

Superior Court  
(Commercial Division)

Canada  
Province of Québec  
District of Montréal  
No: 500-11-058763-208

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**In the matter of the *Companies' Creditors Arrangement Act* of:**

**Groupe Dynamite Inc.  
GRG USA Holdings Inc.  
GRG USA LLC**

Debtors

-and-

**Deloitte Restructuring Inc.**

Monitor

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**AMENDED APPLICATION TO AMEND THE INITIAL ORDER WITH RESPECT  
TO THE PAYMENT OF POST-FILING RENT IN MANITOBA AND ONTARIO**  
(*Companies' Creditors Arrangement Act* (the "CCAA"), ss 11, 11.01)

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**To the Honourable Peter Kalichman, Judge of the Superior Court, sitting in the Commercial Division for the District of Montréal, the Debtors respectfully submit:**

1. Groupe Dynamite cannot and does not use leased premises where it operated eight stores in the Province of Manitoba and 20 stores in the Province of Ontario as a result of public health COVID-19 orders effective from November 12 to December 11, 2020 and November 23 to December 21, 2020, respectively. The Debtors ask the Court to amend the Initial Order to declare that it does not use such leased premises, such that no post-filing rent is due or payable.
- I. Context**
2. With its fashion brands Garage and Dynamite, Montréal-based Groupe Dynamite designs, markets and distributes apparel and accessories to 16 to 40 year old women through its network of over 300 retail stores and e-commerce platform in Canada and the United States.
3. The stores play a central role in Groupe Dynamite's omnichannel business model by not only generating in-store sales, but also building brand awareness, displaying products to customers, reinforcing customer loyalty, and processing returns from online sales.

4. On September 8, 2020, the Debtors filed an Application for an Initial Order and an Amended and Restated Initial Order (the “**Initial Application**”) in order to pursue a restructuring under the CCAA which has two purposes. First, to redefine a new COVID-friendly operating model with its landlords by disclaiming a minority of its leases which are deeply unprofitable stores, and renegotiating the leases of unprofitable stores or, failing reaching an acceptable agreement, also disclaiming such leases. Second, to propose a compromise to its creditors regarding the liabilities incurred since the initial phase of the pandemic.
5. On September 8, 2020, this Court granted the Initial Application and rendered an Initial Order, **Exhibit P-1**, commencing proceedings in respect of the Debtors under the CCAA (the “**CCAA Proceedings**”).
6. On September 18, 2020, the Court rendered an Amended and Restated Initial Order (the “**Restated Initial Order**”), which, among other things extended the stay of proceedings until October 19, 2020 (the “**Stay Period**”), as appears from a copy of the Restated Initial Order, **Exhibit P-2**. The Stay Period has been extended by a further order of this Court dated October 15, 2020.

## **II. The payment of Post-Filing Rent**

7. On September 17, 2020, at the time of the come-back hearing, four stores operated by Groupe Dynamite in leased premises in California were closed due to county shutdown orders since June 13, 2020.
8. On September 18, 2020, the Court held that the Debtors were not currently using these particular leased premises, as appears from paragraph 14 of the reasons for judgment, **Exhibit P-3**. The Court therefore declared on the basis of section 11.01(a) of the CCAA that, where GRG USA LLC cannot operate a store in leased premises as a result of a federal, state or county decree, regulation or order (a “**Lockdown Order**”), GRG USA LLC did not use such leased premises from the time such Lockdown Order entered into force until the time such Lockdown Order is no longer in force (the “**Lockdown Period**”) such that no post-filing rent was due or payable by GRG USA LLC with respect to four leased premises for the Lockdown Period, as appears from paragraph 55 of the Restated Initial Order, Exhibit P-2.

### **A. Province of Manitoba**

9. An identical situation is currently happening in Manitoba, where the Debtors lease premises for five stores in the following locations:
  - (a) Garage store in Kildonan Place, Winnipeg;
  - (b) Garage store and Dynamite store in Outlet Collection, Winnipeg;
  - (c) Garage store and Dynamite store in Polo Park, Winnipeg;

(collectively, the “**Manitoba Premises**” and the “**Manitoba Stores**”) as appears from copies of the leases, **Exhibit P-4** to **Exhibit P-6**.

10. On November 10, 2020, the Manitoba government announced the issuance of a Lockdown Order according to which the entire province would be moving to the critical level on the pandemic response system due to the rising of COVID-19 cases and deaths in the province.
11. On November 11, 2020, Manitoba Chief Provincial Public Health Officer Dr. Brent Roussin issued Orders under *The Public Health Act*, CCSM c P210, **Exhibit P-10** (the “**Manitoba Orders**”), effective from November 12, 2020, at 12:01 a.m. to December 11, 2020.
12. As appears from Manitoba Order 4, the operator of a business or facility that is not listed in the Schedule to the Manitoba Orders and whose ability to open is not otherwise addressed in the Manitoba Orders must ensure that the business or facility is closed, and must ensure that no members of the public enter the business or facility. Fashion retail is not listed in the Schedule to the Manitoba Orders, nor is otherwise addressed in the Manitoba Orders.
13. On November 11, 2020, Groupe Dynamite has closed the Manitoba Stores to the members of the public and will continue to do so while the Manitoba Orders are in effect.
14. As a result of the Manitoba Orders, Groupe Dynamite cannot use the Manitoba Premises, such that it is under no obligation to pay rent while the Manitoba Orders are in effect.
15. It should be noted that Groupe Dynamite also operates three stores at Shoppers Mall, Brandon and St. Vital Centre to which the Manitoba Orders apply. Given that the rent for the leased premises of those stores is solely based on sales, no rent is payable under the respective leases when Groupe Dynamite cannot use such premises. No relief is therefore sought by this Amended Application in respect of those leased premises.

#### **B. Province of Ontario**

16. An identical situation is also currently happening in some regions in Ontario, where the Debtors lease premises for 14 stores in the following locations:
  - (a) Dynamite store in Fairview Mall, Toronto;
  - (b) Dynamite store in Sherway Gardens, Toronto;
  - (c) Garage store and Dynamite store in Toronto Eaton Centre, Toronto;
  - (d) Garage store in Bramalea City Centre, Brampton;
  - (e) Garage store and Dynamite store Heartland Town Centre, Mississauga;
  - (f) Garage store and Dynamite store in Scarborough Town Centre, Toronto;
  - (g) Garage store and Dynamite store in Square One Centre, Mississauga;
  - (h) Garage store and Dynamite store in Yorkdale Centre, Toronto; and
  - (i) Garage store in Dufferin Mall, Toronto;

(collectively, the “**Ontario Premises**” and the “**Ontario Stores**”) as appears from copies of the leases, **Exhibit P-11** to **Exhibit P-24**.

17. On November 20, 2020, the Ontario government announced that the Toronto and Peel public health regions be moving into the “Grey-Lockdown” level in the *Keeping Ontario Safe and Open Framework* to limit community transmission of COVID-19 to keep schools open, safeguard health system capacity, and protect the province’s most vulnerable populations.
18. On November 22, 2020, the Ontario government, in consultation with the Chief Medical Officer of Health, issued Orders under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 **Exhibit P-25** (the “**Ontario Orders**”), effective from November 23, 2020, at 12:01 a.m. to December 21, 2020.
19. As appears from Schedule 1 of the Ontario Orders, each person responsible for a business, or a part of a business, that is not listed in Schedule 2 or 3 of the Ontario Orders shall ensure that the business, or part of the business, is closed, and must ensure that no members of the public enter the business or facility. Fashion retail is not listed in Schedule 2 or 3 to the Ontario Orders.
20. On November 23, 2020, Groupe Dynamite has closed the Ontario Stores to the members of the public and will continue to do so while the Ontario Orders are in effect.
21. As a result of the Ontario Orders, Groupe Dynamite cannot use the Ontario Premises, such that it is under no obligation to pay rent while the Ontario Orders are in effect.
22. It should be noted that Groupe Dynamite also operates six stores at Dixie Outlet Mall, Mississauga, Erin Mills Town Centre, Mississauga, Bramalea City Centre, Brampton (Dynamite store) and Dufferin Mall, Toronto (Dynamite store) to which the Ontario Orders apply. Given that the rent for the leased premises of those stores is solely based on sales, no rent is payable under the respective leases when Groupe Dynamite cannot use such premises. No relief is therefore sought by this Amended Application in respect of those leased premises.

### **C. Relief Sought**

23. The Debtors therefore ask the Court to amend the Restated Initial Order to declare that, where Groupe Dynamite cannot operate the Manitoba Stores in the Manitoba Premises and the Ontario Stores in the Ontario Premises as a result of Lockdown Orders, it does not use such leased premises for the Lockdown Periods, such that no post-filing rent is due or payable by Groupe Dynamite with respect to the leased premises for the Lockdown Periods.
24. Groupe Dynamite submits that the proposed amendment is appropriate in the circumstances in order to limit its expenses to those required for the continuation of its operations as to ensure a successful restructuring, with the objectives of providing for timely, efficient and impartial resolution of its insolvency through its restructuring, preserving its going-concern value and avoiding the social and economic losses that would result from liquidation.

25. Groupe Dynamite has been acting in good faith and with due diligence in presenting the present Amended Application and requesting the relief thereunder.
26. The Monitor supports the relief sought.
27. Given the need to advance the restructuring process as quickly as possible, it is respectfully requested that this Court order the provisional execution of the orders sought pursuant to the Amended Application, notwithstanding any appeal.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Application;

**AMEND** paragraph 55 of the Initial Order as follows:

DECLARES that, where the Debtors cannot operate a store in leased premises as a result of a federal, provincial, state, county or city decree, regulation or order (a "**Lockdown Order**"), the Debtors do not use such leased premises from the time such Lockdown Order enters into force until the time such Lockdown Order is no longer in force (the "**Lockdown Period**") such that no Post-Filing Rent shall be due or payable by the Debtors with respect to those leased premises for the Lockdown Period. This paragraph only applies in respect of Post-Filing Rent payable for leased premises located in the following locations:

- (a) Kildonan Place, Winnipeg, Manitoba, Canada;
- (b) Outlet Collection, Winnipeg, Manitoba, Canada;
- (c) Polo Park, Winnipeg, Manitoba, Canada;
- (d) Fairview Mall, Toronto, Ontario, Canada;
- (e) Sherway Gardens, Toronto, Ontario, Canada;
- (f) Toronto Eaton Centre, Toronto, Ontario, Canada;
- (g) Garage store at Bramalea City Centre, Brampton, Ontario, Canada;
- (h) Heartland Town Centre, Mississauga, Ontario, Canada;
- (i) Scarborough Town Centre, Toronto, Ontario, Canada;
- (j) Square One Centre, Mississauga, Ontario, Canada;
- (k) Yorkdale Centre, Toronto, Ontario, Canada; and
- (l) Garage store at Dufferin Mall, Toronto, Ontario, Canada;

**RESTATE** the Initial Order;

**THE WHOLE** without legal costs, save in case of contestation

Montreal, November 24, 2020

McCarthy Tétrault LLP

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**McCarthy Tétrault LLP**

Lawyers for the Debtors

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**Affidavit**

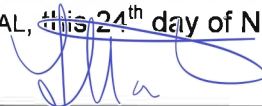
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I, the undersigned, Guy Vallières, Vice-President, Finance and Administration, domiciled for the purpose hereof at 5592 Ferrier Street, Mount-Royal, Québec, Canada, solemnly affirm that all the facts alleged in the present *Amended Application to amend the Initial Order with respect to the payment of Post-Filing Rent in Manitoba and Ontario* are true.

AND I HAVE SIGNED,

  
\_\_\_\_\_  
Guy Vallières

SOLEMNLY AFFIRMED TO BEFORE ME AT  
MONTREAL, ~~this~~ <sup>the</sup> 24<sup>th</sup> day of November, 2020

  
\_\_\_\_\_  
COMMISSIONER OF OATHS  
FOR THE PROVINCE OF QUÉBEC

# 202986

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**Notice of Presentation**

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**TO:**

**Service List**

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**TAKE NOTICE** that the present *Amended Application to amend the Initial Order with respect to the payment of Post-Filing Rent in Manitoba and Ontario* will be presented for adjudication before the Superior Court of Québec, sitting in the Commercial Division for the district of Montréal, on **December 10, 2020**, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montréal, in a room to be determined or by videoconference.

Montreal, November 24, 2020

McCarthy Tétrault LLP

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**McCarthy Tétrault LLP**

Lawyers for the Debtors

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**Amended List of Exhibits**

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|                     |   |
|---------------------|---|
| <b>Exhibit P-1:</b> | Initial Order dated September 8, 2020;  |
| <b>Exhibit P-2:</b> | Amended and Restated Initial Order, dated September 18, 2020;                       |
| <b>Exhibit P-3:</b> | Reasons for judgment, Amended and Restated Initial Order, dated September 18, 2020; |
| <b>Exhibit P-4:</b> | Lease for Kildonan Place (Garage), Winnipeg, MA;                                    |
| <b>Exhibit P-5:</b> | Lease for Outlet Collection (Garage), Winnipeg, MA;                                 |
| <b>Exhibit P-6:</b> | Lease for Polo Park (Dynamite and Garage), Winnipeg, MA;                            |
| <b>Exhibit P-10</b> | Orders under <i>The Public Health Act</i> , CCSM c P210;                            |
| <b>Exhibit P-11</b> | Lease for in Fairview Mall (Dynamite), Toronto, ON;                                 |
| <b>Exhibit P-12</b> | Lease for in Sherway Gardens (Dynamite), Toronto, ON;                               |
| <b>Exhibit P-13</b> | Lease for Toronto Eaton Centre (Garage), Toronto, ON;                               |
| <b>Exhibit P-14</b> | Lease for Toronto Eaton Centre (Dynamite), Toronto, ON;                             |
| <b>Exhibit P-15</b> | Lease for Bramalea City Centre (Garage), Brampton, ON;                              |
| <b>Exhibit P-16</b> | Lease for Garage store in Heartland Town Centre, Mississauga;                       |

- Exhibit P-17** Lease for Dynamite store in Heartland Town Centre, Mississauga;
- Exhibit P-18** Lease for Scarborough Town Centre (Garage), Toronto, ON, *en liasse*;
- Exhibit P-18** Lease for Scarborough Town Centre (Dynamite), Toronto, ON, *en liasse*;
- Exhibit P-20** Lease for Square One Centre (Garage), Mississauga, ON, *en liasse*;
- Exhibit P-21** Lease for Square One Centre (Dynamite), Mississauga, ON, *en liasse*;
- Exhibit P-22** Lease for Yorkdale Centre (Garage), Toronto, ON, *en liasse*;
- Exhibit P-23** Lease for Yorkdale Centre (Dynamite), Toronto, ON, *en liasse*;
- Exhibit P-24** Lease for Dufferin Mall (Garage), Toronto, ON;
- Exhibit P-25** Orders under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 dated November 22, 2020.

Montreal, November 24, 2020

McCarthy Tétrault LLP

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**McCarthy Tétrault LLP**  
Lawyers for the Debtors

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