

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-11-057549-194

DATE: December 2, 2019

PRESIDING: THE HONOURABLE PETER KALICHMAN, J.S.C.

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

9227-1584 QUÉBEC INC.

9336-9262 QUÉBEC INC.

Debtors

-and-

KPMG INC.

Petitioner / Monitor

-and-

110302 CANADA INC.

9325-7277 QUÉBEC INC.

Mises en cause

JK0261

AMENDED AND RESTATED INITIAL ORDER

- [1] **THE COURT**, upon reading the *Motion for an Extension of the Stay of Proceedings and for the Issuance of an Amended and Restated Initial Order* (the "**Motion**") of the Petitioner / Monitor KPMG Inc. (the "**Monitor**" or "**KPMG**")

pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"), having examined the proceeding, the affidavit and the exhibits;

- [2] **GIVEN** the *Initial Order* issued in respect of the Debtors on November 22, 2019, as rectified on November 25, 2019 (the "**Initial Order**");
- [3] **GIVEN** the *Motion for the Issuance of an Initial Order* (the "**Initial Motion**") of the Monitor, and the affidavit and exhibits in support thereof;
- [4] **GIVEN** the report dated November 21, 2019, prepared by KPMG;
- [5] **GIVEN** the testimony of Mr. Dev Coosa, representative of KPMG;
- [6] **GIVEN** the representations by counsel for KPMG and other parties, both in person and by phone, at the hearing of the Motion;
- [7] **GIVEN** the provisions of the CCAA;

FOR THESE REASONS, THE COURT HEREBY:

- [8] **GRANTS** the Motion;
- [9] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - a) Service;
 - b) Application of the CCAA and Procedural Consolidation;
 - c) Effective Time;
 - d) Plan of Arrangement;
 - e) Stay of Proceedings against the Debtors and the Property;
 - f) Stay of Proceedings against the Directors and Officers;
 - g) Possession of Property and Operations;
 - h) No Exercise of Rights or Remedies;
 - i) No Interference with Rights;
 - j) Continuation of Services;
 - k) Non-Derogation of Rights;

- l) Restructuring;
- m) Powers of the Monitor;
- n) Priorities and General Provisions Relating to CCAA Charges;
- o) General.

A. Service

- [10] **GIVEN** that the Court has been advised that prior notice has been given by KPMG to interested parties, by way of service to the electronic service list on November 28, 2019.

B. Application of the CCAA and Procedural Consolidation

- [11] **DECLARES** that the Debtors are debtor companies to which the CCAA applies.
- [12] **ORDERS** that the consolidation of these CCAA proceedings in respect of the Debtors shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the Debtors including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

C. Effective Time

- [13] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

D. Plan of Arrangement

- [14] **DECLARES** that the Monitor shall have the authority to cause the Debtors to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

E. Stay of Proceedings against the Debtors and the Property

- [15] **ORDERS** that, until and including December 20, 2019, or such later date as the 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 Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (as defined herein), including as provided in paragraph [25] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors

or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

- [15].1 **ORDERS** that the rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [16] **ORDERS** that all provisions of the Indivision Agreements and the 9227 Nominee Agreement (as defined in the Initial Motion and filed, respectively, as Exhibits R-3, R-4, and R-5 in support thereof) purporting to affect the rights and obligations of the Debtors with respect to their rights to deal with the Property or otherwise are hereby stayed and suspended until the final Court approval of a Plan or further order of this Court, provided however that nothing in this order shall be construed as suspending the effects of Article 7 and Article 9.2 of the 9227 Indivision Agreement (Exhibit R-3), with the operation of such provisions of the 9227 Indivision Agreement (Exhibit R-3) being subject and subordinate to all of other provisions of this Order, including, notably, paragraphs [17] and [18] below.
- [17] **ENJOINS** the Mises en cause and their respective principals, including any related parties, affiliates or subsidiaries, from disposing of, issuing, encumbering (including without limitation, by way of hypothec or pledge), ceding, assigning, selling, donating, settling, or otherwise transferring any of the Property and moreover **ENJOINS** the Mises en cause or any related entity from exercising any hypothecary right, including the issuance of a sixty-day prior notice pursuant to article 2757 CCQ.
- [18] **ENJOINS** the Mises en cause and their respective principals, including any related parties, affiliates or subsidiaries, from causing the Debtors to enter into any contract, agreement, covenant, pledge, guarantee, settlement, arrangement, commitment, or other obligation.
- [19] **ENJOINS** the Mises en cause and their respective principals from incorporating any new company or setting up any new partnership or other entity, or entering into any new agreement pertaining to any real estate transaction involving the Debtors or the Property without notifying and disclosing to the Monitor any direct or indirect interest of any kind or any nature whatsoever in respect thereof.

F. Stay of Proceedings against Directors and Officers

- [20] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA or further order of this Court, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Debtors nor against any person deemed to be a director or an officer of any of the Debtors under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such

Director which arose prior to the Effective Time and which relates to any obligation of the Debtors where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

G. Possession of Property and Operations

[21] **ORDERS** that, subject and subordinate to the Monitor's additional powers granted herein, the Debtors shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), which Property shall be deemed to expressly include, without limitation, for all purposes hereof, the immovable properties in the city of Candiac, Québec comprising:

- a) lots 6 022 112, 6 022 113, 6 022 115, 6 022 117, 6 022 119, 6 022 120, 6 022 121, 6 022 122, 6 073 665, 6 073 666, 6 073 693, 6 073 694 and 6 265 849 at the Land Register, as may have been or may eventually be subdivided, known as the Square Candiac Project; and
- b) lot number 2 094 091 at the Land Register, as may have been or may eventually be subdivided, bearing civic address 170 de l'Industrie Boulevard, serving as the sales office and to showcase model units of the Square Candiac Project;

the whole in accordance with the terms and conditions of this order including, but not limited, to paragraphs [32], [36] and [38] hereof.

[22] **ORDERS** that the Debtors, through the Monitor, shall be entitled but not required to pay the fees and disbursements of any agents or legal or other counsel retained or employed by the Monitor, on its own behalf or on behalf of the Debtors, in respect of these proceedings, at their standard rates and charges, whether incurred prior to or after this Order.

[23] **ORDERS** that, except as otherwise provided to the contrary herein, the Debtors, through the Monitor, shall be entitled but not required to pay all reasonable expenses incurred by the Debtors during these proceedings and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- a) all expenses reasonably necessary for the preservation of the Property or the Business;
- b) payment for goods or services actually supplied to the Debtors following the date of this Order; and
- c) amounts owing for goods or services actually supplied to the Debtors prior to the date of this Order by third party suppliers up to a maximum

aggregate amount of \$250,000, if, in the opinion of the Monitor, the supplier is critical to the business and ongoing operations of the Debtors.

- [24] **ORDERS** that the Debtors, through the Monitor, shall remit, in accordance with legal requirements, or pay all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors and in connection with the sale of goods and services by the Debtors, 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.

H. No Exercise of Rights or Remedies

- [25] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which either of the Debtors is a party as a result of the insolvency of the Debtors and/or these CCAA proceedings, any events of default or non-performance by the Debtors or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [26] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Debtors or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Debtors, or either of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* ("**BIA**") is appointed in respect of the Debtors, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Debtors in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

I. No Interference with Rights

- [27] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform

any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Monitor, or with leave of this Court.

J. Continuation of Services

- [28] **ORDERS** that during the Stay Period and subject to paragraph [30] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Monitor, acting on behalf of the Debtors, or as may be ordered by this Court.
- [29] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Debtors.
- [30] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by either Debtor with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Debtor and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Debtor's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

K. Non-Derogation of Rights

- [31] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Debtors shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

L. Restructuring

- [32] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA or any further order of the Court, the Monitor shall have the right to:
- a) permanently or temporarily cease, downsize or shut down any of the Debtors' operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
 - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA;
 - c) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of the Debtors' agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Monitor and the relevant party, or failing such agreement, make provision for the consequences thereof in the Plan; and
 - d) subject to section 11.3 CCAA, assign any rights and obligations of Debtors.
- [33] **DECLARES** that, in order to facilitate the Restructuring, the Monitor may, by agreement or further Order of the Court, settle claims of customers and suppliers that are in dispute.
- [34] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their

advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Debtors binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Debtors or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Debtors.

- [35] **ORDERS** that pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations*, made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, the Debtors and the Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisors but only to the extent desirable or required to provide information with respect to any sales process in these CCAA proceedings.

M. Powers of the Monitor

- [36] **ORDERS** that the mandate of KPMG pursuant to the QBCA Order is hereby terminated until further order of the Court.
- [37] **ORDERS** that the Monitor is hereby appointed to monitor the business and financial affairs of the Debtors as an officer of this Court and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in *La Presse+* and the *Globe & Mail* National Edition and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all

known creditors having a claim against a Debtor of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective 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;

- b) shall monitor the Debtors' receipts and disbursements;
- c) shall deal with the Debtors' creditors and other interested Persons during the Stay Period;
- d) shall prepare the Debtors' cash flow projections and any other projections or reports and shall develop, negotiate and cause the Debtors to implement the Plan;
- e) shall review the Debtors' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall conduct the Restructuring and any negotiations with the Debtors' creditors and other interested Persons and shall hold and shall hold and administer any meetings held to consider the Plan;
- g) shall report to the Court on the state of the business and financial affairs of the Debtors or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated Reports for the Debtors;
- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- k) may give any consent or approval as may be contemplated by this Order or the CCAA;

- l) may hold and administer funds in connection with arrangements made among the Debtors, any counterparties and the Monitor, or by Order of this Court; and
- m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

[38] **ORDERS** that neither the board of directors nor the shareholders nor any individual Director or shareholder of the Debtors, nor the Mises en cause, nor any individual director or shareholder of the Mises en cause shall have any power or authority to bind the Debtors or to cause the Debtors to enter into any obligation or to take any other action, and that the Monitor shall have exclusive power and authority in this regard.

[39] **ORDERS** that, in any other powers herein, notwithstanding anything to the contrary and without limiting the generality of anything herein, the Monitor is hereby authorized and empowered to:

- a) preserve, protect and maintain the control of the Property, the Debtors' place of business and the premises occupied by the Debtors, or any parts thereof;
- b) operate and carry on the Business, or any part thereof;
- c) carry out the sale or disposition of the Property in the Debtors' ordinary course of business, to transact in that regard, and to sign any document or any contract requires or useful for such purpose or meant to given effect to any sale or disposition;
- d) petition the Court for authorization to sell all or part of the Property outside of the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable under the circumstances;
- e) take all steps and actions the Monitor considers necessary or desirable in these proceedings including, without limitation:
 - i) causing the Debtors to enter into any agreements;
 - ii) causing the Debtors to incur obligations in the daily ordinary course of business;
 - iii) causing the Debtors to retain or terminate employees or contractors;
 - iv) causing the Debtors to cease to carry on all or part of the Business;

- v) accessing, at all times, the places of business and the premises of the Debtors, the Property, and changing the locks to such places of business and premises of the Debtors;
- vi) accessing all the accounting records of the Debtors, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), including the powers necessary to make copies of all the Records necessary or useful to the execution of the Monitor's functions,
- vii) all powers necessary to undertake an analysis of the Records;
- viii) controlling the Debtors' receipts and disbursements;
- ix) collecting all accounts receivable and all other claims of the Debtors and transacting in respect of same, including signing any document for this purpose;
- x) opening any required bank account, on the terms and conditions the Monitor may determine, with any chartered Canadian bank or any other financial institution, the whole, in order to cash any item payable to the Debtors, and issuing any payment which, in the opinion of the Monitor, is necessary or useful to the Debtors' operations or the safeguarding of their rights;
- xi) using the Debtors' cash flow to pay any and all amounts due by the Debtors and/or the Monitor in relation to post-filing expenses or services as well as all professional services incurred, including the Monitor's fees and expenses as well as those of its legal counsel;
- xii) marketing or soliciting one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;
- xiii) reporting to, meeting and discussing with the Debtors' secured lenders, as the Monitor deems appropriate, regarding all matters relating to the Property, the Restructuring and these proceedings, and sharing information with them subject to such terms as to confidentiality as the Monitor deems advisable; and
- xiv) performing such other duties and taking such other steps reasonably incidental to the exercise of these powers and as required by this Order or by this Court from time to time.

- f) engage consultants, appraisers, agents experts, auditors, accountants, managers, counsel and such other person from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- g) oversee and direct the preparation of cash flow statements and assist in the dissemination of financial or other information in these proceedings;
- h) receive, collect and take possession of all monies and accounts now owned or hereafter owing to any one or more of the Debtors, including proceeds payable pursuant to the sale of Property;
- i) execute, assign, issue, endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of any of the Debtors (including without limitation, financial statements, tax returns and tax filings);
- j) initiate, prosecute, make and respond to applications and motions in, and continue the prosecution of any and all proceedings on behalf of or involving one or more of the Debtors and/or the Property (including the within proceedings) and settle or compromise any proceedings or claims by and against one or more of the Debtors. The authority hereby conveyed shall extend to such appeals or application and motions for judicial review in respect of any order or judgement pronounced in any such proceedings;
- k) exercise powers of investigation in respect of the Debtors by, directly or through its attorneys:
 - i) conducting an examination under oath of any Person reasonably though to have knowledge relating to either or both of the Debtors, the Business or the Property;
 - ii) ordering any Person to be examined pursuant to the preceding subparagraph to disclose to the Monitor and produce any books, documents, correspondence or papers in that Person's possession or power relating to the Debtors, the Business or the Property;
- l) exercise any rights that the Debtors have;
- m) provide instruction and direction to the advisors of the Debtors;
- n) make any distribution or payment required under any Order in these proceedings;

- o) apply to the Court upon notice as required under the BIA, and, where the Court is of the opinion that it is proper and in the best interests of the estate, to assign the Debtors into bankruptcy or obtain a bankruptcy order against the Debtors. Nothing in this Order shall prevent the Monitor from acting as trustee in bankruptcy of any of the Debtors; and
- p) perform such other duties or take any steps reasonably incidental to the exercise of such powers and obligations conferred upon the Monitor by this Order or any Order of this Court.

[40] **ORDERS** that, for the purposes any examination conducted pursuant the Monitor's powers of investigation set out at paragraph [39]k) above:

- a) the Monitor shall serve on the Person to be examined, at least five days prior to the scheduled date of the examination, a summons to appear, specifying the time and place of the examination and, if any, the books, documents, correspondence or papers that the person must have in his or her possession during the examination;
- b) the examinations held pursuant to this Order shall be conducted in the District of Montréal, unless otherwise agreed between the Monitor and the person being examined;
- c) objections raised during examinations held pursuant to this Order shall not prevent the continuation of the examination, the witness being required to respond, unless they relate to the fact that the person being examined cannot be compelled or to fundamental rights or to a matter of substantial legitimate interest, in which case the person being examined may refrain from responding.

[41] **ORDERS** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Debtors or to create a fiduciary duty to any party including, without limitation, any creditor or shareholder of the Debtors. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Debtors and any distribution made to creditors of the Debtors will be deemed to be have been made by the Debtors.

[42] **ORDERS** that the Debtors and their employees, current and former shareholders, officers, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge if its duties, rights and obligations as provided and set out in this Order.

[43] **ORDERS** that, without limiting the generality of the foregoing, the Debtors, the Mises en cause and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall

forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Debtors in connection with the Monitor's duties and responsibilities hereunder.

- [44] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Debtors with information in response to requests made by them in writing addressed to the Monitor and its counsel. In the case of information that is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person unless otherwise directed by this Court.
- [45] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Debtors or continues the employment of the Debtors' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [46] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph [37]i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [47] **DECLARES** that subject to the powers granted to the Monitor pursuant to the terms of this Order, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Property. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [48] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [49] **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, and the Monitor's and Debtors' other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after this Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [50] **DECLARES** that the Monitor, the Monitor's legal counsel (Blake, Cassels & Graydon LLP), and the Monitor's and the Debtors' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan

and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$250,000 (the "**Administration Charge**"), having the priority established by paragraphs [51] and [52] of this Order.

N. Priorities and General Provisions Relating to CCAA Charges

- [51] **DECLARES** that the priorities of the Administration Charge and any other charges that may be created by any subsequent order herein (the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- a) first, the Administration Charge.
- [52] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property whether or not charged by such Encumbrances.
- [53] **ORDERS** that, except as otherwise expressly provided for herein the Debtors or the Monitor shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Debtors, as applicable, obtain the prior written consent of the Monitor and the prior approval of the Court.
- [54] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [55] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, any bankruptcy order made pursuant to such applications, or any assignments in bankruptcy made or deemed to be made in respect of any Debtor; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Debtors (a "**Third-Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Debtors of any Third-Party Agreement to which any Debtors is a party; and
- b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third-Party Agreement caused by or resulting from the creation of the CCAA Charges.

[56] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, any bankruptcy order made pursuant to such applications, or any assignments in bankruptcy made or deemed to be made in respect of any Debtor; and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Debtor pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[57] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Debtors and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtors.

O. General

[58] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Debtors or of the Monitor in relation to the Business or Property of the Debtors, without first obtaining leave of this Court, upon five (5) calendar days' written notice to the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

[59] **ORDERS** that, subject to further Order of this Court, the following rules will apply:

- a) All motions in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list. Each motion shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.
- b) Any Person wishing to object to the relief sought on a motion in these CCAA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Debtors and

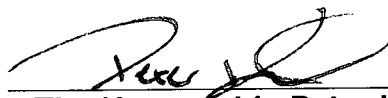
the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montreal Time on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

- c) If no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- d) If no Notice of Objection is served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the service list of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.
- e) If a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested motion and such other matters, including interim relief, as the Court may direct.

[60] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

[61] **DECLARES** that, except as otherwise specified herein, the Debtors and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

- [62] **DECLARES** that the Monitor, the Debtors and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Monitor shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [63] **ORDERS** that the Indivision Agreements, the 9227 Nominee Agreement, the Debtors' Financial Statements, the Evaluation Report and the Cash Flow Forecast (as such terms are defined in the Initial Motion) filed in support of the Initial Motion, respectively, as Exhibits R-3, R-4, R-5, R-11, R-12 and R-15, shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.
- [64] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Response on the solicitors for the Monitor and has filed such Response with this Court, or appears on the service list prepared by the Monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [65] **DECLARES** that the Monitor may, from time to time, apply to this Court for directions concerning the exercise of its powers, duties and rights hereunder or in respect of the proper execution of the Order.
- [66] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [67] **ORDERS** the provisional execution of the Order notwithstanding any appeal.



The Honourable Peter Kalichman, J.S.C.

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