

**SUPERIOR COURT**  
**(Commercial Division)**

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-063165-233

DATE : January 12, 2024

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**IN THE PRESENCE OF THE HONOURABLE LOUIS J. GOUIN, S.C.J.**

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

**13517985 CANADA INC.**

Debtor

-and-

**HIGHCREST LENDING CORPORATION**

Applicant / Secured Creditor

**KPMG INC.**

Monitor

-and-

**PERSONAL AND MOVABLE REAL RIGHTS REGISTRAR**

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**APPROVAL AND REVERSE VESTING ORDER**

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- [1] **ON READING** the Monitor's *Application for the Issuance of an Approval and Reverse Vesting Order* (the "**Application**"), the affidavit and the exhibits in support thereof as well as the report of the Monitor dated January 10, 2024;
- [2] **CONSIDERING** the notification of the Application;
- [3] **CONSIDERING** the submissions of the Monitor's attorneys;
- [4] **CONSIDERING** that the Debtor's business consists of selling pre-owned cars to registered dealers in Quebec, Ontario, Eastern Canada and the United States;
- [5] **CONSIDERING** that required licenses and permits, which would not otherwise be assignable or transferrable in a timely manner, have been issued to the Debtor in each of those jurisdictions, and that the proposed "reverse structure transaction" will allow these licenses and permits to remain in place;
- [6] **CONSIDERING** that certain payment mechanisms in place between the Debtor and the dealers that transact on its platform, including thousands of pre-authorized debit agreements, could not, in practice, be assigned nor put in place in a timely manner outside the proposed "reverse structure transaction";
- [7] **CONSIDERING** that the Monitor has submitted that implementing a going concern sale in accordance with the proposed "reverse structure transaction" will yield more significant realization proceeds than a traditional sale of the Debtor's assets and it will not prejudice any of the Debtor's creditors;
- [8] **CONSIDERING** that in the Monitor's view, the approval of the proposed "reverse structure transaction" is in the best interest of the Debtor's stakeholders as it is the only available transaction which will allow the operations of the Debtor to be preserved and to continue as a going concern for the benefit of its stakeholders;
- [9] **CONSIDERING** that the Monitor, as reported in its "First Monitor's Report (for the Approval of the Proposed Transaction)" dated January 10, 2024, supports the proposed "reverse structure transaction" and submits that the issuance of the requested "Approval and Reverse Vesting Order" is reasonable, appropriate, and justified in the circumstances;
- [10] **CONSIDERING** that the proposed "reverse structure transaction" is not contested by any interested person;
- [11] **CONSIDERING** that it is appropriate to issue an order approving:
  - a) the transaction (the "**Purchase and Sale Transactions**") described in the Amended Investment Agreement (the "**Agreement**") dated as of January 11, 2024 between (i) 15449189 Canada inc., as Investor (the "**Investor**"), and (ii) the Monitor for and on behalf of the Debtor, 13517985 Canada Inc. (the "**Company**"), a copy of which is attached as **Schedule A** to this Order, as the Agreement may be amended from time to time; and

- b) the pre-closing reorganization steps contemplated in the Agreement and listed at paragraph [21] of this Order (the “**Pre-Closing Reorganization**”, and collectively with the Purchase and Sale Transaction, the “**Transactions**”);

**FOR THESE REASONS, the Court:**

- [12] **GRANTS** the Application.
- [13] **ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Agreement.

**NOTIFICATION**

- [14] **ORDERS** that any prior delay for the presentation of this Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
- [15] **PERMITS** service of this Order at any time and place and by any means whatsoever.

**TRANSACTION APPROVAL**

- [16] **AUTHORIZES** and **APPROVES** the Transactions, and the entering into and execution by the Company of the Agreement and the completion of the Pre-Closing Reorganizations, with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.
- [17] **AUTHORIZES** the Monitor, in its capacity as court appointed monitor and not in its personal capacity, to execute any and all agreement, contract, deed, provision, transaction, undertaking, instruments or documents necessary or merely useful for the completion of the Transactions for and on behalf of the Company, ResidualCo. 1 and ResidualCo. 2 (both as defined below).
- [18] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor, for and on behalf of the Company, ResidualCo. 1 and ResidualCo. 2 (both as defined below), to proceed with the Transactions and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.
- [19] **ORDERS** that the Investor may not amend Schedule “B” of the Agreement to remove any asset from the Excluded Assets.

**PRE-CLOSING REORGANIZATION**

- [20] **AUTHORIZES** and **RATIFIES** *nunc pro tunc* the incorporation by the Company:

- a) of a corporation under the *Business Corporations Act* (Québec), with authorized share capital consisting of a class of voting and fully participating common shares ("**ResidualCo. 1**");
- b) of a corporation under the *Business Corporations Act* (Québec), with authorized share capital consisting of a class of voting and fully participating common shares ("**ResidualCo. 2**").

[21] **AUTHORIZES** and **ORDERS** the Investor, the Company or the Monitor as well as ResidualCo. 1 and ResidualCo. 2 to implement and complete the Pre-Closing Reorganization in accordance with the steps described below and in the Agreement (the "**Pre-Closing Reorganization Steps**"):

- a) Prior to the Closing Date, the Investor shall pay the Subscription Price to be held in escrow by the Monitor, on behalf of the Company.
- b) As of 0:01 am Eastern Time on the Closing Date:
  - i) The Company shall be deemed to donate its shares in the capital of ResidualCo. 1 for cancellation and its shares in the capital of ResidualCo. 2 for cancellation and such shares shall be deemed cancelled immediately; and
  - ii) The Monitor shall transfer from the Cash Subscription Price \$6,000,000 to the Company;
- c) As of 0:10 am Eastern Time on the Closing Date:
  - i) The Company shall transfer (i) to ResidualCo. 1, the Excluded Assets and the Excluded Contracts and (ii) to ResidualCo. 2, the Excluded Liabilities;
  - ii) The Company shall issue the Excluded Assets and Contracts Promissory Note to ResidualCo. 1, and the Excluded Liability Promissory Note to ResidualCo. 2; and
  - iii) The Company shall assign the Promissory Note to ResidualCo.2, which shall be bound by the terms of the Promissory Note in the same manner as the Company prior to the assignment.
- d) As of 0:20 am Eastern Time on the Closing Date, the Articles of Reorganization shall be filed to amend the share capital of the Company in order to:
  - i) Amend the rights, privileges, restrictions and conditions attached to the 1,000 Class A shares registered to and held by Trade X Group of Companies Inc. and any other shares and classes of shares outstanding in the capital of the Company ("**Existing Shares**") to

add an automatic redemption feature for no consideration which shall be deemed to be effected at a moment in time prior to the issuance of the Subscribed Shares (as defined below) in accordance with the Pre-Closing Reorganization Steps (the “**Deemed Redemption**”);

- ii) Create a new class of voting and fully participating common shares unlimited in number, designated as “Class ‘A’ common shares”;
  - iii) Immediately following the Deemed Redemption of the Existing Shares, delete all previously authorized and unissued Existing Shares and the rights, privileges, restrictions and conditions attaching thereto, in order that, after giving effect to the foregoing, the class and maximum number of shares that the Company is authorized to issue shall consist of an unlimited number of Class “A” Common Shares;
  - iv) Immediately following the Deemed Redemption of the Existing Shares, cancel any and all agreements, contracts, plans, indentures, deeds, certificates, subscription rights, conversion rights, pre-emptive rights, options (including stock options, or share purchase or equivalent plans), warrants, or other documents or instruments governing, convertible or exchangeable into, and/or having been created or granted in connection with the share capital of the Company prior to the filing of the Articles of Reorganization, but excluding, for greater certainty, the Subscribed Shares issued pursuant to the steps set forth in the Pre-Closing Reorganization Steps; and
  - v) Provide that each of the foregoing amendments shall be deemed to take effect in the order in which they appear above.
- e) As of 0:30 am Eastern Time on the Closing Date, the Company shall issue 100 fully paid and non-assessable Class A Common Shares in the capital of the Company, subscribed for by the Investor (the “**Subscribed Shares**”) in consideration for the Subscription Price, and the Cash Subscription Price shall be released from escrow for the benefit of ResidualCo. 1 and ResidualCo. 2, but shall continue to be held by the Monitor, in escrow, on behalf of ResidualCo. 1 and ResidualCo. 2;
- f) As of 0:40 am Eastern Time on the Closing Date, the Company shall satisfy the amount owing under the Excluded Assets and Contracts Promissory Note and the Excluded Liability Promissory Note by paying the principal amount thereof using the Cash Subscription Price, although such amounts shall continue to be held by the Monitor on behalf of, respectively, ResidualCo. 1 and ResidualCo. 2.

- [22] **ORDERS** and **DECLARES** that the Pre-Closing Reorganization Steps shall be deemed to occur in the manner, order and sequence specified thereunder, with such alterations, changes, amendments, deletions or additions thereto as are permitted under the Agreement, or as may otherwise be agreed to by the Monitor and the Investor.
- [23] **AUTHORIZES** the Monitor, for and on behalf of the Company, ResidualCo. 1 and ResidualCo. 2, as the case may be, to:
- a) execute and deliver any documents and assurances governing or giving effect to the Pre-Closing Reorganization as the Monitor may deem to be reasonably necessary or advisable to conclude the Pre-Closing Reorganization, including the execution of such deeds, contracts or documents, as may be contemplated by the Pre-Closing Reorganization and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and
  - b) take such steps as are deemed necessary or incidental to the implementation of the Pre-Closing Reorganization.
- [24] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Monitor, the Company, ResidualCo. 1 and ResidualCo. 2 to proceed with the Pre-Closing Reorganization and that no director, shareholder, contractual or regulatory approval shall be required in connection with any of the steps contemplated pursuant to the Pre-Closing Reorganization.
- [25] **ORDERS** and **DECLARES** that the Pre-Closing Reorganization steps may be amended, altered or changed as may be agreed to by the Investor and the Monitor, provided that such amendments, alterations or changes do not materially alter or impact the Transactions or the consideration which the Company and/or its applicable stakeholders will benefit from as part of the Transactions.
- [26] **ORDERS AND DECLARES** that the Company or the Monitor, in its capacity as court appointed monitor, as the case may be, are hereby permitted to execute and file articles of amendment, amalgamation, continuance or reorganization or such other documents or instruments as may be required to permit or enable and effect the Transactions and that such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective notwithstanding any requirement under federal, provincial or territorial law to obtain partner, director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required by law to effect the Transactions.
- [27] **ORDERS** the Enterprise Registrar pursuant to the *Business Corporations Act* (Quebec) to accept and receive any articles of incorporation, amendment, amalgamation, continuance or reorganization, the Articles of Reorganization and all documents relating to the incorporation of ResidualCo. 1 and ResidualCo. 2,

or such other documents or instruments as may be required to permit or enable and effect the Transaction, filed by any of the Company, the Investor or the Monitor pursuant to or to give effect to the Transactions, as the case may be.

### **SALE APPROVAL**

[28] **AUTHORIZES** and **ORDERS** the Company, ResidualCo. 1, ResidualCo2 or the Monitor, in its capacity as court appointed monitor, to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Agreement with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor and any other ancillary document which could be required or useful to give full and complete effect thereto and to implement the Transactions and, specifically, but without limiting the generality of the foregoing, upon issuance of the Certificate (as defined below):

- a) **ORDERS** that all of the directors and officers of the Company be deemed to have resigned from their positions without any further approvals, consents or other formalities being required and notwithstanding the provisions of any agreements governing the same, such resignations and releases to be effective at the Closing Time;
- b) **ORDERS** that each director or officer so deemed to have resigned, and each former director or officer of the Company shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) (collectively, "**Director Claims**") arising from their office or directorship of the Company, the said Director Claims being hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the said directors or officers, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the Directors (as this term is defined in the Initial Order) of the Company that is not permitted to be released pursuant to section 5.1(2) of the CCAA;
- c) **ORDERS** that Mark Pavan be appointed as director and President of the Company and that Éric Gosselin be appointed as director and Chief Executive Officer of the Company without any further approvals, consents or other formalities being required and notwithstanding the provisions of any agreements governing the same;

d) **AUTHORIZES** the Monitor to file all required documents to reflect such resignations and appointments with the Québec Enterprise Registrar;

[29] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Company, ResidualCo. 1 and ResidualCo. 2, as the case may be, to proceed with the Transactions, and any other transactions or steps forming part of the Transactions, that no partner, shareholder or regulatory approval, if applicable, shall be required in connection therewith, and the execution, delivery, and performance of the foregoing have been and are within the power of the relevant parties, have been and are duly authorized by all necessary actions, and are hereby ratified for all intents and purposes.

[30] **ORDERS** and **DECLARES** that any defects in any proceedings, appointments, elections, payments or any other corporate acts by the Company shall henceforth be deemed to be rectified and corrected, the whole provided such acts, proceedings, appointments, elections, payments or other corporate acts were permitted by law at the relevant times.

**VESTING OF SUBSCRIBED SHARES AND TRANSFER OF EXCLUDED ASSETS,  
EXCLUDED CONTRACTS AND EXCLUDED LIABILITIES**

[31] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended hereto as **Schedule B** (the "**Certificate**") and the date of the issuance of the Certificate being the "**Effective Date**");

a) All right, title and interest in the Subscribed Shares shall vest absolutely and exclusively in and with the Investor free and clear of any Encumbrances, other than the Permitted Encumbrances, including those identified in **Schedule E** to this Order (the "**Permitted Encumbrances**") and of any and all Excluded Contracts and Excluded Liabilities including, without limiting the generality of the foregoing, all Encumbrances or charges created by order of this Court including the CCAA Charges and all charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable/immovable property or any other personal or real property registry systems and, for greater certainty, **ORDERS** that all of the Encumbrances, other than the Permitted Encumbrances, affecting or relating to the Subscribed Shares be cancelled and discharged as against the Subscribed Shares, in each case effective as of the applicable time and date of the Certificate;

b) all rights, title and interest in and to the Retained Assets shall remain in the Company and be free and clear of and from any Encumbrances, including, without limiting the generality of the foregoing all Encumbrances or charges created by order of this Court including the CCAA Charges and all charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable/immovable property or any other personal or real property registry systems, excluding, however,



the Permitted Encumbrances and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Retained Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Retained Assets, in each case effective as of the applicable time and date of the Certificate;

- c) all of the right, title and interest in and to the Excluded Assets, if any, shall vest absolutely and exclusively in ResidualCo. 1, and all Claims (as defined below) and Encumbrances shall continue to attach to the Excluded Assets in accordance with paragraph [45] of this Order, with the same nature and priority as they had immediately prior to the transfer;
- d) all Excluded Contracts shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo. 1 such that the Excluded Contracts shall exclusively become obligations of ResidualCo. 1 and shall no longer be obligations of the Company, and the Company shall be forever released and discharged from all obligations under such Excluded Contracts;
- e) all Excluded Liabilities (which for greater certainty includes any liability or obligation of the Company, of any kind, character or description, whether known or unknown, absolute or contingent, accrued or not accrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accounted or disclosed on the financial statements of the Company, including, for greater certainty, any Liabilities in respect of Employees whose employment with the Company is terminated on or before the Closing Date, other than Assumed Liabilities) and, for the avoidance of doubt, the Excluded Liabilities include all severance, termination pay, or indemnity in lieu of notice owed to Employees whose employment with the Company is terminated on or before the Closing Date, whether or not such amounts have become due and payable until on or after the Closing Date, shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo. 2, such that the Excluded Liabilities shall exclusively become obligations of ResidualCo. 2 and shall no longer be obligations of the Company, and the Company shall be forever released and discharged from all obligations under such Excluded Liabilities;
- f) no right of withdrawal within the meaning of article 1784 of the *Civil Code of Québec* (the “**CCQ**”) may be exercised as a result of, or further to, the vesting in ResidualCo. 2 of all right, title and interest of the Corporation in the Excluded Liabilities;
- g) any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, warrants, options (including

stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with share capital of the Company, that were existing prior to the Pre-Closing Reorganization, if any, shall be deemed terminated and cancelled;

- h) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise of any demands, claims, actions, counterclaims, suits, judgments, or other remedy or recovery with respect to any indebtedness, liability, obligation or cause of action against the Company in respect of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall be permanently enjoined and barred. Such prohibition shall not, however, preclude the rights of the Canada Revenue Agency (the “**CRA**”) or of the Agence du revenu du Québec (the “**ARQ**”) to effect compensation as provided in section [32] hereof;
- i) the nature and priority of the Excluded Liabilities, including their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to and assumption by ResidualCo. 2;
- j) the Assumed Liabilities including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Agreement or the steps and actions taken in accordance with the terms thereof;
- k) for the avoidance of doubt, the Company, the Investor and their respective Affiliates shall not retain or assume, as applicable, and shall have no liability in respect of any of the Excluded Liabilities or any Claim arising in connection with any of the foregoing;
- l) any Person that, prior to the Closing Date, had a valid right or claim against the Company in respect of the Excluded Liabilities (each a “**Claim**”) shall no longer have such Claim against the Company, but will have an equivalent Claim against ResidualCo. 2 in respect of the Excluded Liabilities from and after the Closing Date in its place and stead, with the same attributes and rights resulting from existing defaults of the Company, and nothing in this Order limits, lessens, modifies (other than by change of debtor) or extinguishes the Excluded Liabilities or the Claim of any Person as against ResidualCo. 2 which shall be the sole and exclusive debtor of the Claim.

[32] **DECLARES** that the present Order does not prevent the CRA and the ARQ (collectively the “**Tax Agencies**”) to set off or compensate, if applicable:

- a) on one hand, any claim of any of the Tax Agencies against the Company, and, on the other hand, any claim of the Company against such

Tax Agency, provided that the aforementioned claims shall both be pertaining to periods prior to the filing date (December 20, 2023); and

b) on one hand, any claim of any of the Tax Agencies against the Company, and, on the other hand, any claim of the Company against such Tax Agency, provided that the aforementioned claims shall both be pertaining to periods between the filing date (December 20, 2023), and the Closing Time.

[33] **ORDERS** and **DECLARES** that subject to the provisions of section [31]h) hereof, the reverse vesting structure of the Transaction, as approved by this Order, shall not affect the rights (if any) of CRA, ARQ or of the Company pursuant to section 21 of the CCAA, as relates to any and all claims existing or arising from events which occurred prior to the issuance of the Certificate or occurred pursuant to the terms of this Order and/or in connection with the Transactions;

[34] **ORDERS** and **DIRECTS** the Monitor, upon receipt of the Conditions Certificates and of the entire Subscription Price, to issue the Certificate and file it with the Court as soon as practicable upon the occurrence of the closing of the Transactions.

### **RETAINED CONTRACTS**

[35] **ORDERS** that all Retained Contracts to which the Company is a party shall remain in full force and effect, and that the Company shall remain entitled to all of its rights, benefits and entitlements under such Retained Contracts, and following the Effective Date, no Person who is a counterparty to any such Retained Contract (a "**Retained Contract Counterparty**") may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right, entitlement or remedy (including any right of set-off) or make any demand under or in respect of such Retained Contract and no automatic termination will have any validity or effect, by reason of:

- a) any circumstance that existed or event that occurred on or prior to the Effective Date that would have entitled such Retained Contract Counterparty to enforce those rights or remedies or caused an automatic termination to occur, including any monetary defaults or defaults or events of default arising as a result of the insolvency of the Company or the cessation of the Company or of its Affiliates' normal course business operations;
- b) the insolvency of the Company or the fact that it sought or obtained relief under the CCAA;
- c) any releases, discharges, cancellations, transactions or other steps taken or effected pursuant to the Agreement, the Transactions (including the Pre-Closing Reorganization), the provisions of this Order or any other Order of the Court in these proceedings; or

d) any change of control of the Company or its Affiliates arising from the implementation of the Transaction, or any anti-assignment or similar provision restricting assignment or requiring the consent of any Person to an assignment or a change of control (an “**Anti-Assignment Provision**”) in a Retained Contract and, for greater certainty, the Transactions and their implementation shall be deemed not to constitute a change in ownership or change in control under any Retained Contract.

[36] **ORDERS** that all Cure Costs payable in accordance with the Agreement shall be paid by the Company to the relevant Retained Contract Counterparty on or before the Closing Date, or such later date as may be agreed to by the Investor, the Monitor and the Retained Contract Counterparty;

[37] **ORDERS** that on the Effective Date, all Retained Contract Counterparties shall be deemed to have waived any and all defaults then existing or previously committed by the Company or caused by the Company, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any Retained Contract arising from the commencement or existence of these CCAA proceedings (including any deferral or interruption of payments and any incurrence of or creation of charges arising from or relating to any such proceedings), the insolvency of the Company or its Affiliates or the entering into the Agreement or any other agreement or document in connection with the Transaction, and the completion of the Transaction, including as a result of any of matters or events listed in paragraph [35] hereof, and any and all notices of default or termination and demands for payment under or in connection with any Retained Contracts shall be deemed to have been rescinded and of no further force nor effect.

[38] **ORDERS** that (a) nothing herein shall waive, compromise or discharge any obligation of the Company in respect of any Assumed Liabilities, (b) the designation of any Assumed Liability as such is without prejudice to the Investor’s and the Company’s right to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the Agreement shall affect or waive the Company’s and the Investor’s rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Assumed Liabilities.

### **NET PROCEEDS**

[39] **ORDERS** that the Cash Subscription Price shall be remitted to the Monitor and shall be distributed in accordance with this Order.

[40] **AUTHORIZES** the Monitor, on or following the Effective Date, to make distributions from the Cash Subscription Price (the “**Distributions**”) to:

- a) Pay the professional fees and disbursements outstanding as at Closing of all those professionals that benefit from the Administration Charge forming part of the CCAA Charges; and
  - b) The creditor(s) of the Company identified in **Schedule C** to this Order (the “**Distribution Recipients**”) in the amounts identified therein, subject to such minor adjustments to the amounts that may be deemed necessary by the Monitor.
- [41] **ORDERS AND DECLARES** that the payment of the Distributions in accordance with this Order is hereby authorized and approved and that this Order shall constitute the only authorization or approval required by the Monitor to proceed with the distribution of the Cash Subscription Price in accordance with this Order or otherwise.
- [42] **ORDERS** that the portion of the Cash Subscription Price which will not have been distributed to the Distribution Recipients, in accordance with this Order, shall be held by the Monitor, together with the Promissory Note, until further Order of this Court.
- [43] **PRAYS ACT** that, subject to approval of this Court, a claims process will be established by the Monitor in order to determine the nature, validity and, if applicable, the quantum, of any Claim which may have existed against the Company prior to the issuance of this Order (and which is now a claim against ResidualCo. 2) or any Claim pertaining to the remaining portion of the Cash Subscription Price, following which a distribution of the balance of the Cash Subscription Price, as the same may be adjusted following the determination of the Final Working Capital, may be made upon approval of this Court.
- [44] **ORDERS**, with respect to the determination of the Final Working Capital, that:
- a) the Monitor upon receipt of the Closing Statement, shall disclose same subject to a confidentiality undertaking to any holder of a claim against the Debtor or the Trade X Group of Companies Inc. and having expressed an interest in the determination of the Final Working Capital (an “**Interested Party**”); and
  - b) any Interested Party may appeal before the Court the decision of the Monitor to accept the calculation of Actual Working Capital within 15 days of being notified of such decision, and, to the extent that the finalization of the Final Working Capital is submitted to the Court for adjudication, any Interested Party may participate to such adjudication.
- [45] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances affecting the assets of the Company that are to be discharged or vested out pursuant to this Order, the Cash Subscription Price and the Promissory Note shall stand in the place and stead of the Company’s assets and, upon payment of the Subscription Price by the Investor, all such Encumbrances,

other than the Permitted Encumbrances, shall attach to the portion of the Cash Subscription Price and the Promissory Note with the same priority as they had with respect to the Company's assets immediately prior to the Transactions, as if the Transactions had not taken place and the Company remained in the possession or control of the person having that possession or control immediately prior to the sale.

- [46] **ORDERS** that, for the purposes of distributing the remaining portion of the Cash Subscription Price and determining the nature, validity and, if applicable, the quantum, of any Claim pertaining to the remaining portion of the Cash Subscription Price, the shares in the Company, including the Existing Shares, as they existed prior to the Pre-Closing Reorganization Steps, shall be considered issued and outstanding, as if the Transactions had not taken place and Trade X Group of Companies Inc. remained the holder of such shares.

### **CANCELLATION OF SECURITY REGISTRATIONS**

- [47] **ORDERS** the Quebec Personal and Movable Real Rights Registrar ("**RPMRR**"), upon presentation of the required form with a true copy of this Order and the Certificate to cancel and strike the registrations listed in Schedule D.
- [48] **ORDERS** that upon the issuance of the Certificate, the Investor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances, except Permitted Encumbrances, registered against the Subscribed Shares and the Retained Assets, including filing such financing change statements in the Ontario Personal Property Registry ("**OPPR**") as may be necessary, from any registration filed against the Company in the **OPPR**, including without limitation, the registrations listed in Schedule D.
- [49] **ORDERS** that, following the delivery of the Certificate to the Investor, the Investor and its counsel shall be authorized to take all steps as may be necessary to effect the discharge of any Encumbrances as against the Company's assets in any applicable jurisdiction, except for any Permitted Encumbrances.

### **CERTAIN ADDITIONAL TRANSACTION MATTERS**

- [50] **ORDERS** and **DECLARES** that any distributions, transfers, sales, assignments, disbursements or payments made under this Order, including, for greater certainty, pursuant to the Transactions, shall not constitute a "distribution" by any Person for the purposes of section 14 of the *Tax Administration Act* (Québec), section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), or any similar federal, provincial, territorial or municipal tax legislation (collectively the "**Tax Statutes**") and the Investor, the Monitor and the Company (including, for the avoidance of doubt, ResidualCo 1 and ResidualCo 2), in making any such distributions, transfers, assignments, disbursements or payments, as applicable,

is merely a disbursing agent under this Order, including, for greater certainty, pursuant to the Transactions, and is not exercising any discretion in making such distributions, transfers, assignments, sales, disbursements or payments and no Person is “distributing” any assets or funds under any provincial or federal statute or regulation, and the Investor, the Monitor and the Company and any other Person shall not incur any liability under the Tax Statutes in respect of distributions, transfers, assignments, sales, disbursements or payments made by it and the Investor, the Monitor, the Company and any other Person is hereby forever released, remised and discharged from any Claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, transfers, assignments, sales, disbursements or payments made by it in accordance with this Order, including, for greater certainty, pursuant to the Transactions, and any Claims of this nature are hereby forever barred.

- [51] **ORDERS AND DECLARES** that on the Effective Date, any agreement, contract, plan, option, indenture, deed, subscription right, conversion rights, pre-emptive rights, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person and are convertible or exchangeable for any securities of the Company, or which require the issuance, sale or transfer by the Company or by the Trade X Groupe of Companies Inc. of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, or any other document or instrument governing and/or having been created, granted in connection with the equity interests of the Company shall be deemed terminated and cancelled.
- [52] **DECLARES** that on the Effective Date, the Transactions shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [53] **ORDERS AND DIRECTS** the Monitor to serve on the Service List in the within CCAA proceedings, post on the Monitor’s website and file with the Court a copy of the Certificate, as soon as possible after the issuance thereof.
- [54] **ORDERS** that the Monitor may rely on written notice from the Investor regarding the fulfillment of conditions to closing under the Agreement and shall have no liability with respect to delivery of the Certificate.

#### **ADMINISTRATIVE CASE MATTERS**

- [55] **ORDERS** that on the Effective Date:
- a) ResidualCo. 1 and Residual Co 2 shall each be a debtor company to which the CCAA Applies;

- b) ResidualCo. 1 and Residual Co 2 shall each be added as a Debtor in these CCAA Proceedings and any reference in any Order of this Court in respect of these CCAA proceedings to a “Debtor” or “Debtors” shall, unless otherwise expressly stated, be deemed to include reference to ResidualCo. 1 and ResidualCo. 2, *mutatis mutandis*, and, for greater certainty, each of the CCAA Charges (as such term is defined in the Initial Order) shall constitute a charge on the property of ResidualCo. 1 and ResidualCo. 2; and
- c) The Company shall cease to be a Debtor in these CCAA proceedings, shall be deemed to be released from the purview of any Order of this Court granted in the within CCAA Proceedings (save and except for the present Order, the terms of which as it relates to the Company shall continue to apply in all respects), and the Monitor shall be discharged as Monitor of the Company.

### **PROTECTION OF PERSONAL INFORMATION**

[56] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable legislation, the Company and the Monitor are authorized and permitted to disclose and transfer to the Investor all human resources and payroll information in the Company and the Company’s records pertaining to their past and current employees. The Investor shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Company.

### **VALIDITY OF THE TRANSACTION**

[57] **ORDERS** that, notwithstanding:

- i) the pendency of these proceedings;
- ii) any application or petition for a bankruptcy order, receiving order or a receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) or any other applicable legislation and any order issued pursuant to any such application or petition;
- iii) any assignment in bankruptcy made in respect of any of the Company or ResidualCo. 1 or ResidualCo. 2; or
- iv) the provisions of any applicable legislation;

the Agreement and the implementation of the Transactions, the transfer and vesting of the Excluded Liabilities and Excluded Assets and Excluded Contracts in ResidualCo. 1 or Residual Co 2 contemplated by this Order (i) shall be binding



on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Company or ResidualCo. 1 or ResidualCo. 2 or their property, (ii) shall not constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable legislation, and (iii) shall not constitute nor be deemed to be oppressive or unfairly prejudicial conduct pursuant to any applicable legislation.

- [58] **ORDERS** that the Agreement and the obligations of the Company thereunder may not be disclaimed, resiliated, repudiated, rejected or otherwise affected or impacted in these CCAA proceedings.

### **RELEASES**

- [59] **ORDERS** that on the Effective Date (i) the present and former partners, shareholders, directors, officers, employees, legal counsel and advisors of the Company (including, for the avoidance of doubt, ResidualCo. 1 and ResidualCo. 2), (ii) the Monitor, (iii) the Investor, (iv) the respective affiliates, shareholders, members, equity holders, trustees, directors, officers, managers, employees, partners, legal counsel, advisors and other representatives of the persons specified in (i), (ii) and (iii) (the persons specified in (i), (ii), (iii) and (iv) being, collectively, the “**Released Parties**”) shall be forever irrevocably and unconditionally released and discharged from any and all present and future claims, losses, damages, judgments, executions, recoupments, debts, sums of money, expenses, costs, accounts, liens, taxes, penalties, interests, recoveries, and other obligations, liabilities and encumbrances of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, or due or not yet due, in law or equity and whether based in statute, contract or otherwise) based in whole or in part on any act, omission, transaction, dealing or other occurrence, matter, circumstance or fact existing or taking place on or prior to the Effective Date or completed pursuant to the terms of this Order and/or in connection with the Pre-Closing Reorganization or the Transactions, in respect of or relating to, in whole or in part, directly or indirectly, any of the Company, ResidualCo. 1 and ResidualCo. 2 or their assets, liabilities, business or affairs wherever or however conducted or governed, the administration and/or management of the Company, these CCAA proceedings, or the Transactions (collectively, the “**Released Claims**”), which Released Claims are hereby fully, finally, irrevocably, unconditionally and forever waived, discharged, released, cancelled and barred as against the Released Parties, and the commencement, prosecution, continuation or assertion, whether directly, indirectly, derivatively or otherwise, by any Person of any Released Claims against the Released Parties, whether before a court, administrative tribunal, arbitrator, other dispute resolver or otherwise, shall be permanently restrained and enjoined; provided, however, that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against the present and former directors of the Debtors that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

## **THE MONITOR**

- [60] **ORDERS** and **DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Debtors, *de facto* or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Debtors. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Company, ResidualCo. 1 or ResidualCo. 2 and any distribution made to the creditors of the Company, ResidualCo. 1 or ResidualCo. 2 will be deemed to have been made by the Company, ResidualCo. 1 or ResidualCo. 2.
- [61] **DECLARES** that without limiting any other protection afforded to the Monitor under the CCAA, this Order or any other order of the Court, the Monitor shall incur no liability whatsoever as a result of acting in accordance with this Order, other than liability arising directly from the gross negligence or willful misconduct of the Monitor, and that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph. For greater certainty, the Monitor (and its representative Mr. David Malin) shall incur no liability as a result of the incorporation of ResidualCo. 1 or ResidualCo. 2 by the Monitor (and its representative Mr. David Malin) as provided for in the Transactions and this Order, including with respect to any action effecting such incorporation.
- [62] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Company, ResidualCo. 1 or ResidualCo. 2. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Company, ResidualCo. 1 or ResidualCo. 2, within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

## **GENERAL**

- [63] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [64] **DECLARES** that the Monitor 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 this Order, including an order authorizing the dissolution, winding-up, consolidation, or conversion of one or more of the Debtors, and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to

provide such assistance to the Debtors, the Monitor and the Investor as may be deemed necessary or appropriate to give effect to this Order.

- [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 (including Transport Canada) and any federal or state court, administrative body or similar entity or organization 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 this Order. All courts tribunals, regulatory and administrative bodies (including Transport Canada) are hereby respectfully requested to provide such assistance to the Monitor and the Investor as may be necessary or desirable to give effect to this Order or to assist the Monitor or the Investor in carrying out the terms of this Order;
- [66] **ORDERS** that the Agreement, Exhibit P-2 in support of the Application and Schedule A of this Order, remain confidential and under seal until the filing of the Certificate in the Court Record;
- [67] **ORDERS** that Appendices B, C and D to the Monitor's Report on the affairs and finances of the debtor dated January 10, 2024 (R-3) are confidential and shall be filed under seal until the filing of the Certificate in the Court Record;
- [68] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

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**The honourable Louis J. Guoin, S.C.J.**

Date(s) of hearing: January 12, 2024

Me Luc Béliveau  
Me Alexander Bayus  
Me Éliane Dupéré-Tremblay  
**Fasken Martineau DuMoulin, LLP**  
Lawyers of the Monitor

**Schedule A  
Agreement**

See attached.

**Schedule B  
Form of Monitor's Certificate**

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-063165-233

DATE : [●], 2024

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

**13517985 CANADA INC.**

Debtor

-and-

**HIGHCREST LENDING CORPORATION**

Applicant / Secured Creditor

**KPMG INC.**

Monitor

-and-

**PERSONAL AND MOVABLE REAL RIGHTS REGISTRAR**

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**MONITOR'S CERTIFICATE**

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**RECITALS:**

- A. Pursuant to an Order of the Superior Court of Québec (Commercial Division) (the “**Court**”) dated December 20, 2023, the Debtor commenced proceedings pursuant to the *Companies’ Creditors Arrangement Act* (Canada) and KPMG Inc. was appointed as monitor of the Debtor (the “**Monitor**”) in those proceedings.
- B. Pursuant to an Order of the Court dated January [●], 2024, the Court approved the Investment Agreement dated January 8, 2024 (the “**Agreement**”) among (i) 15449189 Canada inc., as Investor (the “**Investor**”), and (ii) the Monitor for and on behalf of the Debtor, 13517985 Canada Inc., with respect to, *inter alia* the cancellation of the shares held by Trade X Group of Companies Inc. in the capital of 13517985 Canada inc. d.b.a. “Wholesale Express” (the “**Company**”) and the issuance of new shares in the capital of the Company to the Investor.
- C. Unless otherwise indicated herein, capitalized terms used herein have the meanings given in the Agreement.

**THE MONITOR CERTIFIES** the following:

- 1. The Agreement was signed;
- 2. The Subscription Price, as this term is defined in the Agreement, payable at closing pursuant to the Agreement was received by the Monitor, and the Investor has advised the Monitor that all applicable taxes, as the case may be, have been paid; and
- 3. The Investor has confirmed to the Monitor that the conditions to Closing set forth in the Agreement have been satisfied or waived by the Parties and that the Closing has occurred.
- 4. This Certificate was issued by the Monitor at \_\_\_\_ **[time]** on \_\_\_\_\_ **[date]**.

KPMG Inc., in its capacity as Monitor of 13517985 Canada inc. d.b.a. “Wholesale Express” and not in its personal capacity.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



**Schedule C**  
**Creditors of the Company receiving Distribution and Amounts**

- a) Highcrest Lending Corporation, in repayment of the Highcrest Facility, estimated at \$14.65 million, subject to adjustment as of the payment date, including for interest and fees.



**Schedule D**  
**RPMRR registrations to cancel**

- Conventional hypothec without delivery registered on December 22, 2022, under number 22-1417720-0001, in favour of Highcrest Lending Corp.

**OPPR registrations to cancel**

- Financing Statement registered under number 20221208 1511 9234 5896, in favour of Highcrest Lending Corp.

**Schedule E**  
**Permitted Encumbrances**

Encumbrances in respect of (i) any and all financing provided by Canadian Imperial Bank of Commerce to the Investor or the Company in connection with the Transactions, including, as of the date of this Order, the hypothec without delivery registered with the RPMRR under number 23-1516915-0001 and the financing statement registered with the OPPR under number 20231222 1343 1590 4278, (ii) any and all financing provided by Highcrest Lending Corporation to the Investor or the Company in connection with the Transactions, (iii) easements, rights of way, servitudes and other similar rights in land (including without limitation rights of way and servitudes for highways and other roads, railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light, power, telephone, telegraph and cable television conduits, poles, wires and cables) which do not materially impair the use of the assets affected thereby, (iv) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit or by any statutory provision, to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof, (v) rights of general application reserved to or vested in any Governmental Authority to levy taxes on any leased premises or the income therefrom.