

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: **500-11-060613-227**

DATE: **March 14, 2022**

PRESIDING: THE HONOURABLE DAVID R. COLLIER, J.C.S.

**IN THE MATTER OF THE ARRANGEMENT OR COMPROMISE OF:
RISING PHOENIX INTERNATIONAL INC.**

- and -

10864285 CANADA INC.

- and -

11753436 CANADA INC.

- and -

CDSQ IMMOBILIER INC.

- and -

COLLÈGE DE L'ESTRIE INC.

- and -

ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE LA RIVE SUD INC.

- and -

9437-6845 QUÉBEC INC.

- and -

9437-6852 QUÉBEC INC.

Applicants

- and -

RICHTER INC.

Monitor

RE-AMENDED AND RESTATED INITIAL ORDER

ON READING the Applicants' *Application for (i) the Issuance of an Approval and Vesting Order (ii) the Approval of a Junior Interim Financing Agreement and (iii) a Re-Amended and Restated Initial Order* pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**"), the exhibits and the affidavit filed in support thereof (the "**Application**"), the Fifth Report of Richter Inc. ("**Richter**" or the "**Monitor**") dated March 10, 2022, and relying upon the submissions of counsel present at the hearing on the Application and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Application;

GIVEN the First Day Initial Order rendered by this Court on January 6, 2022 (the "**First Day Order**"), ordering, *inter alia*, a stay of all proceedings and remedies taken or that might be taken in respect of the Applicants or any of their property, except as otherwise set for the in the First Day Initial Order or as otherwise permitted by law, until January 14, 2022 (as further defined in the First Day Order, the "**Stay Period**");

GIVEN the Order Extending the Stay of Period rendered by this Court on January 14, 2022, *inter alia*, extending the Stay Period until January 17, 2022;

GIVEN the Amended and Restated Initial Order rendered by this Court on January 17, 2022, *inter alia*, extending the Stay Period until February 28, 2022;

GIVEN the Order Extending the Stay of Period rendered by this Court on February 28, 2022, *inter alia*, extending the Stay Period until April 29, 2022;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application.
2. **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
 - Service
 - Application of the CCAA and Procedural Consolidation
 - Effective Time
 - Plan of Arrangement
 - Stay of Proceedings against the Applicants and the Property
 - 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
 - Interim Financing (DIP)
 - Directors’ and Officers’ Indemnification Charge
 - Restructuring
 - Powers of the Monitor
 - Priorities and General Provisions Relating to CCAA Charges
 - General

Service

3. **DECLARES** that sufficient prior notice of the presentation of the Application has been given by the Applicants to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

Application of the CCAA and Procedural Consolidation

4. **DECLARES** that the Applicants are each a debtor company to which the CCAA applies.
5. **ORDERS** the consolidation of these CCAA proceedings in respect of the Applicants and **ORDERS** that such consolidation shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the Applicants including, without limitation, for the purposes of any Plan (as defined below) that may be thereafter proposed.
6. **DECLARES** that, unless otherwise indicated, all amounts referenced herein are in Canadian dollars.

Effective Time

7. **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**”).

Plan of Arrangement

8. **DECLARES** that the Applicants shall have the authority, if considered to be appropriate, 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 Applicants and the Property

9. **ORDERS** that, until and including April 29, 2022, 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 Applicants, or affecting the Applicants’ business operations and activities (the “**Business**”) or the Property (as defined below), including as provided in paragraph 13 hereof except with leave of this Court. Any and all Proceedings currently under way against or in respect of

the Applicants 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.

10. **ORDER** 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.

Stay of Proceedings against the Directors and Officers

11. **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 Applicants nor against any person deemed to be a director or an officer of the Applicants 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 Applicants where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.
12. **DECLARES** that neither the Notice of Stay of Proceedings delivered by the Monitor on January 7, 2022 nor paragraphs 9 and 11 of this Order shall in any way stay or preclude Me Gordon Kugler, acting in his capacity as arbitrator, from making and delivering his arbitral decision on the merits (the “**Arbitral Decision**”) in the arbitration proceeding between Rising Phoenix International Inc., Caroline Mastantuono (Bonneville), Christina Mastantuono, Joseph Mastantuono and Les Consultants 3 L M Inc., operating under the name *Institut supérieur d’informatique*, which was taken under advisement by Me Kugler on December 17, 2021. For greater certainty, this declaration shall apply solely in respect of the making of the Arbitral Decision and not in respect of any subsequent homologation and/or enforcement proceedings in respect of the Arbitral Decision for which the parties reserve all of their rights without any admission whatsoever.

Possession of Property and Operations

13. **ORDERS** that the Applicants 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, including, but not limited to, paragraphs 35, 40 and 41 hereof.

14. **ORDERS** that the Monitor, acting in consultation with and on behalf of the Applicants, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, bonuses, commissions, employee contributions, benefits, vacation pay, termination and severance obligations, expenses and other amounts otherwise payable to present or former employees on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the fees and disbursements of any employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by the Applicants, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order and these proceedings, at their standard rates and charges.

15. **ORDERS** that, except as otherwise provided to the contrary herein, the Monitor, acting in consultation with and on behalf of the Applicants, shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the First Day 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 presentation of the Property or the Business of the Applicants including, without limitation, payments on account of insurance (including directors and officers insurance);
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

No Exercise of Rights or Remedies

16. **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 Applicants, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
17. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Applicants 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 Applicants become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of the Applicants, 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 Applicants in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

18. **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 Applicants, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

Continuation of Services

19. **ORDERS** that during the Stay Period and subject to paragraph 21 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Applicants 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, transportation, insurance, including but not limited to

the health and medical insurance program underwritten by Berkley Insurance Company and administered by JF Insurance Agency Group (the policy of which is filed as **Exhibit R-17** to the Application), utility or other goods or services made available to the Applicants, 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 Applicants, and that the Applicants 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 First Day Order are paid by the Applicants, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the Applicants, with the consent of the Monitor, or as may be ordered by this Court.

20. **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 Applicants on or after the date of the 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 Applicants.

21. **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 the Applicants 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 as of the date of the Filing Date 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 the Applicants and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Applicants' account until those cheques or other

instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

22. **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 Applicants 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.

Interim Financing (DIP)

23. **ORDERS** that the Applicants be and are hereby authorized to borrow from Firm Capital Mortgage Fund Inc. (the “**Interim Lender**”) such amounts from time to time as the Applicants may consider necessary or desirable, up to an aggregate principal amount not exceeding \$1,750,000 outstanding at any time, on the terms and conditions as set forth in the Interim Loan Commitment filed as Exhibit R-23A in support of the Application (the “**Interim Financing Agreement**”) and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Applicants and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the “**Interim Facility**”).
24. **ORDERS** that the Applicants are hereby authorized to execute and deliver the Interim Financing Agreement and other security documents and ancillary documents as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Agreement (collectively, the “**Interim Financing Documents**”), and the Applicants are hereby authorized to perform all of its obligations under the Interim Financing Agreement and the Interim Financing Documents.
25. **ORDERS** that Applicants shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”)) under the

Interim Financing Agreement and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lender pursuant to the Interim Financing Agreement, the Interim Financing Documents and the Order.

26. **AUTHORIZES** and **ORDERS** the Monitor to cause the Applicants to pay to Gestion Levy Inc. the Break Fee and the Expense Reimbursement provided for at section 15 of the Commitment Letter filed in support of the Application as Exhibit R-23.
27. **DECLARES** that all of the Property of Applicants, including for greater certainty and without limitation the immovable property specifically identified at Schedule B of the Interim Financing Agreement, is hereby subject to a charge and security for an aggregate amount of \$2,200,000 (such charge and security is referred to herein as the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of the Applicants to the Interim Lender with respect to the payment of the Interim Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lender under or in connection with the Interim Financing Agreement and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs 49 and 50 of this Order.
28. **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
29. **ORDERS** that the Interim Lender may:
 - (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Applicants if the Applicants fail to meet the provisions of the Interim Financing Agreement and the Interim Financing Documents.

30. **ORDERS** that the Interim Lender shall not take any enforcement steps with respect to its security or under the Interim Financing Agreement (or underlying credit agreements) or the Interim Lender Charge without providing at least 5 business days written notice (the "**Notice Period**") of a default thereunder to the Applicants, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under its security, the Interim Financing Agreement, the Interim Financing Documents, the Interim Lender Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, the *Civil Code of Quebec* or any other similar legislation.
31. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 23 to 29 of this Order unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lender applies for or consents to such order.
- 31A. **ORDERS** that the Applicants be and are hereby authorized to borrow from 6815464 Canada Ltd. (the "**Junior Interim Lender**") such amounts from time to time as the Applicants may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Junior Interim Loan Commitment filed as **Exhibit R-4** in support of the Application (the "**Junior Interim Financing Agreement**") and in the Junior Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Applicants and to pay such other amounts as are permitted by the terms of the Order and the Junior Interim Financing Documents (as defined hereinafter) (the "**Junior Interim Facility**").
- 31B. **ORDERS** that the Applicants are hereby authorized to execute and deliver the Junior Interim Financing Agreement and other security documents and ancillary documents as may be required by the Junior Interim Lender in connection with the Junior Interim Facility and the Junior Interim Financing Agreement (collectively, the "**Junior Interim Financing Documents**"), and the Applicants are hereby authorized to perform all of their obligations

under the Junior Interim Financing Agreement and the Junior Interim Financing Documents.

- 31C. **ORDERS** that Applicants shall pay to the Junior Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Junior Interim Lender on a full indemnity basis (the "**Junior Interim Lender Expenses**") under the Junior Interim Financing Agreement and the Junior Interim Financing Documents and shall perform all of their other obligations owed to the Junior Interim Lender pursuant to the Junior Interim Financing Agreement, the Junior Interim Financing Documents and the Order.
- 31D. **DECLARES** that all of the Property of Applicants, including for greater certainty and without limitation the immovable property specifically identified at Schedule B of the Junior Interim Financing Agreement, is hereby subject to a charge and security for an aggregate principal amount of \$3,000,000 plus interest and fees (such charge and security is referred to herein as the "**Junior Interim Lender Charge**") in favour of the Junior Interim Lender as security for all obligations of the Applicants to the Junior Interim Lender with respect to the payment of the Junior Interim Facility (including principal, interest and the Junior Interim Lender Expenses) owing to the Junior Interim Lender under or in connection with the Junior Interim Financing Agreement and the Junior Interim Financing Documents. Such Junior Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs 49 and 50 of this Order.
- 31E. **ORDERS** that the claims of the Junior Interim Lender pursuant to the Junior Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Junior Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- 31F. **ORDERS** that the Junior Interim Lender may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Junior Interim Lender Charge and the Junior Interim Financing Documents in all jurisdictions where it deems it is appropriate; and

(b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Applicants if the Applicants fail to meet the provisions of the Junior Interim Financing Agreement and the Junior Interim Financing Documents.

31G. **ORDERS** that the Junior Interim Lender shall not take any enforcement steps with respect to its security or under the Junior Interim Financing Agreement (or underlying credit agreements) or the Junior Interim Lender Charge without providing at least 5 business days written notice (the "**Junior Charge Notice Period**") of a default thereunder to the Applicants, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Junior Charge Notice Period, the Junior Interim Lender shall be entitled to take any and all steps under its security, the Junior Interim Financing Agreement, the Junior Interim Financing Documents, the Junior Interim Lender Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, the Civil Code of Quebec or any other similar legislation.

31H. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 31A to 31G of this Order unless either (a) notice of a motion for such order is served on the Junior Interim Lender by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Junior Interim Lender applies for or consents to such order.

Directors' and Officers' Indemnification Charge

32. **ORDERS** that the Applicants 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 Applicants after the Effective Time, except where such obligations or liabilities were incurred as a result of such Directors' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 of the CCAA.

33. **ORDERS** that the Directors of the Applicants 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 \$75,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 32 of this Order as it relates to obligations and liabilities that the Directors may incur in

such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 49 and 50 of this Order.

34. **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 in accordance with paragraph 32 of this Order.

Restructuring

35. **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") or the orderly liquidation of their Property (the "**Liquidation**") but subject to such requirements as are imposed by the CCAA or any order of this Court, the Applicants shall have the right, subject to approval of the Monitor 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 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) subject to prior written consent from the Interim Lender, convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business (and outside of the liquidation process to be approved by this Court), in whole or in part, provided that the price in each case does not exceed \$100,000 or \$500,000 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 Applicants and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Applicants 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 Applicants 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 the Applicants.
36. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Applicants 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 Applicants 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 Applicants, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.
37. **ORDERS** that the Applicants shall provide to any relevant landlord notice of the Applicants' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Applicants 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 Applicants and the landlord.
38. **DECLARES** that, in order to facilitate the Restructuring or the Liquidation, the Applicants may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
39. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, and the equivalent provisions

of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c. P-39.1, the Applicants 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 advisors (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 Applicants 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 Applicants 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 Applicants.

Powers of the Monitor

40. **CONFIRMS** and **RATIFIES** the appointment of Richter in accordance with the First Day Order to monitor the business and financial affairs of the Applicants 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, without delay, (i) publish once a week for two (2) consecutive weeks in *Le Devoir* and in the *Montreal Gazette* (ii) within five (5) business days after the date of this First Day 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, which in the case of any students, will be via email, a notice to all known creditors having a claim against the Applicants 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 (with the exception of students) 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, with the exception of any students, who will be listed in a distinct confidential annex to the creditors' list;

- (b) shall monitor and control the Applicants' receipts and disbursements;
- (c) shall assist the Applicants, to the extent required by the Applicants, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Applicants, to the extent required by the Applicants, 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 advise and assist the Applicants, to the extent required by the Applicants, to review the Applicants' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Applicants, to the extent required by the Applicants, with their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Applicants 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;
- (h) may retain and employ such agents, advisors 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;
- (i) 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;
- (j) may engage, with the consent of the Applicants, an independent third party to assist with the sale of certain Property of the Applicants, including, without

limitation, engaging a real estate agency to market the real property owned by certain Applicants;

- (k) may act as a “foreign representative” of the Applicants or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (l) may give any consent or approval as may be contemplated by the Order or the CCAA;
- (m) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time;
- (n) may file a motion pursuant to section 243 of the BIA seeking its appointment as receiver to the Applicants (in such capacity, the “**Receiver**” and the proceedings thereunder, the “**Receivership Proceedings**”) for the sole purpose of allowing the employees of the Applicants to benefit from those payments provided under the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1);

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

41. The Monitor shall be authorized and empowered, but not required, to operate and control, on behalf of the Applicants, all of the Applicants’ existing accounts at any financial institution (each an “**Account**” and collectively the “**Accounts**”) in such manner as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation, to:

- (a) exercise control over the funds credited to or deposited in the Accounts;
- (b) effect any disbursement from the Accounts permitted by the Initial Order or any other Order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or

deposited in such Accounts to such other account or accounts as the Monitor may direct; and

- (d) add or remove persons have signing authority with respect to any Account or to direct the closing of any Account,

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the property, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability in respect thereof to any person.

- 42. **ORDERS** that the Applicants 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 Applicants in connection with the Monitor's duties and responsibilities hereunder.
- 43. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Applicants with information in response to requests made by them in writing addressed to the Monitor and copied to the Applicants' counsel. In the case of information that the Monitor has been advised by the Applicants is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Applicants unless otherwise directed by this Court, with the exception of the Interim Lender to whom the Monitor shall provide all information to which the Interim Lender has a right

pursuant to the Interim Financing Agreement without the need to obtain the consent of the Applicants or further order of the Court.

44. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Applicants or continues the employment of the Applicants' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
45. **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 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.
46. **ORDERS** that the Monitor and each of its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing its duties in connection with the sale of certain Property of the Applicants, except to the extent of such losses, claims, damages or liabilities resulting from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.
47. **ORDERS** that the Applicants shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Applicants' legal counsel and other advisors, directly related to these proceedings, the Plan, the Restructuring or the Liquidation, whether incurred before or after the First Day Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
48. **DECLARES** that, as security for the professional fees and disbursements incurred both before and after the making of the First Day Order and directly related to these proceedings, the Plan, the Restructuring or the Liquidation:
 - the Monitor and the Monitor's legal counsel 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 \$150,000 (the "**Senior Administration Charge**"); and

- the Applicants' legal counsel 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 \$450,000 (the "**Junior Administration Charge**"), in which the beneficiaries of the Senior Administration Charge shall share, on a *pro rata* basis, to the extent of any residual fees and disbursements (if any).

The Senior Administration Charge and the Junior Administration Charge shall have the priority established by paragraphs 49 and 50 hereof.

Priorities and General Provisions Relating to CCAA Charges

49. **DECLARES** that the priorities of the existing security interests registered by Firm Capital Mortgage Fund Inc. on the Property of the Applicants (the "FCC Security"), as well as the Senior Administration Charge, the Junior Administration Charge, the Directors' Charge and the Interim Lender's Charge and the Junior Interim Lender's Charge (collectively, the "CCAA Charges"), as between them with respect to any Property to which they apply, shall be as follows (called the "Priority"):
- first, the Senior Administration Charge;
 - second, the FCC Security;
 - third, the Interim Lender's Charge;
 - fourth, the Junior Interim Lender's Charge;
 - fifth, the Junior Administration Charge; and
 - sixth, the Directors' Charge.
50. **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, trusts, deemed trusts, encumbrances or security, interest or claim of whatever nature or kind (collectively, the "Encumbrances") affecting the Property charged by such Encumbrances, save and except for the FCC Security, which shall rank in priority to the Interim Lender's Charge, the Junior

Interim Lender's Charge, the Junior Administration Charge, the Directors' Charge and such Encumbrances.

51. **ORDERS** that the Applicants shall not grant any Encumbrances, or seek or support the granting of any Encumbrances by the Court, in or against any Property that rank in priority to, or pari passu with, the Senior Administration Charge, the FCC Security, or the Interim Lender's Charge, or the Junior Interim Lender's Charge unless the Applicants obtain the prior written consent of the Monitor and of the Interim Lender and of the Junior Interim Lender and the prior approval of the Court.
52. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Applicants, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
53. **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 receiving order or bankruptcy order filed pursuant to the BIA in respect of the Applicants or any receiving order or bankruptcy order made pursuant to any such application or any assignment in bankruptcy made or deemed to be made in respect of the Applicants; 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 Applicants (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 Applicants of any Third Party Agreement to which they are 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.
54. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a receiving order or bankruptcy order filed pursuant

to the BIA in respect of the Applicants and any receiving order or bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Applicants, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Applicants 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.

55. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Applicants and against all Persons, including, without limitation, any trustee acting in bankruptcy proceedings, receiver, receiver and manager or interim receiver of the Applicants, for all purposes.

General

56. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisors of the Applicants or of the Monitor in relation to the Business or Property of the Applicants, without first obtaining leave of this Court, upon five (5) days written notice to the Applicants' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
57. **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 Applicants under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
58. **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 Applicants 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.

59. **DECLARES** that the Applicants 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.
60. **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.
61. **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.
62. **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 Applicants, the Monitor 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.
63. **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
64. **DECLARES** that the Monitor, with the prior consent of the Applicants, 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*, for which the Monitor shall be the foreign representative of the Applicants. 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.

65. **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.
66. **ORDERS** that Exhibits 18, 19, 22 and 23 filed in support of the Amended Application and Exhibit "D" of the Monitor's Pre-Filing Report dated January 5, 2022, as amended on January 6, 2022, shall be kept under seal until further order from this Court and that, notwithstanding section 23(1)(a)(ii)(C) of the CCAA, the Monitor be dispensed from making the list of students who are creditors or potential creditors publicly available
67. **ORDERS** that Exhibits R-4 filed in support of the Application and Exhibit "A" of the Report shall be kept under seal until further order from this Court.
68. **ORDERS** the provisional execution of the Order notwithstanding any appeal.
69. **THE WHOLE** without costs.

Montreal, March 14, 2022

THE HONOURABLE DAVID R. COLLIER, J.C.S.