

**SUPERIOR COURT**  
(Commercial Division)

**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

No: 500-11-034815-080

DATE: November 18, 2008

---

**PRESIDING : The Honourable William Fraiberg, J.S.C.**

---

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

**Komunik Corporation**

**-and-**

**Komunik Datamark Inc.**

**-and-**

**Komunik Intramedia Inc.**

Debtors/Petitioners

**-and-**

**RSM RICHTER INC.,**

Monitor

---

**INITIAL ORDER**

---

**SEEING** the *Petition for the Issuance of an Initial Order* (the "**Petition**"), the exhibits and the affidavit of Sébastien Demers filed in support thereof;

**CONSIDERING** the consent of RSM Richter Inc. ("**Richter**") to act as monitor and the submissions of counsels for the Petitioners, HSBC Bank Canada and ("**HSBC Bank**") HSBC Capital (Canada) Inc. ("**HSBC Capital**");

**GIVEN** the provisions of the CCAA;

**FOR THESE REASONS, THE COURT :**

[1] **GRANTS** the Petition;

[2] **ISSUES** an order (the "**Order**") pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, (R.S.C., (1985), c. C-36 (the "**CCAA**"), divided under the following headings:

- Service;
- Application of the CCAA;
- Effective Time;
- Plan of Arrangement;
- Stay of Proceedings against the Petitioners, the Property, the Directors or others;
- Possession of Property and Carrying on Business;
- Restructuring;
- Directors Indemnification and Charge;
- Powers of the Monitor;
- Priorities and General Provisions Relating to CCAA Charges; and
- General.

**Service**

[3] **EXEMPTS** Komunik Corporation ("**Komunik**"), Komunik Datamark Inc. and Komunik IntraMedia Inc. (the "**Komunik Gro up**" or "**Petitioners**") from having to serve the Petition and from any notice of presentation.

**Application of the CCAA**

[4] **DECLARES** that Petitioners are debtor companies to which the CCAA applies.

**Effective time**

[5] **DECLARES** that from immediately after midnight (Montreal time) on the day of the Order (the "**Effective Time**") to the time of the granting of the Order, any act or

action taken or notice given by any Person in respect of Petitioners, the Directors or the Property (as those terms are defined hereinafter), are deemed not to have been taken or given, as the case may be, to the extent such act, action or notice would otherwise be stayed upon the granting of the Order.

### **Plan of Arrangement**

- [6] **AUTHORIZES** Petitioners to file with this Court and submit to their creditors one or more plans of compromise or arrangement under the CCAA (collectively, the "Plan") between, among others, Petitioners and one or more classes of their creditors as Petitioners may deem appropriate, on or before the Stay Termination Date (as defined hereinafter) or such other time or times as may be allowed by this Court.

### **Stay of Proceedings against the Petitioners, the Property, the Directors or others**

- [7] **ORDERS** that, until and including December 18, 2008, or such later date as the Court may order (the "Stay Termination Date", the period from the date of the Order to the Stay Termination Date being referred to as the "Stay Period"), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of the Order or otherwise, however and wherever taken (collectively the "Proceedings") may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "Persons" and, individually, a "Person") against or in respect of Petitioners, or any of the present or future property, assets, rights and undertakings of Petitioners, of any nature and in any location, whether held directly or indirectly by Petitioners, in any capacity whatsoever, or held by others for Petitioners (collectively, the "Property"), and all Proceedings already commenced against Petitioners or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA.

- [8] **ORDERS** that, without limiting the generality of the foregoing, during the Stay Period, all Persons having agreements, including insurance or similar agreements/instruments, contracts or arrangements with Petitioners or in connection with any of the Property, whether written or oral, for any subject or purpose :

- (a) are restrained from accelerating, terminating, cancelling, suspending or refusing to modify or extend on reasonable terms such agreements, including insurance or similar agreements/instruments, contracts or arrangements or the rights of Petitioners or any other Person thereunder;
- (b) are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services, or other benefits by or to such Person thereunder (including, without limitation, any directors' and officers' insurance, any telephone numbers, any form of telecommunications, banking, financial or credit services (other than in relation to HSBC Bank and HSBC Capital), and any oil, gas, electricity or other utility supply); and

- (c) shall continue to perform and observe the terms and conditions contained in such agreements, contracts or arrangements, so long as Petitioners pay the prices or charges for such goods and services received after the date of the Order as such prices or charges become due in accordance with the law or as may be hereafter negotiated (other than deposits whether by way of cash, letter of credit or guarantee, stand-by fees or similar items which Petitioners shall not be required to pay or grant), unless the prior written consent of Petitioners and the Monitor Richter (the "**Monitor**") is obtained or the leave of this Court is granted;

[9] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 18.1 of the CCAA, if applicable, cash or cash equivalents placed on deposit by Petitioners 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 Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

[10] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, bond or guarantee (the "**Issuing Party**") at the request of Petitioners shall be required to continue honouring any and all such letters, bonds and guarantees, issued on or before the date of the 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 therefore.

[11] **DECLARES** that, to the extent any rights, obligations, or time or limitation periods, including, without limitation, to file grievances, relating to Petitioners or any of the Property may expire, other than the term of any lease of real property, the term of such rights or obligations, or 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 Petitioners become bankrupt or a receiver within the meaning of paragraph 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of Petitioners in determining the 30-day periods referred to in Sections 81.1 and 81.2 of the BIA.

[12] **ORDERS** that no Person may commence, proceed with or enforce any Proceedings against any former, present or future director or officer of Petitioners, the CRO (as defined hereinafter) or any person that, by applicable legislation, is treated as a director or officer of Petitioners, or that will manage in the future the businesses and affairs of Petitioners (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director that arose before the Order was issued and that relates

to obligations of Petitioners for which such Director is or is alleged to be liable (as provided under Section 5.1 of the CCAA) until further order of this Court or until the Plan, if one is filed, is refused by the creditors or is not sanctioned by the Court.

[13] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of Petitioners, the Monitor or the legal counsel or financial advisers to the Monitor, for or in respect of the Restructuring (as defined hereinafter) or the formulation and implementation of the Plan without first obtaining leave of this Court, upon seven days written notice to Petitioners' *ad litem* counsel and to all those referred to in this paragraph.

[14] **ORDERS** that HSBC Bank and HSBC Capital are unaffected and excluded creditors for all intents and purposes (including in relation to the Order as same may be amended and extended), except in respect of the CCAA Charges (as defined hereinafter);

#### **Possession of Property and Carrying on Business**

[15] **ORDERS** that, subject to the terms of the Order, Petitioners shall remain in possession of the Property until further order in these proceedings.

[16] **ORDERS** that Petitioners shall continue to carry on their businesses and financial affairs in a manner consistent with the commercially reasonable preservation thereof including, but not limited to, post-petition borrowing from HSBC Bank in the ordinary course of business and pursuant to cash flow projections approved by the Monitor, the whole subject to the HSBC Bank Forbearance Agreement and the HSBC Capital Forbearance Agreement (as these terms are defined hereinafter), paragraphs 26 and 27 hereof and further order of the Court.

#### **Restructuring**

[17] **ORDERS** the Petitioners to seek the appointment, no later than December 8, 2008, of a Chief Restructuring Officer ("**CRO**") satisfactory to HSBC Bank and HSBC Capital;

[18] **DECLARES** that, to facilitate the orderly restructuring of their businesses and financial affairs (the "**Restructuring**"), Petitioners 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 and sell, subject to subparagraph (c), the Property, in whole or part;
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property

outside the ordinary course of business, in whole or in part, provided that (i) the greater of the book value or the purchase price in each case does not exceed \$250,000.00 or \$500,000.00 in the aggregate, and that (ii) the prior written consent of HSBC Bank and HSBC Capital is obtained;

- (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 for any consequences thereof in the Plan, as Petitioners may determine;
- (e) subject to paragraphs 23 and 24 hereof, vacate or abandon any leased real property or repudiate any lease and ancillary agreements related to any leased premises, whether located in Québec or elsewhere, as they deem appropriate, provided that Petitioners give the relevant landlord at least seven days prior written notice, on such terms as may be agreed between Petitioners and such landlord, or failing such agreement, to make provision for any consequences thereof in the Plan; and
- (f) repudiate such of their agreements, contracts or arrangements of any nature whatsoever, whether oral or written, as they deem appropriate, on such terms as may be agreed between Petitioners and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan and to negotiate any amended or new agreements or arrangements.

#### **Sale Process**

[19] **ORDERS** that the Petitioners, with the assistance and under the supervision of the Monitor, will forthwith conduct a marketing and sale process to explore available alternatives for the sale of the Property and/or Petitioners' businesses within the timeframe set out hereinafter :

- (a) On or before November 21, 2008, the Monitor will send a letter to potentially interested parties with respect to this transaction opportunity;
- (b) On or before November 25, 2008, the Monitor will place an advertisement seeking expressions of interest in the sale of the Property and/or Petitioners' businesses in La Presse and the national edition of The Globe and Mail and such other publications as the Monitor considers necessary and appropriate;
- (c) On or before November 28, 2008, the Monitor will canvass the market for interested parties;
- (d) On or before November 28, 2008, the Monitor will establish a data room, either physically or electronically, and will prepare and provide a confidential information memorandum for interested parties who execute a confidentiality agreement in a form acceptable to the Monitor and the Petitioners;

- (e) On or before December 15, 2008, the Monitor will prepare and make available to interested parties, and in the data room(s), a standardized agreement which the Monitor shall recommend to all interested parties be (but not require to be) the format for structuring and submitting offers;
- (f) The Monitor will request interested parties to submit offers to purchase by 3:00 p.m. (EST) on January 15, 2009 (subject to the entering into of appropriate forbearance agreements acceptable to Petitioners, HSBC Bank and HSBC Capital, and to the extension of the Stay Period by this Court);

Nothing in this paragraph 19 restricts the ability of, or prejudices the rights of Petitioners to formulate and put forward a Plan or to consider any and all restructuring and refinancing options;

[20] **ORDERS** the Monitor :

- (a) to keep HSBC Bank and HSBC Capital fully apprised and informed on any step undertaken under the sale process; and
- (b) to obtain the written prior approval of HSBC Bank and HSBC Capital before releasing any document in relation to the sale process;

[21] **ORDERS** Petitioners and the Monitor to fully collaborate with HSBC Bank, HSBC Capital and *PriceWaterhouseCoopers* ("PWC") and to provide them with unrestricted access to the information required, Petitioners' employees and the Monitor's employees and representatives and to any report prepared or being prepared by the Monitor and to collaborate and work together with PWC for the monitoring of the borrowing base, the financial progress and Petitioners' financial and business achievement.

[22] **DECLARES** that, in order to facilitate the Restructuring, Petitioners may, but without obligation and subject to the prior approval of the Monitor, HSBC Bank and HSBC Capital :

- (a) settle claims that are in dispute;
- (b) establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith; and
- (c) pay all outstanding (as of the date of the Order) and future wages, salaries, commissions, vacation pay, pension and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts accruing due to current, former or future employees, consultants, sales representatives, officers or individuals that provide or have provided services to the Petitioners as individual contractors;

[23] **DECLARES** that, if leased premises are vacated or abandoned by Petitioners

pursuant to subparagraph 18(e), the landlord may take possession of any such leased premises without waiver of, or prejudice to, any claims or rights of the landlord against Petitioners, provided the landlord mitigates its damages, if any, and re-leases any such leased premises to third parties on such terms as any such landlord may determine.

[24] **ORDERS** that Petitioners shall provide to any relevant landlord notice of Petitioners' intention to remove any fixtures or leasehold improvements at least seven days in advance. If Petitioners have already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute.

[25] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation and 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 Petitioners;

#### **Forbearance Agreements**

[26] **APPROVES** and **ORDERS** the implementation of the terms and conditions of the forbearance agreement entered into by and between Komunik and HSBC Bank as of November 17, 2008 (the "**HSBC Bank Forbearance Agreement**") (Exhibit R-1 to the Petition), which provides, *inter alia*, the circumstances under which Komunik is permitted to borrow, despite its defaults, under the facility letter which Komunik and HSBC Bank have entered into as of February 1, 2007, as amended by the letters dated March 22, 2007 and May 1, 2007;

[27] **APPROVES** and **ORDERS** the implementation of the terms and conditions of the forbearance agreement entered into by and between Komunik and HSBC Capital as of November 17, 2008 (the "**HSBC Capital Forbearance Agreement**") (Exhibit R-2 to the Petition), which provides, *inter alia*, the circumstances under which Komunik is permitted to operate despite its defaults under the credit agreement which Komunik and HSBC Capital have entered into as of June 12, 2007;

#### **Directors Indemnification and Charge**

[28] **ORDERS** that, in addition to any existing indemnities, Petitioners shall



indemnify each of the Directors from and against the following (collectively, "D&O Claims") :

- (a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations, of any nature whatsoever, which may arise from facts or events occurring on or after the date of the Order (including, without limitation, an amount paid to settle an action or a judgment in a civil, criminal, administrative or investigative action or proceeding to which a Director may be made a party), provided that any such liability relates to such Director in that capacity, and, provided that such Director (i) acted honestly and in good faith in the best interests of Petitioners and (ii) in the case of a criminal or administrative action or proceeding in which such Director would be liable to a monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful, except if such Director has breached any fiduciary duties or has been guilty of gross or intentional fault; and
- (b) all costs, charges, expenses, claims, liabilities and obligations relating to the failure of Petitioners to make any payments or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits, or any other amount for services performed on or after the date of the Order and that such Directors sustain, by reason of their association with Petitioners as a Director, except to the extent that they have breached any fiduciary duties or have been guilty of gross or intentional fault.

The foregoing shall not constitute a contract of insurance or other valid and collectible insurance, as such term may be used in any existing policy of insurance issued in favour of Petitioners or any of the Directors.

[29]       **DECLARES** that, as security for the obligation of Petitioners to indemnify the Directors pursuant to paragraph 28 hereof, the Directors are hereby granted a hypothec on, mortgage of, lien on and security interest in the Property to the extent of the aggregate amount of \$4,050,000.00 (the "D&O Charge") subject to reduction by the Court given the circumstances, having the priority established by paragraphs 38 and 39 hereof. Such D&O Charge shall not constitute or form a trust. Such D&O Charge, notwithstanding any language in any applicable policy of insurance to the contrary, shall only apply to the extent that the Directors do not have coverage under any directors' and officers' insurance, which shall not be excess insurance to the D&O Charge. In respect of any D&O Claim against any of the Directors (collectively, the "Respondent Directors"), if such Respondent Directors do not receive confirmation from the applicable insurer within 21 days of delivery of notice of the D&O Claim to the applicable insurer, confirming that the applicable insurer will provide coverage for and indemnify the Respondent Directors, then, without prejudice to the subrogation rights hereinafter referred to, Petitioners shall pay the amount of the D&O Claim upon expiry. Failing such payment, the Respondent Directors may enforce the D&O Charge provided that the Respondent Directors shall reimburse Petitioners to the extent that they subsequently receive insurance benefits for the D&O Claim paid by Petitioners, and

provided further that Petitioners shall, upon payment, be subrogated to the rights of the Respondent Directors to recover payment from the applicable insurer as if no such payment had been made.

### **Powers of the Monitor**

- [30]           **ORDERS** that the Monitor is hereby appointed to monitor the businesses and financial affairs of Petitioners as an officer of this Court and that the Monitor shall, in addition to the duties and functions referred to in Section 11.7 of the CCAA :
- (a)    send notice of the Order, within 10 days, to every known creditor of Petitioners having a claim of more than \$250 against them advising that such creditor may obtain a copy of the Order on the internet at the website of the Monitor (the "Website") or, failing that, from the Monitor and the Monitor shall so provide it. Such notice shall be sufficient in accordance with Subsection 11(5) of the CCAA;
  - (b)    monitor and review all receipts and disbursements;
  - (c)    lead the sale process with the assistance of Petitioners and Petitioners' legal counsel;
  - (d)    assist Petitioners, to the extent required by Petitioners, in dealing with their assets, their creditors and other interested Persons during the Stay Period;
  - (e)    assist Petitioners, to the extent required by Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
  - (f)    advise and assist Petitioners, to the extent required by Petitioners, to review Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
  - (g)    assist Petitioners, to the extent required by Petitioners, with the Restructuring and in its negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
  - (h)    report periodically to HSBC Bank, HSBC Capital and to the Court on the state of and financial affairs of Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
  - (i)    report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
  - (j)    retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

- (k) engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (l) act as a “foreign representative” of Petitioners in any proceedings outside of Canada;
- (m) give any consent or approval as are contemplated by the Order; and
- (n) perform such other duties as are required by the Order, the CCAA or this Court from time to time.

The Monitor shall not otherwise interfere with the businesses and financial affairs carried on by Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the businesses and financial affairs of Petitioners.

[31] **ORDERS** that Petitioners and their directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of Petitioners in connection with the Monitor’s duties and responsibilities hereunder.

[32] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of Petitioners with information (with a copy to HSBC Bank and HSBC Capital) in response to requests made by them in writing addressed to the Monitor and copied to Petitioners’ counsel. The Monitor shall not have any duties or liabilities in respect of such information disseminated by it pursuant to the provisions of the Order or the CCAA, other than as provided in paragraph 34 hereof. In the case of information that the Monitor has been advised by Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Chief Executive Officer of Komunik unless otherwise directed by this Court.

[33] **DECLARES** that the Monitor shall not be, nor be deemed to be, an employer or a successor employer of the employees of Petitioners or a related employer in respect of Petitioners within the meaning of any federal, provincial or municipal legislation governing employment, labour relations, pay equity, employment equity, human rights, health and safety or pensions or any other statute, regulation or rule of law or equity for any similar purpose and, further, that the Monitor shall not be, nor be deemed to be, in occupation, possession, charge, management or control of the Property or businesses and financial affairs of Petitioners pursuant to any federal, provincial or municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status, including, without limitation, the *Environment Quality Act* (Quebec), the *Canadian Environmental Protection Act, 1999* or the *Act Respecting Occupational Health and Safety* (Quebec) or similar other federal or provincial legislation.

[34] **DECLARES** that, in addition to the rights and protections afforded to the

Monitor by the CCAA, the Order or its status as an officer of the Court, the Monitor shall not incur any liability or obligation as a result of its appointment and the fulfillment of its duties or the provisions of the Order, save and except any liability or obligation arising from a failure to act in good faith and to take reasonable care, and no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30(j) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

[35]           **ORDERS** that Petitioners shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, Petitioners' legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[36]           **ORDERS** Petitioners to pay the invoices of the said professionals within three (3) business days, the whole without the obligation from HSBC Bank to honor any such payments should the HSBC Bank Forbearance Agreement not be fully complied with; however, such invoices shall remain at all times subject to the Administration Charge (as defined hereinafter);

[37]           **DECLARES** that the Monitor, the Monitor's legal counsel and Stikeman Elliott LLP as Petitioners' legal counsel, as security for the professional fees, charges and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring be entitled to the benefit of and are hereby granted a hypothec on, mortgage of, lien on, and security interest in the Property to the extent of the aggregate amount of \$450,000.00 (the "**Administration Charge**"), having the priority established by paragraphs 38 and 39 hereof.

#### **Priorities and General Provisions Relating to CCAA Charges**

[38]           **DECLARES** that the priorities of the Administration Charge and D&O Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- (a)     first, the Administration Charge; and
- (b)     second, the D&O Charge;

[39]           **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, conditional sale agreements, financial leases, charges, encumbrances or security of whatever nature or kind (collectively, "**Encumbrances**") affecting any of the Property.

[40]           **ORDERS** that, except as otherwise expressly provided for herein, Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or

*pari passu* with, any of the CCAA Charges unless Petitioners obtain the prior written consent of the Monitor, HSBC Bank, HSBC Capital and the prior approval of the Court.

[41]           **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time of the Order, to all present and future Property of Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[42]           **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 petition for a receiving order filed pursuant to the BIA in respect of Petitioners or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioners; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a)    the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by Petitioners 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.

[43]           **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of Petitioners and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by Petitioners pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

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

#### **General**

[45]           **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 Petitioners under any statute, regulation, licence, permit, contract, permission, covenant,

agreement, undertaking or other written document or requirement.

- [46]           **DECLARES** that, except as otherwise specified herein, Petitioners 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 Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [47]           **DECLARES** that Petitioners may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Petitioners shall deliver "*hard copies*" of such materials upon request to any party as soon as practicable thereafter.
- [48]           **DECLARES** that any party in these proceedings, other than Petitioners, may serve any court materials electronically, by emailing a PDF or other electronic copy of all materials to counsels' email addresses, provided that such party shall deliver both PDF or other electronic copies and "*hard copies*" of all materials to counsel to the Petitioners, counsel to the Monitor, counsel to HSBC Bank and HSBC Capital and to any other party requesting same.
- [49]           **DECLARES** that, unless otherwise provided herein 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 Petitioners and the Monitor and has filed such notice with this Court.
- [50]           **DECLARES** that Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
- [51]           **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven days notice to Petitioners, to counsel to Petitioners (Stikeman Elliott, c/o Jean Fontaine & Philippe Buist), to the Monitor (RSM Richter Inc. c/o Robert Kofman and Shawn Travitsky), to counsel to the Monitor (as the case may be), to counsel to HSBC Bank and HSBC Capital (Davies Ward Philipps & Vineberg, c/o Denis Ferland) (see coordinates below).

- i)           Me Jean Fontaine - jfontaine@stikeman.com  
Me Philippe Buist - pbuist@stikeman.com  
Stikeman Elliott, LLP  
1155 René-Lévesque West, 40<sup>th</sup> floor  
Montreal, Quebec, H3B 3V2
- ii)          Mr. Robert Kofman - bkofman@rsmrichter.com

Mr. Shawn Travitsky - [stravitsky@rsmrichter.com](mailto:stravitsky@rsmrichter.com)  
RSM Richter Inc.  
200 King Street West  
Suite 1100, P.O. Box 48  
Toronto, Ontario, M5H 3T4; and  
2, Place Alexis-Nihon,  
Montreal, Quebec,  
H3Z 3C2

- iii) Me Julie Himo - [jhimo@ogilvyrenault.com](mailto:jhimo@ogilvyrenault.com)  
Me Tony Reyes - [treyes@ogilvyrenault.com](mailto:treyes@ogilvyrenault.com)  
Ogilvy Renault LLP  
1981, McGill College Ave., suite 1100  
Montreal, Quebec, H3A 3C1
- iv) Me Denis Ferland - [dferland@dwpv.com](mailto:dferland@dwpv.com)  
Davies Ward Phillips & Vineberg LLP  
1501, McGill College Avenue., 26<sup>th</sup> Floor  
Montreal, Quebec, H3A 3N9

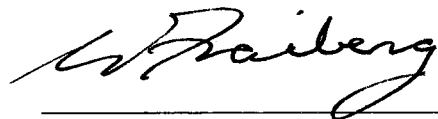
[52]           **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[53]           **DECLARES** that the Monitor, with the prior consent of Petitioners, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

[54]           **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.

[55]           **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

**THE WHOLE** without costs.



\_\_\_\_\_  
The Honourable William Fraiberg, J.S.C.