

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-057570-190

SUPERIOR COURT
(Commercial Division)

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

9348069 CANADA INC.

-and-

4295862 CANADA INC.

-and-

MOTOVAN CORPORATION

(collectively hereafter referred to as "**MTV**")

Petitioners

-and-

MONCY HOLDING COMPANY INC.

-and-

**MONCY FINANCIAL SERVICES COMPANY
INC.**

-and-

NICHOLS MOTORCYCLE SUPPLY INC.

-and-

MONCY LLC

-and-

MOTORCYCLE TIRES & ACCESSORIES LLC

Mises en cause

(Petitioners and the Mises en cause are

- 2 -

collectively hereafter referred to as the « **CCAA Parties** »)

-and-

MICROSOFT CANADA, legal party duly constituted, having its legal place of business at 2000, Avenue McGill College, in the city and district of Montréal, province of Québec, H3A 3H3;

Mise en cause

-and-

BANK OF MONTREAL

-and-

INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

-and-

BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

**PETITIONERS' MOTION FOR AN ORDER
APPROVING THE SALE OF MOTOVAN CORPORATION'S ASSETS
OUTSIDE THE ORDINARY COURSE OF BUSINESS AND FOR A
VESTING ORDER**

(Section 36 of the Companies' Creditors Arrangement Act)

TO THE HONOURABLE JUSTICE MARIE-ANNE PAQUETTE, J.S.C. SITTING IN COMMERCIAL DIVISION IN THE DISTRICT OF MONTREAL, THE PETITIONERS AND THE MISES-EN-CAUSE SUBMIT:

I. INTRODUCTION

1. On December 2, 2019, the Honourable Justice Marie-Anne Paquette, J.S.C., issued an initial order (the “**Initial Order**”¹) commencing these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of the CCAA Parties, as appears from the Court record;
2. Pursuant to the Initial Order, the Court:
 - a) Declared that the CCAA Parties are debtor companies to whom the CCAA applies, or companies entitled to benefit from the protection arising from the Initial Order;
 - b) Declared a stay of proceedings in favour of the CCAA Parties and their respective directors and officers and other general CCAA relief pursuant to, inter alia, sections 11, 11.02 and 11.03 thereof for an initial period of ten (10) days, i.e. until on or about **December 12, 2019** (hereinafter the “**Initial Period**”); and
 - c) Authorized the CCAA Parties to continue their operations in order to preserve their assets and make payments in the normal course of business;
 - d) Named KPMG Inc. (“**KPMG**”) (Dev A. Coossa, PAIR, SI) as Monitor pursuant to Section 11 of the CCAA;
 - e) Granted an Administration Charge to secure the Petitioners’ obligations towards its legal advisors (BCF LLP), the Monitor (KPMG) and the Monitor’s legal advisors (Norton Rose Fulbright Canada LLP);
 - f) Granted a D&O Charge to secure the Petitioners’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies;
 - g) Authorized Petitioners to file at a later date a plan of arrangement with their creditors pursuant to the CCAA (the “**Plan**”);

¹ Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Initial Order.

- h) Authorized various measures required in order to facilitate the proposed restructuring; and
 - i) Declared that the Petitioners may at all times address this Court in order to seek any other measures necessary in order to carry out the restructuring process;
3. On December 12, 2019, the Honourable Marie-Anne Paquette, j.c.s., issued an Amended and Restated Initial Order pursuant to which the Court:
- a) Extended the Stay Period in respect of the CCAA Parties until January 31, 2020;
 - b) Amended the Initial Order to increase the amount of the Administration Charge from \$335,000.00 to \$500,000.00;
 - c) Approved the SISP proposed by the CCAA Parties;
4. On January 31, 2020, the Honourable Marie-Anne Paquette, J.C.S., issued an Order pursuant to which the Stay Period was extended to May 15, 2020;

II. ORDERS SOUGHT

5. The CCAA Parties hereby seek the authorization to sell the assets of Motovan Corporation (“**Motovan**”) out the ordinary course of business and a vesting order, pursuant to Section 36 of the CCAA, for reasons more fully explained hereafter;

III. CONDUCT OF THE SISP

6. The SISP was conducted by KPMG CF, who reported to the Monitor on a weekly basis;
7. The Monitor provided weekly reports to the Secured Creditors;
8. At no time did the CCAA Parties’ management receive a copy of the weekly reports;
9. KPMG CF initially sent a teaser and a non-disclosure agreement (“**NDA**”) to 59 potential bidders;
10. The Monitor received a signed NDA from 12 potential bidders, who then received a copy of the process letter and confidential information memo which were approved by this Court;

11. Each potential bidder was given access to an electronic data room with detailed information with respect to the CCAA Parties;
12. On January 22, 2020, the deadline set by this Court for filing of a bid, KPMG CF received four offers from bidders (the "**Bidders**");
13. On or about January 24, 2020, the Monitor asked additional information to the Bidders with respect to their respective bids;
14. The same day, the Monitor provided all relevant information with respect to the Bidders and the bids to the Secured Creditors, along with a chart estimating the value of each bid received;
15. On January 28, 2020, the Secured Creditors and the Monitor analyzed and discussed the bids received in the context of the SISP;
16. On January 28 and January 29, 2020, two of the four Bidders withdrew their bid;
17. On February 6, 2020, following discussions between Bank of Montreal and Gestion Claude Bigras Inc. ("**GCBI**"), one of the Bidders, GCBI agreed to lift certain conditions and ultimately adjust its bid and submitted an amended and restated offer (the "**GCBI Offer**");
18. On or about February 7, 2020, Bank of Montreal confirmed that it was supporting the GCBI Offer; Other Secured Creditors have been informed and kept apprised of this decision;
19. None of the bids received in the context of the SISP were providing for any value beyond the Bank of Montreal's, senior secured lender, position. In fact, even considering the completion of the transaction contemplated pursuant to the GCBI Offer, Bank of Montreal is anticipated to suffer a significant loss on its senior secured position;
20. All documents relevant to the above are attached to the Monitor's third report, under seal;

IV. DETAILS OF THE GCBI'S OFFER

21. The GCBI Offer provides that it will purchase all inventories, receivables, and other moveable assets of Motovan Corporation, including fixed assets, trademarks, logos, licences and other rights;
22. Licences and agreements will be assigned from Motovan Corporation to GCBI, including licences from Microsoft and potentially other software companies;

23. The GCBI Offer also provides that Motovan Corporation's operations will continue and that the employment of most of its employees will be preserved;
24. The CCAA Parties ask that they be authorized to accept the GCBI Offer considering that :
 - a) The process leading to the GCBI Offer, the SISF, was reasonable and conducted in a manner to maximize the realization value for the business and assets of Motovan;
 - b) The process leading to the GCBI Offer, the SISF, was developed and implemented with the support of all Secured Creditors and ratified by this Honourable Court;
 - c) All Secured Creditors affected by the GCBI Offer have been consulted;
 - d) The Bank of Montreal, senior secured lender, supports the transaction contemplated pursuant to the GCBI Offer;
 - e) The transaction contemplated pursuant to the GCBI Offer is the best possible outcome under the circumstances, for all stakeholders;
 - f) The transaction contemplated pursuant to the GCBI Offer will allow the going concern operations of Motovan and most of the jobs associated thereto to be preserved;
25. The Monitor supports the present Motion and has informed Motovan that it will submit a report to this Honourable Court in support to the present Motion;
26. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

ISSUE an order substantially in the form of the draft Order (**Exhibit R-1**) communicated in support hereof;

THE WHOLE without costs, save and except in case of contestation.

Montreal, February 12, 2020

(S) BCF S.E.N.C.R.L./LLP

BCF LLP

Me Bertrand Giroux

bertrand.giroux@bcf.ca

Me Marc-Étienne Boucher

marc-etienne.boucher@bcf.ca

1100, René-Lévesque blvd. West

Suite 2500

Montreal (Quebec) H3B 5C9

Tel.: (514) 397-8500

Fax: (514) 397-8515

Attorneys for the CCAA Parties

TRUE COPY

BCF LLP

BCF LLP

NOTICE OF PRESENTATION

TO: **The Honourable Marie-Anne Paquette**
marie-anne.paquette@judex.qc.ca
Mme Darlène Jérôme (adjointe)
Darlène.jerome@judex.qc.ca
**Superior Court –
Commercial Division**
1, Notre-Dame East
Montréal (Québec) H2Y 1b6

TO: **Mr. Dev A. Coossa**
dcoossa@kpmg.ca
Mr. Maxime Codère
mcodere@kpmg.ca
KPMG Inc.
600, De Maisonneuve West
Suite 1500
Montréal (Québec) H3A 0A3
Tel : (514) 840-2555

TO: **Me Luc Morin**
luc.morin@nortonrosefulbright.com
Me Sylvain Rigaud
Sylvain.rigaud@nortonrosefulbright.com
Norton Rose Fulbright Canada
1, Place Ville-Marie
Suite 2500
Montréal (Québec) H3B 1R1
Tel. : (514) 847-4860 (L. Morin)
(514) 847-4702 (S. Rigaud)

TO: **Me Marc Duchesne**
MDuchesne@blg.com
Borden Ladner Gervais
1000, De la Gauchetière West
Suite 900
Montréal (Québec) H3B 5H4
Tel. : (514) 954-3102

**Attorneys for Bank of Montreal and
Export Development Canada**

Attorneys for KPMG Inc.

TO: **Mr. Abdelbasset Loulad**
Abdelbasset.Loulad@invest-quebec.com
Mr. Alejandro Morales
Alejandro.Morales@invest-quebec.com
Investissement Québec
600, De la Gauchetière West
Suite 1500
Montréal (Québec) H3B 4L8

TO: **Me François Viau**
francois.viau@gowlingwlg.com
Me Alexander Bayus
alexander.bayus@gowlingwlg.com
Gowling WLG
1, Place Ville-Marie
Suite 3700
Montréal (Québec) H3B 3P4
Tel. : (514) 392-9530

Attorneys for BDC Capital Inc.

TO: **Me Annie Claude Beauchemin**
acbeauchemin@rsslex.com
Robinson Sheppard Shapiro
800, Square-Victoria
Suite 4600
Montréal (Québec) H4Z 1H6
Tel : (514) 393-7471

**Attorneys for Sumitomo Rubber
North America**

TO: Me Sabine Audette-Hall
Sabine.Audette-Hall@camso.co
Camso
2633, MacPherson Street
Magog (Québec) J1X 0E6

TO: **Me Émile Catimel-Marchand**
Emile.Catimel-Marchand@mcmillan.ca
McMillan S.E.N.C.R.L. / L.L.P.
1000, Sherbrooke St. West
Suite 2700
Montréal (Québec) H3A 3G4

**Attorneys for Continental Tire USA and
Continental Tire Canada**

TO: **MICROSOFT CANADA**
2000, Avenue McGill College
Montréal (Québec) H3A 3H3;

TAKE NOTICE that the present *Petitioners' Motion for an Order Approving the Sale of Motovan Corporation's Assets Outside the Ordinary Course of Business and for a Vesting Order* will be presented before the Honourable Justice Marie-Anne Paquette, of the Superior Court sitting in practice division and for the district of Montreal, located at 1, Notre-Dame Street East, in Montréal, in a room to be determined, **on February 19, 2020, at 14h15**, or as soon as counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, February 12, 2020

(S) BCF S.E.N.C.R.L./LLP

BCF LLP

Me Bertrand Giroux

bertrand.giroux@bcf.ca

Me Marc-Étienne Boucher

marc-etienne.boucher@bcf.ca

1100, René-Lévesque blvd. West
Suite 2500

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BCF LLP
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CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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SUPERIOR COURT
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-and-

MONCY LLC

-and-

**MOTORCYCLE TIRES & ACCESSORIES
LLC**

Mises en cause

(Petitioners and the Mises en cause are
collectively hereafter referred to as the
« **CCAA Parties** »)

-and-

MICROSOFT CANADA, legal party duly constituted, having its legal place of business at 2000, Avenue McGill College, in the city and district of Montréal, province of Québec, H3A 3H3

Mise en cause

-and-

BANK OF MONTREAL

-and-

INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

-and-

BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

LIST OF EXHIBITS

EXHIBIT R-1: Draft Order;

Montreal, February 12, 2020

(S) BCF S.E.N.C.R.L./LLP

BCF LLP

Me Bertrand Giroux

bertrand.giroux@bcf.ca

Me Marc-Étienne Boucher

marc-etienne.boucher@bcf.ca

1100, René-Lévesque blvd. West
Suite 2500

Montreal (Quebec) H3B 5C9

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Fax: (514) 397-8515

Attorneys for the CCAA Parties

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BCF LLP

BCF LLP

EXHIBIT R-1

SUPERIOR COURT
(Commercial Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-057570-190
DATE: February 19, 2020**

PRESIDING: THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C.

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

**9348069 CANADA INC.
-and-
4295862 CANADA INC.
-and-
MOTOVAN CORPORATION**

Petitioners

-and-

**MONCY HOLDING COMPANY INC.
-and-
MONCY FINANCIAL SERVICES COMPANY INC.
-and-
NICHOLS MOTORCYCLE SUPPLY INC.
-and-
MONCY LLC
-and-
MOTORCYCLE TIRES & ACCESSORIES LLC;
-and-
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (Québec)**

Mises en cause

-and-

MICROSOFT CANADA

Mise en cause

-and-

BANK OF MONTREAL

-and-

INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

-and-

BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

APPROVAL AND VESTING ORDER

- [1] **ON READING** the *Petitioners' Motion for an Order Approving the Sale of Motovan Corporation's Assets Outside the Ordinary Course of Business and for a Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Monitor dated February ●, 2020 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Debtors, the Monitor and their respective attorneys;
- [4] **SEEING** that it is appropriate to issue an order approving the transactions (the "**Transaction**") contemplated by an agreement titled Offer to Purchase (the "**Purchase Agreement**") by and between Motovan Corporation and Motorcycle Tires & Accessories LLC (collectively the "**Vendor**"), as vendor, and Gestion Claude Bigras Inc. (or an entity to be designated by same) (the "**Purchaser**"), as purchaser, copy of which was filed under seal and is attached to the Monitor's third report dated February ●, 2020, and vesting in the Purchaser the assets described in the Purchase Agreement (the "**Purchased Assets**").

WHEREFORE THE COURT:

- [5] **GRANTS** the Motion;

SERVICE

- [6] **ORDERS** 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.
- [7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [9] **AUTHORIZES** the Vendor and the Purchaser 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 Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [11] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be

cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

- [11] - **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on **Schedule "B"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser.
- [12] **ORDERS and DIRECTS** the Monitor to serve a copy of this Order to every party to the Assigned Agreements.
- [13] **ORDERS and DIRECTS** the Monitor to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [14] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the registrations detailed hereunder in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

<u>Registration</u>	<u>Holder</u>
a) 09-0786475-0001	Bank of Montreal
b) 09-0786475-0004	Bank of Montreal / Export and Development Canada
c) 09-0786475-0006	Bank of Montreal / Export and Development Canada
d) 15-0721260-0001	Bank of Montreal
e) 15-0761886-0001	Bank of Montreal
f) 15-1158615-0002	Bank of Nova-Scotia
g) 17-0794855-0001	BDC Capital Inc.
h) 17-0794855-0002	BDC Capital Inc.
i) 17-1277504-0001	Investissement Québec

PROCEEDS

- [15] **ORDERS** that the proceeds from the sale of the Purchased Assets (the "**Proceeds**") shall be remitted to the Monitor and shall be distributed in accordance with applicable legislation.
- [16] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to

the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

VALIDITY OF THE TRANSACTION

[17] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Monitor.

LIMITATION OF LIABILITY

[18] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the *Companies' Creditors Arrangement Act*;

[19] **DECLARES** 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;

GENERAL

[20] **ORDERS** that the Purchaser or the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

[21] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.

- [22] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [23] **DECLARES** that the Vendor and 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 the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;
- [24] **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;
- [25] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

MARIE-ANNE PAQUETTE, J.S.C.

SCHEDULE "A"
DRAFT CERTIFICATE OF THE MONITOR

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-057570-190

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**MOTORCYCLE TIRES & ACCESSORIES
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INVESTISSEMENT QUÉBEC

-and-

EXPORT DEVELOPMENT CANADA

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BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on December 2, 2019, the Superior Court of Quebec (the "**Court**") issued an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors*

Arrangement Act (the "**Act**") in respect of the Petitioners and the Mises en cause (the "**CCAA Parties**");

WHEREAS pursuant to the terms of the Initial Order, KPMG Inc. (the "**Monitor**") was named Monitor of the CCAA Parties; and

WHEREAS on February 19, 2020, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioners of the transactions (the "**Transaction**") contemplated by an agreement titled Offer to Purchase (the "**Purchase Agreement**") by and between Motovan Corporation and Motorcycle Tires & Accessories LLC (collectively, the "**Vendor**") as vendor, and Gestion Claude Bigras Inc. (or an entity to be designated by same) as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Monitor once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor at Montréal (Québec) on February ●, 2020.

KPMG in its capacity as monitor, and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "B"
ASSIGNED AGREEMENTS

**Microsoft Windows Server 2019 and USER CAL License
Contract V8845555**

**Microsoft Office Suite 2019 License
Contract V2365754**

**Microsoft Exchange Server License
License Open 64647931**

**Microsoft Exchange USER CAL License
License Open 64779148**

**Microsoft Windows Server 2012
Licence Open 64748754 and 65048676**

**Microsoft Windows 10Pro
License Open 87093645 and 88011723**

No.: 500-11-057570-190

**SUPERIOR COURT
PROVINCE OF QUÉBEC
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Mises en cause

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MICROSOFT CANADA

Mise en cause

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BANK OF MONTREAL et al.

Secured Creditors

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CORPORATION'S ASSETS OUTSIDE THE
ORDINARY COURSE OF BUSINESS, NOTICE OF
PRESENTATION, LIST OF EXHIBITS AND EXHIBIT
R-1**

*(Section 36 of the Companies' Creditors Arrangement
Act)*

COPY

Me Bertrand Giroux

Our file: 8350-318



**1100 René-Lévesque Blvd. West, 25th Floor
MONTRÉAL, QUÉBEC, CANADA
H3B 5C9**

Tel: (514) 397-6935

Fax: (514) 397-8515

BB 7462