

2023 01G 0841

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of
Rambler Metals and Mining Canada
Limited and 1948565 Ontario Inc.

AND IN THE MATTER OF the *Companies'*
Creditors Arrangement Act, R.S.C. 1985,
c. C-36, as amended ("CCAA")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Rambler Metals and Mining Canada Limited ("Rambler Canada") and 1948565 Ontario Inc. ("1948") (collectively, the "Rambler Group" or the "Applicants") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order substantially in the form filed with the Application was heard this 27th day of February, 2023.

ON READING the affidavit of Toby Bradbury sworn the 22nd day of February, 2023 (the "Bradbury Affidavit") and the exhibits thereto, the consent of Grant Thornton Limited ("GTL") to act as Court-appointed monitor of Rambler Group (in such capacity, the "Monitor"), and the Monitor's Pre-Filing Report;

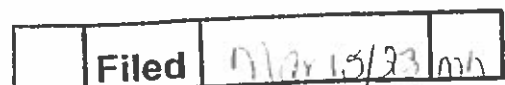
AND ON READING the Monitor's First Report, dated March 3, 2023;

AND ON READING the Monitor's Second Report, dated March 13, 2023;

ON HEARING the submissions of counsel for Joe Thorne, counsel for the Rambler Group, and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service dated the 13th day of March, 2023;

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the materials filed, as set out in the affidavit of service is hereby deemed adequate notice so that this application is properly returnable today and hereby dispenses with further service thereof.



APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that Rambler Group are each companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Rambler Group shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that Rambler Group shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Honourable Court, the Rambler Group shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. Rambler Group is authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of its Business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Rambler Group shall be entitled to continue to utilize its cash management system currently in place, or replace it with another substantially similar cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Rambler Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Rambler Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or

arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Rambler Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Rambler Group in respect of these proceedings, at their standard rates and charges;
- (c) amounts owing for goods and services supplied to the Rambler Group if in the opinion of the Monitor the supplier or vendor of such goods or services is necessary for the operation or preservation of the Business or Property; and
- (d) only with written consent of the Monitor, amounts owing for goods or services supplied to the Rambler Group prior to the Initial Order if, in the opinion of the Rambler Group and the Monitor, such payment is necessary or desirable to avoid disruption to the operations of the Business or the Applicant during the CCAA proceedings.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Rambler Group shall be entitled but not required to pay all reasonable expenses incurred by the Rambler Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services and lease payments for mining equipment used in the operation of the Business; and

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- (b) payment for goods or services actually supplied to the Rambler Group following the date of this Order.
8. **THIS COURT ORDERS** that the Rambler Group shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Rambler Group in connection with the sale of goods and services by the Rambler Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
 - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Rambler Group.
9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Rambler Group shall pay all amounts constituting rent or payable as rent under 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 Rambler Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order. The Rambler Group may pay such Rent 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 the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Rambler Group is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Rambler Group to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Rambler Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding CAD\$50,000 in any one transaction or CAD\$250,000 in the aggregate;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
 - (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,
- all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").
12. **THIS COURT ORDERS** that the Rambler Group shall provide each of the relevant landlords with notice of the Rambler Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Rambler Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Rambler Group, or by further Order of this Court upon application by the Rambler Group on at least two (2) days notice to such landlord and any such secured creditors. If the Rambler Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent

under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Rambler Group's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Rambler Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Rambler Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE RAMBLER GROUP OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including the 19th day of May, 2023 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Rambler Group or the Monitor, or affecting the Business or the Property, except with the written consent of the Monitor and the Rambler Group, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Rambler Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
15. **THIS COURT ORDERS** that the stay of Proceedings set out in paragraph 14, above, shall also extend to any and all of the property, assets, and undertaking of Rambler Metals and Mining plc and Rambler Mines Limited (collectively, "**Rambler UK**") situate in Canada (the "**Rambler UK Assets**") for the duration of the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Rambler Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Monitor and the Rambler

Group, or leave of this Court, provided that nothing in this Order shall (i) empower the Rambler Group to carry on any business which the Rambler Group is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Rambler Group, except with the written consent of the Monitor and the Rambler Group, or leave of this Court.
18. **THIS COURT ORDERS** that the protections afforded to the Rambler Group in paragraphs 16 and 17 above, shall also extend to Rambler UK and the Rambler UK Assets for the duration of the Stay Period.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Rambler Group 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, insurance, transportation services, utility or other services to the Business or the Rambler Group, 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 Rambler Group, and that the Rambler Group 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 Rambler Group in accordance with normal payment practices of the Rambler Group or such other practices as may be agreed upon by the supplier or service provider and each of the Monitor and the Rambler Group, or as may be ordered by this Court.




NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Rambler Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Rambler Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Rambler Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Rambler Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the Rambler Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. **THIS COURT ORDERS** that the Rambler Group shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Rambler Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
23. **THIS COURT ORDERS** that the directors and officers of the Rambler Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD\$675,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 44 and 46 herein. 
24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the

benefit of the Directors' Charge, and (b) the Rambler Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Rambler Group with the powers and obligations set out in the CCAA or set forth herein and that the Rambler Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Rambler Group pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor and approve in writing the Rambler Group's receipts and disbursements;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - (c) advise, in consultation with the Rambler Group, in its development of the Plan and any amendments to the Plan, if applicable;
 - (d) run the sales and investment solicitation process ("SISP") in accordance with the procedures set out in this Court's order authorizing the SISP, dated March 15, 2023;
 - (e) assist, in consultation with the Rambler Group, in its dissemination of reports and other information to the DIP Lender (as defined herein) and their respective counsel, pursuant to and in accordance with the Definitive Documents (as defined herein), or as may otherwise be reasonably requested by the DIP Lender;



- (f) advise, in consultation with the Rambler Group, in its preparation of the Rambler Group's cash flow statements and reporting required by the DIP Lender under the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Lender and their respective counsel in accordance with the Definitive Documents;
 - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Rambler Group, to the extent that is necessary to adequately assess the Rambler Group's business and financial affairs or to perform its duties arising under this Order;
 - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
 - (i) perform such other duties as are required by this Order or by this Court from time to time.
27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, as amended, and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Rambler Group and the DIP Lender with information provided by the Rambler Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor 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 Monitor has been advised by the Rambler Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Rambler Group may agree.
30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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 the Monitor by the CCAA or any applicable legislation.
31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Rambler Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Rambler Group as part of the costs of these proceedings. The Rambler Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Rambler Group on a weekly basis and, in addition, the Rambler Group is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Rambler Group reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.



33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Rambler Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of CAD\$1,350,000, as security for their professional fees and disbursements incurred at their respective standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 44 and 46 herein.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

34. **THIS COURT ORDERS** that the Rambler Group and Rambler UK and all their respective current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf shall fully cooperate with the Monitor in the exercise its powers under this Order or any other Order of the Court, including by:
- (a) advising the Monitor of the existence of any Property, including the Rambler UK Assets, of which such party has knowledge of;
 - (b) providing the Monitor with immediate and continued access to any Property in such party's possession or control, including continued access to the Rambler UK Assets;
 - (c) advising the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Rambler Group and Rambler UK, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information ("**Records**") of which such party has knowledge of; and
 - (d) providing access to and use of the Records, including any accounting, computer, software and physical facilities relating thereto, and including providing the Monitor with instructions on the use of any computer or other system as requested by the Monitor and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the Records, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to

the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

LIMITATION ON THE MONITOR'S LIABILITY

35. **THIS COURT ORDERS** that the Monitor is not and shall not, for any purposes, be deemed to be a director, officer, employee, receiver, receiver-manager, or liquidator of the Rambler Group.
36. **THIS COURT ORDERS** that the Monitor is not and shall not for the purposes of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.), as amended (the "ITA") be deemed to be a legal representative or person to whom s. 150(3) of the ITA applies.
37. **THIS COURT ORDERS** that that the rights, protections, indemnities, charges, priorities and other provisions in favour of the Monitor set out in the CCAA, any other applicable legislation, and any other Order granted in these proceedings, all shall apply and extend to the Monitor in connection with the Monitor carrying out the provisions of this Order, amended as necessary to give effect to the terms of this Order.

DIP FINANCING

38. **THIS COURT ORDERS** that Rambler Group is hereby authorized and empowered to execute, enter into and deliver the Terms and Conditions for a Senior Secured Superpriority Debtor-in-Possession Credit Facility (the "**DIP Financing Agreement**") dated the 23rd day of February, 2023 between, Rambler Canada as borrower, RMM Debt Limited Partnership by its General Partner RMM General Partner Inc. as lender (the "**DIP Lender**"), and Rambler UK, Rambler Mines Limited, and 1948 as guarantors, and to borrow, in accordance with the terms and conditions of the DIP Financing Agreement, interim financing of up to USD\$5,000,000 (the "**DIP Agreement**") to, among other things, fund the Rambler Group's working capital requirements and other general corporate purposes of the Rambler Group during the Stay Period.
39. **THIS COURT ORDERS** that, in addition to the DIP Agreement, Rambler Canada is also hereby authorized and empowered to execute and deliver such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Agreement, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender

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pursuant to the terms thereof, and Rambler Canada is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that, as security for Rambler Canada's obligations under the Definitive Documents, the DIP Lender shall be entitled to the benefit of and are hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 44 and 46 herein.
41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the DIP Agreement, the other Definitive Documents or the DIP Lender's Charge, upon five (5) days notice to the Monitor and the Rambler Group, may exercise any rights and remedies against Rambler Canada or the Property under or pursuant to the DIP Agreement, the other Definitive Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to Rambler Canada and set off and/or consolidate any amounts that may be owing by the DIP Lender against the obligations of Rambler Group to the DIP Lender under the DIP Agreement, the other Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Rambler Group and for the appointment of a trustee in bankruptcy of the Rambler Group; and
 - (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Rambler Group or the Property.



42. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Rambler Group under the CCAA, or any proposal filed by the Rambler Group under the BIA, with respect to any advances made under the DIP Agreement and the other Definitive Documents.
43. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "Variation") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the DIP Agreement or the other Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the DIP Agreement and the other Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge and the Directors' Charge (collectively, the "Charges"), as among them, shall be as follows:

First – the Administration Charge (to the maximum amount of CAD\$1,350,000);

Second – the DIP Lender's Charge (to the maximum amount of USD\$5,000,000);
and

Third – the Directors' Charge (to the maximum amount of USD\$675,000)

45. **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.

46. **THIS COURT ORDERS** that each of 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 security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any secured creditor of the Rambler Group who did not receive notice of the application for this Order. The Rambler Group shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrances over which the Charges have not obtained priority pursuant to this Order.
47. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Rambler Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Rambler Group also obtains the prior written consent of the Monitor and of the applicable chargee(s) entitled to the benefit of the Charges (collectively, the "Chargees"), or further Order of this Court.
48. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees 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 Rambler Group, 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 the DIP Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Rambler Group of any Agreement to which it is a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Rambler Canada



entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and


- (c) The payments made by the Rambler Group pursuant to this Order, the DIP Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

- 49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Rambler Group's interest in such real property leases.

SERVICE AND NOTICE

- 50. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Rambler Group of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

GENERAL

- 51. **THIS COURT ORDERS** that the Rambler Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 52. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Rambler Group, the Business, or the Property.
- 53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States, or in the United Kingdom to give effect to this Order and to assist the Rambler Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Rambler Group and to the Monitor, as 

an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Rambler Group and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that each of the Rambler Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
55. **THIS COURT ORDERS** that any interested party (including the Rambler Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland Standard/Daylight Time on the date of this Order.



Assistant Deputy Registrar

