

C A N A D A

PROVINCE OF QUEBEC

District of Montreal

S U P E R I O R C O U R T

(Commercial Division)

No: 500-11-055238-188

**IN THE MATTER OF THE RECEIVERSHIP  
OF:**

**SPG INTERNATIONAL LTEE**, a duly constituted corporation having its principal place of business at 300-215 rue Saint-Jacques, Montréal (Québec) H2Y1M6

Debtor

- and -

**BANK OF MONTREAL**, a chartered bank, duly constituted under the Bank Act (Canada), having a place of business at 105 St-Jacques, 5<sup>th</sup> Floor Montréal (Québec), H2Y 1L6

Petitioner

- and -

**DELOITTE RESTRUCTURING INC.** (Benoît Clouatre, CPA, CA, CIRP, LIT, designated person), a duly constituted corporation having a place of business at 1190 Canadiens-de-Montréal avenue, Montréal (Québec), H3B 0M7

Proposed Receiver

-and-

**INVESTISSEMENT QUEBEC**, a duly constituted corporation having a place of business at 600, de La Gauchetière West street, suite 1500, Montréal, (Québec), H2Y 1N9

-and-

**LAURENTIAN BANK OF CANADA**, a chartered bank, duly constituted under the Bank Act (Canada), having a place of business at 1360, René-Lévesque Blvd. West, Suite 620, Montreal, Quebec H3G 0E8

Mis en cause

-and-

**NATHALIE BRAULT SYNDIC INC.**, in its capacity as trustee under the notice of intention of SPG International Ltée, having a place of business at 400 Boulevard Saint-Martin West, suite 305, Laval, QC H7M 3Y8

Trustee to the Notice of Intention/  
Mis en cause

**BUREAU DE LA PUBLICITÉ DES DROITS DE DRUMMOND**, having its place of business at 270, rue Lindsay, RC 16 Drummondville, Quebec, J2B 1G3

Mis en cause

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**MOTION FOR THE APPOINTMENT OF A RECEIVER**  
(Art. 243 of the *Bankruptcy and Insolvency Act (Canada)* (the “BIA”), R. 6(4) of the *Bankruptcy and Insolvency General Rules*)

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, PETITIONER SETS OUT THE FOLLOWING:

**I. INTRODUCTION**

1. By this *Motion for the appointment of a Receiver* (“**Motion**”), Bank of Montreal (“**Petitioner**” or the “**Bank**”) seeks an order:
  - (a) Appointing Deloitte Restructuring Inc. (“**Deloitte**”) as Receiver pursuant to Section 243 of the BIA, with the power to exercise such control over the property and assets of SPG International Ltd (the “**Debtor**”) as the Court deems appropriate, and to conduct a sales process for the property of the Debtor, the whole in accordance with the form of Order attached hereto as Appendix “A”;

## II. THE PARTIES

2. The Debtor is a company which operates a business involved in the manufacture of toolboxes and metal storage cabinets;
3. On September 21, 2018, the Debtor filed a notice of intention to make a proposal under the Bankruptcy and Insolvency Act (the "**NOI**"), and the Trustee accepted to act as trustee to that notice of Intention, as more fully appears from the Court record;
4. Petitioner is a chartered bank that has made loans and advances to the Debtor pursuant to various credit facilities under the following loan documents:
  - (a) a demand line of credit having an initial loan limit of \$6,000,000 (the "**Line of Credit**"), pursuant to a Combined Canadian and/or US Dollar Operating Loan Agreement, dated as of February 24, 2010, as amended;
  - (b) a demand loan facility in a maximum amount of \$2,500,000, dated as of July 26, 2016, as amended (the "**Pari Passu Loan**") of which \$1,765,533.38 has been disbursed as confirmed by promissory notes;
  - (c) a MasterCard Credit facility, having a loan limit of \$125,000 (the "**MasterCard**"), pursuant to a corporate Master Card Account Agreement, dated February 24, 2010, as amended (the MasterCard, together with the Line of Credit and the Pari Passu Loan, the "**Credit Facilities**");

copies of which are filed herewith, *en liasse*, as **Exhibit R-1**;
5. The terms and conditions applicable to the Credit Facilities were set out and confirmed by the Bank in an offer of financing made to the Debtor by the Bank dated March 4, 2016, as amended by an Amending Agreement dated as of April 30, 2018, between the Bank, the Debtor and International Tool Boxes Corp. (the "**Guarantor**") (such offer of financing, as amended by the Amending Agreement, being the "**Offer of Financing**"), as more fully appears from the Offer of Financing and the Amending Agreement (collectively, with the agreements comprising Exhibit R-1, the "**Loan Agreements**"), copies of which are relied upon, *en liasse*, as **Exhibit R-2**;
6. Repayment of the amounts owed by the Debtor to the Petitioner pursuant to the Loan Agreements, and the due payment and performance of all other obligations of the Debtor, present and future, towards the Petitioner are secured by hypothecs and security in favour of the Petitioner by the Debtor charging all of its movable and immovable property (the "**Property**") pursuant to various security documents (the "**Security**");

**Documents**", collectively with the Loan Agreements, the "**Loan Documents**"):

- (a) A Movable Hypothec dated as of March 14, 2016, made by the Debtor in favour of the Bank and registered at the Register of Personal and Movable Real Rights (the "**RPMRR**") on May 17, 2016 under number 16-0462763-0001, as rectified by inscription published on July 20, 2016, under number 16-0701417-0001;
- (b) A Movable Hypothec dated as of July 21, 2016, made by the Debtor in favour of the Bank and registered at the RPMRR on July 22, 2016 under number 16-0708610-0003;
- (c) A deed of immovable hypothec dated as of July 21, 2016, received by Me André Lepage, notary, under number 5390 of his minutes, made by the Debtor in favour of the Bank, and registered at the Land Registry Office for the registration division of Drummond on July 22, 2016, under number 22 501 501, and at the RPMRR on July 28, 2016, under number 16-0736222-0001;
- (d) Documents creating security pursuant to s. 427 of the *Bank Act (Canada)*, namely (i) Notice for Registration under Sec. 427 of the Bank Act dated December 7, 2011, and published on December 16, 2011 under number 01270050 at the offices of the Bank of Canada for the province of Quebec, made by the Debtor in favour of the Bank; (ii) an Agreement as to Loans and Advances and Security therefore dated December 17, 2011, made by the Debtor in favour of the Bank; (iii) an Application for Credit and Promise to Give Bills of Lading, Warehouse Receipts, or Security under Section 427 of the Bank Act dated December 17, 2011, made by the Debtor in favour of the Bank; and (iv) a Security under sec. 427(1) of the Bank Act (Security on all property of specified kinds) dated December 17, 2011, made by the Debtor in favour of the Bank;

copies of which are relied upon, *en liasse*, as **Exhibit R-3**;

7. The Petitioner's Security is of first rank over the inventory and claims (mostly accounts receivable) of the Debtor, and of joint first rank (*pari passu* with the security held by Investissement Quebec ("**IQ**") and Laurentian Bank of Canada ("**BLC**") over the Debtor's remaining property, movable and immovable, as more fully appears from a copy of the printout of the RPMRR regarding the Debtor and a copy of the printout of the Index of Immovables from the Quebec Land Register, division of Drummond, bearing lot numbers 3 533 292 and 3 533 291 filed herewith, *en liasse*, as **Exhibit R-4**, as well as the "*Convention Pari Passu*", as

amended, entered into between BMO, IQ and BLC, a copy of which is filed herewith as **Exhibit R-5**.

8. IQ and BLC will therefore be served with this Motion in order to allow them to make proper representations regarding the appointment of a Receiver and on the powers to be granted to such a Receiver if appointed. IQ and BLC have been informed of this motion and are in favor of it;
9. As November 2, 2018, the amounts owed to the Petitioner pursuant to the Loan Documents amounts to \$1,626,031.92, subject to interest, adjustments and costs, as more fully appears from the Petitioner's updated statement of account, **Exhibit R-6**;

### III. FINANCIAL DIFFICULTIES OF THE DEBTOR

10. In late November 2017, Petitioner began to have serious concerns about the Debtor's financial performance and prospects. Indeed, the Debtor had failed to :
  - (a) Provide its most recent annual financial statements to the Petitioner when due; nor had it
  - (b) Maintain an EBITDA to Total Net Worth Ratio of no less than 1.20:1.00, as required under the Loan Agreements. In fact, as at June 30, 2017, that ratio stood at negative 0.44.
11. At about that time, the Petitioner engaged Deloitte, with the consent and agreement of the Debtor, to act as its financial adviser, in connection with the review of its affairs. Since its appointment, Deloitte remains actively involved, as a representative of the Petitioner, in monitoring the operations of the Debtor and reporting thereon to the Petitioner.
12. In April 2018, as a result of the review and multiple discussions with the representatives of the Debtor, the terms of the Debtor's credit facilities were revised in accordance with the Amending Agreement, notably to revise the borrowing base calculation, to provide for certain additional security, and to provide for increased financial reporting by the Debtor, under Deloitte's review:
13. However, in mid-May 2018, Petitioner was advised that:
  - (a) The Debtor's shareholders and its related parties were no longer prepared to financially support the Debtor;
  - (b) Geelong Sales (Macao Commercial Offshore) Limited ("**Geelong Sales**"), the Debtor's principal supplier, and a party related to the Debtor and to the Debtor's shareholders, to whom the Debtor owed

in excess of USD \$4,069,566.00, demanded payment of its accounts payable prior to shipping any further parts or materials to the Debtor, and the Debtor was unable to make the payments owed to Geelong Sales;

- (c) Following the Debtor's decision to terminate an unprofitable program, the Home Depot decided to discontinue the Husky brand 41" 16 drawer product, that was produced by the Debtor, which at times represented about 40% of the Debtor's production forecast;
  - (d) Geelong Sales has also discontinued certain products which it deemed to be unprofitable, representing a further reduction of about \$1,000,000 in revenue for the Debtor; and
  - (e) the Debtor had no clear going-forward profitable business plan.
14. Taken as a whole, the above amounted to a material adverse change under the Loan Agreements, allowing the Bank to recall its advances;
15. As a result, on May 15, 2018, the Bank advised the Debtor that it would withdraw its financial support unless the Debtor restructured its affairs in a timely manner, under the auspices of a forbearance agreement acceptable to the Bank, as more fully appears from the undersigned attorney's demand letter of that date, along with the Bank's prior notice under section 244 BIA, copies of which are filed herewith *en liasse* as **Exhibit R-7**;
16. On or about July 5, 2018, the Bank, the Debtor and the Guarantor entered into a Forbearance Agreement, which maintained the Bank's financial support for the Debtor, albeit on a reduced basis and within the strict confines of a cash-flow projection covering the period from the date of the Forbearance Agreement until September 14, 2018 (the "**Forbearance Period**");
17. The Forbearance Period was subsequently extended to October 5, 2018 and again to October 26, 2018, as more fully appears from the Forbearance Agreement dated July 5, 2018, and the First and Second Forbearance Extension Agreement filed herewith, *en liasse*, as **Exhibit R-8**;
18. During the Forbearance Period, it became apparent that the Debtor's business, as currently operated, faced significant challenges, and that a sale of the business as a going concern was potentially the best opportunity for the preservation of its value and the continuity of its operations;

19. Therefore, on or about August 7, 2018, the Debtor, at the request of its shareholders, began a process to solicit offers of purchase for its business on a going concern basis;
20. To that end, the Debtor hired a local advisory firm, Courval Pontbriand inc., to canvas the market for potential purchasers;
21. Over two hundred potential purchasers were contacted over a period of more than two months, ten of which eventually executed confidentiality agreements with a view to obtaining more information about the Debtor's business. Although some parties showed some interest in the business, the letters of intent they provided were found to be lacking, either due to the amounts offered or the conditions precedent, and all were deemed unacceptable;
22. However, by late September, without a purchaser for its business and facing mounting pressure from its unsecured creditors, the Debtor had no choice but to file the NOI with the Trustee, with the objective to continue the sale process and to prepare a restructuring plan that would be acceptable to its creditors. Petitioner having already delivered its notice under s. 244 BIA, it is unaffected by the stay.

#### **IV. REASONS TO APPOINT A RECEIVER**

23. Petitioner submits to this Honourable Court that it is now essential, right and appropriate, for the protection of the Property and for the protection of Petitioner's interests, that a receiver be appointed by this Honourable Court, in order to complete the sale process commenced by the Debtor prior to the filing of its NOI. Following the appointment of the receiver, the focus of the sale process will be maximizing the value of the assets. Such a sale may or may not be a going concern sale;
24. As, mentioned, more than 10 days have elapsed since the Debtor received Petitioner's s. 244 notice;
25. The Debtor has largely exhausted its finished goods inventory and raw material reserves, and it is apparent that it will be unable to find new suppliers on terms which would allow it to continue its operations and become profitable;
26. Furthermore, the recent bankruptcy of Sears Holding Corp., the parent company of the Sears retail chain, has significantly diminished the prospects of a sale of the Debtor as a going concern in its current form, since Sears was one of the Debtor's most significant customers. Petitioner understands that an amount of approximately \$500,000 CAD is owed by Sears on account of its most recent purchases of the Debtor's products;

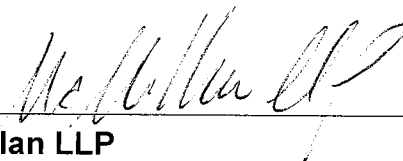
27. For all of the above mentioned reasons, and that the Debtor is not, and will not, be able to repay all amounts owed to Petitioner when due, Petitioner believes that the continued operations of the Debtor will only lead to a further erosion of Petitioner's security, to its detriment and that of the creditors as a whole;
28. Without the appointment of the Receiver, the recovery of Petitioner's debt is therefore seriously at risk;
29. It is therefore reasonable and appropriate that Deloitte be appointed as Receiver with the necessary powers to take control of the Property charged by Petitioner's security and to allow Deloitte as Receiver, to undertake all necessary steps to sell the Property in the most efficient and cost effective method possible. Deloitte would in fact, once appointed as receiver, continue the sale process in order to ensure that a sale of the assets is completed;
30. Petitioner is further advised that the Debtor does not intend to contest the appointment of Deloitte as receiver and will actively cooperate with Deloitte in order to proceed with the sale of its assets to a third party;
31. Deloitte is qualified and has agreed to act as receiver to the assets of the Debtor and to exercise any and all of the proposed powers provided for in the order sought herein, as will be demonstrated at the hearing on this motion;
32. An entity related to Deloitte, Deloitte S.E.N.C.R.L., is the auditor of the Debtor since 2007. The last financial statements for which an audit opinion was rendered were the financial statements for the year ending June 30, 2017;
33. Neither Petitioner nor any of IQ or BLC are of the view that this situation affects the capabilities of Deloitte to act and perform its duty as Receiver, should Deloitte be appointed by this Honourable Court, and in fact, all three secured creditors support its appointment;
34. The creditors will also benefit from the appointment of Deloitte as Deloitte has been involved with the Debtor for several months, as Petitioner's financial advisor, and consequently has a deep understanding of the context, the Debtor's affairs and the sale process currently pursued by the Debtor. There is no doubt that there is a costs saving aspect for the mass of creditors in appointing Deloitte considering the knowledge of Deloitte in regard of this specific file;
35. The Petitioner respectfully submits that the notices given of the presentation of this Motion are proper and sufficient;
36. This Motion is well founded in fact and law;



**WHEREFORE MAY IT PLEASE THE HONOURABLE COURT TO:**

- [1] **GRANT** this Motion;
- [2] **ORDER** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;
- [3] **RENDER** an order appointing Deloitte Restructuring Inc. (Benoît Clouatre, CPA, CA, CIRP, LIT, designated person), trustee, to act as receiver (the "**Receiver**") to the property of SPG International Ltd. (the "**Debtor**"), substantially on the terms set out in the draft Order attached hereto as Appendix "A";
- [4] **THE WHOLE** without costs, save in the case of contestation.

Montreal, November 5 2018



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**McMillan LLP**  
Attorneys for Petitioner  
BANK OF MONTREAL

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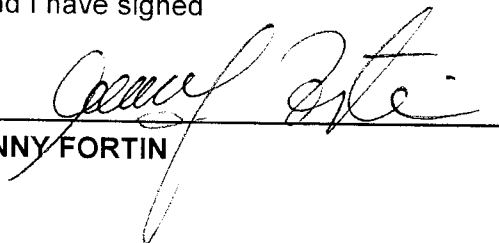
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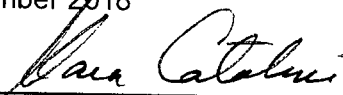
I, the undersigned, ANNY FORTIN, account manager, special accounts management group, residing and domiciled for the purposes of these presents at 105 St-Jacques Street, 5<sup>th</sup> Floor, Montréal (Quebec), H2Y 1L6, solemnly declare as follows:

1. I am a duly authorized representative of Bank of Montreal;
2. I have read the attached Motion for the appointment of Receiver, and the facts contained therein and in this affidavit are true.

And I have signed

  
\_\_\_\_\_  
ANNY FORTIN

Solemnly declared to before me, in the city of Montreal, this 5<sup>th</sup> day of November 2018

  
\_\_\_\_\_  
Commissioner of oaths for the judicial district of Montreal



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**NOTICE OF PRESENTATION**

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- TO : **SPG INTERNATIONAL LTD**  
300-215 rue Saint-Jacques  
Montréal (Québec) H2Y1M6  
c/o François Deshaies  
[fdeshaies@spg-toolbox.com](mailto:fdeshaies@spg-toolbox.com)  
  
*Debtor*
- TO: **BLAKE, CASSELS & GRAYDON S.E.N.C.R.L., s.r.l.**  
1 Place Ville-Marie, Suite 3000  
Montreal, Quebec H3B 4N8  
c/o Bernard Boucher  
[bernard.boucher@blakes.com](mailto:bernard.boucher@blakes.com)  
  
*Attorneys for SPG International Ltée (Debtor)*
- TO: **DELOITTE RESTRUCTURING INC.**  
(Benoît Cloutre, CPA, CA, CIRP, LIT, designated person)  
1190 Canadiens-de-Montréal avenue  
Montréal (Québec), H3B 0M7  
  
*Proposed Receiver*
- TO: **Investissement Quebec**  
413, rue Saint-Jacques, Suite 500  
Montreal, Quebec H2Y 1N9  
c/o Marc Di Maria  
[marc.dimaria@invest-quebec.com](mailto:marc.dimaria@invest-quebec.com)  
  
*Mis en cause*
- TO: **Lavery**  
1 Place Ville-Marie, Suite 4000  
Montreal, Quebec H3B 4M4  
c/o Me Jean Legault  
[jlegault@lavery.ca](mailto:jlegault@lavery.ca)  
  
*Attorneys for Investissement Québec (mis en cause)*

TO: **Laurentian Bank of Canada**  
 1360, boul. René-Lévesque West  
 Suite 620  
 Montreal, QC H3G 0E8  
 c/o Ariella Yedid  
[Ariella.yedid@banquelaurentienne.ca](mailto:Ariella.yedid@banquelaurentienne.ca)

*Mis en cause*

TO: **Gowling WLG**  
 1 Place Ville-Marie, Suite 3700  
 Montreal, Quebec H3B 3P4  
 c/o Me Alexander Bayus  
[alexander.bayus@gowlingwlq.com](mailto:alexander.bayus@gowlingwlq.com)

*Attorneys for Banque Laurentienne (mis en cause)*

TO: **Nathalie Brault Syndic Inc.**  
 400 Boulevard Saint-Martin West, suite 305,  
 Laval, QC H7M 3Y8  
 c/o Nathalie Brault  
[nb@nbsyndic.com](mailto:nb@nbsyndic.com)

*Trustee to the Notice of Intention/Mis en cause*

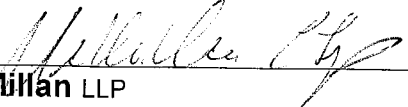
TO: **BUREAU DE LA PUBLICITÉ DES DROITS DE DRUMMOND,**  
 270, rue Lindsay, RC 16  
 Drummondville, Quebec, J2B 1G3

*Mis en cause*

**TAKE NOTICE** that Petitioner's *Motion for the Appointment of a Receiver* will be presented for adjudication before the Superior Court, on **November 8, 2018** at **9:15 a.m.** in room 16.12 of the Montreal Court house, situated at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, or as soon thereafter as counsel may be heard.

**AND DO GOVERN YOURSELVES ACCORDINGLY**

**MONTREAL**, November 5, 2018

  
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**McMillan** LLP  
 Attorneys for Petitioner  
**BANK OF MONTREAL**

APPENDIX "A"

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. 500-11-055238-188

DATE: November \_\_\_\_\_, 2018

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PRESIDING : THE HONOURABLE MR. JUSTICE \_\_\_\_\_  
J.S.C.

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IN THE MATTER OF THE RECEIVERSHIP OF:

**SPG INTERNATIONAL LTEE**

Debtor

-and-

**BANK OF MONTREAL**

Petitioner

-and-

**DELOITTE RESTRUCTURING INC.**  
(Benoît Clouatre, CPA, CA, CIRP, LIT, designated person)

Receiver

-and-

**INVESTISSEMENT QUÉBEC**  
and  
**LAURENTIAN BANK OF CANADA**

Mis en cause

-and-

**NATHALIE BRAULT SYNDIC INC.**

Trustee to the Notice of Intention / Mis en cause

-and-

**BUREAU DE LA PUBLICITÉ DES DROITS DE DRUMMOND**

Mis en cause

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**ORDER APPOINTING A RECEIVER  
(Section 243 of the *Bankruptcy and Insolvency Act*)**

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- [1] **ON READING** the Petitioner's Motion to Appoint a Receiver (the "**Motion**") pursuant to Article 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Petitioner's attorneys and the submissions of the attorneys for Investissement Québec ("**IQ**") and those of Laurentian Bank of Canada ("**BLC**");
- [4] **SEEING** that Petitioner sent the Debtor a notice pursuant to the terms of Article 244 of the BIA;
- [5] **SEEING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;
- [6] **CONSIDERING** that, despite having acted as Petitioner's financial advisor in this matter, Deloitte Restructuring Inc. is nonetheless well-suited to act as Receiver to the assets of the Debtor, given its knowledge of the Debtor's affairs and the consent of both IQ and BLC to its appointment in such capacity;

**WHEREFORE THE COURT:**

- [7] **GRANTS** the Motion;
- [8] **APPOINTMENT**
- [9] **APPOINTS** Deloitte Restructuring Inc. (Benoît Clouatre, CPA, CA, CIRP, LIT, designated person), trustee, to act as receiver (the "**Receiver**") to the property of SPG International Ltd. (the "**Debtor**") until one of the following events comes to pass:

- (a) the sale of all the Property (as hereinafter defined); or
- (b) the issuance of any order by the Court terminating the mandate of the Receiver;

**[10] DECLARES** that the order (the “**Order**”) and its effects shall survive the filing by the Debtor of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies Creditors Arrangements Act* (the “**CCAA**”) or the bankruptcy of the Debtor, unless the Court orders otherwise.

### **RECEIVER’S POWERS**

**[11] AUTHORIZES** the Receiver to exercise the following powers:

#### **11.1 Powers related to the possession of the Property**

**AUTHORIZES** the Receiver to take possession of all of the Debtor’s movable and immoveable property, corporeal and incorporeal, wherever located (the “**Property**”) and regardless of whomever may be in possession of same, including without limitation the following immovable property:

An immovable known and designated as comprising lots THREE MILION FIVE HUNDRED THIRTY THREE THOUSAND TWO HUNDRED AND NINTETY ONE (3 533 291) and THREE MILION FIVE HUNDRED THIRTY THREE THOUSAND TWO HUNDRED AND NINTETY TWO (3 533 292) of the Land Register of Quebec, Registration Division of Drummond

And more commonly known as 4225 and 4275 Saint-Joseph Boulevard, Drummondville, Quebec;

and to exercise the following powers listed hereinafter in the place and stead of the Debtor in respect of the Property.

#### **11.2 Powers related to the preservation of the Property**

- (a) all the powers necessary for the preservation and for the protection of the Property;
- (b) all the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;
- (c) all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and to change the locks granting access to such premises and places of business of the Debtor;

- (d) all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (e) all the powers necessary to undertake an analysis of the Debtor's Records;

### **11.3 Powers related to the Debtor's operations**

- (a) carry on, all or any part of the Debtor's operations, and if considered necessary, suspend Debtor's operations;
- (b) all the powers necessary to control the Debtor's receipts and disbursements;
- (c) all the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same, as well as to sign any document for this purpose;
- (d) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;

### **11.4 Powers related to the disposition or sale of the Property**

- (a) all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtor, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;
- (b) all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;

**[12] ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances, provided however that no such authorization will be required where the property to be sold has net orderly liquidation value of less than **\$50,000** for a single transaction or **\$150,000** in the aggregate;



- [13] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;
- [14] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
- [15] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

#### **DEBTOR'S DUTIES**

- [16] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor, as well as to the Records;
- [17] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
- [18] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the authorization of the Receiver, subject to the limitation as set out above in paragraph 4 of this Order;

#### **NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY**

- [19] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the Petitioner, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [20] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

## CONTINUATION OF SERVICES

[21] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

## EMPLOYEES

[22] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*;

## PROTECTION OF PERSONAL INFORMATION

[23] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

## LIMITATION OF LIABILITY

[24] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 3 of this Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the

meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;

**[25] DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

**[26] DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

### **FEES**

**[27] DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors of the Receiver, to the extent of the aggregate amount of **\$200,000.00** (the "**Administration Charge**");

**[28] DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;

**[29] DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of this Order (the "**Effective Time**"), all the Debtor's Property present and future;

**[30] DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the *BIA* in respect of the Petitioner and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;

**[31] AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

**GENERAL**

**[32] DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;

**[33] DECLARES** that the Receiver is at liberty to serve any notice, circular or any 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 address as last shown in the Records; the documents served in this manner 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 (3) business days after mailing if delivered by ordinary mail;

**[34] DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

**[35] DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;

**[36] DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the *BIA*, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court;

**[37] DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Petitioner and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

- [38] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [39] **DECLARES** that the Receiver 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 Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;
- [40] **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;
- [41] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.
- [42] **THE WHOLE** without costs, save in case of contestation.

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

**C A N A D A**

**PROVINCE OF QUEBEC**  
District of Montreal

**SUPERIOR COURT**  
(Commercial Division)

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**No: 500-11-055238-188**

**IN THE MATTER OF THE  
RECEIVERSHIP OF:**

**SPG INTERNATIONAL LTEE**

Debtor

- and -

**BANK OF MONTREAL**, a chartered bank,  
duly constituted

Petitioner

- and -

**DELOITTE RESTRUCTURING INC.**  
(Benoît Clouatre, CPA, CA, CIRP, LIT,  
designated person

Proposed Receiver

-and-

**INVESTISSEMENT QUEBEC**

-and-

**LAURENTIAN BANK OF CANADA**

Mis en cause

-and-

**NATHALIE BRAULT SYNDIC INC**

Trustee to the Notice of Intention/  
Mis en cause

-and-

**BUREAU DE LA PUBLICITÉ DES  
DROITS DE DRUMMOND**

Mis en cause

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**LIST OF EXHIBITS**

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- Exhibit R-1: Loan documents, *en liasse*;
- Exhibit R-2: Offer of Financing and the Amending Agreement, *en liasse*;
- Exhibit R-3: Security documents, *en liasse*;
- Exhibit R-4: Copy of the printout of the RPMRR regarding the Debtor and a copy of the printout of the Index of Immovables from the Quebec Land Register, division of Drummond, bearing lot numbers 3 533 292 and 3 533 291, *en liasse*;
- Exhibit R-5: Copy of the “*Convention Pari Passu*”, as amended, entered into between BMO, IQ and BLC;
- Exhibit R-6: Petitioner’s updated statement of account;
- Exhibit R-7: Demand letter dated May 15, 2018, along with the Bank’s prior notice under section 244 BIA, *en liasse*;
- Exhibit R-8: Forbearance Agreement dated July 5, 2018, and the First and Second Forbearance Extension Agreements, *en liasse*.

Montreal, November 5, 2018



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**McMillan LLP**  
Attorneys for Petitioner  
BANK OF MONTREAL

N° / No.: 500-11-055238-188

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**SUPERIOR COURT**  
(Commercial Division) / District of Montreal

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**IN THE MATTER OF THE RECEIVERSHIP OF:**

**SPG INTERNATIONAL LTEE**, Debtor

-and-

**BANK OF MONTREAL**, Petitioner

-and-

**DELOITTE RESTRUCTURING INC.**, Proposed  
Receiver

-and-

**INVESTISSEMENT QUEBEC** and **LAURENTIAN  
BANK OF CANADA**, mis en cause

-and-

**NATHALIE BRAULT SYNDIC INC.**, trustee to the  
Notice of Intention/mis en cause

-and-

**BUREAU DE LA PUBLICITÉ DES DROITS DE  
DRUMMOND**, mis en cause

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**MOTION FOR THE APPOINTMENT OF A  
RECEIVER (Art. 243 of the *Bankruptcy and  
Insolvency Act (Canada)* (the “BIA”), R. 6(4)  
of the *Bankruptcy and Insolvency General  
Rules*), AFFIDAVIT, NOTICE OF  
PRESENTATION AND EXHIBITS R-1 TO R-8**

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**Me Michael J. Hanlon**

Michael.hanlon@mcmillan.ca

Réf. / Ref.: 254932

Procureur pour / Attorney for Petitioner

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**McMillan S.E.N.C.R.L., s.r.l./LLP**

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