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COURT

COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF A PLAN OF
PEAVEY INDUSTRIES GENERAL
PARTNER LIMITED, TSC STORES GP
INC., GUYS FREIGHTWAYS LTD., and
PEAVEY INDUSTRIES LIMITED

DOCUMENT

**AMENDED AND RESTATED INITIAL
ORDER (CCAA)**

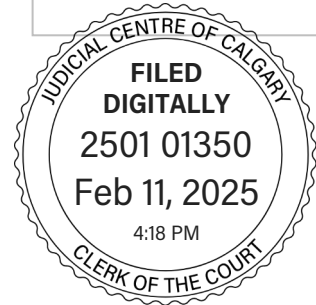
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DATE ON WHICH ORDER WAS PRONOUNCED: February 6, 2024

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice B.B. Johnston

LOCATION OF HEARING: Calgary, Alberta via WebEx

UPON the Application of Peavey Industries General Partner Limited, TSC Stores GP Inc., Guys Freightways Ltd., Peavey Industries Mutual Fund Trust and Peavey Industries Limited (the **Applicants**); **AND UPON** having read the first and second affidavits of Douglas Anderson, sworn January 27 (**Anderson Affidavit #1**) and January 31, 2025, respectively, and the affidavit of service of Joanna Van Ham, sworn February 5, 2025; **AND UPON** having read the Brief of Law of the Applicants, filed January 27, 2025; **AND UPON** having read the First Report of the Monitor, FTI Consulting Inc. (**Monitor** and **First Report of the Monitor**); **AND UPON** reviewing the Initial Order granted in the proceedings under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (**CCAA**) by the Honourable Justice Feasby on January 27, 2025 (the **Initial Order**); **AND UPON** hearing counsel for the Applicants, Peavy Industries LP (**Peavey**), and Peavey Industries Mutual Fund Trust (**MFT**) (collectively, the **Peavey Group**), and any other party that may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application of this Amended and Restated Initial Order is hereby abridged and deemed good and sufficient, and this application is properly returnable today.

CAPITALIZED TERMS

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in Anderson Affidavit #1.

APPLICATION

3. The Applicants are companies to which the *Companies' Creditors Arrangement Act* of Canada (the **CCAA**) applies.
4. Although not Applicants, Peavey and MFT are integral to the business of the Applicants, and shall be bound by this Order as though they were Applicants, and enjoy the benefits of the protections and authorizations provided in this Order, and shall be subject to the same restrictions provided herein.

PLAN OF ARRANGEMENT

5. The Peavey 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 (the **Plan**).

POSSESSION OF PROPERTY AND OPERATIONS

6. The Peavey Group shall:
 - (a) 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**);
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the **Business**) and Property;
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, 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 business or for the carrying out of the terms of this Order; and

- (d) be entitled to continue to utilize the central cash management system currently in place as described in Anderson Affidavit #1, or replace it with another substantially similar central 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 Peavey 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 Peavey 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 the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
7. To the extent permitted by law, the Peavey Group shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after the date of the Initial Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of the Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) any or all amounts outstanding for inventory delivered by critical suppliers, provided the Agent and the Monitor consent to such payment; and
 - (c) the reasonable fees and disbursements of any Assistants retained or employed by the Peavey Group in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of the Initial Order.
8. Except as otherwise provided to the contrary herein, the Peavey Group shall be entitled but not required to pay all reasonable expenses incurred by the Peavey Group in carrying on the Business in the ordinary course after the Initial 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 (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Peavey Group following the date of the Initial Order.
9. The Peavey 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 that 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,but only where such statutory deemed trust amounts arise after the date of the Initial Order, or are not required to be remitted until after the date of the Initial Order, unless otherwise ordered by the Court;
 - (b) all goods and services or other applicable sales taxes (collectively, **Sales Taxes**) required to be remitted by the Peavey Group in connection with the sale of goods and services by the Peavey Group, but only where such Sales Taxes are accrued or collected after the date of the Initial Order, or where such Sales Taxes were accrued or collected prior to the date of the Initial Order but not required to be remitted until on or after the date of the Initial 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 that are attributable to or in respect of the carrying on of the Business by the Peavey Group.
10. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Peavey Group may 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 as rent to the landlord under the lease) based on the terms

of existing lease arrangements or as otherwise may be negotiated by the Peavey Group from time to time for the period commencing from and including the date of the Initial Order (**Rent**), but shall not pay any rent in arrears.

11. Except as specifically permitted in this Order, the Peavey 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 Peavey Group to any of its creditors as of the date of the Initial Order;
 - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
 - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. The Peavey Group shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the 1903 Credit Agreement (as defined in para 36), have the right to:
- (a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets (including furniture, fixtures and equipment (**FF&E**) but excluding inventory sold to public customers) not exceeding \$750,000 in any one transaction or \$3,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Peavey Group (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
 - (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Peavey Group and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
 - (c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Peavey Group deems appropriate, in accordance with section 32 of the CCAA; and
 - (d) 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 Peavey Group to proceed with an orderly restructuring of the Business (the **Restructuring**).

13. The Peavey Group shall provide each of the relevant landlords with notice of the Peavey 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. If the landlord disputes the Peavey 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 Peavey Group, or by further order of this Court upon application by the Peavey Group on at least two (2) days' notice to such landlord and any such secured creditors. If the Peavey Group disclaims or resiliates 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 or resiliation of the lease shall be without prejudice to the Peavey Group's claim to the fixtures in dispute.
- 13a. No FF&E that is subject to a registered security interest shall be sold without consent of the holder of the registered security interest and the Monitor, or further order of this Court.
14. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Peavey Group and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, 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 Peavey Group in respect of such lease or leased premises and such landlord shall be entitled to notify the Peavey Group of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
15. The SC Consulting Agreement, the RE Consulting Agreement and the Consignment Agreement (all as defined in Anderson Affidavit #1, being the **Consulting Agreements**), and any applicable Statements of Work thereunder, are hereby approved, authorized and ratified and the Peavey Group is authorized and directed to continue to perform pursuant to the Consulting Agreements

(including remitting payment for fees and expenses to the Consultant) or take any and all actions as may be necessary to implement the Consulting Agreements and the transactions contemplated therein, but always subject to this Order and any other Orders of this Court.

16. The Consultant is and shall act as an independent consultant to the Peavey Group.

NO PROCEEDINGS AGAINST THE PEAVEY GROUP OR THE PROPERTY

17. Until and including April 30, 2025, or such later date as this Court may order (the **Stay Period**), no proceeding or enforcement process in any court (each, a **Proceeding**) shall be commenced or continued against or in respect of the Peavey Group or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Peavey Group or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. 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**), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Peavey Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Peavey Group to carry on any business that the Peavey Group is not lawfully entitled to carry on;
 - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
 - (c) prevent the filing of any registration to preserve or perfect a security interest;
 - (d) prevent the registration of a claim for lien; or
 - (e) exempt the Peavey Group from compliance with statutory or regulatory provisions relating to health, safety or the environment.
19. Nothing in this Order shall prevent any party from taking an action against the Peavey Group where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

20. During the Stay Period, no Person shall accelerate, suspend, 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 Peavey Group, except with the written consent of the Peavey Group and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

21. During the Stay Period, all persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Peavey Group, 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 Peavey Group

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Peavey Group or exercising any other remedy provided under such agreements or arrangements. The Peavey 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 usual prices or charges for all such goods or services received after the date of the Initial Order are paid by the Peavey Group in accordance with the payment practices of the Peavey Group, or such other practices as may be agreed upon by the supplier or service provider and each of the Peavey Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of the Initial Order, nor shall any person, other than the Interim Lender (as defined in paragraph 35), in accordance with the Cash Management System and this Order, be under any obligation on or after the date of the Initial Order to advance or re-advance any monies or otherwise extend any credit to the Peavey Group.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 19 of this Order, no Proceeding may be commenced or continued against any of the

former, current or future directors or officers of the Peavey Group (the **D&Os**) with respect to any claim against the directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Peavey 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 Peavey Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the Peavey Group or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. The Peavey Group shall indemnify their D&Os against obligations and liabilities that they may incur as directors and officers of the Peavey Group after the commencement of the within proceedings except to the extent that, with respect to any D&O, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
25. The D&Os of the Peavey Group shall be entitled to the benefit of and are hereby granted a charge (the **D&O Charge**) on the Property, which charge shall not exceed an aggregate amount of \$7,000,000, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority set out in paragraphs 42 and 44 herein.
26. 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 D&O Charge; and
 - (b) the D&Os shall only be entitled to the benefit of the D&O 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 24 of this Order.

APPOINTMENT OF MONITOR

27. FTI Consulting Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs of the Peavey Group with the powers and obligations set out in the CCAA or set forth herein and that the Peavey Group and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Peavey 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.

28. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Peavey Group's receipts and disbursements, Business and dealings with the Property;
 - (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 and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Peavey Group;
 - (c) assist the Peavey Group, to the extent required by the Peavey Group, in its dissemination to the Interim Lender (as defined in paragraph 35) and its counsel of financial and other information as agreed to between the Peavey Group and the Interim Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lender and as set out in the 1903 Credit Agreement's terms governing the 1903 Revolving Loan Facility;
 - (d) advise the Peavey Group in its preparation of the Peavey Group's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis agreed to by the Interim Lender;
 - (e) advise the Peavey Group in its development of the Plan and any amendments to the Plan;
 - (f) assist the Peavey Group, to the extent required by the Peavey Group, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
 - (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 Peavey Group to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Peavey Group 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;
 - (i) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Peavey Group and any other Person; and

- (j) perform such other duties as are required by this Order or by this Court from time to time.
29. 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, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, 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 or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. 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 federal or provincial environmental legislation.
30. The Monitor shall provide any creditor of the Peavey Group and the Interim Lender with information provided by the Peavey 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 Peavey 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 Peavey Group may agree.
31. 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.
32. The Monitor, counsel to the Monitor, and counsel to the Peavey Group shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Peavey Group as part of the costs of these proceedings. The Peavey Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Peavey Group from time to time, in addition, the Peavey Group is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Peavey Group, retainers as reasonably requested by the Monitor, counsel for the Monitor and counsel for the Peavey Group.

33. The Monitor and its legal counsel shall pass their accounts from time to time.
34. The Monitor, counsel to the Monitor, if any, and the Peavey Group's counsel, as security for the professional fees and disbursements incurred both before and after the granting of the Initial Order, shall be entitled to the benefits of and are hereby granted a charge (the **Administration Charge**) on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 42 and 44 herein.

INTERIM FINANCING

35. Notwithstanding any existing or ongoing defaults by the Peavey Group under the 1903 Credit Agreement, the Peavey Group is authorized and directed to continue to use the 1903 Revolving Loan Facility under the Cash Management System that is granted by 1903P Loan Agent, LLC, as lender and agent (the **Agent**) pursuant to the 1903 Credit Agreement, as defined and described in Anderson Affidavit #1, for the purposes of interim financing. For greater certainty, (i) the Peavey Group is authorized and directed, despite existing and ongoing defaults under the 1903 Credit Agreement, to borrow, repay and re-borrow such amounts from time to time as the Peavey Group may consider necessary or desirable under the 1903 Credit Agreement, subject to the terms and conditions of the 1903 Credit Agreement and this Order; and (ii) for so long as the Peavey Group remains authorized and directed to borrow, repay and re-borrow under the 1903 Credit Agreement in accordance with (i), 1903P Loan Agent, LLC, in its capacity as interim lender (the **Interim Lender**) is authorized to apply receipts and deposits made to the Peavey Group's bank accounts, whether directly or through blocked accounts, against pre-filing indebtedness owing under the 1903P Credit Agreement up to the maximum aggregate amount of \$66,414,413.41, subject to further Order of this Court.
36. The Cash Management System will be governed by the terms of the 1903 Credit Agreement, despite existing and ongoing defaults under the 1903 Credit Agreement, this Order, and such other documentation applicable to the Cash Management System, including any blocked account agreements. The rights and remedies of the Interim Lender shall be unaffected by paragraphs 17, 18, 20 and 21 of this Order or any other stay of proceedings that may be granted in these proceedings.
37. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the **Interim Lender's Charge**) on the Property, which charge shall not exceed an aggregate amount of \$25,000,000, as security for any advances made under the 1903 Credit Agreement from and after the commencement of these CCAA proceedings. The Interim Lender's Charge shall have the

priority set out in paragraphs 42 and 44 herein. The Interim Lender's Charge shall not secure any obligation existing before the date on which the Initial Order was made.

38. Notwithstanding any other provision of this Order:
- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge;
 - (b) upon the occurrence of a new and further event of default under the 1903 Credit Agreement or the Interim Lender's Charge, the Interim Lender, upon two (2) days' notice to the Peavey Group and the Monitor, may exercise any and all of its rights and remedies against the Peavey Group or the Property under or pursuant to the 1903 Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the Peavey Group and set off and/or consolidate any amounts owing by the Agent to the Peavey Group against the obligations of the Peavey Group to the Agent under the 1903 Credit Agreement or the Interim 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 Peavey Group and for the appointment of a trustee in bankruptcy of the Peavey Group; and
 - (c) the foregoing rights and remedies of the Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Peavey Group or the Property.
39. The Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Peavey Group under the CCAA, or any proposal filed by the Peavey Group under the *Bankruptcy and Insolvency Act of Canada* (the **BIA**), with respect to any post-filing advances made under the 1903 Credit Agreement.

KEY EMPLOYEE RETENTION AND INCENTIVE PLAN

40. The amounts payable to key employees pursuant to the KERP and KEIP (as attached to the First Report of the Monitor at Confidential Appendix 1) are hereby secured by a charge (the **KERP / KEIP Charge**) on the Property, in favour of the key employees identified therein. The KERP / KEIP Charge shall have the priority set out in paragraphs 42 and 44 hereof.
41. The KERP / KEIP Charge shall be in the aggregate amount of no more than \$1,204,470, less any amounts allocable in the KERP to any employees who do not retain their employment in accordance with the KERP.

VALIDITY AND PRIORITY OF CHARGES

42. The priorities of the Administration Charge, the Interim Lender's Charge, the D&O Charge, and the KERP Charge (collectively, the **Charges** and each a **Charge**), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$750,000);

Second – Interim Lender's Charge (to the maximum amount of \$25,000,000);

Third – D&O Charge (to the maximum amount of \$7,000,000); and

Fourth – KERP Charge (to the maximum amount of \$1,204,470).

43. The filing, registration or perfection of the Charges shall not be required, and 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.

44. Each of the Charges shall constitute a charge on the Property and subject always to section 34(11) of the CCAA, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, **Encumbrances**) in favour of any Person.

45. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Peavey Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Peavey Group also obtains the prior written consent of the Monitor, the Interim Lender, and the beneficiaries of the D&O Charge, the Administration Charge, and the KERP Charge, or further order of this Court.

46. The Charges and the 1903 Credit Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the **Charges**) and/or the Interim Lender thereunder shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to the 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**) that binds the Peavey Entities, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by the Peavey Group of any Agreement to which it is a party;
 - (ii) 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 the creation of the Charges; and
 - (iii) the payments made by the Peavey Group pursuant to this Order, 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.

ALLOCATION

- 47. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property.

WAGE EARNER PROTECTION PROGRAM ACT

- 48. Pursuant to subsection 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1, Peavey Industries General Partner Limited, TSC Stores GP Inc., Guys Freightways Ltd., Peavey Industries Limited, Peavey Industries LP and Peavey Industries Mutual Fund Trust meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222.

SERVICE AND NOTICE

- 49. The Monitor shall (i) without delay, publish in the Globe and Mail, Retail Insider, and Calgary Herald a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (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 Peavey 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.

50. The Peavey Group and, where applicable, the Monitor, are at liberty to serve 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 electronic transmission to the Peavey Group's creditors or other interested parties at their respective addresses as last shown on the records of the Peavey Group and that any such service or notice by courier, personal delivery or electronic 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.
51. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the **Service List**) to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: <http://cfcanada.fticonsulting.com/peavey/>

GENERAL

52. The Peavey Group, the Interim Lender, 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.
53. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
54. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Peavey Group, the Business or the Property.
55. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Peavey 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 Peavey 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 Peavey Group and the Monitor and their respective agents in carrying out the terms of this Order.

56. Each of the Peavey Group and the Monitor shall 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 proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
57. Any interested party (including the Peavey 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.
58. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

B B Johns

Justice of the Court of King's Bench of Alberta