

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-11-062636-234

DATE: April 11, 2024

PRESIDING: THE HONOURABLE JUSTICE CHRISTIAN IMMER, S.C.J.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

DMSC REAL ESTATE INC.

9503-6737 QUEBEC INC.

9503-6752 QUEBEC INC.

BRUNSWICK MEDICAL CENTRE @ GLEN INC.

Debtors

and

BUSINESS DEVELOPMENT BANK OF CANADA

and

THE TORONTO-DOMINION BANK

Applicants

and

RAYMOND CHABOT INC.

Monitor

RE-AMENDED AND RESTATED TRANSITION ORDER

ON READING the Applicants' *Modified Application for Extension of the Stay of Proceedings and the Issuance of an Amended and Restated Transition Order* dated April 9th, 2024 (the "**Application**") in respect of DMSC Real Estate Inc. ("**DMSC**"), Brunswick Medical Centre @ Glen Inc. ("**BMC Glen**") 9503-6737 Quebec Inc. ("**BHG ResidualCo**") and 9503-6752 Quebec Inc. ("**DMSC ResidualCo**", and together with DMSC, BHG ResidualCo and BMC Glen the "**Debtors**"), the sworn statement and the exhibits in support thereof;

CONSIDERING the Transition Order issued by this Court on January 12, 2024, as amended and restated on January 22, 2024 (the "**Transition Order**"), which *inter alia*, appointed Raymond Chabot Inc. as monitor (the "**Monitor**");

ON READING the Third Report of the Monitor, dated March 18, 2024 (the "**Monitor's 3rd Report**") and the Supplement to the Monitor's 3rd Report dated April 9, 2024 (the "**Supplemental**");

CONSIDERING that the Transition Order provided for a stay of proceedings until and including March 22, 2024 (the "**Stay Period**");

CONSIDERING the *Application for the Issuance of an Amended and Restated Approval and Vesting Order* dated February 6, 2024 filed by the Monitor;

CONSIDERING the *Amended and Restated Approval and Vesting Order* issued by this Court on February 9, 2024 (the "**Amended and Restated Approval and Vesting Order**");

CONSIDERING that the transaction approved pursuant to the Amended and Restated Approval and Vesting Order closed on February 13, 2024 (the "**Closing Date**") further to the issuance by the Monitor and the trustee to the notice of intention of Brunswick Labs & Tests Inc. on February 13, 2024, which was filed in the Court record;

CONSIDERING the Order Extending the Stay of Proceedings issued by this Court on March 22, 2024, which *inter alia* extended Stay Period until and including April, 11, 2024 (the "**Stay Period**");

SEEING the service of the Application upon the Debtors and the parties listed in the Notice of presentation of the Application;

CONSIDERING the representations of counsel for the Applicants and counsel for the Monitor;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application for reasons to follow.
2. **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - A. Service

- B. Effective Time
- C. Bankruptcy of Brunswick Medical Centre @ Glen Inc.
- D. Application of the CCAA and Administrative Consolidation
- E. Plan of Arrangement
- F. Stay of Proceedings Against the Debtors and the Property
- G. Stay of Proceedings Against the Directors and Officers
- H. Possession of Property and Operations
- I. No Exercise of Rights or Remedies;
- J. No Interference with Rights
- K. Continuation of Services
- L. Non-Derogation of Rights
- M. Restructuring
- N. Powers of the Monitor
- O. Administration Charge and Applicants' Counsels' Charge
- P. Continuance and Restatement of the Financial Advisor Charge and NOI Administration Charge
- Q. Priorities and General Provisions Relating to CCAA Charges
- R. General

A. Service

- 3. **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- 4. **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Applicants to interested parties, including to the Debtors.

B. Effective Time

- 5. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on April 11, 2024 (the "**Effective Time**").

C. Bankruptcy of Brunswick Medical Centre @ Glen Inc.

- 6. **AUTHORIZES** the Monitor to assign Brunswick Medical Centre @ Glen Inc. (into bankruptcy pursuant to the provisions of section 49 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and **DECLARES** that Raymond Chabot Inc. shall be entitled to act as trustee to the bankruptcy of BMC Glen (the "**BMC Glen Trustee**") and to file with the official receiver the prescribed documents pursuant to the BIA as relates to BMC Glen.

7. **ORDERS** and **DECLARES** that, as security for the payment of its professional fees and disbursements in connection with the bankruptcy of BMC Glen, the BMC Glen Trustee shall benefit from the CCAA Administration Charge.

D. Application of the CCAA and Administrative Consolidation

8. **DECLARES** that each of the Debtors is a debtor company to which the CCAA applies.
9. **ORDERS** the consolidation of these CCAA Proceedings (as defined below) under one single Court file, in file number 500-11-062636-234.
10. **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA proceedings (the "**CCAA Proceedings**") henceforth be filed by the Applicants or any other stakeholder, as applicable, under file number 500-11-062636-234.
11. **DECLARES** that the consolidation of these CCAA Proceedings in respect of the Debtors, or any other party to these CCAA Proceedings, shall be for administrative purposes only and shall not affect a consolidation of the assets and property or of the debts and obligations of each of the Debtors including, without limitation, for the purposes of any plan of compromise or arrangement (a "**Plan**") that may be hereafter proposed.

E. Plan of Arrangement

12. **DECLARES** that the Debtors shall, in consultation with the Monitor and the Applicants, have the sole authority to file with this Court and to submit to the Debtors' creditors one or more Plans in accordance with the CCAA.

F. Stay of Proceedings Against the Debtors and the Property

13. **ORDERS** that, until and including September 27, 2024 (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") including but not limited to seizures, right to distrain, executions, writs or seizures or execution, any and all actions, applications, arbitration, proceedings and other lawsuits existing at the time of this Order in which any of the Debtors is a defendant, party or respondent (either individually or with other Persons (as defined herein below)) 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 below), including as provided in paragraph 15 hereinbelow 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.
14. **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of Subsection 11.09 CCAA.

15. **ORDERS** that pursuant to subsection 11.1(3) CCAA, subsection 11.1(2) CCAA does not apply in respect of any Proceeding taken or that may be taken by the Ministre du Revenu (“**MRQ**”) pursuant to the Money-Services Businesses Act, RLRQ. C. E-12.000001. against or in respect of the Debtors.

G. Stay of Proceedings Against the Directors and Officers

16. **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 Debtors nor against any person deemed to be a director or an officer 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.

H. Possession of Property and Operations

17. **ORDERS**, under reserve of the rights and powers granted to the Monitor under the present Order, that each of the Debtors shall remain in possession and control of its 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.
18. **ORDERS** that each of the Debtors are authorized, with the approval of the Monitor, to complete outstanding transactions and engage in new transactions with other Debtors, and to continue, on and after the date of this Order, to buy and sell goods and services, and allocate, collect and pay costs, expenses and other amounts from and to the other Debtors, or any of them (collectively, the “**Intercompany Transactions**”) in the ordinary course of business. All ordinary course Intercompany Transactions among the Debtors shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto such as the prior approval of the Monitor, or to such governing principles, policies or procedures as the Monitor may require, or subject to further Order of this Court.
19. **ORDERS** that the Debtors shall be entitled but not required, with the approval of the Monitor, to pay the following expenses whether incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, bonuses, expenses, benefits and vacation pay 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 agent or counsel retained or employed by the Debtors and the Applicants in respect of these proceedings, at their standard rates and charges; and
 - (c) the amounts due for goods and services rendered to any of the Debtors prior to July 14, 2023 by third party suppliers up to an aggregate amount of \$50,000 if, in

the opinion of the Monitor, the supplier is essential to the restructuring contemplated as part of the CCAA proceedings.

20. **ORDERS** that, except as otherwise provided to the contrary herein, the Monitor shall be entitled but not required to pay all reasonable expenses incurred by the Debtors 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; and
- (b) payment for goods or services actually supplied to the Debtors following the date of this Order.

21. **ORDERS** that the Debtors shall be authorized to remit, with the Approval of the Monitor and 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, or, in the case of foreign Debtors any similar amounts payable pursuant to applicable local law; and
- (b) 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, or, in the case of foreign Debtors, any similar amounts payable pursuant to applicable local law, but only where such Sales Taxes are accrued or collected after the date of this Order.

I. **No Exercise of Rights or Remedies;**

22. **ORDERS** that during the Stay Period, and subject to 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 Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

23. **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 become bankrupt or a receiver as defined in subsection 243(2) of the 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 period referred to in Section 81.1 of the BIA or the 15 day period referred to in Section 81.2 of the BIA.

J. No Interference with Rights

24. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, suspend, 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 Debtors, the Applicants, the Interim Lender (as defined hereinafter) and the Monitor, or with leave of this Court.

K. Continuation of Services

25. **ORDERS** that during the Stay Period and subject to paragraph 25 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 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 Debtors, with the consent of the Monitor, or as may be ordered by this Court.
26. **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.
27. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA and paragraph 18 of this Order, if applicable, cash or cash equivalents placed on deposit by the Debtors 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 themselves for the amount of any cheques drawn by Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Debtors' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

L. Non-Derogation of Rights

28. **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.

M. Restructuring

29. **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 Monitor, for an on behalf of the Debtors, in consultation with the Applicants, shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the operations or locations of the Debtors, 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 \$50,000 each or \$250,000 in the aggregate;
- (d) terminate the employment of the employees of the Debtors or temporarily or permanently lay off the employees of the Debtors as they deem appropriate, and, to the extent that 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 Debtors and such employees or, failing such an agreement, make provision to deal with, any consequences thereof in the Plan, as the Debtors may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate any of the agreements, contracts or arrangements of the Debtors of any nature whatsoever, with such disclaimers or resiliations to be on such terms as may be agreed between the Debtors and the relevant party or, failing such an agreement, to make provision for the consequences thereof in the Plan; and
- (f) subject to section 11.3 CCAA, assign any rights or obligations of Debtors.

30. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Debtors pursuant to section 32 of the CCAA and subsection 35(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 Debtors 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 the landlord may determine, without waiver of, or prejudice to, any claims or rights of the landlord against the Debtors, provided nothing herein shall relieve a landlord of its obligation to mitigate any damages claimed in connection therewith.

31. **ORDERS** that the Debtors, as applicable, shall provide to any relevant landlord notice of the Debtors' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Debtors have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute between the Debtors and the landlord.
32. **DECLARES** that, in order to facilitate the Restructuring, the Debtors may, subject to further order of the Court, settle claims of customers and suppliers that are in dispute.
33. **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 Debtors 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 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.

N. Powers of the Monitor

34. **ORDERS** and **DECLARES** that effective as of the Closing Date, the Monitor, in addition to the prescribed powers and obligations referred to in section 23 of the CCAA, shall be entitled, but not required to, exercise the following powers as it relates to the Debtors:
 - (a) deal with the Debtors' creditors and other interested Persons during the Stay Period;
 - (b) conduct and control the affairs and operations, financial and otherwise, of the Debtors and carry on the business of the Debtors;
 - (c) control the Debtors' receipts and disbursements whether through copies of bank records or access to the electronic platform to visualize the activities in the accounts, wherever they may be;

- (d) take steps for the preservation and protection of the Property of the Debtors;
- (e) prepare the Debtors' cash-flow projections and any other projections or reports and disseminate financial or other information in these proceedings and if appropriate, develop and implement a Plan or Plans on behalf of the Debtors, the whole in consultation with the Applicants;
- (f) 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;
- (g) 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, if applicable;
- (h) 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 and of the Amended and Restated Approval and Vesting Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) may engage or retain 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, under the Amended and Restated Approval and Vesting Order or under the CCAA;
- (j) may hold and administer funds in connection with arrangements made among the Debtors, any counterparties and the Monitor, or by Order of the Court;
- (k) exercise all rights granted to the Debtors pursuant to this Order and the Amended and Restated Approval and Vesting Order including, for greater certainty, the rights granted to the Debtors under paragraph M.29 of this Order;
- (l) take any steps, give any consent or approval as may be contemplated by this Order and the Amended and Restated Approval and Vesting Order and execute such documents as may be necessary in connection with any proceedings before, or order of, the Court, for and on behalf of the Debtors;
- (m) perform such other duties, take any steps, negotiate and enter into any agreements or incur any obligations necessary or reasonably incidental to the exercise of the powers and duties conferred by this Order or any Order of this Court or with respect to the Property of the Debtors;
- (n) exercise such shareholder or member rights, including voting rights, as may be available to the Debtors;
- (o) operate and carry on the Business of the Debtors, including, without limitation, taking all steps and actions the Monitor considers necessary or desirable in these proceedings as relates to the Debtors, including, without limitation:
 - (i) incurring obligations in the daily ordinary course of business;

- (ii) continue to engage the services of DMSC's employees on behalf of DMSC, until the Monitor, acting for and on behalf of the DMSC, terminates the employment of such employees. The Monitor shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in section 11.8(1) of the CCAA, other than such amounts as the Monitor may specifically agree in writing to pay;
- (iii) administering and winding down all employee benefit plans of DMSC and making and endorsing all filings related thereto (including, without limitation, financial statements, tax returns and tax filings);
- (iv) accessing, at all times, the places of business and the premises of DMSC, the Property of the Debtors, and changing the locks to such places of business and premises of DMSC, except in respect of the premises identified in the Target Entity Leases and the CDL Lease (as both such terms are defined in the Re-Amended SPA), where such rights may only be exercised in accordance with the terms of those leases, as the case may be;
- (v) collecting all accounts receivable and all other claims of the Debtors and transacting in respect of same, including signing any document for this purpose;
- (vi) 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;
- (vii) marketing or soliciting one or several potential buyers of all or any part of the Property of the Debtors, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property of the Debtors;
- (viii) reporting to, meeting with and discussing with DMSC's representatives and the Applicants, as the Monitor deems appropriate, regarding all matters relating to the Property of the Debtors and these proceedings, and sharing information with them subject to such terms as to confidentiality as the Monitor deems advisable; and
- (ix) make any distribution or payment required under any Order made in these proceedings;
- (p) apply to the Court for any vesting order or any other order which may be necessary or appropriate in order to convey the Property of the Debtors to a purchaser or purchasers thereof;
- (q) initiate, prosecute, make and respond to applications and motions in, and continue the prosecution of any and all proceedings for and on behalf of or involving one or more of the Debtors (including the within proceedings) and settle or compromise any proceedings or claims by or against one or more of the Debtors, provided that

the amount of such settlement does not exceed \$100,000, unless otherwise authorized by the Court. The authority hereby conveyed shall extend to such appeals or application and motions for judicial review in respect of any order or judgment pronounced in any such proceedings.

- (r) if required, act as “foreign representative” of the Debtors or in any other similar capacity in any insolvency, bankruptcy or reorganization proceedings outside of Canada.

- 35. **ORDERS** that, notwithstanding the provisions of sections 34(c) and 34(o)(vi) hereof, the Monitor shall be entitled to continue to utilize all of the Debtors’ existing bank accounts, subject to the execution by the Monitor of new signing authority documents as relates to such bank accounts.
- 36. **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 and **ORDERS** that 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 have been made by the Debtors.
- 37. **ORDERS** that the Debtors 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.
- 38. **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 copied to the Monitor’s counsel. In the case of information that the Monitor has been advised by the Debtors is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Debtors, unless otherwise directed by this Court.
- 39. **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 ten days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 40(h) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

O. Administration Charge and Applicants’ Counsels’ Charge

- 40. **DECLARES** that the Monitor, the Monitor’s legal counsel (McCarthy Tétrault LLP) as security for the professional fees and disbursements incurred before or 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 of the Debtors to the extent of the aggregate amount of \$350,000, in priority to all other encumbrances, including over the claims of the federal and provincial governments

subject to a deemed trust (the “**CCAA Administration Charge**”), having the priority established by paragraph 45 of this Order.

41. **DECLARES** that the Applicant’s legal counsel (Borden Ladner Gervais LLP and Kaufman Lawyers LLP) 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 of the Debtors to the extent of the aggregate amount of \$250,000, in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust (the “**Applicants’ Counsels’ Charge**”), having the priority established by paragraph 45 hereof.

P. Continuance and Restatement of the Financial Advisor Charge and NOI Administration Charge

42. **ORDERS and DECLARES**, for greater clarity, that the Financial Advisor Charge created pursuant to the Order of this Court dated August 17, 2023, as amended pursuant to the Order of this Court dated November 28, 2023, and as restated pursuant to the Transition Order, in the amount of \$350,000 is continued and restated under these CCAA Proceedings, in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust (the “**Financial Advisor Charge**”), having the priority established by paragraph Q.45 of this Order.

43. **ORDERS and DECLARES**, for greater clarity that the NOI Admin. Charge created pursuant to the Order of this Court dated August 17, 2023, as amended pursuant to the Order of this Court dated November 1st, 2023, in the amount of \$200,000 is continued and restated under these CCAA Proceedings, in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust (the “**NOI Admin. Charge**”), having the priority established by paragraph 45 of this Order.

44. **ORDERS** that notwithstanding (i) the terms of paragraph 50 hereof, (ii) the terms of paragraph 32 of the Order of this Court dated August 17, 2023 and (iii) the terms of paragraph 14 of the Order of this Court dated November 1st, 2023, the only reasonable professional fees and disbursements of the NOI Trustee and the Interim Receiver (as such terms are defined in the Order of this Court dated August 17, 2023) namely C.S. Adjami inc., and of the Debtors counsel, namely McCarthy Tétrault L.L.P. (collectively, the “**NOI Fees & Expenses**”) that remain covered by the NOI Admin. Charge as of the Effective Time of this Order shall be the NOI Fees & Expenses covered by the NOI Admin. Charge and incurred up to and including January 11, 2024 and only up to the amount thereof, and for greater certainty, that no NOI Fees & Expenses incurred after January 11, 2024 will be covered by the NOI Admin. Charge.

Q. Priorities and General Provisions Relating to CCAA Charges

45. **DECLARES** that the priorities of the Financial Advisor Charge, the CCAA Administration Charge and the Applicants’ Counsels’ Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:

1. The \$200,000 NOI Admin. Charge;
 2. The \$350,000 Financial Advisor Charge;
 3. The \$350,000 CCAA Administration Charge; and, lastly,
 4. The \$250,000 Applicants' Counsels' Charge.
46. **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, including over the claims of the federal and provincial governments subject to a deemed trust (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
47. **ORDERS** that, except as otherwise expressly provided for herein, 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 Monitor obtains the prior written consent of the Applicants, and the prior approval of the Court.
48. **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.
49. **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 Debtors 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 Debtors; 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 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 or be deemed to constitute a breach by the Debtors 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.
50. **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 Debtors and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Debtors, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Debtors pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, transfers at

undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

51. **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, for all purposes.

R. General

52. **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 ten (10) days' written notice to the Debtors, the Monitor's counsel, the Interim Lenders counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings; provided, however, that this paragraph 70 shall not apply to any contract, covenant, agreement or undertaking that may be enforced by the Applicants or the Interim Lenders.
53. **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 Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
54. **DECLARES** that, except as otherwise specified herein, the Applicants 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.
55. **DECLARES** that the Applicants and any party to these CCAA 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.
56. **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 Applicants 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.
57. **DECLARES** that the Applicants 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.
58. **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Debtors, the Monitor, the

Applicants and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.

59. **DECLARES** that the Order and all other orders in these CCAA Proceedings shall have full force and effect in all provinces and territories in Canada.
60. **DECLARES** that either the Monitor or the Applicants (for and on behalf of all of the Debtors) shall be authorized to apply and act as “**foreign representative**” of the Debtors 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* (*US Code, Title 11*). 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 or the Debtors as may be deemed necessary or appropriate for that purpose.
61. **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court 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.
62. **ORDERS** the provisional execution of this order, notwithstanding any appeal.



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