

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 30TH
JUSTICE NEWBOULD) DAY OF SEPTEMBER, 2016



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 COMPROMISE OR ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC. AND GOLF TOWN GP II INC.

Applicants

APPROVAL AND VESTING ORDER

THIS MOTION, made by Golf Town Canada Holdings Inc., Golf Town Canada Inc., Golf Town GP II Inc. (collectively, the "**Applicants**" and, together with Golfsmith International Holdings LP and Golf Town Operating Limited Partnership, the "**Golf Town Entities**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (i) approving the sale transaction (the "**Golf Town Transaction**") contemplated by a Purchase Agreement dated as of September 14, 2016 (the "**Purchase Agreement**") between Golf Town Canada Inc. and Golf Town Operating Limited Partnership (together, the "**Vendors**") and 9918167 Canada Inc.; and (ii) vesting in 9918167 Canada Inc. or such other person as 9918167 Canada Inc. may designate with the consent of the Vendors (the "**Purchaser**") all of the Vendors' right, title and interest in and to the Purchased Assets was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Roussy sworn September 13, 2016, the affidavit of Robert White sworn September 23, 2016 (the "**White Affidavit**") and the first report (the "**First Report**") of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor of the Golf Town Entities (the "**Monitor**") and on hearing the submissions of counsel for the Golf

Town Entities, 9918167 Canada Inc., the First Lien Agent and the DIP Agent, and the Monitor and such other counsel who were present and wished to be heard, and on reading the affidavit of service of Bradley Wiffen sworn September 27, 2016:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meanings given to them in the Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Golf Town Transaction is hereby approved, and the execution and delivery of the Purchase Agreement by the Vendors is hereby authorized and approved, with such minor amendments to the Purchase Agreement as the Vendors and the Purchaser may agree to with the consent of the Monitor. The Vendors are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Golf Town Transaction and for the conveyance of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement, including, without limitation, the Transition Services Agreement, the Escrow Agreement and any occupancy agreement.
4. **THIS COURT ORDERS** that the Purchase Agreement and any ancillary documents entered into by the Vendors and the Purchaser in connection therewith shall not be repudiated, disclaimed or otherwise compromised in these proceedings.
5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Vendors and the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Vendors' right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or

charges created by the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 14, 2016 or any other Order of the Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), provided that (i) the Claims and the Encumbrances referred to herein shall not include Permitted Encumbrances, and (ii) except as may otherwise be agreed to by the Purchaser and the applicable landlord with respect to an Assumed Real Property Lease, nothing herein shall affect the rights and remedies of such landlord against the Purchaser that may exist or arise under or in respect of an Assumed Real Property Lease. For greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that the Monitor is authorized and directed to undertake and perform such activities and obligations as are contemplated to be undertaken or performed by the Monitor pursuant to this Order or the Purchase Agreement or any ancillary document related thereto, including the Escrow Agreement and the Transaction Services Agreement, and shall incur no liability in connection therewith, save and except for any gross negligence or wilful misconduct on its part.

7. **THIS COURT ORDERS** that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of any real property lease; (b) where any real property lease is not, in accordance with its terms, transferrable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, such real property lease shall not be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order, save and except to the extent that the requisite consent has been, or is in the future, obtained from such landlord, or upon further Order of the Court.

8. **THIS COURT ORDERS** that the Vendors and the Monitor are authorized and directed to make any payment to the Purchaser required pursuant to section 2.8(f) of the Purchase Agreement (the “**Working Capital Adjustment Payment**”) from the net proceeds from the sale of the Purchased Assets (the “**Net Proceeds**”) as and when such Working Capital Adjustment Payment becomes due in accordance with the Purchase Agreement, including from the escrow

funds held by the Monitor in accordance with sections 2.5 and 2.8 of the Purchase Agreement and the Escrow Agreement (the “**Escrow Funds**”). The Escrow Funds shall be released in accordance with section 2.8 of the Purchase Agreement and the Escrow Agreement.

9. **THIS COURT ORDERS** that, subject to the terms of the Purchase Agreement, the Vendors are hereby authorized and directed at Closing to reserve, with the consent of the DIP Agent or pursuant to further Order of this Court, such amount, if any, of the Net Proceeds in excess of the Escrow Funds as the Monitor, in consultation with the Vendors and the Purchaser, determines should be reserved in respect of the potential obligation of the Vendors with respect to the Working Capital Adjustment Payment (a “**Reserve**”); and in the event of any disagreement as to the amount or timing of the release of all or any portion of any Reserve established hereunder, then the amount and timing of such release shall be determined by further Order of this Court.

10. **THIS COURT ORDERS** that the Vendors are authorized and directed, with the consent of the Monitor, to release any Reserve or portion thereof or any Escrow Funds that have not been paid to the Purchaser as a Working Capital Adjustment Payment promptly upon the determination that the Working Capital Adjustment Payment has been satisfied or is not payable pursuant to the terms of the Purchase Agreement.

11. **THIS COURT ORDERS** that, subject to the terms of this Order, the Monitor, on behalf of the Golf Town Entities, shall be authorized and directed, without further Order of the Court, to distribute to Antares Capital LP, as DIP Agent and First Lien Agent, from the Net Proceeds following the delivery of the Monitor’s Certificate:

- (a) forthwith, an amount to be determined by the Monitor to be reasonable after deducting the Escrow Funds, any Reserve and other reasonable reserves determined by the Monitor in its sole discretion to be necessary in connection with these proceedings or the administration of the Golf Town Entities’ estate; and
- (b) from time to time in its sole discretion, amounts released from any Reserve and the Escrow Funds in accordance with this Order;

in each case free and clear of all Encumbrances other than those in favour of Antares Capital LP, which distributions shall be applied against the indebtedness, liabilities and obligations owing by any of the Golf Town Entities pursuant to the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement dated as of September 19, 2016 or the Credit Agreement dated as of July 24, 2014, as amended, provided that nothing in this Order shall impair, limit, derogate from or otherwise affect the right of any Golf Town Entity to assert or claim a right of contribution or subrogation against any of its affiliates in respect of any amount paid to Antares Capital LP pursuant to this Order.

12. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, from and after the delivery of the Monitor's Certificate, the Net Proceeds shall stand in the place and stead of the Purchased Assets and all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, provided that, notwithstanding anything to the contrary in this paragraph, (a) the Working Capital Adjustment Payment shall rank in priority to all other Claims or Encumbrances in respect of the Net Proceeds, and (b) the Claims and Encumbrances shall not attach to any portion of the Reserve or the Escrow Funds that has not been released in favour of the Vendors pursuant to the terms of this Order.

13. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof to the Vendors and the Purchaser.

14. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendors and the Purchaser or their respective counsel regarding the satisfaction of the Purchase Price and the fulfillment of conditions to closing under the Purchase Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate.

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendors are authorized and permitted to disclose and transfer to the Purchaser customer, employee, human resources and payroll information in the Vendors' records. The Purchaser shall maintain and protect the privacy of

such information and shall be entitled to use the personal information provided to it in a manner that is consistent with the prior use of such information by the Vendors.

16. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Vendors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Vendors,

the entering into of the Purchase Agreement and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendors and shall not be void or voidable by creditors of the Vendors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the **BIA** or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. **THIS COURT ORDERS AND DECLARES** that the Golf Town Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) or any similar legislation in any other province and section 6 of the *Retail Sales Tax Act* (Ontario) or any equivalent or corresponding provision under any other applicable tax legislation.

18. **THIS COURT ORDERS** that the Vendors and the Purchaser are deemed to have obtained clearance certificates as required under the *Tax Administration and Miscellaneous Taxes Act* (Manitoba), the *Revenue and Financial Services Act* (Saskatchewan), and the *Provincial Sales Tax Act* (British Columbia), and the Purchaser shall not be liable for any taxes or penalties based on or in respect of any unpaid taxes of the Vendors pursuant to such statutes.

19. **THIS COURT ORDERS** that each of the Golf Town Entities is authorized, following delivery of the Monitor’s Certificate, to execute, deliver and file any document, including,

without limitation, any articles of reorganization, required to effect a change of its corporate or partnership name without any requirement to obtain shareholder or partner consent.

20. **THIS COURT ORDERS** that Confidential Supplement No. 1 to the Monitor's First Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

21. **THIS COURT ORDERS** that Confidential Supplement No. 2 to the Monitor's First Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order, until delivery of the Monitor's Certificate pursuant to this Order.

22. **THIS COURT ORDERS** that leave is hereby granted to the Golf Town Entities, the Purchaser, the Monitor or the DIP Agent to apply for assistance and further order of this Court with respect to any supplementation or variation of this Order.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Vendors, 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 Vendors and the Monitor, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Vendors, the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 30 2016

PER / PAR: 

SCHEDULE A
FORM OF MONITOR'S CERTIFICATE

Court File No.: CV-16-11527-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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 COMPROMISE OR
ARRANGEMENT OF GOLF TOWN CANADA HOLDINGS
INC., GOLF TOWN CANADA INC. AND
GOLF TOWN GP II INC.

Applicants

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 14, 2016, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Golf Town Canada Holdings Inc., Golf Town Canada Inc., Golf Town GP II Inc., Golfsmith International Holdings LP and Golf Town Operating Limited Partnership (collectively the "**Golf Town Entities**") in proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).

B. Pursuant to an Order of the Court dated September 30, 2016 (the "**Approval and Vesting Order**"), the Court approved the Purchase Agreement dated as of September 14, 2016 (the "**Purchase Agreement**") between Golf Town Canada Inc. and Golf Town Operating Limited Partnership (together, the "**Vendors**") and 9918167 Canada Inc. and provided for the vesting in 9918167 Canada Inc. or such other person as 9918167 Canada Inc. may designate with the consent of the Vendors (the "**Purchaser**") all of the Vendors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the

delivery by the Monitor to the Vendors and the Purchaser of a certificate confirming (i) the satisfaction of the Purchase Price for the Purchased Assets by the Purchaser in accordance with the Purchase Agreement; (ii) that the conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Vendors and the Purchaser; and (iii) the Golf Town Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR HEREBY CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets in accordance with the Purchase Agreement;
2. The conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Vendors and the Purchaser;
3. The Golf Town Transaction has been completed to the satisfaction of the Monitor; and
4. This Certificate was delivered by the Monitor at _____ ● [p.m.] on _____ ●, 2016.

**FTI Consulting Canada Inc., in its capacity as
Monitor of the Golf Town Entities and not in
its personal capacity**

Per: _____
Name:
Title:

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

Court File No: CV-16-11527-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF GOLF TOWN CANADA HOLDINGS INC., GOLF TOWN CANADA INC.
AND GOLF TOWN GP II INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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