

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-058116-209

DATE: September 25, 2020

PRESIDING : THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

SPECTRA PREMIUM INDUSTRIES INC.

-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

And

ERNST & YOUNG INC.

Monitor

SECOND AMENDED AND RESTATED INITIAL ORDER

ON READING the Motion for (i) the issuance of a second Amended and restated Initial order, ii) the approval regarding the wind-up of certain debtors and (ii) the approval of a claims process (the “**Motion**”);

CONSIDERING the Amended Motion for the Issuance of (I) A First Day Initial Order and (II) an Amended and Restated Initial Order (the “**Petition**”) pursuant to the Companies’ Creditors Arrangement Act, R.S.C. 1985, C-36 (as amended the “**CCAA**”) that has been previously granted by this court in the present proceedings;

CONSIDERING the consent of Ernst & Young inc. to act as monitor (the “**Monitor**”);

GIVEN the provisions of the CCAA;

CONSIDERING that it is appropriate to issue the present second amended and restated initial order;

WHEREFORE, THE COURT:

1. **GRANTS** the Petition.
2. **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
 - Service
 - Application of the CCAA
 - Effective Time
 - Plan of Arrangement
 - Stay of Proceedings against the Petitioners and the Property and unaffected creditors
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies
 - No Interference with Rights
 - Continuation of Services
 - Non-Derogation of Rights
 - Directors’ and Officers’ Indemnification and Charge
 - Key employee retention plan

- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Service

3. **ORDERS** that any prior delay for presentation of the Motion is hereby abridged and validated so that the Motion is properly returnable today and hereby dispenses with further service thereof.

Application of the CCAA

4. **DECLARES** that the Petitioners are debtors to which the CCAA applies.
5. **ORDERS** that these CCAA proceedings in respect of the Petitioners shall be consolidated in the present matter for administrative purposes only, and shall not effect a consolidation of the assets, property or debt of each of the Petitioners, including for the purposes of any Plan or Plans that may be hereafter proposed.

Effective time

6. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on March 10, 2020 (the “**Effective Time**”).

Plan of Arrangement

7. **DECLARES** that the Petitioners shall have the authority 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.

Stay of Proceedings against the Petitioners and the Property and unaffected creditors

8. **ORDERS** that, until and including January 30, 2021, 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 Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined hereinbelow), including as provided in paragraph 14 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners 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.

9. **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.
10. **ORDERS and DECLARES** that Wells Fargo Capital Finance Corporation Canada, in its capacity as administrative agent for itself and for Canadian Imperial Bank of Commerce, as lenders (collectively "**Wells Fargo**"), are unaffected creditors in these CCAA proceedings and are not subject to the stay of proceedings or other limitations of creditors' rights herein ordered. Nothing in this Order shall prevent Wells Fargo from enforcing their security (the "**Wells Fargo Security**") against the Property (as hereinafter defined) of the Petitioners in conformity with their contractual rights, subject only to Wells Fargo advising the Court in advance.
11. **ORDERS** that notwithstanding any other provision of this Order, the Petitioners shall be entitled to continue to utilize the central cash management system currently in place, or to replace it with another substantially similar central cash management system acceptable to Wells Fargo (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 Petitioners 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 a Petitioner, 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 these CCAA proceedings with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

Stay of Proceedings against the Directors and Officers

12. **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be

a director or an officer of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Directors which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

13. **ORDERS** that the Petitioners 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**”), the whole in accordance with the terms and conditions of this Order.

No Exercise of Rights or Remedies

14. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies 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 Petitioners, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
15. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioners 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 a Petitioner becomes a bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of a Petitioner, the period between the date of this Order and the day on which the Stay Period ends shall not be calculated in respect of that Petitioner in determining the 30 day period referred to in Section 81.1 of the BIA.

No Interference with Rights

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

Continuation of Services

17. **ORDERS** that during the Stay Period and subject to paragraph 19 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners 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 Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply, or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners 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 Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, with the consent of the Monitor, or as may be ordered by this Court.
18. **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 Petitioners on or after the date of this Order, and that nothing in this Order compels any Person to make further advance of money or otherwise extend any credit to the Petitioners on or after the date of the Order.
19. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, and to paragraph 11 hereof, cash or cash equivalents placed on deposit by the Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for themselves or for another entity, shall not be applied by such

Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period 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 Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

20. **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 Petitioners 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.

Directors' and Officers' Indemnification and Charge

21. **ORDERS** that, if and only if the Directors are not already covered by the existing liability insurance, the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA,
22. **ORDERS** that the Directors of the Petitioners shall 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 \$800,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 21 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time.
23. **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 Directors 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 for which the Directors are entitled to be indemnified.

Key Employee Retention Plan

24. **ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as reflected in the KERP summary filed in support of the Petition as Exhibit R-16 (the "**KERP Summary**"), is hereby approved, and that the Petitioners are authorized and directed to make payments in accordance with the terms thereof, up to a maximum aggregate amount of \$850,000.
25. **ORDERS** that as security for the payment of the amounts provided in the KERP Summary, the employees that are mentioned in the KERP Summary are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$850,000 (the "**KERP Charge**") and that said charge shall be divided in two tranches, a first tranche of \$425,000 (the "**First Tranche KERP Charge**") and a second tranche of \$425,000 (the "**Second Tranche KERP Charge**")

Restructuring

26. **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, the Petitioners shall have the right, subject to approval of the Monitor and compliance with the terms of the forbearance agreement entered into between certain of the Petitioners and Wells Fargo on March 9, 2020 (the "**Forbearance Agreement**"), or further order of the Court, to:
 - (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem 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, and under reserve of subparagraph (c);
 - (c) convey, transfer, assign, lease, or in any other manner dispose of the Property,

outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$150,000 or \$750,000 in the aggregate;

- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioners may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioners and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

27. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioners pursuant to section 32 of the CCAA and subsection 26(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioners and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

28. **ORDERS** that the Petitioners shall provide to any relevant landlord notice of the Petitioners' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If a Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.

29. **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
30. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c. P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their 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 Petitioners 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 Petitioners 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 Petitioners.

Powers of the Monitor

31. **ORDERS** that Ernst & Young inc. is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in LaPresse+ and the Globe and 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 the

Petitioners 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 Petitioners' receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall assist the Petitioners in their reporting to Wells Fargo in the manner provided for under paragraph 6.5 of the Forbearance Agreement;
- (f) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (g) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (h) shall report to the Court on the state of the business and financial affairs of the Petitioners 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;
- (i) 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;
- (j) may retain and employ such agents, advisers and other assistants as are reasonably

necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

- (k) 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 the Order or under the CCAA;
- (l) may act as a “foreign representative” of the Petitioners or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada and may engage legal counsels in the relevant jurisdiction to the extent that the Monitor considers necessary in its capacity as “foreign representative” or in any other similar capacity;
- (m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- (n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- 32. **DECLARES** that the Monitor is dispensed from filing any further reports required by Section 23(1)(d)(ii) of the CCAA until January 30, 2021.
- 33. **ORDERS** that the Petitioners 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 Petitioners in connection with the Monitor’s duties and responsibilities hereunder.
- 34. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners’ counsel. In the case of information that the

Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.

35. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
36. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 31(j) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
37. **ORDERS** that Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
38. **DECLARES** that the Monitor, the Monitor's legal counsel (including US legal counsel), if any, the Petitioners' legal counsel and the Monitor and the Petitioners' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the 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 \$750,000 (the "**Administration Charge**").

Priorities and General Provisions Relating to CCAA Charges

39. **DECLARES** that the priorities of the Administration Charge, the Directors' Charge, the KERP Charge (collectively, the "**CCAA Charges**") and the Wells Fargo Security, as between them, with respect to any Property to which they apply, shall be as follows:
 - (a) first, the Administration Charge;
 - (b) second, the First Tranche KERP Charge;

- (c) third, the Wells Fargo Security against the accounts receivable and the inventory of the Petitioners;
 - (d) fourth, the Directors' Charge; and
 - (e) fifth, the Second Tranche KERP Charge.
40. **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances, except for the Wells Fargo Security which, other than as provided in paragraph 39 hereof, is unaffected by this Order.
41. **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners 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 Petitioners obtain the prior written consent of the Monitor and the prior approval of the Court.
42. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
43. **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such 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 declaration of insolvency made herein; (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Petitioners or any bankruptcy order made pursuant to any such application or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners; 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, offer to lease or other arrangement which binds the Petitioners (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 or be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which it is a party; and

- (b) any of the beneficiaries of the CCAA Charges shall not have 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.
44. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Petitioners and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioners pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at under value or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
45. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes.

General

46. **DECLARES** that the Petitioners are authorized, with the consent of the Monitor, but are not obliged:
- (a) to continue making payments to the Lienholder Creditors and the Critical Suppliers (as these terms are defined in the Petition) in the normal course of business, even if such payments relate to amounts owed by the Petitioners prior to the Effective Date;
 - (b) to pay all outstanding and future wages, salaries, bonuses, expenses, benefits and vacation pay, in each case consistent with existing compensation policies and arrangements and incurred in the ordinary course of business with respect to employees that are continuing their employment with the Petitioners, whether incurred prior to or after the Effective Date;
47. **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

Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioners' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

48. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
49. **DECLARES** that, except as otherwise specified herein, the Petitioners 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 Petitioners 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 (3) business days after mailing if by ordinary mail.
50. **DECLARES** that the Petitioners 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 Petitioners shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
51. **ORDERS** that the financial statements (Exhibits R-6 to R-12), the cashflow (Exhibit R-14), the Forbearance Agreement (Exhibit R-15) and the KERP Summary (Exhibit R-16) shall be sealed and kept confidential.
52. **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 Notice of Appearance on the solicitors for the Petitioners and the Monitor and has filed such notice 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;

53. **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
54. **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief.
55. **ORDERS** that, subject to further Order of this Court, 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.
56. **ORDERS** that 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 Petitioners 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 (the "**Objection Deadline**").
57. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (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.
58. **ORDERS** that, 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.
59. **ORDERS** that, if a Notice of Objection is served by the Objection Dealine, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the 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; 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 the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
61. **DECLARES** that the Monitor, with the prior consent of the Petitioners, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code* (11 U.S.C. §§ 101-1532, as amended), for which the Monitor shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
62. **REQUESTS** the aid and recognition of any Court, regulatory or administrative body in any Province of Canada and any Canadian federal court, regulatory or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
63. **DECLARES** that, for the purposes of any application to a foreign court, the Petitioners' centre of main interest is located in the Province of Quebec, Canada.
64. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

LOUIS J. GOVIN, J.S.C.

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