, to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the CRO and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against any of the Respondents in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

14. ~~10.~~ **THIS COURT ORDERS** that until and including ~~November 19~~February 10, 20232024 or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Respondents, the Monitor or the CRO (as defined below), or affecting the Business or the Property, except with the written consent of the Respondents and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. ~~11.~~ **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 Respondents, the Monitor or the CRO (defined below), or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Respondents and the Monitor, or leave of this Court, provided that nothing in this Order shall:

- (a) empower the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. ~~12.~~ **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 the Respondents, except with the written consent of the Respondents and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. ~~13.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, call center services, collections services, equipment warranty and repair services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Respondents, 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 Respondents, and that the Respondents shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Respondents in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and each of the Respondents and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. ~~14.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Respondents. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. ~~15.~~ **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 Respondents with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Respondents 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, until a compromise or arrangement in respect of the Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the Respondents or this Court.

APPOINTMENT OF MONITOR

20. ~~16.~~ **THIS COURT ORDERS** that KPMG Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Respondents with the powers and obligations set out in the CCAA or set forth herein and that the Respondents and its shareholders, officers, directors, and Assistants shall advise the Monitor

of all material steps taken by the Respondents pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. ~~17.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Respondents' receipts and disbursements, Business and dealings with the Property and, among other things, ensure all disbursements are consistent with the Cash Flow Statements (as defined in Pre-Filing Report), as amended from time to time, and subject to the variances permitted in the ~~DIP Agreement~~Definitive Documents;
- (b) exercise the consent rights set out in the Order in its sole discretion including without limitation the right to consent to any agreement, transaction payment or transfer referenced in paragraphs ~~5-6~~6-7 above;
- (c) notify or otherwise contact, whether orally or in writing, customers of the Respondents, to advise of the commencement of these proceedings, and the continued obligation of such customers to make payments to the Respondents under existing agreements with, or otherwise assigned to, the Respondents;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) assist the Respondents, to the extent required by the Respondents or the DIP Lender (as defined below), in its dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Respondents and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) advise the Respondents in its preparation of the cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor

and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;

- (g) advise the Respondents in their development of a Plan and any amendments to a Plan;
- (h) assist the CRO, to the extent required by the CRO, with the holding and administering of creditors' or shareholders' meetings for voting on a Plan;
- (i) ~~(g)~~ 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 Respondents, to the extent that is necessary to adequately assess the Respondents' business and financial affairs or to perform its duties arising under this Order;
- (j) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) ~~(i)~~ give notice pursuant to the CRO Engagement Letter (as defined below) terminating for and on behalf of the Respondents the engagement of the CRO;
- (l) ~~(j)~~ assist the Respondents in complying with the terms of the ~~DIP Agreement~~ Definitive Documents;
- (m) ~~(k)~~ provide information to the DIP Lender regarding the Business and affairs of the Respondents in response to reasonable requests thereof;
- (n) ~~(l)~~ apply to this Court, on its own behalf or on behalf of the Respondents, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in these proceedings, including for advice and directions with respect to any matter; and
- (o) ~~(m)~~ perform such other duties as are required by this Order or by this Court from time to time.

22. ~~18.~~ **THIS COURT ORDERS** that the Monitor 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.

23. ~~19.~~ **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts, or any successor employer liabilities as provided for in section 11.8(1) of the CCAA.

24. ~~20.~~ **THIS COURT ORDERS** that nothing herein contained and nothing done by the Monitor in carrying out its duties hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, ~~receiver~~receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as

provided in s. 14.06(1.2) and s. 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~21.~~ **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Respondents and the DIP Lender with information provided by the Respondents in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor 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 Monitor has been advised by the Applicant or the Respondents is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant or the Respondents, as applicable, may agree.

26. ~~22.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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 and the Monitor shall not have any liability with respect to losses, claims, damages, indemnities or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities directly result from the gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. ~~23.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant and counsel to the CRO shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the CRO shall be paid its fees in accordance with the CRO Engagement Letter, by the Respondents as part of the costs of these proceedings. The Respondents are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Respondents are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

28. ~~24.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. ~~25.~~ **THIS COURT ORDERS** that the Monitor, the CRO, counsel to the Monitor, counsel to the CRO, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of ~~\$250,000~~ 1.5 million as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and in the case of the CRO, as set out in the CRO Engagement Letter both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~41~~45 and ~~43~~47 hereof.

APPOINTMENT OF CRO

30. ~~26.~~ **THIS COURT ORDERS** that the agreement dated as of November 8, 2023 pursuant to which the Respondents have engaged HWS Consulting Inc. to act as Chief Restructuring Officer (the "**CRO**") through the services of Joe Prosperi and other employees or agents of HWS Consulting Inc., a copy of which is attached as **Exhibit A** to the Yurkovich Affidavit as may be amended by the parties thereto with the consent of the Monitor and the Applicant (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

31. ~~27.~~ **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to oversee the Business and the Property, and otherwise exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter, which shall include the exercise of all consent rights and matters of discretion reserved to the Respondents under the terms of this Order, together with such other powers, responsibilities and duties as may be agreed upon by the CRO, the Monitor and the Applicant (collectively, the "**CRO Powers**"). For the avoidance of doubt, the CRO Powers shall include the authority to enter agreements or instruments on behalf of the Respondents. In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Respondents and not its personal or corporate capacity.

32. ~~28.~~ **THIS COURT ORDERS** that the CRO shall not be, or deemed to be a director, officer or employee of the Respondents.

33. ~~29.~~ **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the CRO to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts.

34. ~~30.~~ **THIS COURT ORDERS** that nothing herein contained and nothing done by the CRO in carrying out its duties hereunder shall result in, or be deemed to result in, the CRO being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the CRO shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under Environmental Legislation, provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the CRO is nevertheless found to be in possession of any Property, then the CRO shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as provided in s. 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property. The CRO shall not, as a result of this Order or anything done in pursuance of the CRO's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. ~~31.~~ **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

36. ~~32.~~ **THIS COURT ORDERS** that the obligations of the Respondents to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Respondents.

37. ~~33.~~ **THIS COURT ORDERS** that, to the extent required by the Monitor or the DIP Lender, the CRO shall assist with the timely dissemination of financial and other information to the DIP Lender, its counsel, and the financial advisor to the DIP Lender of such information reasonably requested by the DIP Lender.

38. ~~34.~~ **THIS COURT ORDERS** that the Respondents shall not make any payment or transfer of money, without the consent of the CRO.

DIP FINANCING

39. ~~35.~~ **THIS COURT ORDERS** that the Respondents are hereby authorized and empowered to obtain and borrow under a credit facility from the Applicant (in such capacity, the "DIP Lender") in order to finance the Respondents' working capital requirements and restructuring costs, provided that borrowings under such credit facility shall not exceed ~~\$1,100,000.00 in the initial 10-day period~~ 15,000,000 unless permitted by further Order of this Court.

40. ~~36.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Term Sheet between the Respondents and the DIP Lender dated as of November 9, 2023 (the "**DIP Agreement**"), filed as **Exhibit C** to the Yurkovich Affidavit.

41. ~~37.~~ **THIS COURT ORDERS** that the ~~CRO, on behalf of the~~ Respondents, ~~is~~ are hereby authorized and directed to execute and deliver the DIP Agreement, any drawdown notices under the DIP Agreement, and such credit agreements, mortgages, charges, hypothecs and security

documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Respondents are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. ~~38.~~ **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, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~41~~45 and ~~43~~47 hereof.

43. ~~39.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may immediately exercise any and all of its rights and remedies against the Respondents or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Respondents and set off and/or consolidate any amounts owing by the DIP Lender to the Respondents against the obligations of the Respondents to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Respondents and for the appointment of a trustee in bankruptcy of the Respondents; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Respondents or the Property.

44. ~~40.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Respondents under the CCAA, or any proposal filed by the ~~Applicant~~ Respondents under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$~~250,000~~ 1.5 million);
and

Second – DIP Lender's Charge (to the maximum amount of \$~~1,100,000~~ the Obligations (as defined under the DIP Agreement)).

46. ~~42.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, 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.

47. ~~43.~~ **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property 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.

48. ~~44.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Respondents shall not grant any Encumbrances over any

Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the DIP Lender's Charge, unless the Respondents also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

49. ~~45.~~ **THIS COURT ORDERS** that the Administration Charge, the DIP Agreement, the Definitive Documents and the DIP Lender's Charge 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**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made herein;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the ~~Applicant~~Respondents, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Respondents of any Agreement to which it is a party;
 - (ii) 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 ~~Applicant~~Respondents entering into the DIP Agreement or the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (iii) the payments made by the Respondents pursuant to this Order, the DIP Agreement or the Definitive Documents, 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.

50. ~~46.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Respondents' interest in such real property leases.

SERVICE AND NOTICE

51. ~~47.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against ~~the Applicant~~ any Respondent of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. ~~48.~~ **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: kpmg.com/ca/crowncrest

53. ~~49.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Respondents and the Monitor 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 Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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.

54. ~~50.~~ **THIS COURT ORDERS** that the Applicant, the Respondents and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Respondents' creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

GENERAL

55. ~~51.~~ **THIS COURT ORDERS** that the Respondents or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

56. ~~52.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Respondents, the Business or the Property.

57. ~~53.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Respondents, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Respondents 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 Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

58. ~~54.~~ **THIS COURT ORDERS** that each of the Applicant, the Respondents and the Monitor be at liberty and are 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

60. ~~56.~~ **THIS COURT ORDERS** that the Initial Order is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry and filing.

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT
CORP., CROWN CREST FINANCIAL CORP., MARBLE AMALCO
INC., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

GOWLING WLG (CANADA) LLP

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Document comparison by Workshare Compare on November 15, 2023 12:27:19 PM

Input:	
Document 1 ID	file:///gowlings.corp/PersonalDrives/TOR/Yurkovik/Desktop/Peoples, Simply Green/Comeback Hearing - Motion Record/Simply Green - Draft Initial Order (1).docx
Description	Simply Green - Draft Initial Order (1)
Document 2 ID	file:///gowlings.corp/PersonalDrives/TOR/Yurkovik/Desktop/Peoples, Simply Green/Comeback Hearing - Motion Record/Simply Green - Draft Amended and Restated Initial Order(59531372.4).docx
Description	Simply Green - Draft Amended and Restated Initial Order(59531372.4)
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Moved to	0
Style changes	0
Format changes	0
Total changes	235

TAB 5

Court File No. — CV-23-00709183-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE — MADAM) ~~WEEKDAY~~ FRIDAY, THE # 17TH
JUSTICE — B. CONWAY) DAY OF ~~MONTH~~ NOVEMBER,
20~~YR~~ 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ (the
"Applicant") CROWN CREST CAPITAL MANAGEMENT
CORP., CROWN CREST FINANCIAL CORP., CROWN
CREST FUNDING CORP., SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME SERVICES
CORP., AND CROWN CREST CAPITAL TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST
FUNDING CORP., SIMPLY GREEN HOME SERVICES
INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST

Respondents

AMENDED AND RESTATED INITIAL ORDER

(Amending Initial Order dated November 9, 2023)

THIS ~~APPLICATION~~MOTION, made by Peoples Trust Company (“PTC” or the “Applicant”), for an order amending and restating the initial order of Justice Conway issued on November 9, 2023 (the “Initial Order”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) was heard this day at 330 University Avenue, Toronto, Ontario via videoconference.

ON READING the affidavit of ~~[NAME]~~Michael Lombard sworn ~~[DATE]~~November 6, 2023 and the Exhibits thereto, the affidavit of Katherine Yurkovich sworn November 9, 2023 and the Exhibits thereto (the “Yurkovich Affidavit”), the affidavit of Michael Lombard sworn November 15, 2023 and the Exhibits thereto, the consent of KPMG Inc. (“KPMG” or the “Monitor”) to act as Monitor; the pre-filing report of KPMG dated November 7, 2023 (the “Pre-Filing Report”) and the first report of KPMG, to be filed (the “First Report”), each in KPMG’s capacity as Monitor of Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Funding Corp., Simply Green Home Services Inc., Simply Green Home Services Corp., and Crown Crest Capital Trust (collectively, the “Respondents”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this motion, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~¹PTC, counsel for the Respondents, counsel for KPMG, and those other parties listed on the counsel slip, no other party although duly served as appears from the affidavit of service of ~~[NAME]~~Katherine Yurkovich sworn ~~[DATE]~~ and on reading the consent of [MONITOR’S NAME] to act as the MonitorNovember 9, 2023.

SERVICE

¹ ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~Motion and the ~~Application~~Motion Record is hereby abridged and validated² so that this ~~Application~~Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the ~~Applicant—is—a~~company~~Respondents are companies~~ to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the ~~Applicant~~Respondents shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the ~~“Plan”~~“Plan”).

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the ~~Applicant~~Respondents shall remain in possession and control of ~~its~~their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~Respondents shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the "**Business**") and Property. The ~~Applicant is~~Respondents are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by ~~it~~them, with liberty to retain such further Assistants with the consent of Monitor, as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

5. ~~{~~ **THIS COURT ORDERS** that, the ~~Applicant~~Respondents shall be entitled to continue to utilize the central cash management system³ currently in place ~~as described in the Affidavit of [NAME] sworn [DATE]~~ or replace it with another substantially similar central cash management system with the consent of the Monitor (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~Respondents of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~Respondents, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.~~}~~

6. **THIS COURT ORDERS** that, the ~~Applicant~~Respondents shall be entitled but not required to pay the following advances or expenses whether incurred prior to or after this Order, with the consent of the Monitor and subject to availability under and in an accordance with the Definitive Documents (as hereinafter defined):

- (a) all outstanding and future wages, salaries, employee and pension benefits, commissions, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Respondents in respect of these proceedings, at their standard rates and charges; and

~~³ This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

- (c) amounts owing for goods or services supplied to the Respondents prior to the date of this Order by third-party suppliers or service providers, up to a maximum aggregate amount of \$750,000, if, in the opinion of the CRO (as hereinafter defined), such supplier or service provider is critical to the Business and the ongoing operations of the Respondents.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~Respondents shall be entitled but not required to, with the consent of the Monitor, pay all reasonable expenses incurred by the ~~Applicant~~Respondents in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance ~~(including directors and officers insurance)~~, maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant~~Respondents following the date of this Order.

8. **THIS COURT ORDERS** that the ~~Applicant~~Respondents shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~Respondents in connection with the sale of goods and services by the ~~Applicant~~Respondents, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Respondents.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for~~ resiliated⁴ in accordance with the CCAA, the ~~Applicant~~Respondents shall, with the consent of the Monitor, pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~Respondents and the landlord from time to time ("**Rent**") with the consent of the Monitor, for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein and in the Definitive Documents, the ~~Applicant is~~Respondents are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Respondents to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

⁴ ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

RESTRUCTURING

11. **THIS COURT ORDERS** that the ~~Applicant~~Respondents, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents ~~(as hereinafter defined)~~, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its~~the Respondents' business or operations, ~~and~~ to dispose of redundant or non- material assets not exceeding \$~~250,000~~2 million in any one transaction or \$~~2 million~~2 million in the aggregate⁵;
- (b) ~~terminate~~ the employment of such of ~~its~~the Respondents' employees or temporarily lay off such of ~~its~~the Respondents' employees as it deems appropriate~~;~~ ~~and~~
- (c) pursue all avenues of refinancing of ~~its~~the Respondents' Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any ~~material~~materials refinancing,

all of the foregoing to permit the ~~Applicant~~the Respondents, to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the ~~Applicant~~Respondents shall provide each of the relevant landlords with notice of the ~~Applicant~~Respondents's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the ~~Applicant~~applicable Respondent's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~CRO, on behalf of the applicable Respondent, or by further Order of this Court upon application by the ~~Applicant~~CRO, on behalf of the applicable Respondent, on at least two (2) days notice to such landlord and any such secured creditors. If

⁵ ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

the ~~Applicant disclaims~~ ~~for resiliates~~ Respondents disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for ~~in~~ un Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the ~~Applicant~~ CRO's claim, on behalf of the applicable Respondent, to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the ~~Applicant~~ CRO and the Monitor 24 hours' 2 prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against any of the ~~Applicant~~ Respondents in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ RESPONDENTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ February 10, 2024 or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~ Respondents, the Monitor or the ~~Monitor~~ CRO (as defined below), or affecting the Business or the Property, except with the written consent of the ~~Applicant~~ Respondents and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ Respondents or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **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 Applicant Respondents, the Monitor or the Monitor CRO (defined below), or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant Respondents and the Monitor, or leave of this Court, provided that nothing in this Order shall :

(ia) empower the Applicant Respondents to carry on any business which the Applicant ~~is~~ Respondents are not lawfully entitled to carry on;;

(ib) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;;

(ic) prevent the filing of any registration to preserve or perfect a security interest;; or

(id) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **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 the Applicant Respondents, except with the written consent of the Applicant Respondents and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, call center services, collections services, equipment warranty and repair services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant Respondents, 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 Applicant Respondents, and that the Applicant Respondents shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that

the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~Respondents in accordance with normal payment practices of the ~~Applicant~~Respondents or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Respondents and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Respondents. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **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 ~~Applicant~~Respondents with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~Respondents 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, until a compromise or arrangement in respect of the ~~Applicant~~Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Respondents or this Court.

~~DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE~~

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~20. — THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21. — THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

~~22. — THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

APPOINTMENT OF MONITOR

20. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~KPMG Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Respondents with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Respondents and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Respondents pursuant to this Order, and shall co-operate fully with the Monitor in the

⁷ ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

⁸ ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

21. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Respondents' receipts and disbursements, Business and dealings with the Property and, among other things, ensure all disbursements are consistent with the Cash Flow Statements (as defined in Pre-Filing Report), as amended from time to time, and subject to the variances permitted in the Definitive Documents;
- (b) exercise the consent rights set out in the Order in its sole discretion including without limitation the right to consent to any agreement, transaction payment or transfer referenced in paragraphs 6-7 above;
- (c) notify or otherwise contact, whether orally or in writing, customers of the Respondents, to advise of the commencement of these proceedings, and the continued obligation of such customers to make payments to the Respondents under existing agreements with, or otherwise assigned to, the Respondents;
- (d) ~~(b)~~ report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) ~~(e)~~ assist the ~~Applicant~~Respondents, to the extent required by the ~~Applicant~~Respondents or the DIP Lender (as defined below), in its dissemination, to the DIP Lender and its counsel on a ~~{TIME INTERVAL}~~weekly basis of financial and other information as agreed to between the ~~Applicant~~Respondents and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) ~~(d)~~ advise the ~~Applicant~~Respondents in its preparation of the ~~Applicant's~~ cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a

periodic basis, but not less than ~~[TIME-INTERVAL]~~weekly, or as otherwise agreed to by the DIP Lender;

- (g) ~~(e)~~ advise the ~~Applicant~~Respondents in ~~its~~their development of ~~the~~a Plan and any amendments to ~~the~~a Plan;
- (h) ~~(f)~~ assist the ~~Applicant~~CRO, to the extent required by the ~~Applicant~~CRO, with the holding and administering of creditors' or shareholders' meetings for voting on ~~the~~a Plan;
- (i) ~~(g)~~ 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 ~~Applicant~~Respondents, to the extent that is necessary to adequately assess the ~~Applicant's~~Respondents' business and financial affairs or to perform its duties arising under this Order;
- (j) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) give notice pursuant to the CRO Engagement Letter (as defined below) terminating for and on behalf of the Respondents the engagement of the CRO;
- (l) assist the Respondents in complying with the terms of the Definitive Documents;
- (m) provide information to the DIP Lender regarding the Business and affairs of the Respondents in response to reasonable requests thereof;
- (n) apply to this Court, on its own behalf or on behalf of the Respondents, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in these proceedings, including for advice and directions with respect to any matter; and
- (o) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

22. ~~25.~~ **THIS COURT ORDERS** that the Monitor 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.

23. **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts, or any successor employer liabilities as provided for in section 11.8(1) of the CCAA.

24. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained ~~shall require~~ and nothing done by the Monitor in carrying out its duties hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under the Canadian Environmental Protection Act, the Ontario Environmental Protection Act, the Ontario Water Resources Act, or the Ontario Occupational Health and Safety Act and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the

purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as provided in s. 14.06(1.2) and s. 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~27.~~ **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the ~~Applicant~~Respondents and the DIP Lender with information provided by the ~~Applicant~~Respondents in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor 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 Monitor has been advised by the Applicant or the Respondents is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant or the Respondents, as applicable, may agree.

26. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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 and the Monitor shall not have any liability with respect to losses, claims, damages, indemnities or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities directly result from the gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant and counsel to the CRO shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the CRO shall be paid its fees in accordance with the CRO Engagement Letter, by the ~~Applicant~~Respondents as part of the costs of these proceedings. The ~~Applicant is~~Respondents are hereby authorized and directed to pay the

accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL]~~weekly basis and, in addition, the ~~Applicant is~~Respondents are hereby authorized to pay to the Monitor, counsel to the Monitor, ~~and~~ counsel to the Applicant, reasonable retainers ~~in the amount[s] of \$●-[, respectively,]~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

28. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. ~~31.~~ **THIS COURT ORDERS** that the Monitor, the CRO, counsel to the Monitor, ~~if any~~counsel to the CRO, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$●, 1.5 million as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and in the case of the CRO, as set out in the CRO Engagement Letter both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38~~45 and ~~40~~47 hereof.

APPOINTMENT OF CRO

30. **THIS COURT ORDERS** that the agreement dated as of November 8, 2023 pursuant to which the Respondents have engaged HWS Consulting Inc. to act as Chief Restructuring Officer (the "**CRO**") through the services of Joe Prosperi and other employees or agents of HWS Consulting Inc., a copy of which is attached as **Exhibit A** to the Yurkovich Affidavit as may be amended by the parties thereto with the consent of the Monitor and the Applicant (the "**CRO Engagement Letter**"), and the appointment of the CRO pursuant to the terms thereof, are hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

31. **THIS COURT ORDERS** that, during the Stay Period, the CRO is authorized to oversee the Business and the Property, and otherwise exercise and perform the powers, responsibilities and duties as described in the CRO Engagement Letter, which shall include the exercise of all consent rights and matters of discretion reserved to the Respondents under the terms of this

Order, together with such other powers, responsibilities and duties as may be agreed upon by the CRO, the Monitor and the Applicant (collectively, the “CRO Powers”). For the avoidance of doubt, the CRO Powers shall include the authority to enter agreements or instruments on behalf of the Respondents. In exercising the CRO Powers, the CRO shall be deemed to be acting for and on behalf of the Respondents and not its personal or corporate capacity.

32. **THIS COURT ORDERS** that the CRO shall not be, or deemed to be a director, officer or employee of the Respondents.

33. **THIS COURT ORDERS** that all employees of the Respondents shall remain employees of the Respondents until such time as the employment of such employees is terminated. Nothing in this Order shall cause the CRO to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension, retirement or benefit amounts.

34. **THIS COURT ORDERS** that nothing herein contained and nothing done by the CRO in carrying out its duties hereunder shall result in, or be deemed to result in, the CRO being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Respondents, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the CRO shall not, as a result of this Order, or anything done pursuant to this Order, be deemed to occupy or to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, under Environmental Legislation, provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation, provided further however, if the CRO is nevertheless found to be in possession of any Property, then the CRO shall be deemed to be a person who has been lawfully appointed to take or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the BIA (as defined below) and shall be entitled to the benefits and protections in relation to the Respondents and such Property as

provided in s. 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property. The CRO shall not, as a result of this Order or anything done in pursuance of the CRO's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

35. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of the fees paid to the CRO.

36. **THIS COURT ORDERS** that the obligations of the Respondents to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Respondents.

37. **THIS COURT ORDERS** that, to the extent required by the Monitor or the DIP Lender, the CRO shall assist with the timely dissemination of financial and other information to the DIP Lender, its counsel, and the financial advisor to the DIP Lender of such information reasonably requested by the DIP Lender.

38. **THIS COURT ORDERS** that the Respondents shall not make any payment or transfer of money, without the consent of the CRO.

DIP FINANCING

39. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~ Respondents are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ (the Applicant (in such capacity, the "DIP Lender")) in order to finance the ~~Applicant's~~ Respondents' working capital requirements and ~~other general corporate purposes and capital expenditures~~ restructuring costs, provided that borrowings under such credit facility shall not exceed \$●15,000,000 unless permitted by further Order of this Court.

40. ~~33.~~ **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP Facility Term Sheet between the

~~Applicant~~Respondents and the DIP Lender dated as of ~~[DATE]~~November 9, 2023 (the "~~Commitment Letter~~DIP Agreement"), filed as Exhibit C to the Yurkovich Affidavit.

41. ~~34.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Respondents are hereby authorized and ~~empowered~~directed to execute and deliver the DIP Agreement, any drawdown notices under the DIP Agreement, and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the ~~Commitment Letter~~DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~Respondents are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. ~~35.~~ **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, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~38~~45 and ~~40~~47 hereof.

43. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, ~~upon 30 days notice to the Applicant and the Monitor,~~ may immediately exercise any and all of its rights and remedies against the ~~Applicant~~Respondents or the Property under or pursuant to the ~~Commitment Letter~~DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the ~~Applicant~~Respondents and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~Respondents against the obligations of the ~~Applicant~~Respondents to the DIP Lender under the ~~Commitment Letter~~DIP Agreement, the Definitive Documents

or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Respondents and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Respondents; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Respondents or the Property.

44. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Applicant~~Respondents under the CCAA, or any proposal filed by the ~~Applicant~~Respondents under the ~~Bankruptcy and Insolvency Act of Canada (the "BIA")~~, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. ~~38.~~ **THIS COURT ORDERS** that the priorities of ~~the Directors' Charge~~, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows⁹:

First ~~—~~ Administration Charge (to the maximum amount of \$~~●~~1.5 million); ~~and~~

Second ~~—~~ DIP Lender's Charge; ~~and~~

~~Third — Directors' Charge~~ (to the maximum amount of \$~~●~~the Obligations (as defined under the DIP Agreement)).

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

46. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of ~~the Directors' Charge,~~ the Administration Charge or the DIP Lender's Charge (collectively, 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.

47. ~~40.~~ **THIS COURT ORDERS** that each of ~~the Directors' Charge,~~ the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property 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.

48. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~Respondents shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the~~ Administration Charge or the DIP Lender's Charge, unless the ~~Applicant~~Respondents also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of ~~the Directors' Charge and~~ the Administration Charge, or further Order of this Court.

49. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the~~ Administration Charge, the ~~Commitment Letter~~DIP Agreement, the Definitive Documents and the DIP Lender's Charge 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**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by :

- (a) the pendency of these proceedings and the declarations of insolvency made herein;
- (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the ~~Applicant~~Respondents, and notwithstanding any provision to the contrary in any Agreement:

- (i) ~~(a)~~ neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant~~Respondents of any Agreement to which it is a party;
- (ii) ~~(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 ~~Applicant~~Respondents entering into the ~~Commitment Letter~~DIP Agreement or the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (iii) ~~(c)~~ the payments made by the ~~Applicant~~Respondents pursuant to this Order, the ~~Commitment Letter~~DIP Agreement or the Definitive Documents, 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.

50. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Respondents' interest in such real property leases.

SERVICE AND NOTICE

51. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against ~~the Applicant~~any Respondent of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. ~~45.~~ **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 ~~“@”~~: kpmg.com/ca/crowncrest

53. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~[Respondents](#) and the Monitor 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 ~~Applicant's~~[Respondents'](#) creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~[Respondents](#) 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.

54. **THIS COURT ORDERS** that the Applicant, the Respondents and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Respondents' creditors or other interested parties and their advisors. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SORS/DORS).

GENERAL

55. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~Respondents or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

56. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Respondents, the Business or the Property.

57. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Respondents, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Respondents 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 ~~Applicant~~Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

58. ~~50.~~ **THIS COURT ORDERS** that each of the Applicant, the Respondents and the Monitor be at liberty and ~~is~~are 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, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

60. ~~52.~~ **THIS COURT ORDERS** that the Initial Order is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry and filing.

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT
CORP., CROWN CREST FINANCIAL CORP., MARBLE AMALCO
INC., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME
SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND
CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Input:	
Document 1 ID	file:///gowlings.corp/PersonalDrives/TOR/Yurkovik/Desktop/Peoples, Simply Green/Comeback Hearing - Motion Record\intitial-order-CCAA-EN (2).doc
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Document 2 ID	file:///gowlings.corp/PersonalDrives/TOR/Yurkovik/Desktop/Peoples, Simply Green/Comeback Hearing - Motion Record\Simply Green - Draft Amended and Restated Initial Order(59531372.4).docx
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Rendering set	Firm Standard

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Split/Merged cell	

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Statistics:	
	Count
Insertions	343
Deletions	300
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	643

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

Court File No. **CV-23-00709183-00CL**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP.,
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD

(RETURNABLE NOVEMBER 17, 2023)

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