

District of Ontario  
Division No. 9 - Toronto  
Court File No.: 31-3051650  
Estate File No.: 31-3051650

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE ) THURSDAY THE 14<sup>th</sup>  
 )  
JUSTICE STEELE ) DAY OF MARCH, 2024

B E T W E E N:

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF ORGANIC GARAGE (CANADA) LTD., 2412383 ONTARIO INC.,  
2347018 ONTARIO INC., 2507158 ONTARIO INC., AND 2581751 ONTARIO INC.

**ORDER**  
**(Sale Process, Procedural Consolidation, Charges, KERP)**

THIS MOTION, made by Organic Garage (Canada) Ltd. (“**Organic Garage**”), 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc., and 2581751 Ontario Inc. (collectively the “**Companies**”), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) was heard this day by Zoom video conference.

**ON READING** the Notice of Motion, the Affidavit of Matthew Lurie sworn March 8, 2024 and the exhibits thereto (the “**Lurie Affidavit**”), and the First Report of KPMG Inc. (“**KPMG**”) dated March 8, 2024 (the “**First Report**”), in its capacity as proposal trustee of the Companies (in such capacity, the “**Proposal Trustee**”), and on being advised that the secured creditors who are likely affected by the charge created herein were given notice, and on hearing

the submissions of counsel for the Companies and counsel for the Proposal Trustee, and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of Shallon Garrafa, filed,

### **SERVICE AND INTERPRETATION**

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Lurie Affidavit.

### **PROCEDURAL CONSOLIDATION**

3. **THIS COURT ORDERS** that the following proposal proceedings shall be procedurally consolidated into one proceeding and shall continue under Estate No. 31-3051650 (the “**Consolidated Proceeding**”):

- (a) Estate No. 31-3051650 in respect of Organic Garage;
- (b) Estate No. 31-3051654 in respect of 2412383 Ontario Inc.;
- (c) Estate No. 31-3051653 in respect of 2347018 Ontario Inc.;
- (d) Estate No. 31-3051656 in respect of 2507158 Ontario Inc.; and
- (e) Estate No. 31-3051657 in respect of 2581751 Ontario Inc. (together the “**Proposal Proceedings**”).

4. **THIS COURT ORDERS** that the style of cause in the within proceedings is hereby amended and shall be assigned to the Consolidated Proceeding:

**Court File No:** 31-3051650

**Estate File No.** 31-3051650

**IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C., 1985, C. B-3, AS AMENDED***

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ORGANIC GARAGE (CANADA) LTD., 2412383 ONTARIO INC., 2347018 ONTARIO  
INC., 2507158 ONTARIO INC., AND 2581751 ONTARIO INC.**

5. **THIS COURT ORDERS** that the procedural consolidation pursuant to this Order shall not:

- (a) affect the separate legal status and corporate structures of any of the Companies;
- (b) cause any of the Companies to be liable to any claim for which it is otherwise not liable, or cause any of the Companies to have an interest in an asset to which it otherwise would not have; or
- (c) affect the Proposal Trustee's or any creditor's right to seek to disallow any claim, including on the basis that such claim is duplicative.

6. **THIS COURT ORDERS** that the Proposal Proceedings are not substantively consolidated, and nothing in this Order shall be construed to that effect.

7. **THIS COURT ORDERS** that the Proposal Trustee is authorized and directed to administer the Proposal Proceedings, on a consolidated basis, for all purposes in carrying out its duties and responsibilities as trustee under the BIA, including, without limitation:

- (a) sending notices to creditors of the Companies pursuant to one consolidated notice;

- (b) calling and conducting any meetings of creditors of the Companies pursuant to one combined advertisement;
- (c) issuing consolidated reports in respect of each of the estates of the Companies;
- (d) preparing, filing, advertising and distributing any and all filings or notices relating to the administration of the estates of the Companies;
- (e) taxing its fees, and those of its counsel; and
- (f) bringing motions to this Court.

8. **THIS COURT ORDERS** that the Companies shall file a copy of this Order in the Court file for each of the Proposal Proceedings but that all other or further materials in the Proposal Proceedings shall be filed with the Court only in the Consolidated Proceeding.

9. **THIS COURT ORDERS** that for avoidance of doubt, any motion, application or action in respect of the Companies shall be brought and filed in the Consolidated Proceeding and if so brought and filed it shall be deemed brought and filed in each of the Proposal Proceedings as appropriate, without prejudice to any rules of court or otherwise that are applicable.

#### **EXTENSION OF THE TIME TO FILE A PROPOSAL**

10. **THIS COURT ORDERS** that, pursuant to subsection 50.4(9) of the BIA, the time for filing a proposal with the Official Receiver in respect of each of the Companies, including the stay of proceedings, is extended up to and including April 30, 2024.

## **RENT**

11. **THIS COURT ORDERS** that until any of the Companies' real property leases are disclaimed in accordance with the BIA, the Companies shall pay all amounts constituting rent or payable as rent under the applicable real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including to March 5, 2024 (the "**NOI Filing Date**") shall also be paid.

## **NO INTERFERENCE WITH RIGHTS**

12. **THIS COURT ORDERS** that until the expiry of the date by which the Companies must file a proposal pursuant to section 50.4(1) of the BIA (including as such date may be extended pursuant to section 50.4(9) of the BIA, the "**Proposal Outside Date**"), no individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, permit, lease, purchase order or other arrangement, whether written or oral (each, an "**Agreement**"), in favour of or held by the Companies, except with the written consent of the Companies and the Proposal Trustee, or leave of this Court

## CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that until the expiry of the Proposal Outside Date, all Persons having an Agreement with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, merchant and credit card processing services, insurance, transportation services, utility or other services to the Companies, are 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 Companies, and that the Companies shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, 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 Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Companies and the Proposal Trustee, or as may be ordered by this Court.

14. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that are or may become due from the Companies to such Person in respect of obligations relating to the period prior to the NOI Filing Date, against any amounts that are or may become due from such Person to the Companies in respect of obligations arising on or after the NOI Filing Date, in each case without the consent of the Companies and the Proposal Trustee, or as may be ordered by this Court. For greater certainty and without limiting the generality of the foregoing, no merchant or credit card service provider (a “**Provider**”) shall be entitled to set off any monies that are in its possession or control as of the NOI Filing Date, or that come into its possession and control

subsequent to the NOI Filing Date, against any amounts that may be owing to the Provider, or may become owing to the Provider, in respect of transactions prior to the NOI Filing Date, including in respect of any customer chargebacks relating to sales by the Companies prior to the NOI Filing Date.

#### **DIRECTOR'S CHARGE**

15. **THIS COURT ORDERS** that the Companies shall indemnify their directors and officers (“**D&O**”) against obligations and liabilities that they may incur as a directors or officers of the Companies after the NOI Filing Date, except to the extent that the obligation or liability was incurred as a result of the D&O’s gross negligence or wilful misconduct.

16. **THIS COURT ORDERS** that the D&O of the Companies shall be entitled to the benefit of and is hereby granted a charge (the “**Director’s Charge**”) on all of the Companies’ assets, undertakings and properties acquired for, or used in relation to a business carried on by the Companies, including all proceeds thereof (collectively, the “**Property**”), which charge shall not exceed an aggregate amount of \$140,000, as security for the indemnity provided in paragraph 31 of this Order. The Director’s Charge shall have the priority set out in paragraphs 31 and 33 of this Order.

#### **ADMINISTRATION CHARGE**

17. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and the Companies’ counsel shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property. The Administration Charge shall not exceed an aggregate amount of \$95,000, as security for their professional fees and disbursements incurred at

the standard rates and charges of the Companies' counsel, the Proposal Trustee and its counsel both before and after the making of this Order in respect of these proceedings.

18. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except any validly perfected security interest in favour of equipment lessors.

#### **PROPOSAL TRUSTEE**

19. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court including, to perform such duties are required to give effect to the terms of this Order and such Other orders as may be made by this Court from time to time.

20. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Companies' business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Trustee being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.



21. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Environmental Protection Act* (Canada), the *Environmental Protection Act* (Ontario), the *Water Resources Act* (Ontario), or the *Occupational Health and Safety Act* (Ontario) and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. **THIS COURT ORDERS** that the Trustee shall provide any creditor of the Companies with the information provided by the Companies in response to reasonable requests for information made in writing by such creditor addressed to the Trustee. The Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Trustee has been advised by the Companies is confidential, or that the Trustee has determined must be kept confidential so as to facilitate the Sale Process, the Trustee shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Trustee and the Companies may agree.

### **NO LIABILITY OF PROPOSAL TRUSTEE**

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee under the BIA or any applicable legislation.

### **KEY EMPLOYEE RETENTION PLAN**

24. **THIS COURT ORDERS** that the KERP, an unredacted version of which is attached as **Confidential Exhibit “1”** to the Lurie Affidavit and a redacted version as Exhibit “E” to the Lurie Affidavit is approved.

### **APPROVAL OF SALE PROCESS**

25. **THIS COURT ORDERS** that sale process set out in Schedule “A” to this order in respect of the Companies’ assets and/or business (the “**Sale Process**”) is approved. The Proposal Trustee may take such steps as are necessary or desirable to carry out the Sale Process, provided that any definitive agreement to be executed by the Companies in respect of the sale of all or part of the Companies’ Property shall require further approval of this Court.

26. **THIS COURT ORDERS** that the Companies and the Proposal Trustee are authorized and directed to take such steps as they deem necessary or advisable to carry out and perform their

obligations under the Sale Process and to take such steps and execute such documentation as may be necessary or incidental to the Sale Process.

27. **THIS COURT ORDERS** that any step taken by the Companies or the Proposal Trustee in connection with the Sale Process prior to the date of this Order is approved and ratified.

28. **THIS COURT ORDERS** that the Proposal Trustee, the Companies, and their respective assistants, affiliates, partners, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct in performing their obligations under the Sales Process as determined by this Court.

29. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Proposal Trustee and the Companies are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Companies’ records pertaining to its past and current employees, but only to the extent desirable or required to negotiate or attempt to complete one or more sales of the Property ( each, a “**Sale**”). Each Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee and the Companies, or in the alternative destroy all such information. The Successful Bidder(s) (as defined

in the Sale Process) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s) (as defined in the Sale), shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Proposal Trustee and the Companies, or ensure that all other personal information is destroyed.

### **APPROVAL OF STALKING HORSE APA**

30. **THIS COURT ORDERS** that the execution, delivery, and entry into by the Companies of the Stalking Horse Purchase Agreement dated as of March 7, 2024 (the “**Stalking Horse APA**”) between the Companies and Maab Global Ltd. (the “**Stalking Horse Purchaser**”), substantially in the form attached as Exhibit “F” to the Lurie Affidavit is confirmed, authorized and approved. For greater certainty, the Stalking Horse APA is approved only as a bid in the Sale Process (as defined herein) and the transaction contemplated therein is subject to prior Court approval.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

31. **THIS COURT ORDERS** that the priorities of the Director’s Charge, the Administration Charge, and the Deposit Charge (as defined herein) (collectively, the “**Charges**”) as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$95,000.00); and

Second – Directors’ Charge (to the maximum amount of \$140,000.00).

32. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. **THIS COURT ORDERS** that the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other Encumbrances in favour of any person.

34. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Companies also obtain the prior written consent of the Proposal Trustee the beneficiaries of the Charges, or further Order of this Court.

35. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other

agreement (collectively, an “**Agreement**”) which binds the Companies, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any agreements or document to establish the Charges shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;
- (b) that the Stalking Horse Purchaser shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the applicable Companies entering into the Stalking Horse APA or the creation of the Deposit Charge; and
- (c) the payments, if any, made by the Companies pursuant to this Order and the granting of the Deposit Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

36. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Companies’ interests in such real property leases.

**SEALING**

37. **THIS COURT ORDERS** that the unredacted copy of the KERP attached as Confidential Exhibit “1” to the Lurie Affidavit shall be filed with the Court and be kept confidential and under seal with the Court until further order of the Court.

## SERVICE AND NOTICE

38. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in these proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol at the following [URL:https://kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks.html](https://kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks.html).

39. **THIS COURT ORDERS** that the Proposal Trustee and the Companies and their respective counsel be and are hereby authorized but not obligated, to serve or distribute this Order, any other materials, orders, communication, correspondence or other information as may be necessary or desirable in connection with the Sale Process to any Person or interested party that the Proposal Trustee or the Companies consider appropriate. For greater certainty, any such distribution, communication or correspondence shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

40. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Companies and the Proposal Trustee are at liberty to serve

or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

41. **THIS COURT ORDERS** that the Proposal Trustee shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the "**Service List**"). The Proposal Trustee shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to these proceedings. Notwithstanding the foregoing, the Proposal Trustee shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

#### **GENERAL**

42. **THIS COURT ORDERS** that the Companies or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

43. **THIS COURT ORDERS** that this Order and its effects shall survive the filing by the Companies of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard to the Companies pursuant to the terms of the *Companies Creditors' Arrangement Act* or the bankruptcy of the Companies, unless this Court orders otherwise.



44. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, and this Order is enforceable without the need for entry and filing.



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*(Signature of judge, officer or registrar)*

Court File No.: 31-3051650  
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AND IN THE MATTER ORGANIC GARAGE (CANADA) LTD., 2412383 ONTARIO INC.,  
2347018 ONTARIO INC., 2368123 ONTARIO INC., 2507158 ONTARIO INC.,  
2557479 ONTARIO INC., AND 2581751 ONTARIO INC.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

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PROCEEDING COMMENCED AT TORONTO

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**ORDER**

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